

AM

- Haupeis v. Far Hills

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Stenographic Transcript of Non-jury trial

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ALOIS HAUEIS et al, )

Plaintiff, )

vs. )

BOROUGH OF FAR HILLS et al, )

Defendant. )

Stenographic Transcript

of

Non-jury Trial

Place:

Somerset County Court House  
Somerville, New Jersey

Date:

November 9, 1983

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**HON. DAVID G. LUCAS**

B E F O R E:

HONORABLE DAVID G. LUCAS, J.S.C.

T R A N S C R I P T O R D E R E D B Y:

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Official Court Reporter  
Somerset County Court House  
Somerville, New Jersey.

2

I N D E X

WITNESS

PAGE

ALLEN J. DRESDNER

Continued Cross-Examination by Mr. Vogel	18
Redirect Examination by Mr. Mastro	39, 58
Recross Examination by Mr. Vogel	57

ARTHUR L. REUBEN

Direct Examination by Mr. Mastro	62
Cross-Examination by Mr. Vogel	78
Redirect Examination by Mr. Vogel	92

1 MORNING SESSION

2 TIME: 9:30 a.m.

3  
4 A L L E N J. D R E S D N E R, previously  
5 sworn.

6 THE COURT: All right, good morning.

7 MR. VOGEL: Good morning.

8 MR. MASTRO: Good morning.

9  
10 (A discussion takes place off the  
11 record.)

12  
13 THE COURT: We'll go on the record.

14 MR. VOGEL: I want to reiterate your  
15 question --

16 THE COURT: Hold on. We've taken  
17 care of some housekeeping off the record.

18 I've told you of the availability of  
19 Mr. Reuben this morning. I've told you my own  
20 schedule for this afternoon. All right.

21 Now, Mr. Mastro.

22 MR. MASTRO: Yes, your Honor.

23 I would request that the Court call  
24 Mr. Reuben this morning. As I indicated off  
25 the record, I don't think either myself or Mr.

1 Vogel will be that long with him, first of  
2 all.

3 Secondly, I think he's an important  
4 witness in view of what has transpired during  
5 the testimony of Mr. Ginman. There's a  
6 significant issue as to whether there was  
7 total accord between the staff of the  
8 Department of Community Affairs in preparing  
9 the State Development Guideline and the  
10 Somerset County Planning Board and/or its  
11 staff.

12 We're focusing on an issue of  
13 reasonableness of the State Development  
14 Guideline as it affects Far Hills. And I  
15 think if there is an issue or a distinction or  
16 difference of opinion between the County  
17 Planning Board and the staff of the Department  
18 of Community Affairs in preparing the State  
19 Development Guide Plan, I think that  
20 particular issue should be addressed  
21 testimonially before this Court and available  
22 for review before Judge Serpentelli.

23 Let me give Mr. Vogel an opportunity  
24 to express himself.

25 MR. VOGEL: Your Honor, I have two

1 reasons to object to Mr. Reuben coming back on  
2 the stand:

3 The first is we are trying a limited  
4 issue with respect to the State Development  
5 Guide Plan.

6 I think we had an understanding of  
7 counsel and the Court that the witnesses that  
8 would be called for this limited issue were  
9 the planner for the plaintiff, Mr. Zimmerman,  
10 the planner for the municipality, Mr.  
11 Dresdner, who's on the stand, and the Court  
12 would call as the Court's own witness Mr.  
13 Ginman, who is head of the Division of  
14 Planning who developed the State Development  
15 Guide Plan.

16 I think that the request at this  
17 point is beyond what was our discussion,  
18 beyond what was our understanding.

19 I think it is further unnecessary to  
20 call a witness, Mr. Reuben, who has been on  
21 the stand in an earlier part of this case for  
22 perhaps two days, elaborating upon the County  
23 Master Plan, the meaning of the County Master  
24 Plan in terms of the issues of growth and the  
25 need for housing and of population and where

1 the village lines are and where the village  
2 lines are not relative to the Village of Far  
3 Hills.

4 We're not going to find out anything  
5 new about that plan from Mr. Reuben.

6 So far as Mr. Ginman's testimony, his  
7 testimony was he met with County officials and  
8 in his view he took into account their  
9 contemplations.

10 I don't know how Mr. Reuben could add  
11 anything to that, except for time in this pro-  
12 ceeding, and I personally would object to it.

13 I think it is beyond the scope of  
14 what we agreed to for this limited proceeding.

15 MR. MASTRO: Your Honor, I don't  
16 think there was any accord as to the extent of  
17 the witnesses being recalled, although we did  
18 mention those witnesses.

19 And my recollection is that Mr.  
20 Reuben was mentioned during that process --

21 THE COURT: Originally he was  
22 mentioned by me. That was the understanding,  
23 that we were in effect beginning a new trial  
24 of the whole issue raised by Mount Laurel II.

25 And then later you came in -- I say

1 "you," I mean you and Mr. Vogel -- and my  
2 understanding was we were going with a limited  
3 issue, and that had to do with the inclusion  
4 of the parcel in question as a growth area and  
5 the reasonableness of that inclusion as shown  
6 on the State Development Guide Plan.

7 Each of you produced witnesses to  
8 that, and I brought in for my purposes to get  
9 background and afforded you both an  
10 opportunity to cross-examine Mr. Ginman  
11 because his position was somewhat unique here.

12 And I thought that would be helpful  
13 to me and would be helpful to Judge  
14 Serpentelli ultimately.

15 My point is this. Suppose -- let's  
16 assume Mr. Reuben says I objected strenuously,  
17 where are we going with that?

18 MR. MASTRO: I think then, your  
19 Honor, that would bear upon the reasonableness  
20 of that State Development Guideline; because  
21 depending upon the nature of his objection, I  
22 think it would be quite significant.

23 If he, for example, said I didn't  
24 want any part of Peapack-Gladstone or Far  
25 Hills included within the growth district, you

1 know there's a sound -- I'm not suggesting he  
2 will, your Honor -- but there's a sound  
3 argument.

4 THE COURT: I must tell you, Mr.  
5 Mastro, I have not spoken directly to Mr.  
6 Reuben. I've not interviewed him and I have  
7 no idea what he would say on this stand.

8 He may come in here and endorse this  
9 plan and its reasonableness and its correct-  
10 ness, given the bases of the plan without any  
11 qualification.

12 I don't know that either of you have  
13 talked to him directly or indirectly.

14 So you know if you had some  
15 suggestion he was going to come in here and  
16 give you the kind of testimony you want, but  
17 he may come in here and do nothing.

18 MR. MASTRO: He may, your Honor. He  
19 may.

20 And I don't intend to explore with  
21 him the reasonableness of the plan. We're  
22 talking about a boundary line as it affects a  
23 particular municipality.

24 Certainly he is more finely tuned on  
25 the 206 Corridor than perhaps Mr. Ginman is or

1 was.

2 MR. VOGEL: Judge, are we to have new  
3 opinion evidence from the -- from Mr. Reuben  
4 beyond the scope of what is already in  
5 evidence in this trial, namely the County  
6 Master Plan as his --

7 THE COURT: That is what he was  
8 called for.

9 MR. VOGEL: He was called because he  
10 is the County Planner to explain the County  
11 Master Plan, to explain what it meant relative  
12 to the villages, including Far Hills.

13 That is in the record. We have  
14 exhibits showing it. We have the County  
15 Master Plan in evidence. We see where the  
16 villages are relative to the growth area.

17 The Court can make factual findings  
18 on that.

19 Beyond that, are we to call a totally  
20 new witness and say and ask do you think the  
21 State Development Guide Plan growth area in  
22 the 206 area is capricious, reasonable,  
23 unreasonable, arbitrary, mistake or whatever?

24 I mean we've had no discovery on this  
25 point from this witness.

1 We've all said we don't need  
2 discovery. We're willing to go with Mr.  
3 Ginman; we're willing to go with the two  
4 planners in this case.

5 To start with a totally new witness  
6 in this case who's given us massive testimony  
7 on the meaning of the County Master Plan and  
8 the Court has that before it.

9 And I think anything beyond that goes  
10 beyond the nature of this proceeding, goes  
11 beyond fairness.

12 The Court will recall that even  
13 before we called Mr. Reuben the last time,  
14 both Mr. Mastro and I had the opportunity to  
15 take his deposition so that we had some idea  
16 what he would say.

17 And I think at this point to add a  
18 new witness to this:

19 A, will add nothing. We have it in  
20 the record.

21 B, is unfair.

22 C, I think is beyond the purpose of  
23 this limited inquiry.

24 If we should come back to this Court  
25 and try the rest of the Mount Laurel II

1 issues, it is certainly correct to say that  
2 your Honor talked about Mr. Reuben possibly  
3 coming back and I wouldn't object at this  
4 point -- actually I have objected but I would  
5 understand it at this point.

6 MR. MASTRO: Judge, the texture of  
7 the testimony that took place prior to Mount  
8 Laurel II is one thing. The emphasis  
9 subsequent to Mount Laurel II is something  
10 else. It's more -- it's more directed in a  
11 particular area.

12 I don't think an argument that Mr.  
13 Reuben already testified as to the County  
14 Master Plan and State Development Guide Plan  
15 is adequate. We're now at a critical point  
16 where we are exploring the definition of a  
17 growth line.

18 I think it's very important at this  
19 point. If there's anything that could lead  
20 this Court in making recommendations or  
21 findings of fact or Judge Serpentelli to an  
22 informed conclusion, I think this Court should  
23 entertain it.

24 And I think Mr. Reuben is appropriate  
25 for that purpose.

1                   And we are obviously -- the objective  
2 to getting him here is to focus upon the  
3 definition of the 206 Corridor. We never  
4 addressed that issue with Mr. Reuben and I  
5 think we should have that opportunity.

6                   THE COURT: I agree with you. I  
7 don't think it was because that wasn't before  
8 the Court --

9                   MR. MASTRO: No.

10                  THE COURT: -- in that context.

11                  MR. MASTRO: Not in that context  
12 certainly.

13                  THE COURT: But now I have several  
14 problems with calling Reuben and I've told  
15 you. No one has talked with him; no one knows  
16 what he's going to say.

17                  Two, does it make any difference what  
18 he says in terms of the State Development  
19 Guide Plan? All right.

20                  If he comes in and endorses it, does  
21 it make make much difference? If he comes in  
22 and knocks it or deprecates it or indicates  
23 his difference with it, does it make much  
24 difference?

25                  Is he going to come in and are we

1 going to get into some dispute as to how many  
2 meetings were held, who on his staff  
3 participated and that State officials were not  
4 sensitive to what was said by some of his  
5 people?

6 MR. MASTRO: Judge, it's my under-  
7 standing --

8 MR. VOGEL: Excuse me.

9 THE COURT: I just think we're  
10 opening up something and when it's all  
11 finished, it strikes me as having a limited  
12 value, limited use.

13 MR. MASTRO: Judge, it's my  
14 understanding -- and let me correct one  
15 statement.

16 I had coffee one time. Mr. Reuben  
17 came in and sat down and had coffee. I think  
18 he asked me how the case was going and that  
19 was about it.

20 But I have --

21 MR. VOGEL: I said hello to him in  
22 the hall Monday.

23 MR. MASTRO: I'm sure it would have  
24 been improper for either of us to question him  
25 about this issue out of the presence of the

1 other party.

2 However, I have the feeling that  
3 there was not the accord that Mr. Vogel is  
4 suggesting between the Department of Community  
5 Affairs and Somerset County.

6 THE COURT: Did there have to be?

7 MR. MASTRO: No, I'm not suggesting.

8 THE COURT: Was there prerequisite?

9 MR. MASTRO: I'm not suggesting that  
10 there was. If there is to that extent, I  
11 think a suggestion can be drawn with respect  
12 to the reasonableness as it affects Far Hills.

13 And we're talking about what weight  
14 should be applied to that testimony, and  
15 that's for you and Judge Serpentelli to  
16 determine.

17 But I don't think we should be  
18 precluded.

19 THE COURT: I'm not precluding, but  
20 you want me to call him as the Court's witness  
21 and I'm telling you we don't know where he's  
22 going to go and both of you are running  
23 considerable risk in this, I suggest, without  
24 an opportunity to talk with him.

25 MR. VOGEL: Judge, may I suggest that

1 both Mr. Zimmerman and Mr. Dresdner in  
2 preparing for their testimony and in their  
3 testimony have commented on the comparison of  
4 the County Master Plan, which is the document  
5 of Mr. Reuben's office, and the State  
6 Development Guide Plan, and their own relative  
7 opinions on whether or not there's consistency  
8 or not and that's before the Court.

9 THE COURT: Let me ask you how long  
10 will it take you to finish with Mr. Dresdner?

11 MR. VOGEL: Half hour.

12 THE COURT: Half hour?

13 MR. VOGEL: To an hour.

14 THE COURT: To an hour. All right.

15 Suppose I ask Mr. Reuben to appear in  
16 the court at about ten-thirty and afford each  
17 of you an opportunity together to talk to Mr.  
18 Reuben.

19 MR. MASTRO: Fine.

20 THE COURT: All right. And, well, so  
21 that you understand where he might go or what  
22 he might say, and with that, we might have a  
23 better articulation of reasons why he should  
24 or should not be called.

25 Because as I say, I have no idea

1 where he would go and I don't know -- and I've  
2 indicated -- how relevant it is which way he  
3 goes.

4 But I think you will want to explore  
5 with him, Mr. Mastro, whether there were  
6 differences in approach, the nature of those  
7 differences, the severity of those  
8 differences.

9 And I assume what you would really  
10 like to know is if he were drawing the line he  
11 would have drawn it someplace else.

12 So will that make it anymore  
13 palatable?

14 MR. MASTRO: I have no problem.

15 THE COURT: I'll ask him to come  
16 ten-thirty to the courtroom and then you will  
17 get a chance to talk with him.

18 MR. MASTRO: We have no problem with  
19 that approach.

20 THE COURT: It's abbreviated kind of  
21 discovery. At least you'll have some idea  
22 where he's going.

23 MR. VOGEL: Judge, will I have an  
24 understanding that Mr. Mastro will conclude  
25 his redirect of this witness before Mr. Reuben

1 gets on the stand?

2 MR. MASTRO: Yes.

3 THE COURT: If we put Mr. Reuben on  
4 the stand.

5 MR. MASTRO: If you stay within the  
6 parameters you indicate, I'll be finished.

7 THE COURT: I'll have a call made now  
8 (Pause.)

9  
10 THE COURT: All right, we sent a  
11 message out to Mr. Reuben asking him to appear  
12 about ten-thirty, and that the immediate  
13 purpose of his appearance is an informal  
14 discussion with counsel.

15 All right, shall we continue then the  
16 cross-examination of Mr. Dresdner?

17 MR. VOGEL: Yes. Thank you, your  
18 Honor.

19

20

21

22

23

24

25

1 CONTINUED CROSS-EXAMINATION BY MR. VOGEL:

2 Q. Mr. Dresdner, you testified that  
3 there was very little land in the growth area suitable  
4 and available for development?

5 A. That's correct.

6 Q. Talking about the growth area as it  
7 goes through Far Hills.

8 And you also testified to the only  
9 exception was that you saw the property in question as  
10 one which was a potential for development?

11 A. The property is a major -- not the only  
12 exception but a major exception. There are some  
13 isolated parcels available for development,  
14 particularly smaller parcels within the village.

15 Q. You're talking about smaller parcels  
16 within the village. Can you tell us how many of those  
17 parcels exist?

18 A. As I recall in my earlier testimony, there  
19 were four to seven parcels or properties.

20 THE COURT: Mr. Reuben will be here  
21 at ten-thirty, gentlemen.

22 MR. VOGEL: Thank you, your Honor.

23 Q. Referring to your Exhibit D-9, can  
24 you remind us what the green areas represent?

25 A. The green areas represent undeveloped lands.

1 Q. And can you tell me within the  
2 confines of the developed area of the village how many  
3 green areas you show -- let me ask you directly so we  
4 get right to it.

5 I see only one green area lot on your  
6 Exhibit D-9 in the built-up area of the village, and  
7 I'm pointing to it.

8 THE COURT: Now, does green area  
9 depict available land?

10 THE WITNESS: No, not necessarily.  
11 It depicts undeveloped land which may or may  
12 not be available, although I'm not sure how  
13 available it may be.

14 BY MR. VOGEL:

15 Q. Undeveloped. Is that not true your  
16 exhibit shows only one single lot of green area within  
17 the built-up area of the village?

18 A. I included the built-up area of the village to  
19 also include that portion of the village located  
20 immediately to the north, generally from Far Hills  
21 Avenue up to and beyond Ludlow Avenue.

22 Q. Okay. So there's one in the village,  
23 one in the what we'll call the developed area of the  
24 village. And then off of Ludlow Avenue there's --  
25 there are how many lots there?

1 A. Well, one. The large lot is owned by the  
2 North Branch Watershed Association.

3 Q. So that is not available for  
4 development, wouldn't you say?

5 A. I would not include that as available for  
6 development.

7 I had identified several other lots  
8 as undeveloped lands.

9 Q. How much of an area is those other  
10 lots?

11 A. Probably less than an acre.

12 Q. Less than an acre. And if you add to  
13 that the single lot on Prospect Street, can you tell  
14 us how large that lot is?

15 A. That lot is three to 5,000 square feet.

16 Q. So that all together is it fair to  
17 say that within the village there's no more than one  
18 acre of undeveloped land?

19 A. I think it's reasonable to say that there's  
20 approximately an acre of undeveloped land within the  
21 village.

22 Q. Now, assuming I understand this --  
23 no, let me ask you one further question.

24 What about other portions of the  
25 growth area? We now have isolated lots comprising

1 about one acre within the village. We have the P.O.  
2 outside of the village on the other side of the  
3 railroad tracks from the village of 19 point some odd  
4 acres.

5 Is there any other land in the growth  
6 area that's available for development?

7 A. Well, there are as shown on Exhibit Number  
8 D-9, there are two or three other parcels within the  
9 growth area that are shown as undeveloped.

10 One is approximately ten acres. That  
11 also is cut in two at the edge of the growth area  
12 line.

13 Q. Excuse me, can you point that one  
14 out?

15 A. Yes, that would be this property in here at  
16 the eastern edge of the growth area line.

17 Q. Is that between Sunnybranch Road and  
18 the railroad track, that parcel?

19 A. No, that's not between Sunnybranch Road and  
20 the railroad track.

21 Q. Is that parcel immediately adjoining  
22 the built-up area of the village?

23 A. No. Your question was are there any vacant  
24 lands within the growth area.

25 Q. I'm trying to clarify a few other

1 things about this one ten-acre parcel that you've  
2 pointed to.

3 Indeed, that parcel, how far roughly  
4 to the west of the built-up area of the village is  
5 that parcel that you're talking about?

6 A. There's no scale on this map so it would be  
7 difficult for me to make an estimate.

8 It is to the west of Sunnybranch Road  
9 and at the edge of the growth area.

10 THE COURT: Can we identify it by  
11 name, perhaps?

12 THE WITNESS: Well, there is no name  
13 to it but it's serviced by a private drive or  
14 an easement from the northern portion of  
15 Sunnybranch Road.

16 THE COURT: All right.

17 BY MR. VOGEL:

18 Q. Judging -- do you recall the  
19 testimony that the P.O. frontage along the railroad  
20 was some 1500, or 1520 feet, judging from that  
21 dimension, can you give us an idea how far that one  
22 ten-acre lot is from the village?

23 A. Perhaps 3500 feet from the village, from the  
24 railroad.

25 Q. More than half mile?

1 A. Yes.

2 Q. Right. Any other undeveloped land in  
3 the growth corridor?

4 A. Well, there are two other lands that are shown  
5 as undeveloped in the growth corridor. One is a  
6 portion of a property that is located south of 287 and  
7 is the larger portion of which is in Bedminster  
8 Township.

9 Q. All right. How large is that lot  
10 within Far Hills?

11 A. Within Far Hills?

12 Q. Yes.

13 A. Perhaps 5,000 square feet, 6,000 square feet.

14 Again this is just a very rough  
15 estimate based on comparing the small sliver located  
16 in the southwestern portion of the borough with the  
17 size of properties I know that are in the village.

18 The other property within the growth  
19 area that is shown as undeveloped is located between  
20 the North Branch of the Raritan and the railroad line.  
21 It's an area that is largely flood plain.

22 Q. And you've identified because of the  
23 flood plain and because of that wouldn't you agree  
24 that is certainly unavailable for development?

25 A. I wouldn't say it's unavailable for

1. development.

2.                   However, there are severe environ-  
3. mental constraints to development. The portion of  
4. that that would be unavailable would be the flood  
5. plain. But generally speaking, I think it would be  
6. fair to say that it is largely unavailable for  
7. development or unsuitable for development.

8.                   Q.            Okay, thanks.

9.                   And that's the totality of all the  
10. undeveloped land in the growth area as shown on the  
11. State Development Guide Plan?

12.                  A.            That's correct.

13.                  Q.            Mr. Dresdner, if I recall, you had  
14. some objection to any higher density development to  
15. the west of the railroad tracks?

16.                  A.            That's correct.

17.                  Q.            And is it not so that to the west of  
18. the railroad tracks is the ten-acre estate zone area  
19. of Far Hills whereas to the east of the railroad  
20. tracks there is the existing higher density develop-  
21. ment in Far Hills, namely the 3,000 and the 5,000 and  
22. the 9,000 square-foot lots?

23.                               MR. MASTRO: Excuse me.

24.                               MR. VOGEL: Is that an objection or  
25. you're going to --

1 MR. MASTRO: I have a question, a  
2 quasi-objection. You indicated west of the  
3 railroad and --

4 THE COURT: You mean east?

5 MR. MASTRO: I think you meant east,  
6 sir.

7 MR. VOGEL: I appreciate that.

8 THE COURT: East of the line.

9 MR. VOGEL: As a sailor, I must say  
10 I'm embarrassed I don't know my east and my  
11 west.

12 BY MR. VOGEL:

13 Q. Okay, let's correct that.

14 When we refer to the P.O., that's to  
15 the east of the railroad; that's correct?

16 A. That's correct. I also should have picked  
17 that up.

18 Q. And the large lot zoning, the ten-  
19 acre zoning, that's to the east of the railroad track?

20 A. That's correct.

21 Q. And the smaller lot zoning, the  
22 three, five and 9,000 square-foot lots, that's to the  
23 west of the railroad tracks, correct?

24 A. Yes, to the west of the railroad tracks.

25 Q. Now, Mr. Dresdner, given the fact

1 that to the west of the railroad tracks in the built-  
2 up village scattered together, you have about one acre  
3 of undeveloped land, that for practical purposes the  
4 other areas to the west of the railroad track are  
5 either flood plain or not suitable because they're  
6 controlled by environmental groups, et cetera, not  
7 available for development;

8 Can you explain your reasoning for why the  
9 P.Q. to the west of the railroad tracks -- let me  
10 change that question around. All right.

11 Is your objection to the utilization  
12 of the P.Q. for higher density development because it  
13 is in a ten-acre zone?

14 A. No. I have a positive rather than negative  
15 reason for objecting to the development of the P.Q. in  
16 higher density.

17 Q. All right, I just asked you is that  
18 your reason and you said no?

19 A. That's correct.

20 Q. All right. Is -- does the railroad  
21 tracks play a significance in your view of these two  
22 areas as a dividing line, that is on the one side of  
23 the railroad tracks there should be large lot estate  
24 zoning whereas on the other side of the tracks there  
25 should be the higher density zoning for poorer people?

1 A. No, that's not the only reason. I think the  
2 railroad track --

3 Q. Is that one reason?

4 A. The railroad tracks would be one reason.

5 The more important reason would be  
6 the historic development of the village area and the  
7 character of the village area as it has evolved over  
8 the course of the years.

9 Additionally in my opinion, the  
10 retention of the village area as the major high  
11 density, relatively high density area within the  
12 village is in substantial compliance with the County  
13 and State Development Guide Plans.

14 I don't think that the purposes of  
15 the County Master Plan nor the State Development Guide  
16 Plan would be enhanced by expanding the village.

17 Q. Did you not say that the village as  
18 it exists today is substantially similar in terms of  
19 development to the way the village existed in 1958?

20 A. Well, I wasn't there in 1958. It appears to  
21 me that the village has changed little.

22 Q. Excuse me, can you tell from the maps  
23 that you have put into evidence in this case what the  
24 development of the village was from 1958?

25 A. The maps that were put into development --

1 into the exhibits show the village as having been  
2 essentially developed back then, 1958, 1968.

3 They do not show the extent to which,  
4 if any, there have been expansions onto buildings,  
5 change or conversions from single family to two-  
6 and/or three-family homes.

7 Generally speaking, the village has  
8 retained its character over the years. It has changed  
9 somewhat, but its character remains the same, that of  
10 a very small town, insular in a way, residential and  
11 local commercial area.

12 Q. Could that village have changed in  
13 the sense that its essential nature of small lot  
14 zoning expanding beyond the geographic boundaries as  
15 it now exists with the ten-acre zone boundary lines  
16 surrounding it?

17 A. Clearly if it were to change, being bounded by  
18 ten-acre zones, it would have to change either through  
19 variance or rezoning.

20 Q. Okay.

21 A. I think to the extent that there would have  
22 been change -- and I've mentioned this before -- it  
23 would have a substantial impact on the character.

24 Q. I didn't ask you about the impact. I  
25 asked you could it have changed in view -- that is

1 enlarge the boundaries of the higher density housing  
2 with the ten-acre zone surrounding it?

3 A. It's not clear to me whether that would have  
4 happened prior to this litigation, and I believe  
5 recent previous litigation.

6 Q. Excuse me if I interrupted.

7 A. It would appear to me that to the extent that  
8 the ten-acre zoning limited development, it would have  
9 been challenged. It has been challenged in these  
10 recent two cases.

11 But prior to that, it appears to me  
12 that there was no demand to expand the village.

13 Q. Mr. Dresdner, you've also testified  
14 to, as I recall when you were listing your reasons why  
15 the growth area line is arbitrary and unreasonable,  
16 you testified to the fact that the Borough of Far  
17 Hills has not experienced population growth; do you  
18 recall that testimony?

19 A. That's correct.

20 Q. Is it not true that the ten-acre  
21 minimum lot size zoning that predominates Far Hills,  
22 what, 95 percent of the community or even more, has  
23 had a substantial and direct effect on the ability of  
24 Far Hills to have experienced population growth?

25 A. No. I think the major factor affecting

1 population in the past decade has been in the decline  
2 in the family size. There has been community after  
3 community has had substantial development, but that  
4 populations have remained stable.

5 Q. Is it your testimony, Mr. Dresdner,  
6 so that we understand it, that had the Borough of Far  
7 Hills expanded its higher density -- its areas for  
8 higher density living, the three, the five, the 9,000  
9 square-foot lots or multi-family housing in the same  
10 numbers of units per acre that those small lots  
11 translate to, that that would not have caused an  
12 increase in the population of Far Hills had it been  
13 permitted in that zoning ordinance?

14 MR. MASTRO: Judge, let me object to  
15 this line of questioning.

16 Mr. Vogel's cross-examining -- he had  
17 his witness testify and I assume did address  
18 or could have addressed that issue.

19 I don't know if it's a proper line of  
20 cross-examination.

21 MR. VOGEL: Well, one of the reasons  
22 that this witness articulated for supporting  
23 his conclusion that the growth area line was  
24 arbitrary and capricious as it related to Far  
25 Hills is that Far Hills is a little sleepy

1 town that has not experienced population  
2 growth.

3 I think it is fair to cross-examine  
4 the witness on the issue of what's the cause  
5 of that population growth, if there's  
6 exclusionary zoning that causes the  
7 prohibition of population growth, I think that  
8 ought to be evaluated by the Court.

9 THE COURT: Well, I'll allow that  
10 exploration given the reasons for his opinion,  
11 but how long and how far are we going to be in  
12 it?

13 I'll allow the question.

14 MR. VOGEL: What was the last  
15 question?

16 THE COURT: Read back the last  
17 question please.

18 (The pending question is read back  
19 by the Reporter.)

20 MR. MASTRO: Judge, it creates a  
21 problem for me on redirect. I was going to  
22 confine my remarks.

23 Then we get into an issue suppose  
24 there were ratables introduced into Far Hills,  
25 what would that do? And is there a big

1 difference between size of lots; suppose they  
2 were three acres or five acres, does that make  
3 that much difference?

4 MR. VOGEL: I'll withdraw that.

5 THE COURT: Question's withdrawn.

6 MR. VOGEL: I'll withdraw the last  
7 question.

8 BY MR. VOGEL:

9 Q. Mr. Dresdner, in your direct  
10 examination you talked about available housing within  
11 the village itself.

12 Have you performed any studies with  
13 respect to available housing, specifically relative to  
14 vacancy in existing housing in the Borough of Far  
15 Hills or in the Village of Far Hills?

16 Let me divide it up. First, in the  
17 Village of Far Hills?

18 A. I did conduct a survey of housing as well as  
19 income and other information -- or a survey was  
20 conducted, would be more accurate, by the Planning  
21 Board.

22 Q. Did that survey divide the village  
23 from the rest of the community?

24 A. No, not specifically. All residents of the  
25 village were contacted by mail.

1 Q. And you don't know how many vacant  
2 houses or apartments there are within the village?

3 A. No, not specifically. To the extent that that  
4 information is available, it would be available from  
5 the census, but not within the village solely.

6 Q. Do you know -- you also referred to  
7 in my notes one-, two-, three-family houses in the  
8 village; do you recall that testimony, the existence  
9 of one-, two- and three-family houses in the village?

10 A. Yes, sir.

11 Q. And have you performed a study as to  
12 the number of family dwelling units in the village  
13 that are in excess of single family?

14 A. No, I haven't performed a specific land use  
15 study or housing study to determine the number.

16 Q. So you don't know if there's one  
17 three-family residence in the village or more than  
18 one?

19 A. Well, it's my understanding -- it's my  
20 recollection rather that there is more than one.

21 I could not however identify the  
22 exact number of one-, two- or three-family houses in  
23 the village.

24 Q. Do you know how many apartments in  
25 three-family houses are vacant and available in the

1 village?

2 A. No, I don't.

3 Q. Do you know how many flats or  
4 apartments in two-family houses are vacant and avail-  
5 able in the village?

6 A. No, I undertook no survey to identify the  
7 number of vacancies by type of housing in the village.

8 Q. You indicated as I recall, another  
9 reason why you thought the growth area line was  
10 arbitrary and unreasonable as it went through Far  
11 Hillage (phonetic)-- Far Hills Village -- I think I  
12 combined two words there -- was because Far Hills  
13 Village does not adjoin Route 206; is that correct?  
14 Am I correct in my recollection of your testimony?

15 A. There are a number of reasons I --

16 Q. I don't want you to reiterate the  
17 reasons. I don't want you to reiterate the reasons.

18 Is one that the Far Hills Village  
19 does not adjoin Route 206?

20 A. The reason it does not adjoin Route 206, but  
21 it was separated from Route 206 by the North Branch of  
22 the Raritan River.

23 Q. All right. Now, I show you again  
24 your Exhibit D-17a or b. That is the Route 206  
25 Corridor indicating various villages: Gladstone,

1 Bedminster, Far Hills, Pluckemin.

2 Is there any other village within the  
3 growth area that does not adjoin Route 206?

4 A. No. Gladstone is essentially adjacent to 206.

5 Q. Gladstone is adjacent to 206?

6 A. Well, it extends.

7 Q. Can you measure -- can you measure  
8 the approximate distance on your exhibit -- can we  
9 just close that there?

10 Can we measure the approximate  
11 distance on your Exhibit D-17 from Gladstone to Route  
12 206, closest you can get it, and measure Far Hills  
13 from Route 206 the way you've drawn it on your  
14 exhibit?

15 A. I've shown a circle, Gladstone, that is  
16 symbolic. The village extends across Gladstone Brook  
17 towards Route 206 and it is relatively close to 206,  
18 surely within a thousand feet of Route 206.

19 Q. And do you have some kind of ruler  
20 here today?

21 A. No, I don't.

22 First joint on my thumb is one inch  
23 and one inch equals 2,000 feet.

24 Q. Is it your suggestion as you've drawn  
25 Gladstone on this exhibit, that's closer, signifi-

1 cantly closer to 206 than Far Hills is?

2 A. This is a misreading -- or you are misreading  
3 my exhibit. I have shown an orange circle as a symbol  
4 for Gladstone. It represents the center of the  
5 Gladstone; it does not represent the extent of  
6 Gladstone.

7 Gladstone extends across Gladstone  
8 Brook across 206 -- across the brook to 206.

9 Q. Is the orange circle for Gladstone,  
10 the orange circle as you have depicted for Far Hills  
11 Village, are these not approximately the same distance  
12 from 206 as shown on your exhibit?

13 A. No. Far Hills is further from 206 than  
14 Gladstone.

15 Q. Do you show a direct major highway  
16 from the Borough of Far Hills to Route 206 from Far  
17 Hills?

18 A. I show Route 202 as extending to 206.

19 Q. Do you show any direct roads, major  
20 highways like State 202 from Gladstone to Route 206?

21 A. No. It's my testimony that Gladstone --

22 Q. I just wanted to show a major  
23 highway. Are there any state highways running from  
24 the Peapack-Gladstone Village to Route 206?

25 A. 206 is the only state highway running through

1 Peapack-Gladstone.

2 Q. And your testimony is it runs through  
3 the Village of Peapack-Gladstone?

4 A. It runs adjacent to the village and to the  
5 west of the village.

6 There's a development that extends  
7 from the east side of Gladstone Brook to the west side  
8 of Gladstone Brook toward Route 206.

9 Q. Incidentally, Gladstone Brook is a  
10 continuation of the North Branch -- sorry -- flows  
11 into the North Branch of the Raritan River?

12 A. Yes, it's a tributary of the North Branch.

13 Q. And indeed you've shown it as flowing  
14 into the North Branch.

15 A. Yes.

16 Q. And you've drawn the circle for  
17 Gladstone Village on the east of Gladstone Brook as  
18 you've drawn the circle for Far Hills Village on the  
19 east of the North Branch, correct?

20 A. That's an accurate description of the map; not  
21 an interpretation but it's a description.

22 Q. All right. Let me ask you this one  
23 other thing about Gladstone. Is it not true that  
24 Gladstone Village and Far Hills Village share one  
25 common and identified factor from the criterion of the

1 State Development Guide Plan for growth areas, namely  
2 access to -- indeed a railroad station and railroad  
3 lines going through the center of those villages?

4 A. I don't recall from the State Development  
5 Guide Plan whether that would be a criteria for  
6 location in a growth area.

7 But both Peapack-Gladstone or  
8 Gladstone and Far Hills has a stop on the old Erie-  
9 Lackawanna Railroad.

10 Q. Do I understand that you do not  
11 recall that the railroad was one of the criteria for a  
12 growth area as shown in the State Development Guide  
13 Plans?

14 A. Yes, that's correct. I don't recall.

15 Q. Will you take a look at Page 47 of  
16 the State Development Guide Plan?

17 THE COURT: P-33.

18 Q. Take a look at the middle or the  
19 third criteria and would you read that out loud for  
20 us?

21 A. "Location within or in proximity to areas  
22 served by major highway and commuter rail facilities."

23 Q. To the extent that Gladstone and Far  
24 Hills are served by railroad, commuter railroad  
25 facilities, would you say that they share that

1 criteria on the State Development Guide Plan?

2 A. Yes, they do.

3 MR. VOGEL: Your Honor, it's ten-  
4 twenty. If Mr. Mastro's going to get any  
5 redirect, I think --

6 THE COURT: You're essentially  
7 finished?

8 MR. VOGEL: I'm essentially finished.  
9 I could go over a lot of things, but I think  
10 the Court has the details from these  
11 witnesses, Mr. Ginman, and I think I'll rest  
12 at this point.

13 THE COURT: Mr. Mastro, redirect.

14 MR. MASTRO: Thank you, Judge.

15  
16  
17  
18 REDIRECT EXAMINATION BY MR. MASTRO:

19 Q. Mr. Dresdner, to pick up on the  
20 railroad as it affects Gladstone and Far Hills, in  
21 your opinion, does the railroad contribute to any  
22 objective of the State Development Guide Plan insofar  
23 as being a vehicle or moving people from their  
24 residences to their jobs?

25 A. I'm not sure I understand --

1 Q. Let me rephrase the question.

2 Does the former Erie-Lackawanna as  
3 it's presently aligned and passing through Far Hills  
4 and Peapack-Gladstone act effectively or in any  
5 significant degree insofar as being capable or in  
6 actuality moving people from their homes to their  
7 jobs?

8 A. Well, the railroad -- the commuter rail system  
9 is an important element of the overall transportation  
10 system. It serves as a supplement to the highway  
11 system, and in the higher density sections of the  
12 state, is an essential element to the transportation  
13 system.

14 The railroad serves those populations  
15 best who are located in higher density rather than  
16 lower density areas.

17 Q. Where are the employment centers as  
18 they relate to Far Hills and Peapack-Gladstone; can  
19 you identify some of the areas?

20 A. Well, the close-in areas would be in Morris  
21 County and in the industrial parts in Morris County,  
22 the closest then of course would be Beneficial Finance  
23 or Management, AT&T Long Lines, would be the two major  
24 close-in employers.

25 Additionally, there is AT&T in

1           Bernards Township, and finally, of course, Somerville  
2           would be a local employment generator.

3           Q.           Does the railroad -- or is the  
4           railroad capable of moving people from their jobs to  
5           any of those employment centers?

6           A.           From their homes to any of those employment  
7           centers?

8           Q.           I'm sorry, from the homes to the  
9           employment centers.

10          A.           No, these areas are essentially -- particu-  
11          larly the ones along Route 206, are essentially  
12          related to in part 206, but more importantly, to the  
13          interchange of Route 206-287 and I-78.

14                        The railroad plays a relatively  
15          little role in moving people from these low densities  
16          -- low density western Somerset County areas to the  
17          closer-in high generation density centers.

18          Q.           Mr. Dresdner, you testified in regard  
19          to other areas of availability in Far Hills in the  
20          growth area and the P.Q. and the balance between the  
21          two is approximately one acre plus residual within the  
22          growth area, plus the P.Q. of some 19 acres.

23                        Would those circumstances lead you to  
24          conclude that it was reasonable to draw the State  
25          Development Guideline and incorporate that portion of

1 Far Hills within the growth area because we have that  
2 residual one acre plus the 19 some acres on the P.O.?

3 A. My opinion is given the conditions that exist  
4 the inclusion of the Borough of Far Hills within the  
5 growth area is unreasonable.

6 Q. Would it be reasonable to redefine  
7 the growth area line to include say only the P.O.? In  
8 other words, let's excise the balance of the area in  
9 Far Hills from the growth area and run the growth area  
10 line along the westerly boundary of Far Hills and  
11 again swing it around the village to include the P.O.;  
12 would that be a reasonable approach?

13 MR. VOGEL: I'm going to object to  
14 that question. I don't know that that is the  
15 focus of what the Supreme Court directed.

16 THE COURT: I'm not sure it is  
17 either, but I'll allow the question.

18 BY MR. MASTRO:

19 Q. Can you answer it?

20 A. That would be in my opinion equally unreason-  
21 able as the present line that is on the State Develop-  
22 ment Guide Plan, if it were transposed precisely onto  
23 a map of the village -- the borough that is.

24 What I'm saying is that it is  
25 unreasonable to include solely the village and the

1 property in question in the growth area as well.

2 Q. Do you recall when you testified  
3 last, Mr. Dresdner, there was testimony in regard to  
4 rentals in Far Hills, and Mr. Vogel questioned you  
5 about a statement that Far Hills was the lowest of all  
6 the Somerset Hills communities; do you recall that?

7 THE COURT: That's in evidence in the  
8 case.

9 MR. MASTRO: May I have that, Judge?

10 I was looking for it. It's a diagram  
11 of median rentals, P-36.

12 MR. VOGEL: Judge, I have that. That  
13 came from the census data promulgated from the  
14 County and was marked for identification I  
15 think P-35.

16 THE COURT: There was census data,  
17 but the diagram itself was drawn and that was  
18 marked.

19 MR. VOGEL: Yes, I have that booklet  
20 in case Mr. Mastro or anyone else want to  
21 reference it.

22 BY MR. MASTRO:

23 Q. Did you have an opportunity, Mr.  
24 Dresdner, to take a look at some of these figures  
25 between the time you last testified and this morning?

1 A. Yes, I did.

2 Q. Do you find the information as  
3 indicated on Exhibit P-36 to be accurate as far as you  
4 can determine, at least reflecting census data  
5 figures?

6 A. I was a little concerned over the numbers that  
7 I had read from one document and the numbers I had  
8 recalled, as well as the analysis or the implications  
9 of the numbers.

10 I subsequently looked at, as I recall  
11 it was P-25 or P-35 in evidence, and found differences  
12 with some of the figures that I had read from.

13 THE COURT: P-25 is a contract  
14 between Ochs and Haueis. P-35 is the 1980  
15 census data marked for identification?

16 THE WITNESS: I have a P -- excuse me  
17 a J-25a and J-25b.

18 THE COURT: Let's take a look at it.  
19 Census report of Somerset County  
20 Planning Board, two reports, yellow and blue.

21 THE WITNESS: And there's also a  
22 green one and I think that's the one that I  
23 had read from Mr. Vogel.

24 A. And there are differences in the statistics  
25 for what appear to be the same item.

1 For example, for Bernards Township in  
2 J-25a, the median contract rent is a hundred and  
3 fifty-four dollars.

4 Q. Could we go a little slower on that?

5 THE COURT: Pardon?

6 MR. VOGEL: Could we get that number  
7 again, what it's for?

8 THE COURT: He says it's median  
9 available rent, those words you used.

10 THE WITNESS: Or specifically I will  
11 read from the document: Specified Renter  
12 Occupied Housing Units by Contract Rent.

13 A. In one document, it's \$154 a month. In  
14 another document, it's \$204 a month. And in a third  
15 document, it's \$232 a month.

16 So I went back to look at these  
17 documents to see whether the numbers were consistent,  
18 and there are inconsistencies in the numbers. Without  
19 going through those inconsistencies at this point, I  
20 satisfied in my own mind at least that there was a  
21 lack of consistency in the three 1980 census data  
22 documents that were prepared.

23 Additionally, I was concerned in my  
24 own mind regarding my statement as to --

25 MR. VOGEL: I'm going to object. I

1 think the witness is now beyond the scope of  
2 the question.

3 BY MR. MASTRO:

4 Q. Are you satisfied in your own mind  
5 that Far Hills does not have the lowest rental of all  
6 the municipalities in Somerset Hills?

7 A. Yes, I've concluded that Far Hills does not  
8 have the lowest rental of all the communities.

9 I had apparently confused that with  
10 other data that related to housing that does have a  
11 bearing on housing costs.

12 Q. What data would that be?

13 A. That would be the cost of owner-occupied  
14 structures wherein the cost of owner-occupied struc-  
15 tures in the Borough of Far Hills is lower than in any  
16 of the surrounding communities, and indeed substan-  
17 tially lower than any surrounding communities based on  
18 information again available from the U.S. census.

19 Q. You referring to the median sale  
20 price?

21 A. It would be the median value as noted here,  
22 Specified Owner Occupied Non-condominium Housing.

23 Q. Would you approximate what level Far  
24 Hills is say compared to the County median?

25 MR. VOGEL: I just want to object or

1 ask for clarification. The witness has been  
2 referring to an exhibit. He seemed to be  
3 reading a category, and I'd like to know which  
4 of the exhibits he was reading from, your  
5 Honor.

6 THE COURT: Well, the reference he  
7 gave us was J-25a, the yellow sheet, the  
8 yellow book.

9 MR. VOGEL: And the page I would  
10 appreciate so we know where he took that from?

11 THE WITNESS: Well, yes, let me  
12 answer that. I'm reading from J-25b.

13 THE COURT: B as in Boy?

14 THE WITNESS: And J-25a. And the  
15 category I am reading from in both documents  
16 would be Specified Owner Occupied Non-  
17 condominium Housing Units by Value.

18 BY MR. MASTRO:

19 Q. Can you locate anything comparable in  
20 P-35 for identification?

21 A. Yes. I believe this would be comparable. It  
22 sounds comparable in any event: Mean Value of  
23 Specified Owner Occupied Non-condominium Housing  
24 Units, that would be comparable.

25 Q. What is the mean in Far Hills? Let's

1 stick with one document, P-35.

2 A. The mean value of non-condominium housing  
3 units in Far Hills is \$88,097; rounding it off,  
4 \$88,000.

5 Q. What would the median be for the  
6 County in the same document; I think Mr. Vogel had  
7 targeted these areas?

8 A. Eighty-nine thousand, seven hundred dollars.

9 Q. Can you pick out the other Somerset  
10 Hills communities?

11 A. In Bedminster, one hundred and twenty-nine  
12 thousand -- \$129,600.

13 In Bernards, \$126,300.

14 In Bernardsville, \$132,800.

15 In Peapack-Gladstone, \$120,700.

16 That would all be from P-35.

17 THE COURT: Now, gentlemen --

18 MR. MASTRO: I think that's all I  
19 have of Mr. Dresdner, Judge.

20 THE COURT: Am I to infer from what  
21 has been told me that the figures you've just  
22 given me are mean rentals?

23 THE WITNESS: No, the mean value of  
24 owner-occupied housing.

25 THE COURT: The mean value of the

1 property?

2 THE WITNESS: Owner-occupied.

3 MR. MASTRO: Non-condominium.

4 THE WITNESS: No, sir. This would be  
5 the median value of the house and lot.

6 THE COURT: This is then quite  
7 distinct what we're using then on the diagram  
8 in terms of rentals?

9 MR. MASTRO: And, your Honor, I wish  
10 we could put those in red on P-36. They come  
11 out of the same -- apparently the same  
12 exhibit. One is rentals and one is mean,  
13 value.

14 THE COURT: Now, wait a minute, not  
15 on the exhibit as I understood it; these were  
16 rentals as shown on the exhibit?

17 THE WITNESS: Yes, sir, those are  
18 rentals.

19 THE COURT: And they were mean  
20 monthly rentals, all right.

21 Now, when you say owner-occupied,  
22 does that mean where a house is divided and  
23 whether up or down or side, and the owner  
24 lives in one portion and the other part is  
25 rented?

1 THE WITNESS: Typically in the  
2 Somerset Hills community, it would mean a one-  
3 family home. There are relatively few two --  
4 owner-occupied two-family homes or three-  
5 family homes or apartments or what have you.

6 THE COURT: The figure we were  
7 dealing with then on the chart which is P-35  
8 which, as I recall, were your figures taken  
9 from the census data and you put them up there  
10 at that time and Mr. Vogel was putting them up  
11 out of the census data, P-36.

12 These are the mean rental figures,  
13 all right, you're telling me essentially, for  
14 these homes?

15 THE WITNESS: No, sir. They would be  
16 the mean rental for an apartment, a flat, or a  
17 home if it is rented.

18 THE COURT: So all three categories?

19 THE WITNESS: It's for a rental unit,  
20 whether it be a single-family home or a high-  
21 rise.

22 THE COURT: Apart from condominiums?

23 THE WITNESS: Yes.

24 THE COURT: Now, has anyone done --  
25 and I don't know -- you were trying to offset

1                   apparently with this what he had previously  
2                   said about low rentals in Far Hills?

3                   MR. VOGEL: Relative to the other  
4                   surrounding communities.

5                   THE COURT: Relative to the other  
6                   communities. The figures in themselves are  
7                   bald.

8                   I don't know, for example, to compare  
9                   -- you're comparing all those units, but I  
10                  don't know how many housing units are avail-  
11                  able in the Borough of Bernardsville. I don't  
12                  know their nature, all right.

13                  There was a day perhaps when I could  
14                  have given you much better perspective, but  
15                  now we have some garden apartments, for  
16                  example, have gone up in there.

17                  And how does one compare that, all  
18                  right, with an individual house which is  
19                  rented? Is that a comparison of apples and  
20                  oranges?

21                  If we were comparing, if we had a  
22                  hundred rental units in Far Hills and if we  
23                  had a hundred rental units comparably in  
24                  Bernardsville, then perhaps we could draw some  
25                  inferences from it that would have some real

1           relevance.

2                     But the figures themselves, so many  
3 variables, I don't know what the impact is  
4 except as you were trying to effect a broad  
5 statement made by the witness that rentals in  
6 Far Hills on a mean basis were lower than they  
7 were in the surrounding jewels of Northern  
8 Somerset County.

9                     MR. VOGEL: And that's all, your  
10 Honor. We make no point of that except that  
11 the accuracy of the witness' statement was not  
12 consistent with the records as we find them.

13                    MR. MASTRO: Judge, I think your  
14 Honor has the significance of that type of  
15 testimony because you put the mean value of  
16 the housing unit themselves along the rental  
17 units, you'll see there is some sort of  
18 correlation except for Far Hills and Bernards;

19                    And I would suggest to you a lot of  
20 these other variables: Number One, Bernards  
21 has a senior citizen community. If you look  
22 at some of the data, you see there are rentals  
23 for \$50 a month, a hundred dollars a month.

24                    MR. VOGEL: I'm going to object to  
25 Mr. Mastro's going beyond --

1 THE COURT: You have other problems  
2 don't you?

3 You give me the figures, for example,  
4 on the value of rentals here. And let's just  
5 take Bernardsville with a hundred thirty-two  
6 thousand, eight hundred and Far Hills with  
7 89,000, in and of itself an appreciable  
8 difference, some 43,000 on its face.

9 But how many places in Far Hills are  
10 available for rental? How many places in  
11 Bernardsville are available for rental?  
12 What's the number of units.

13 MR. MASTRO: No question a lot of  
14 variables.

15 THE COURT: And again, I think we  
16 have some problems here in drawing too much  
17 from that.

18 THE WITNESS: Your Honor --

19 THE COURT: Yes.

20 THE WITNESS: I just wanted to --

21 MR. VOGEL: I don't know if there's  
22 no witness -- we're again now in some kind of  
23 dialogue here where we're chatting, with due  
24 respect, to the witness.

25 I think if a question is posed, he

1 should have an opportunity to answer it; other  
2 than that, not volunteer information.

3 MR. MASTRO: Your Honor, you  
4 mentioned the mean value in Far Hills is 89.  
5 I think the witness was going to tell you it's  
6 the County.

7 THE COURT: No, the County was  
8 eighty-nine seven; Far Hills was eighty-eight.

9 Did I misstate it?

10 MR. MASTRO: I think you said--

11 THE WITNESS: Again it's twelve and  
12 42,000 where I made the difference between  
13 that and Bernardsville.

14 THE COURT: But again, I don't know  
15 what we're talking about. All right.

16 I don't know, for example, at the  
17 time this was done, to use an outlandish  
18 example, there was one house which was in the  
19 Village in Far Hills which was utilized, as  
20 opposed to one house in Old Army Road in  
21 Bernardsville which was being utilized; and  
22 even one who has even the grossest familiarity  
23 with the area would then appreciate the  
24 differences trying to compare those two areas  
25 and housing values, all right.

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And so again, I don't know how much weight I would give to it.

MR. MASTRO: Your Honor, I would request that the mean value be indicated in red on Exhibit --

THE COURT: You have no objection to slashing and then putting mean housing values alongside of it?

MR. VOGEL: I do object for a number of reasons.

The purpose of this witness' testimony in proving that the lowest rentals around were in Far Hills was his opinion that if they put in more high density housing it's going to drive the rentals up.

THE COURT: Rent rate was going up.

MR. VOGEL: The basic facts underlying that opinion of the witness are now gone.

THE COURT: If one accepts the premises which underlie those figures.

MR. VOGEL: The witness himself said his figures on rechecking may be wrong. Now he's got another whole set of facts.

We have single-family houses and

1 we're going into the same idea, the cheapest  
2 housing is in Far Hills.

3 THE COURT: We're going into some-  
4 thing else.

5 MR. VOGEL: And he hasn't given any  
6 opinions on the significance of more higher  
7 density housing and what effect it's going to  
8 have on the sales of single-family houses.

9 So it has nothing to do with his  
10 underlying opinion, except to say, gee, these  
11 books have some variables in it.

12 THE COURT: All right, anything  
13 further on it?

14 MR. MASTRO: No, that's all.

15 THE COURT: I think I have enough on  
16 it. Any other questions of this witness?

17 MR. MASTRO: That's all, your Honor.

18 THE COURT: Any recross?

19 MR. VOGEL: Just one on those housing  
20 values.

21

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25

1 RECROSS-EXAMINATION BY MR. VOGEL:

2 Q. Do they represent -- where is that  
3 information taken from?

4 A. The census and more specifically --

5 Q. I understand the census. I mean  
6 where does the census get mean housing values; is that  
7 from the tax assessment information?

8 A. No, the raw data is the value of the  
9 particular house. They derive the mean value through  
10 statistical analysis of all the values.

11 Q. I understand the mean value from the  
12 statistics. What I want to know is how do they get  
13 the value of the houses? Where do they receive data,  
14 from tax assessment?

15 A. They get that from a standard information or  
16 questionnaire sheet that they use in the census,  
17 whether it be for family size, type of house, housing  
18 value, rents, it all comes --

19 Q. It's people supplying information  
20 with their own opinions of the value of their homes,  
21 is that how the census people get that?

22 A. It's my understanding that would be the way  
23 they get that, yes, sir. And that's the way they get  
24 all their information, through interviews.

25 Q. If you take the ten-acre zone in Far

1 Hills which represents certainly more than 95 percent  
2 of the community, is it your opinion that the mean  
3 value of the housing in the ten-acre zone is \$88,000;  
4 that's a fair representation of the value, if you have  
5 an opinion?

6 A. No, my opinion is that the value of the homes  
7 in the ten-acre area would be in excess of \$88,000.

8 MR. VOGEL: Okay, thank you. That's  
9 all.

10 THE COURT: Anything further?

11

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14 FURTHER REDIRECT EXAMINATION BY MR. NASTRO:

15 Q. Do you have an opinion as to the mean  
16 value of the homes in the village area, or compare it  
17 to that figure?

18 A. If one followed suit, then the mean value in  
19 the village would be lower because the lot sizes are  
20 substantially smaller and the homes are substantially  
21 smaller.

22 MR. NASTRO: That's all I have, your  
23 Honor.

24 THE COURT: All right, anything  
25 further?

1 MR. VOGEL: No further questions.

2 THE COURT: Step down, sir.

3 (The witness leaves the stand.)

4

5 THE COURT: I have to make it out

6 which it was, re, re, re.

7

All right. I couldn't leave the

8 subject matter without knowing that one of you

9 referred to that railroad at one point as the

10 Erie-Lackawanna. And my recollection is that

11 we called it the Delaware, Lackawanna &

12 Western, DL&W, and we had a euphemistic phrase

13 that we used for it.

14 MR. MASTRO: Delay, linger and wait.

15 THE COURT: And if it had been the

16 Erie, it would have thrown off that entire

17 phrase.

18 Now, gentlemen, Mr. Reuben is here

19 and has been kind enough to come over and each

20 of you want an opportunity to talk with him

21 informally. And if you wish, we'll set you up

22 in an office for that purpose or we'll clear

23 the courtroom.

24 MR. VOGEL: I think we can go into a

25 conference room.

1 THE COURT: John, would you seen --  
2 Jean, will you see that set up?

3 Thank you, Mr. Reuben.

4 MR. REUBEN: Thank you.

5 (Recess.)  
6

7 THE COURT: Gentlemen, you've had --  
8 each of you has had an opportunity to talk,  
9 however briefly, with Mr. Reuben.

10 The purpose of that was to determine  
11 whether or not either of you would wish to put  
12 him on as a witness. It was admitted there  
13 had been no discovery of Mr. Reuben.

14 And we are also sensitive and  
15 appreciative of the fact that Mr. Reuben has  
16 had no alerting, no forewarning, no  
17 opportunity to prepare specifically for the  
18 questions.

19 As a result of that conversation,  
20 I've been informed in chambers that the  
21 defendant, Far Hills, through Mr. Mastro,  
22 would want an opportunity to examine Mr.  
23 Reuben in a limited area.

24 I understand essentially this is over  
25 the objection of Mr. Vogel representing,

1 Haueis.

2 And I have agreed generally in order  
3 not to foreclose an opportunity to the  
4 defendant -- or to appear to be foreclosing an  
5 opportunity to the defendant to make out its  
6 case, to allow the testimony of Mr. Reuben and  
7 that in a very limited area.

8 Essentially it has to do with the  
9 growth area boundaries as it encompasses Far  
10 Hills and the parcel in question; and more  
11 particularly, as I understand it, the inter-  
12 play between his agency and the State and the  
13 bureau which drew the State Development Guide  
14 Plan.

15 All right, Mr. Mastro.

16 MR. MASTRO: All right, the Borough  
17 will call Arthur Reuben, your Honor.

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1           A R T H U R       L.       R E U B E N,       sworn.

2                           THE COURT:   And your position again,  
3           sir?

4                           THE WITNESS:   I am Planning Director,  
5           Somerset County Planning Board.

6                           THE COURT:   And we've of course gone  
7           through your expertise and your positions,  
8           your training and your education.

9                           And with that, Mr. Mastro.

10                          MR. MASTRO:   All right, your Honor.

11  
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14           DIRECT EXAMINATION BY MR. MASTRO:

15                          Q.           Mr. Reuben, I'm going to focus upon  
16           the growth area on the State Development Guide Plan in  
17           Somerset County, particularly as it affects Far Hills,  
18           and I've placed before you my copy of the State  
19           Development Guide Plan, particularly Page 133.

20                          Mr. Reuben, were there meetings -- a  
21           meeting or meetings -- with the Department of  
22           Community Affairs, and I believe it was at that time  
23           the Division of State and Regional Planning, in regard  
24           to development of the State Development Guide Plan as  
25           it affects Somerset County?

1 A. Yes, there were. There were meetings between  
2 staff and also between board members and also a  
3 meeting which Somerset County Planning Board hosted in  
4 respect to municipal participation.

5 THE COURT: Gentlemen, before we go  
6 any further, P-33 is a Court's exhibit. May  
7 we have it?

8 MR. VOGEL: Oh.

9 THE COURT: Do you have something to  
10 work from?

11 MR. MASTRO: Somehow Mr. Zimmerman  
12 and I had two of them. One is now in evidence  
13 and the other is in his briefcase.

14 THE COURT: Let's give that one back  
15 to Mr. Mastro, Jean, and the Court is using  
16 its own version.

17 So the response of the witness, would  
18 you read it back slowly and clearly.

19 (The pertinent answer is read back  
20 by the Reporter.)

21 BY MR. MASTRO:

22 Q. Mr. Reuben, could you tell me  
23 approximately how many meetings there were?

24 A. No, I could not tell you except to indicate  
25 that there were several meetings.

1 Q. Could you indicate the approximate  
2 time frame or dates or years of those meetings?

3 A. I could not be exact in that respect, but it  
4 was prior to the revision of the plan which occurred  
5 in 1980.

6 Q. Are you familiar with the 1977 draft  
7 of the plan?

8 A. In general, yes.

9 Q. You have a recollection of what the  
10 initial draft of the State Development Guide Plan map  
11 was as it affected Somerset County, and particularly  
12 Far Hills?

13 A. My recollection of the '77 plan indicated that  
14 there was much wider swath of growth area indicated in  
15 the so-called Clinton Corridor which roughly  
16 paralleled Route 22 and Route 78.

17 Plan extended the growth area much  
18 further south into Somerset County and it also  
19 extended in some areas further north.

20 Q. Did you have a recollection of how  
21 that plan -- that draft affected Far Hills?

22 A. Yes. The southern end of Far Hills was  
23 included in the growth area at that time.

24 Q. And perhaps with the pointer you  
25 could indicate on D-9 approximately what portion of

1 Far Hills was included in that draft?

2 A. While the scale of the state maps do not  
3 indicate exactly where the line fell, I think would  
4 approximate the location of 287. It may have been  
5 slightly north of that or slightly south of that, but  
6 that was the approximate location.

7 THE COURT: Are we now dealing with  
8 D-9 for reference?

9 MR. MASTRO: Yes, the witness is  
10 referring to D-9, your Honor.

11 THE COURT: All right.

12 BY MR. MASTRO:

13 Q. In that initial draft or the draft  
14 that you saw, was there any indication that the growth  
15 area had extended north and south along the Route Two  
16 -- what is now the 206 Corridor, and particularly  
17 north of the intersection of 287 and 78?

18 A. Again, we're dealing with maps that are on a  
19 very small scale. But the indication at that time,  
20 that there was not so much of a 206 Corridor  
21 definition as there was a very wide 78 definition,  
22 I-78 definition. So there was a broad swath of  
23 development indicated paralleling the I-78.

24 Q. Did the Somerset County Planning  
25 Board or its staff have any reaction to the growth

1 area as it appeared in the first draft, and particu-  
2 larly the growth area as it affected Far Hills and  
3 vicinity?

4 A. The area which is to the southerly end of Far  
5 Hills was objected to on the part of staff and we had  
6 indicated that an area including Far Hills and  
7 Bernards Township and part of Bedminster Township  
8 there, we felt should not be in the growth area.

9 Q. And do I understand you correctly the  
10 areas you were referring to was what you pointed out  
11 previously, the wider Clinton Corridor as it reached  
12 up and ran along the southerly portion of Far Hills  
13 roughly paralleling 287?

14 A. That is correct.

15 Q. Now, was there a discussion about  
16 creating a 206 Corridor that you recall -- discussion  
17 with the DCA?

18 A. I do recall that there was a discussion at  
19 that time that there would be increased development in  
20 the 206 Corridor, and there was evidence that such  
21 development was taking place.

22 Q. Do you have a recollection of what  
23 indeed was taking place at the time?

24 A. The AT&T headquarters building there, Long  
25 Lines structure.

1 Q. Was it the position of the -- or what  
2 was the position of the Somerset County Planning Board  
3 insofar as a 206 Corridor was concerned?

4 A. We had anticipated that there would be  
5 development along this corridor in our Master Plan,  
6 and indicated an enlargement of the village areas that  
7 were indicated on the County Master Plan.

8 Quite frankly, we did not anticipate  
9 the magnitude of the development, in particular the  
10 size of the AT&T headquarters, Long Lines building.

11 Q. And ultimately you at some point I  
12 presume saw the 1980 revision of the State Development  
13 Guide Plan and particularly the two-on-eight -- 206  
14 Corridor that was outlined?

15 A. Yes.

16 Q. Was that in accord with what the  
17 Somerset County Planning Board or its staff had  
18 anticipated?

19 A. I think to some degree it was.

20 You also have to recognize that the  
21 broad sketch that was part of the State Plan didn't  
22 have the definition of the Somerset County Master  
23 Plan. The question of where a given line falls on  
24 something that is placed on a very small map on a  
25 state-wide basis cannot be determined exactly and that

1 line may shift a mile or so.

2 It does put into question just where  
3 that line falls, but I don't think either we or the  
4 State indicated that they wanted that line to be a  
5 rigid well-defined line.

6 Q. Was there any discussion at all with  
7 the DCA as to how the growth area boundaries would  
8 fall as it related to -- well, strike that. Let me  
9 try this first.

10 Mr. Reuben, you indicated the  
11 objective of development along 206 Corridor had  
12 acknowledged Long Lines certainly. Was Beneficial in  
13 the initial planning stage or in existence at the time  
14 you had initial discussions with the DCA?

15 A. I'm not aware that there was any plans for  
16 Beneficial at that time.

17 Q. At any rate, the objective was to  
18 acknowledge what was in existence and anticipated  
19 along 206; is that a fair appraisal?

20 A. I think that's a fair appraisal.

21 Q. Now, was there any specific  
22 discussion as to how that line as drawn, ultimately  
23 drawn, would affect the Borough of Far Hills?

24 THE COURT: Discussion with whom?

25 Q. Any discussion with the Department of

1 Community Affairs as to how the line that was drawn  
2 would ultimately affect Far Hills?

3 A. No, there was not to the best of my  
4 recollection.

5 I think one of the factors that  
6 related to this whole question --

7 MR. VOGEL: I would, with due respect  
8 to Mr. Reuben, I think the question was asked  
9 and the question was answered, your Honor.

10 THE COURT: All right.

11 BY MR. MASTRO:

12 Q. Mr. Reuben, was it the object or was  
13 it your understanding that the object at the time you  
14 met with the representatives of the DCA was to  
15 identify municipalities as they relate to the  
16 projected growth area?

17 A. Well, in our meeting with the DCA, Mr. Ginman,  
18 there was participation on the part of the munici-  
19 palities; but there was not an attempt to be defini-  
20 tive to the point of an exact alignment of any area.

21 There was a general concern about  
22 where growth areas would be and where they would not  
23 be; but I don't believe that anybody gave that much  
24 credence to the State Plan at the time that they  
25 wanted to be concerned about an exact alignment.

1 Q. Mr. Reuben, if you look at P-34 which  
2 generally shows an overlay of the 206 Corridor with a  
3 base map underneath showing 206 as it runs oh,  
4 northwest-southeast; do you see that, sir?

5 A. Yes, I do.

6 Q. Were there any discussions as to the  
7 width of the finger as it appears along the 206  
8 Corridor?

9 THE COURT: You understand the  
10 question?

11 THE WITNESS: No, I understand the  
12 question.

13 A. I think there were after the revision of the  
14 plan that came out from the State, there was very  
15 little discussion at that point in time. Most of the  
16 discussion had taken place before the revision.

17 And also I think that there was not a  
18 great certain, either by the municipalities or the  
19 County, concerning an exact width of the finger,  
20 whether the finger was fat or whether it was skinny.

21 The concept in our view was that  
22 there would be a determination and that this was  
23 really a guide to the municipalities, not necessarily  
24 an exact definitive plan.

25 Q. All right. You indicated in your

1 response that there was no discussion as to the exact  
2 width.

3 Was there any discussion as to which  
4 municipalities would be included?

5 MR. VOGEL: Well, I would object. I  
6 think in a way it duplicates. We're focusing  
7 in on Far Hills.

8 He's already asked Mr. Reuben.

9 THE COURT: I assume that's what  
10 your question is addressed to?

11 MR. VOGEL: Whether that was  
12 specifically addressed, and he said no. And  
13 I think we've gotten the answer.

14 THE COURT: Well it had been  
15 addressed apparently post-'77, had it not?

16 MR. MASTRO: I wanted to pose the  
17 question in two parts, before the final draft  
18 and after the final draft.

19 THE COURT: Talking about the '80  
20 draft.

21 A. I'm not aware that every municipality looked  
22 at this plan in detail. But certainly the County  
23 Planning Board did know the extent of the areas that  
24 were covered in the -- as they affected Somerset  
25 County.

1                   We did know that it touched upon  
2 Montgomery Township and that it touched upon Far  
3 Hills.

4                   Q.           Mr. Reuben, give Mr. Vogel an  
5 opportunity to object to this question, he may not.

6                   If you were aware at that time of the  
7 current significance of the State Development Guide  
8 Plan boundary lines as they affect municipalities,  
9 would there have been a more concerned dialogue  
10 between your office, County Planning Board, and the  
11 DCA?

12                   MR. VOGEL:  Objection and I think Mr.

13 Mastro is so --

14                   THE COURT:  I'll sustain.

15                   Speculative nature is terribly obvious.

16                   MR. VOGEL:  Thank you.

17 BY MR. MASTRO:

18                   Q.           So your knowledge, Mr. Reuben, aside  
19 from the one meeting which was hosted, I believe you  
20 said, by the Somerset County Planning Board, were  
21 there any public hearings held on the State Develop-  
22 ment Guide Plan?

23                   A.           Not to my knowledge and certainly not in  
24 Somerset County.

25                   Q.           Now, if we look at D-15, Mr. Reuben,

1 we see Far Hills superimposed -- or not superimposed  
2 but outlined in red on the Somerset County Master  
3 Plan. I think if you relate D-15 to D-9, you can  
4 outline approximately where the State Development  
5 Guide Plan growth line would intersect Far Hills?

6 A. Yes, I can.

7 Q. Do you find that the State Develop-  
8 ment Guide Plan line as ultimately placed to be  
9 consistent with what was indicated in the Somerset  
10 County Master Plan?

11 A. No, we do not. There is a significant area in  
12 both southern Far Hills, the southwestern portion of  
13 Far Hills and the northwestern portion of Far Hills  
14 that is not consistent with the Somerset County Master  
15 Plan.

16 Q. Is -- are those portions at all --  
17 you said significant. My question is are they  
18 important or are they negligible?

19 A. I think they're very important to Far Hills.  
20 They may not be very important on a state-wide scale.

21 Q. Let's take it on the local level and  
22 county level. Are they important on the local level  
23 and county level?

24 A. Yes, I believe so.

25 Q. In what respects are they important

1 at the county level?

2 A. They're important on the county level because  
3 our definition of areas where we expected growth to  
4 take place and where growth should be channeled do not  
5 include these areas that I had previously mentioned in  
6 the southwest portion of Far Hills and in the north-  
7 west portion.

8 Q. Is that in any way related -- well,  
9 what was the basis for that conclusion, what factors  
10 participated in that conclusion?

11 A. Well, there was a topographical analysis that  
12 had taken place. There was an analysis of contiguous  
13 areas of low growth. There was an analysis of areas  
14 where it was felt that it would be difficult to  
15 provide sewage and water facilities.

16 These factors along with a policy of  
17 restricting growth from some of the open areas in  
18 Somerset County.

19 Q. Did the North Branch of the Raritan  
20 participate in that process?

21 A. This was a consideration of the development,  
22 but there are not any significant flood plains in  
23 those areas.

24 Q. Now, Mr. Reuben, the County Master  
25 Plan outlines villages, designates them as village

1 neighborhoods, and there are several throughout the  
2 county. Do you know approximately how many?

3 A. Approximately 20.

4 Q. Were they targeted for -- strike  
5 that.

6 Do you know whether they or most of  
7 them are included in the growth area?

8 A. Most of them are in the growth areas I  
9 believe, but there are several areas that are not  
10 within the growth area as the State has defined it.

11 Q. The Somerset County Master Plan  
12 anticipated growth in various villages as more  
13 particular located in the plan itself.

14 Now, if there is a Mount Laurel  
15 obligation imposed on the Borough of Far Hills and if  
16 the property in question here, which I believe you  
17 recall and can recognize on D-9 being outlined in red,  
18 if that is developed for multiple-family purposes  
19 approximately a hundred and twenty-five units;

20 And as you can see it abuts the  
21 railroad tracks across which is the existing village,  
22 and to refresh your recollection, the current village  
23 contains approximately 80 to a hundred units, dwelling  
24 units;

25 Was this the type of growth

1 anticipated in the Somerset County Master Plan as far  
2 as villages was concerned, and when I indicated to you  
3 Mount Laurel obligation and the construction of that  
4 level of units that will go in as a project?

5 A. I think in villages such as Far Hills and  
6 throughout the county, we anticipated that there would  
7 be a need for growth and development. And we were  
8 emphasizing that this growth should take place on an  
9 incremental basis and should be in accord with the  
10 needs of the community.

11 So we did not think that there ought  
12 to be an exclusion of growth from the villages. We  
13 did not feel that there could be a stop in time as far  
14 as the villages are concerned.

15 But we nowhere specified the exact  
16 design parameters or the exact location of a given  
17 site in reference to the growth of the villages.

18 Q. Would doubling the number of units at  
19 a project adjacent to the village fall within the  
20 growth concept as indicated in the Somerset County  
21 Master Plan?

22 A. I think the doubling of the village's size  
23 would not be at variance with the concept of growth in  
24 villages. The key question is the question is how the  
25 municipality designs this development.

1 Q. If it's put in as a single project --  
2 I'm not talking about adding units over a period of  
3 ten or fifteen years -- I'm talking about a piece of  
4 property being developed within a period of one or two  
5 years?

6 A. I think the key question is the design  
7 parameters that would be focused upon that project and  
8 not the exact number of units.

9 Q. Can you -- Mr. Reuben, can you tell  
10 me something about -- something about the capacity of  
11 206 at the present time to accept additional traffic?

12 MR. VOGEL: Well, I will object.

13 I really don't like to interrupt Mr.  
14 Mastro and none of these questions really hurt  
15 my cause as far as I'm concerned.

16 A, we have a time period. It's about  
17 twelve or five to twelve;

18 B, I don't know that the capacity of  
19 the road is really where we -- you know where  
20 we are going with this witness.

21 THE COURT: Mr. Mastro.

22 MR. VOGEL: If he could limit his  
23 time to another minute or two because he's had  
24 a half hour?

25 MR. MASTRO: That's my last question

1 but I think --

2 MR. VOGEL: I'll withdraw the  
3 objection if it's his last question.

4 THE COURT: Would you repeat the  
5 question for the witness please?

6 (The pending question is read back  
7 by the Reporter.)

8 A. The capacity of Route 206 this morning doesn't  
9 present any real capacity problems. But with the  
10 increased development in the area, there is  
11 undoubtedly going to be peak hour congestion on 206.

12 And that's even anticipating that  
13 there will be substantial expenditures to widen 206.

14 MR. MASTRO: That's all I have, your  
15 Honor.

16 THE COURT: Go ahead.

17 MR. VOGEL: Thank you, your Honor.

18

19

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21 CROSS-EXAMINATION BY MR. VOGEL:

22 Q. Mr. Reuben, first with respect to  
23 what the County Master Plan specified, that last  
24 series of questions, you testified on direct that  
25 exact sites for development was not the intent of the

1 County Master Plan in specifying the areas for  
2 enlargement of the villages for example; is that  
3 correct?

4 A. That's correct.

5 Q. And is it fair to state, however,  
6 that the County Master Plan did pick out locations  
7 where it would be -- to try to use your words -- where  
8 growth should take place and should be channeled; is  
9 that correct?

10 A. In the context that I indicated that the  
11 villages would grow.

12 Q. And in fact, within the 206 Corridor  
13 -- let's see if we can get some maps up here.

14 I show you -- got one more now.

15 THE COURT: What are you looking for,  
16 sir?

17 MR. VOGEL: First I have to think  
18 what I'm looking for. It was like P-35 or so,  
19 Mr. Zimmerman's -- not 35, that would be the  
20 census data.

21 Is photo enlargement -- photo  
22 enlargement.

23 THE COURT: Thirty-two and 32a.

24 MR. VOGEL: No, I'm sorry, the county  
25 map. There was a county map with -- road map,

1 your Honor.

2 Here it is.

3 THE COURT: P-23 is Somerset County  
4 Master Plan and Land Use Map.

5 MR. VOGEL: Right here.

6 BY MR. VOGEL:

7 Q. Now, if you can, I show you these  
8 exhibits and there's certainly a number of them up  
9 here.

10 First, with reference to P-34, can  
11 you see the 206 growth corridor as superimposed upon  
12 the county road map?

13 A. Yes, I can.

14 Q. And also taking into account Exhibit  
15 D-17b prepared by Mr. Dresdner which shows Route 206  
16 and various villages, including Pluckemin, Bedminster,  
17 Far Hills and Gladstone, do you recognize those  
18 villages as being within the Route 206 Corridor?

19 A. I believe that's the Village of Peapack but  
20 other than that --

21 Q. You mean Gladstone is the Village of  
22 Peapack?

23 A. No, there's two different villages there. One  
24 is Gladstone and one is Peapack.

25 Q. And it should be identified Peapack?

1 A. Right.

2 THE COURT: Combined for baseball  
3 purposes as Gladpack.

4 BY MR. VOGEL:

5 Q. I also show you now -- this is your  
6 real test of your ability to put together all these  
7 exhibits, Mr. Reuben, which I'm sure you can do -- I  
8 will show you Exhibit D-15 which in part has upon it a  
9 portion of the Somerset County Master Plan. You're  
10 familiar with that map, are you not?

11 A. Yes, I am.

12 Q. Now, can you tell the Court the  
13 villages along the Route -- within the Route 206  
14 Corridor as shown on the County -- as shown on the  
15 State Development Guide Plan, those villages which are  
16 identified on the County Master Plan map and call for  
17 some enlargement or growth; do you follow the  
18 question?

19 A. I don't. I don't know what the question is.

20 Q. Okay. We got to Point One where you  
21 understand where the growth corridor section?

22 A. Yes.

23 Q. The State Development Guide Plan 206  
24 growth site, and you see on D-17 which shows various  
25 communities along this 206 Growth Corridor -- I should

1 call them villages,

2 A. As you will. As far as the Master Plan is  
3 concerned.

4 Q. What I want to know is taking each of  
5 these villages, I want to know how the County Master  
6 Plan for those villages, the ones that exist within  
7 the Route 206 Corridor, does it call for any enlarge-  
8 ment or does it call for the villages to remain as is?  
9 Can we go through them?

10 First, Pluckemin.

11 A. Yes, I think in every case, by the way, it  
12 calls for the growth to take place in the villages in  
13 Somerset County.

14 Q. Okay. And you're talking about in  
15 every case all of the villages within the Route 206  
16 Corridor?

17 A. That's correct.

18 Q. So to the extent that those four or  
19 so villages exist within the Route 206 Corridor as  
20 shown on the State Development Guide Plan and to the  
21 extent that the County Master Plan calls for growth  
22 around each of those villages, would you say to that  
23 extent the State Development Guide Plan and the County  
24 Master Plan have some -- something in common?

25 A. That is correct.

1 Q. Mr. Reuben, when you said you were  
2 giving some testimony about the -- about the County  
3 Master Plan and the State Development Guide Plan  
4 having some incongruity or inconsistency with respect  
5 to Far Hills itself; do you recall that?

6 And as I recall your testimony, you  
7 said that the growth area on the State Development  
8 Guide Plan included areas in the southern portion of  
9 Far Hills -- and I'm referring to D-9 -- and included  
10 some areas in the northern portions of Far Hills which  
11 were not growth areas designated on the County Master  
12 Plan; is that correct?

13 A. That's correct.

14 Q. Is there one area of Far Hills, how-  
15 ever, which calls for some growth on both the County  
16 Master Plan and the State Development Guide Plan?

17 A. Yes, there is.

18 Q. And what is that area; can you  
19 identify?

20 A. That's the village area in Far Hills.

21 Q. The Village of Far Hills. And to the  
22 extent that you're familiar with the property in  
23 question, is it fair to say that the property in  
24 question is encompassed within the proposed growth  
25 area as set forth on the County Master Plan?

1 A. It's fair to say, assuming that this map is  
2 accurate, that the vast majority of the area is so  
3 encompassed.

4 Q. And when you say assuming this map is  
5 accurate, you're referring to Exhibit D-9?

6 A. Right.

7 Q. That is correct?

8 A. Yes.

9 Q. Incidentally, when Mr. Mastro asked you  
10 about specifics of the County Master Plan and you said  
11 that the County Master Plan did not focus on exact  
12 design parameters, they left that to the local  
13 municipalities; is that correct?

14 A. I believe so.

15 Q. Is it -- and I understand that answer  
16 and don't seek to argue with it -- but is it not so,  
17 Mr. Reuben, that on Page 46 of the County Master  
18 Plan -- and that's Exhibit J-11. You may know it well  
19 enough so that you don't have to look at it but if you  
20 want to see the Master Plan?

21 THE COURT: Why don't we show it to  
22 him in all fairness. Get J-11 out.

23 MR. VOGEL: I have a feeling he knows  
24 it a lot better than me, Judge.

25 THE COURT: I wouldn't be a bit

1 surprised.

2 MR. VOGEL: J-11.

3 BY MR. VOGEL:

4 Q. Mr. Reuben, you're looking now at  
5 J-11, Page 46, is that a part of a chapter or sub-  
6 portion of the County Master Plan entitled Village  
7 Neighborhood?

8 A. Yes, it is.

9 Q. And in describing the village  
10 neighborhoods, is there anywhere in the second full  
11 paragraph on the left-hand column of Page 46 that  
12 refers to a range of density uses that are anticipated  
13 for the enlarged village neighborhoods?

14 A. Yes, there is.

15 Q. And what is that range, sir?

16 A. Well, it says:

17 Existing densities of development  
18 range over a considerable spectrum and there's no need  
19 to set up stringent density definitions. Density is  
20 also dependent upon the amount of open space  
21 preserved, but the compact areas of development may  
22 well approximate five to fifteen families per acre and  
23 the size of the village may -- may vary ultimately  
24 from one to 2,000 persons.

25 Q. Thank you. There was some testimony

1 -- and you may have to clear it up yourself, Mr.  
2 Reuben, but just to make sure it's clear in everyone's  
3 mind -- is there -- is there any doubt that during the  
4 course of the various meetings held between the County  
5 officials, particularly the County officials -- I'm  
6 talking about Somerset County officials and the people  
7 from Mr. Ginman's office, including Mr. Ginman  
8 relative to the State Development Guide Plan -- is  
9 there any doubt that they intended to include within  
10 the Route 206 growth corridor as it evolved some  
11 portion, however small, of the Borough of Far Hills?

12 A. I don't think that ever came up in discussion  
13 as such.

14 Q. You testified that the -- if I have  
15 you correctly, that the County Planning Board did know  
16 that the plan touched upon Far Hills; do you recall  
17 that testimony?

18 A. Yes, I do.

19 Q. What did you mean when you said  
20 touched upon?

21 A. Well, as I've emphasized all along, is that  
22 the broad swath of development corridors that the  
23 State has set up really was not a well-defined line,  
24 so that the line, as we saw it, did go through Far  
25 Hills on both the '77 plan and the 1980 plan.

1 Q. All right. Now, I think what I got  
2 from your testimony is that in the '77 plan the  
3 Clinton Corridor was wider in scope; is that correct?

4 A. That's correct.

5 Q. And when you say wider, I show you  
6 Exhibit P-34 and in a general way can you say what you  
7 meant or point out, if it would help you, to just  
8 point it out on the plan?

9 A. Well --

10 Q. If you recall?

11 A. The 1980 plan shows the limited growth area  
12 dipping further south into Somerset County, with the  
13 exception of a widened finger that went up along the  
14 206 Corridor.

15 Q. Right. And are you saying, Mr.  
16 Reuben, that these two areas of limited growth dipping  
17 further south as you've described them, that they were  
18 in the growth area on the '77 plan?

19 A. Yes, that's what I'm saying.

20 Q. And as a result of meetings,  
21 discussions, give and take between the State and the  
22 County Planners, was the County effective in con-  
23 vincing the State that these should be -- that the  
24 limited growth areas should dip further south into the  
25 Clinton Corridor?

1 A. Yes. As I may have indicated before, the  
2 State was somewhat responsive, if not totally  
3 responsive, to our discussion about their conformance  
4 with our County Master Plan.

5 Q. And did those discussions with the  
6 State as you were cutting into the Clinton Corridor  
7 and getting more areas for limited growth, were there  
8 also -- were there not also some discussions  
9 concerning the likelihood of growth up what we have  
10 described as a finger sort of picture, up the Route  
11 206 Corridor?

12 A. Yes. Between 1977 and 1980, it was evident  
13 that there was going to be more growth along that  
14 corridor.

15 Q. And discussions occurred between the  
16 State and the County planners in that general regard?

17 A. Yes, to the best of my recollection.

18 Q. Just one last question or two about  
19 the meetings. Where did the meetings take place  
20 between the State planning officials, Mr. Ginman and  
21 his staff, and the Somerset County planning officials?

22 A. I was not present at all such meetings. But  
23 at least two meetings took place in our offices and  
24 another meeting took place with the participation of  
25 planning board members and municipalities at the

1 freeholders meeting room.

2 Q. In Somerset County?

3 A. In Somerset County.

4 Q. At that time just to refresh my  
5 recollection, I know that at some point you became a  
6 planning director and before that for a long period of  
7 time you were the assistant planning director; is that  
8 correct to my recollection?

9 A. That's correct.

10 Q. So at that time between '77 and '80,  
11 were you the director or the assistant?

12 A. I was the Assistant Director.

13 Q. But you were the Number Two man in  
14 the Somerset County Planning Department at that time?

15 A. That's correct.

16 Q. Now you're the Number One man; is  
17 that correct?

18 A. That's correct.

19 Q. For better or for worse.

20 Okay, how did that meeting with the  
21 officials of various municipalities in Somerset County  
22 come about? How did it occur, who brought it about?

23 A. The meeting was primarily at the initiative of  
24 the Somerset County Planning Board to inform the  
25 municipalities of the details of the State Development

1 Guide Plan and to provide a forum for those  
2 municipalities to respond.

3 Q. And you've described the meeting as  
4 located here in Somerset County. Did the State  
5 officials willingly attend that meeting -- or attend  
6 the meeting?

7 A. In answer to the second question, the State  
8 officials attended the meeting.

9 Q. Do you recall whether anybody from  
10 Far Hills was at that meeting?

11 A. No, I don't recall.

12 I know there were a number of  
13 representatives from Bernards Township and Bernards-  
14 ville. But my recollection doesn't extend to whether  
15 there was a Far Hills representative or not.

16 Q. Were all municipalities invited,  
17 including Far Hills?

18 A. All municipalities were invited.

19 Q. And how long did the meeting last, do  
20 you recall?

21 A. The meeting lasted I believe approximately two  
22 to two-and-a-half hours.

23 Q. And were all who were in attendance,  
24 all the municipal representatives given an opportunity  
25 to express their views?

1 A. Yes, they were.

2 Q. And State officials, did they listen  
3 or was there a discussion back and forth, or both?

4 A. There was a discussion and sometimes it was  
5 rather heated.

6 Q. Were there any other meetings with  
7 County officials subsequent to that meeting with local  
8 officials -- sorry -- were there any other meetings  
9 between Somerset County planning officials and the  
10 State planning officials subsequent to the meeting  
11 between the State, the County and the local people?

12 A. Yes, there were.

13 Q. So that you had the benefit of that  
14 public or of that municipal meeting when you had  
15 further discussions with the representatives of the  
16 State; is that correct?

17 A. Yes.

18 MR. VOGEL: Thank you, Mr. Reuben, no  
19 further questions.

20 THE COURT: Anything further?

21 MR. MASTRO: Just a couple questions,  
22 your Honor.

23

24

25

1 REDIRECT EXAMINATION BY MR. MASTRO:

2 Q. Mr. Reuben, reference was made to the  
3 Pluckemin Village as it appears at the time P-15 was  
4 being utilized in that process. Is the development,  
5 that development that has occurred in Pluckemin  
6 Village and what was anticipated now in accordance  
7 with what the Somerset County Master Plan had  
8 anticipated for that village -- for Pluckemin?

9 A. No, it is not. The scale of the development  
10 is far in excess of what the Somerset County Master  
11 Plan anticipated.

12 Q. If you look at D-9, Mr. Reuben, was  
13 the outline of the village neighborhood in Far Hills  
14 intended to be site-specific or conceptual?

15 MR. VOGEL: Objection, your Honor.

16 He's asked that question more than  
17 once before, got answers to it. It's been  
18 explored in depth.

19 THE COURT: Is there any dispute  
20 about the fact?

21 MR. MASTRO: In my mind, no.

22 THE COURT: Nor in mine.

23 MR. VOGEL: Nor in mine.

24 BY MR. MASTRO:

25 Q. One final question, Mr. Reuben, again

1 referring to D-9, if you were to accept the growth  
2 line as it appears in the State Development Guide Plan  
3 literally, would you consider that to be reasonable or  
4 arbitrary and capricious?

5 THE COURT: You understand the  
6 question, sir?

7 THE WITNESS: Yes, I do.

8 A. I think one thing that has to be understood is  
9 that the line is not a surveyed line or meant to be an  
10 exact line. So if you think of it as an exact line  
11 going through a municipality, it can be arbitrary and  
12 capricious.

13 If you think of it as a general  
14 indication of where growth should take place, then in  
15 recognition that the line may vary in many areas a  
16 mile or two miles in width, then it's obviously not  
17 arbitrary. It's a question of how you define this  
18 line.

19 Q. I understand what you said.

20 If we define it, take it literally as  
21 it now exists slicing through the westerly portion of  
22 Far Hills and include everything to the west of that  
23 line as anticipated for growth, would that be  
24 considered reasonable or arbitrary and capricious?

25 MR. VOGEL: Objection, your Honor.

1 I don't think any witness in this  
2 case, including Mr. Ginman and Mr. Reuben, has  
3 defined that line to mean site-specific. They  
4 have all referred to it as a conceptual line.

5 And Mr. Mastro wants this witness to  
6 conceive of the line in a way that the State  
7 people who developed the line -- in a way  
8 totally different from the way the line was  
9 developed.

10 Mr. Reuben has laid out the para-  
11 meters if it's an exact line, it could be  
12 arbitrary. If it's a general conceptual  
13 growth area, it's not.

14 What more are we going to find out?

15 And to suggest that it is an exact  
16 line with given boundary lines of lots is  
17 simply incongruous with the nature of the  
18 testimony from the State and the all the  
19 planners that testified in this case.

20 MR. MASTRO: Your Honor.

21 THE COURT: Yes.

22 MR. MASTRO: Your Honor, I made no  
23 reference to site-specific to any particular  
24 parcel of land. My question related to  
25 accepting the line literally as it slices

1 across the westerly boundary of Far Hills; and  
2 I think D-9 is their representation of that  
3 line as it lies across the westerly side of  
4 Far Hills.

5 Accepting that line as drawn, not  
6 conceptually, in his opinion would it be  
7 considered reasonable or arbitrary and  
8 capricious.

9 THE COURT: My problem with your  
10 question is, all right, the same predicate  
11 would have to be asked that was asked the  
12 others, given the purposes of the State  
13 Development Guide Plans, is a line as it is  
14 drawn intersecting the northern and southern  
15 boundaries of Far Hills unreasonable,  
16 arbitrary or capricious.

17 I will allow that question.

18 You understand it, sir?

19 THE WITNESS: Yes, I do, Judge.

20 A. Given the general scope of the Guide Plan, I  
21 don't believe a line is arbitrary and capricious.

22 I don't know really whether I should  
23 be making those definitions about arbitrary and cap-  
24 ricious. But it's when you take a general conceptual  
25 proposal and specifically say that the termination of

1 that proposal should be on this exact alignment, then  
2 I do think it becomes arbitrary and capricious.

3 Q. Well, Mr. Ginman -- and I know  
4 there's going to be disagreement as to this question.  
5 In view of what the Supreme Court has done with this  
6 line, it is no longer conceptual; it is now being  
7 applied to municipalities as it exists, and if it  
8 slices across Far Hills, you live with it.

9 Now, accepting that interpretation of  
10 what that line means, in your opinion is it arbitrary  
11 and capricious?

12 MR. VOGEL: Your Honor, I'll object  
13 for all of the reasons articulated by myself  
14 and also the qualification of the Court.

15 THE COURT: I think you've got to  
16 give him, if I were to permit the question,  
17 you would have to give him more than that, Mr.  
18 Mastro.

19 MR. MASTRO: Judge, I don't know if I  
20 do since he is intimately familiar with I'm  
21 sure what exists in Far Hills --

22 THE COURT: But he may not be  
23 intimately familiar with the Court's approach  
24 to the use of the State Development Guide  
25 Plan.

1                   And while the Court, as I read it,  
2                   and we went over this earlier, appears to be  
3                   raising some presumption that if you fall  
4                   within the growth area you are in the growth  
5                   area, and if you fall outside it you may not  
6                   be; although even there there's a caveat on  
7                   that too because -- we'll get to that in a  
8                   little bit.

9                   MR. VOGEL: Judge, I'd like to define  
10                  my objection a little more sharply with  
11                  respect to the Supreme Court.

12                  THE COURT: Let me finish and then  
13                  we'll get to that.

14                  MR. VOGEL: I'm sorry, your Honor.

15                  THE COURT: The Court then went on to  
16                  say that that would not be, as I recall the  
17                  word, the ultimate arbiter. But the Court was  
18                  saying to us lawyers, all right -- and it was  
19                  written by one of us -- we're going to make  
20                  some presumptions.

21                  If you're within the growth area, you  
22                  fall within it. Then the burdens that affect  
23                  municipalities within the growth area fall on  
24                  you. If you want to put yourself outside of  
25                  that presumption, here's what you have to do.

1                   And there are three bases for attack  
2                   on it. I think it has here been conceded by  
3                   all of us that it was the first bases or basis  
4                   which undergirded -- underlies this attack,  
5                   that is that the line as drawn, given the  
6                   purposes of the State Development Guide Plan,  
7                   is unreasonable; or it is arbitrary or  
8                   capricious. All right.

9                   Now, what's your specific objection?

10                  MR. VOGEL: My objection, what I  
11                  think your Honor was saying it, but the issue  
12                  for this witness is not whether the line is  
13                  unreasonable considering how the Supreme Court  
14                  has directed the trial courts to use that line  
15                  or what implications that line has.

16                  The issue that we're litigating  
17                  here --

18                  THE COURT: Let's just stop here if  
19                  you can keep your thought.

20                  MR. VOGEL: All right.

21                  THE COURT: The witness is not called  
22                  here for the purpose of applying the opinion  
23                  in Mount Laurel II to his area of expertise;  
24                  he's called as a planner, all right.

25                  As a planner, he can conceive of the

1 line, all right, in one fashion, it strikes  
2 me, even if Mr. Zimmerman could or Mr.  
3 Dresdner, the Court -- and I have to be  
4 careful as I put this -- has applied a plan  
5 drawn in broad scope and is attempting to  
6 apply it with some specificity, leaving the  
7 text, such as here, to be worked out on an ad  
8 hoc or case-by-case basis.

9 And this poses problems for all of us  
10 conceptually, poses semantic problems for all  
11 of us.

12 But I suggest it is not the witness'  
13 purpose to agree or disagree with what the  
14 Supreme Court, at least as his expert has  
15 already, put forward in Mount Laurel II.

16 We're going to live with that, and I  
17 don't mean to be disrespectful. We lawyers,  
18 we citizens, until the Supreme Court is  
19 persuaded that it should be modified, altered  
20 or done away with completely.

21 And that I don't agree with it as of  
22 absolutely no significance and that Mr. Reuben  
23 doesn't agree with it, that is the opinion or  
24 the application of the State Development Guide  
25 Plan to this area, is with equally little

1 significance.

2 I have to apply the law as I under-  
3 stand it.

4 MR. VOGEL: Just a moment, I had a  
5 further --

6 Your Honor, I think that's precisely  
7 the point I was making. And to say it perhaps  
8 a little differently or to say it another  
9 nuance of it, the focus of this planning  
10 witness is not how the Supreme Court says the  
11 Court should apply that.

12 The focus of this witness is to focus  
13 upon -- or all witnesses to focus on, A, where  
14 is the line; and B, whether the State people  
15 in drafting that line the way they did draft  
16 it for their own purposes, whether they made a  
17 mistake, were they in error.

18 And the Court is to find where they  
19 are in error by saying that the State  
20 officials were arbitrary and capricious, not  
21 that the Supreme Court's arbitrary and  
22 capricious, the way it says society should use  
23 that line now.

24 That is not the issue. That is not  
25 the purpose for which this planner's testimony

1 is given.

2 THE COURT: As you two, Mr. Nastro as  
3 well know perhaps better than I, if we take  
4 those words arbitrary and capricious as  
5 applied to zoning matters, they are predicated  
6 on a lack of reason upon which a result can be  
7 founded.

8 MR. NASTRO: I agree.

9 THE COURT: So if reason is shown,  
10 you know, on a prerogative writ, whether I  
11 like some of them or not -- and I've had my  
12 hand slapped more than once in this area, all  
13 right -- if what they say has some semblance  
14 in reason, the local board reached it, Judge  
15 -- say, Judge you can think of it whatever you  
16 like, all right. You'll give presumptive  
17 validity, to use the old cliché, to their  
18 finding.

19 You've got to find what they did was  
20 arbitrary and capricious. Meaning what? They  
21 had no bases in reason for that which they  
22 have here arrived at.

23 Isn't that a fair statement?

24 MR. NASTRO: Judge, the disagreement  
25 I have with your Honor's views and Mr. Vogel's

1 views is that we are not addressing the  
2 concept map as it was outlined by the  
3 Department of Community Affairs in that  
4 perspective, i.e. as a concept map.

5 I don't think there's going to be  
6 anyone in this state, let alone Somerset  
7 County, who's going to be able to prove that  
8 the concept map as a concept map was  
9 incorrect, unless there was absolutely no  
10 foundation for its being formulated.

11 MR. VOGEL: Excuse me --

12 THE COURT: Let him finish.

13 MR. MASTRO: If I were questioning  
14 Mr. Reuben or any other witness as to the  
15 propriety of outlining a 206 Corridor, then I  
16 think I would quite agree with you, I would  
17 have the burden of establishing that this  
18 concept is inaccurate.

19 I'm not doing that.

20 Now, what I'm doing and I'd like this  
21 clear for the record, I'm referring to page --

22 THE COURT: Of the State Development  
23 Guideline.

24 MR. MASTRO: Last sentence at the  
25 bottom which states, I quote --

1 Mr. Reuben, you can look at it with  
2 me, last sentence:

3 "The concept map consists of broad,  
4 generalized areas without site-specific detail  
5 or precise boundaries," et cetera.

6 Now, my question to Mr. Reuben and  
7 has been to Mr. Ginman, if we make this growth  
8 line as it intersects Far Hills along its  
9 westerly border precise instead of conceptual,  
10 does it then become arbitrary and capricious?

11 MR. VOGEL: Objection.

12 THE COURT: Sustained.

13 MR. VOGEL: I just want to, in view  
14 of Mr. Mastro's statements, just put on the  
15 record what he wants this witness to do is to  
16 give an opinion as to whether or not the  
17 Supreme Court is proper in the way it has  
18 directed the trial courts to apply the map;  
19 and that isn't the issue.

20 The issue is whether or not the State  
21 people drew that line in error.

22 THE COURT: Mr. Mastro, my response,  
23 if one is necessary, would be the illustration  
24 given by the Court where Municipality A is in  
25 a growth area and Municipality F is not.

1                   The assumption from the language,  
2                   they are contiguous. And the Court says it  
3                   will not be enough for one to come in and say,  
4                   all right, we have essentially the same bases.

5                   They put us in one. We've wanted to  
6                   be in the other, or any of the variables of  
7                   that.

8                   The Court has said more than that  
9                   will have to be shown to make the application  
10                  of the line -- even if it splits them in the  
11                  fashion that I've described, more than that  
12                  will have to be shown to indicate that there  
13                  is some unreasonableness in the drafting of  
14                  the line between them; that it was unreason-  
15                  able and arbitrary as I understand that  
16                  opinion.

17                  MR. MASTRO: Your Honor, I quite  
18                  subscribe to what you indicate insofar as to  
19                  the Court's conclusion that lines have to be  
20                  drawn somewhere.

21                  I agree; I am not disagreeing with  
22                  that.

23                  What I'm saying is that when you draw  
24                  it and you slice a part of Far Hills, and if  
25                  you accept it as doing that and taking a

1 portion of the westerly boundary of Far Hills  
2 with it, including it in the growth area, that  
3 is arbitrary and capricious because there's  
4 nothing there.

5 There's nothing in Far Hills that  
6 would warrant that being in the growth area.

7 THE COURT: That's your position.  
8 But it runs contrary to the fact that the  
9 village of Far Hills is contained within the  
10 parameters of that line.

11 MR. MASTRO: Judge, I understand that  
12 and there are a lot of villages in Somerset  
13 County and in the State that are not in growth  
14 areas and that would be little rational for  
15 putting a growth line to Far Hills.

16 THE COURT: And in some of those  
17 there will be no growth area at all  
18 denominated, but here there was.

19 That argument is, it strikes me --  
20 and, Mr. Mastro, I have my own problem  
21 conceptually with this thing as you know.

22 But to accept that argument is to say  
23 to the government agency you will draw the  
24 line consistent with municipal boundaries.  
25 You will draw it consistent with outstanding

1 terrain features, mountains, rivers, roads,  
2 all right.

3 And I suggest -- and I don't have to  
4 go too far with this -- that the development  
5 of that kind of map, given the history of New  
6 Jersey, is an impossibility.

7 The planners may take exception to  
8 that, but we would never get a map in New  
9 Jersey, I would suggest, if those were the  
10 bases on which it had to be drawn. All right.

11 It just wouldn't happen for reasons  
12 which all of us know about and could  
13 articulate. It's just wouldn't happen, not in  
14 our life times certainly.

15 What we have is a broad plan, and I'm  
16 suggesting what I'm saying about the State  
17 Plan is probably if reduced applicable to  
18 county plans and the problem of drafting  
19 those.

20 But on a state plan is simply exacer-  
21 bated given size, local interests, local  
22 concerns and other things. And the Court  
23 recognized it too.

24 And I don't want to be an apologist  
25 for the Supreme Court, but the reason they

1 have accepted this plan was because  
2 essentially they were left with nothing else.  
3 The executive gave them nothing and has given  
4 them nothing. The legislature has given them  
5 nothing and walks away from this whole area.

6 And the Court was concerned with a  
7 practical problem of housing which had raised  
8 to a constitutional level in Mount Laurel I.  
9 And it has said very bluntly it will not allow  
10 what has happen since Mount Laurel I to happen  
11 for the next ten years under Mount Laurel II.

12 And the Court is well aware of the  
13 problems with which we grapple here, the  
14 problems that the State agency had.

15 MR. MASTRO: I understand.

16 THE COURT: We used the word  
17 mechanic; we could use the word simplifi-  
18 cation, oversimplification.

19 The Court has said there it is,  
20 that's what we mean. You're a municipality in  
21 the growth area; you've got a responsibility  
22 to absorb housing. That's it.

23 You're not happy with it, you go to  
24 court. But when you get in court, an oblig-  
25 ation you have, a burden of proving one of the

1 three reasons. And you're going to show that  
2 line as it applies to you is unreasonable. It  
3 is arbitrary. It is capricious.

4 You've got to show somebody made a  
5 mistake or somebody could not reasonably --  
6 not that we disagree with reason -- could not  
7 reasonably have drawn the line where he drew  
8 it.

9 This is my understanding of where we  
10 are at and this is my understanding of where I  
11 am at to.

12 I've got a decision. While  
13 ultimately I won't decide this, Judge  
14 Serpentelli will; he's going to have the same  
15 problems.

16 MR. MASTRO: Judge, the only require-  
17 ment of what you said that I want to emphasize  
18 is that true, the Court has indicated this is  
19 the growth line, but left the door open --

20 MR. VOGEL: Excuse me.

21 THE COURT: Let him finish please.

22 MR. MASTRO: And certainly I  
23 appreciate that there are municipalities  
24 entirely within the growth area, substan-  
25 tially, Bergen County, Middlesex County.

1                   And I'm sure you have to make allow-  
2                   ance for environmental constraints within  
3                   those municipalities. That sounds reasonable;  
4                   a sensible approach.

5                   It seems to me where you have an area  
6                   where you're talking about what is happening  
7                   along the periphery, the boundary line, you  
8                   should be free to make adjustment if it  
9                   doesn't make sense, i.e. move the boundary  
10                  line.

11                  You may not be --

12                  THE COURT: But to move the boundary  
13                  line you must show the reasons for moving it,  
14                  all right.

15                  Let me put it to you a little  
16                  differently. If the State had come in and had  
17                  shown this land or its line to come down,  
18                  looking at D-9, all right, and had gerry-  
19                  mandered it -- a term that all of us in New  
20                  Jersey are more than familiar with -- to  
21                  include the property of Ochs and Haueis only,  
22                  that is when it got down to the northern  
23                  boundary it went northeast and when it got up  
24                  to a point it then came down southwest, got to  
25                  202 and went southwest -- or southeast and

1           then southwest -- looking at that -- and then  
2           continued south, all right;

3                     We'd have the obvious instance, it  
4           strikes me, where in reason and in conscience  
5           somebody looking at that would say, all right,  
6           either the fellow who drew it has got some-  
7           thing going with Ochs and Haucis, or else he  
8           had a bad night, or the fellow ought to go see  
9           his eye man.

10                    The thing sticks out like a sore  
11           thumb. He couldn't reasonably have drawn a  
12           conceptual line and included the piece in  
13           question. Another version of what we're  
14           dealing with here.

15                    Whenever we get close to the line,  
16           we're going to have problems.

17                    MR. MASTRO: Let me refine your  
18           example, if I might, for just a second.

19                    Instead of the obvious gerrymandering  
20           which you described, let's assume that the  
21           development guideline intended to catch a  
22           commercial -- commercial development that was  
23           occurring to the northwest of Far Hills and  
24           snipped the northwesterly corner of Far Hills,  
25           the thumb that sticks out.

1                    Now, I think, if I question Mr.  
2                    Reuben, he'd look at that and say there's no  
3                    reason for that to be in that growth area,  
4                    there's no logic to it. If you were to  
5                    interpret that line literally, it wouldn't  
6                    make sense. It may not.

7                    If you look at the map, it may be  
8                    smooth; and as a conceptual line, it may be  
9                    perfectly reasonable, all that someone could  
10                   do on a broad conceptual map.

11                   But as applied to Far Hills, I don't  
12                   think Mr. Reuben would have any hesitation in  
13                   saying if you were to consider Far Hills as  
14                   being in the growth area because of that  
15                   thumb, I think you're off-base, that it's  
16                   arbitrary and capricious.

17                   THE COURT: I think it's just another  
18                   variation of what I described.

19                   And I must also tell you while we're  
20                   trying Far Hills, it happens to be the  
21                   litigant in the case, this applies to all  
22                   municipalities.

23                   Far Hills is in no distinct or unique  
24                   position. It's susceptible to the standard  
25                   which is the same as that of every other

1 community in the State of New Jersey.

2 All right.

3 MR. VOGEL: My objection to the  
4 question continues, your Honor.

5 THE COURT: Sustained.

6 MR. MASTRO: That's all I have of Mr.  
7 Reuben. I appreciate his coming.

8 THE COURT: Anything further?

9 MR. VOGEL: No, your Honor. I  
10 likewise appreciate Mr. Reuben.

11 THE COURT: Mr. Reuben, we put you in  
12 a difficult position and you have been most  
13 generous with your assistance to the Court.

14 THE WITNESS: Thank you, your Honor.

15

16

17 THE COURT: All right, gentlemen,

18 MR. MASTRO: Are we off or on the  
19 record?

20 I think we're both finished except  
21 for --

22 MR. VOGEL: We both rest on the  
23 issues currently before the Court. I rest on  
24 the issues before the Court.

25 THE COURT: In that case, I would ask

1 of you, as I've asked you in chambers, I would  
2 like from you within some time period a  
3 proposed findings of fact relating to this  
4 specific issue with which we have now here  
5 dealt.

6 I see no need for oral summations in  
7 the matter. You may have different views;  
8 I'll hear that.

9 In terms of findings of fact, I know  
10 you're both busy. What would you say a  
11 reasonable time within which to submit them?  
12 And I think they ought to be submitted, not  
13 having one, you both due the same date.

14 MR. VOGEL: Same date?

15 MR. MASTRO: Judge, considering that  
16 this week is short, next week is even worse, I  
17 assume you're familiar with the bar meeting  
18 which is going on.

19 MR. VOGEL: State Bar and League of  
20 Municipalities.

21 THE COURT: The week of the twenty-  
22 first we are all at Judicial College.

23 MR. MASTRO: Both Mr. Vogel and I are  
24 involved heavily in either or both of those  
25 functions.

1 MR. VOGEL: Judge, I share Mr.  
2 Mastro's concerns about the calendars and this  
3 is a short week and next week is a short week.

4 On the other hand, we are at -- we  
5 are dealing with a narrow issue about which  
6 there have been four witnesses. Mr. Mastro  
7 and I are now getting transcripts, and we  
8 probably have them for all witnesses except  
9 Mr. Reuben.

10 And I know that my clients who have  
11 been waiting an inordinate period of time  
12 because of the unusual event of Mount Laurel  
13 II coming down a day or two before the end of  
14 the original trial.

15 And I personally would like to see a  
16 short date. If I have to do some work over a  
17 weekend, I will do it.

18 THE COURT: Give me a date and we can  
19 bat that around.

20 MR. VOGEL: Let's see, I would say --  
21 this is Tuesday.

22 THE COURT: This is Wednesday, the  
23 ninth.

24 MR. VOGEL: Wednesday the ninth.  
25 Next week is the conventions.

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THE COURT: Fridays are eleven,  
eighteen and twenty-five.

MR. VOGEL: What was the problem with  
the following week?

THE COURT: You're going to get into  
Thanksgiving the twenty-fourth.

MR. MASTRO: That's the Thanksgiving  
week.

MR. VOGEL: I would say -- I need a  
calendar.

THE COURT: Here's one.

MR. VOGEL: Thanks, Judge.

THE COURT: You have a calendar?

MR. MASTRO: I have one.

MR. VOGEL: We're here, the ninth.

MR. MASTRO: Here the Court, the  
following week -- the court's going to be in  
recess that following week.

THE COURT: The twenty-first.

MR. VOGEL: The entire week?

THE COURT: Judicial College three  
days and Thanksgiving.

MR. VOGEL: Well, what about Monday  
the twenty-eighth on your desk?

THE COURT: Fine with me, November

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MR. NASTRO: How about Thursday,  
December first?

THE COURT: Do you have any problem  
with that, Thursday?

MR. VOGEL: Maybe your Honor wants to  
cut it down the middle, Wednesday, the last  
day of November, or some such thing?

THE COURT: We've had agreement on so  
many things.

MR. VOGEL: We usually get along.

THE COURT: How about we -- that  
makes a certain consistency, Wednesday,  
November the thirtieth, four o'clock.

MR. NASTRO: All right.

MR. VOGEL: Will be done.

THE COURT: The understanding will be  
there will be no oral summations. And if any-  
one or either of you wish to submit a written  
summation, you have the Court's permission to  
do so. All right.

MR. VOGEL: I have the feeling that  
our reflection of the appropriate factual  
findings --

THE COURT: Will probably.

1 MR. VOGEL: -- will parallel what  
2 summation might take, or substantially  
3 parallel.

4 THE COURT: We're going to get  
5 proposed findings of fact from each of you by  
6 Wednesday, November 30, '83, four o'clock.

7 And when I get those, I trust that my  
8 Law Clerk will have done it, and he and I will  
9 sit before and I hope we will sit after we get  
10 them and we'll get something together.

11 I think that Judge Serpentelli was  
12 then going to afford you an opportunity to  
13 take exceptions to those --

14 MR. VOGEL: To your --

15 THE COURT: -- findings of fact and  
16 whatever recommendations, if any, I make.

17 MR. VOGEL: Your Honor, if we in our  
18 proposed findings of fact, I assume it would  
19 not be inappropriate for us to suggest what we  
20 think are proper recommendations?

21 THE COURT: Then do that, if you  
22 will, separately. Don't mix them up.

23 Because if you get into that old  
24 legal problem of questions of law or mixed  
25 questions of law and fact, I don't know how

1 Judge Serpentelli will view that.

2 So let's keep them as clean as we  
3 can.

4 MR. VOGEL: One last thing, I want to  
5 make sure that your Honor he is getting the  
6 transcripts.

7 THE COURT: I have them. I have them  
8 so far.

9 What I would ask of you is to make  
10 sure that we have all the exhibits.

11 Do we have them?

12 THE CLERK: Yes, we do.

13 MR. VOGEL: Could we make arrange-  
14 ments to come in here?

15 THE COURT: To copy?

16 MR. VOGEL: We couldn't copy the  
17 exhibits. When I'm dictating my proposed fact  
18 findings, I may want to make reference to the  
19 exhibits.

20 THE COURT: We will have them and  
21 we'll try to set you up in a conference room.  
22 We don't have much in the way of space -- you  
23 know it -- and no one will ever confuse this  
24 with the Ritz.

25 But whatever we have we'll make

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available to you.

MR. VOGEL: The jury room will keep me up.

THE COURT: You'll be so uncomfortable, you won't be able to fall asleep.

MR. VOGEL: It's frigid.

THE COURT: We'll do the best we can and we will try to accommodate you.

Again, gentlemen, you have my thanks. Have a good day.

MR. VOGEL: Thank you very much, your Honor.

(Trial completed: 12:45 p.m.)

C E R T I F I C A T E

I, LAUREL K. KIRSCHEN, an  
Official Court Reporter of the State of  
New Jersey, License Number 956, certify  
that the foregoing is a true and accurate  
transcript of my original stenographic  
notes to the best of my knowledge and  
ability.

Laurel K. Kirschen, CSR

LAUREL K. KIRSCHEN, C.S.R.  
Official Court Reporter

Dated: November 15, 1983