

Am - Timber Properties v. Twp of Chester 1/19/84

Transcript
of

Court's decision re State Development
Guide Plan
+ Sewerage Systems

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TIMBER PROPERTIES, INC., et al., :

Plaintiffs,

: Court's Decision

v.

TOWNSHIP OF CHESTER, et al., :

Defendants.

-----:

Middlesex County Courthouse
New Brunswick, New Jersey
January 19, 1984

B E F O R E: Honorable Stephen Skillman, J.S.C.

APPEARANCES: Vogel & Chait, Esqs.,
By: Herbert A. Vogel, Esq.,
-and-
Thomas F. Collins, Jr., Esq.,
Attorneys for

Gilbert J. Stroming, II, Esq.,
Attorney for

McCarter & English, Esqs.,
By: Alfred Ferguson, Esq.,
-and-
Gary T. Hall, Esq.,
Attorneys for the Defendants.

Stanley Grabon, C.S.R.
Official Court Reporter

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THE COURT: This is a Mount Laurel case, that is, the complaint alleges that the zoning ordinance of the defendant, Chester Township, is unconstitutional because it does not provide a realistic opportunity for the construction of low and moderate income housing.

There are other parts of the case. It is a multi-count complaint containing non-Mount Laurel, as well as Mount Laurel claims, some of which have previously been disposed of, and some of which are still pending before me on motion, and others of which have not yet been addressed by motion or otherwise.

The hearing that we have held over the last nine days has involved the Mount Laurel claim, and specifically one aspect of the Mount Laurel claim.

The defendant, Chester Township, has been designated by the Department of Community Affairs in the State Development Guide Plan as lying wholly outside any growth area. Specifically, it's been designated as lying entirely within what the Department of Community Affairs characterizes as a limited growth area.

The plaintiffs have challenged the

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1 validity of that designation by the Department of
2 Community Affairs, and it is that challenge which
3 has been the subject of the nine-day hearing that
4 we have held.

5 Now, if the Department of Community
6 Affairs designation is valid, then Chester's
7 obligations under Mount Laurel II are limited to
8 providing a realistic opportunity for the con-
9 struction of decent housing for its indigenous
10 poor.

11 On the other hand, if Chester were
12 found to be located partly or wholly in a growth
13 area, it would have the more expansive respon-
14 sibility of providing a realistic opportunity for
15 the construction of lower income housing for its
16 fair share of the present and prospective need
17 in the region in which it is located.

18 This means that the proofs required
19 at trial and the fact finding required by the
20 court are quite different, depending on whether
21 a municipality such as Chester is located
22 entirely outside any growth area or whether it
23 is located at least in part in a growth area.

24 If a municipality is located entirely
25 outside any growth area, then the court's role,

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its responsibility is limited to determining the number of resident poor currently residing in inadequate housing, and then to determine whether the municipality's zoning ordinance makes adequate opportunity for the construction of housing for those so called indigenous poor.

On the other hand, if a municipality is located wholly or partly in a growth area, then the court is called upon to determine the housing region in which the municipality is located, the total need for lower income housing in the region, and the municipality's fair share of that need.

Now, in view of this substantial difference in the proofs and fact-finding which the court is required to make, depending upon whether or not a municipality is partly in a growth area, I, a number of months ago, bifurcated the issue of the validity of the Department of Community Affairs designation of Chester for a separate hearing in advance of the main trial of the case.

Now, I think that before discussing the proofs which have been presented on the challenge to the Department of Community Affairs designation of Chester as lying wholly outside any growth area, it is appropriate to review generally the

1 approach of the State Development Guide Plan and
2 the role that it is to play in Mount Laurel
3 litigation under the Supreme Court of New Jersey
4 decision in Mount Laurel II.

5 Now, the first point which needs to be
6 made about the State Development Guide Plan is
7 that it is a planning document. It does not
8 simply describe what is, in fact, going on in the
9 housing market. Rather, it undertakes to describe
10 where new housing ought to be constructed in the
11 future.

12 To put this another way, it's a norma-
13 tive, rather than purely descriptive document.

14 Now, I think that this is made clear
15 by the articulation of goals which appear,
16 starting at page 21 of the State Development
17 Guide Plan, and then they are identified as
18 follows:

19 One. The protection of the State's air,
20 water, wildlife, and land resources from the
21 adverse effects of man's activities, and to
22 correct past misuses.

23 Number two. Preservation of the open
24 space necessary for a quality environment that
25 would be adequate for the population of the state.

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Number three. The maintenance of a viable agricultural economy.

Number four. The enhancement of the quality of life in urban, suburban, and rural areas, with special priority for revitalizing older urban areas.

Number five. The clustering of the settlement patterns in the state in order to promote the conservation of energy, to encourage a proper jobs-housing balance, and to foster the efficient use of the State's capital facilities, such as highways, rail lines, and sewer systems.

Number six. To provide opportunities for economic expansion and new employment in New Jersey.

And then the Plan goes on to set forth a growth management strategy to effectuate these various goals.

I think all of this indicates that it is a document that is intended to affect the course of development in this state, rather than merely to describe it.

Now, the second important point to be made by the State Development Guide Plan is that its overriding thesis is that post World War II

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1 suburban growth has involved an undesirable degree
2 of population dispersion, and that future growth
3 in the state should therefore be in or immedi-
4 ately adjacent to areas which already have sub-
5 stantial development.

6 This thesis appears at numerous places
7 in the State Development Guide Plan, and one of
8 those places being pages 24 and 25, where the
9 Department of Community Affairs stated as
10 follows:

11 "The pattern of development has an
12 important relationship to social and economic
13 inter-action within the state, and also to the
14 cost of such inter-action.

15 "The state's growth after World War II
16 expanded outward from the central cities along
17 major transportation routes. This suburbaniza-
18 tion process required major new capital facili-
19 ties, such as roads, sewers, power lines, and
20 water mains, and expanded education, health,
21 and social services.

22 "The public and private investment was
23 immense. The expansion extended into rural areas,
24 but not uniformly, and tended to skip past many
25 areas.

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"This suburbanization process has proved to be expensive and wasteful. Facilities and service were duplicated elsewhere, while urban facilities and service declined.

"Travel shifted to the less efficient mode of automobile travel, and increased greatly due to the expanded travel distances and the disassociation of residences and jobs.

"There is a need now in New Jersey to alter this unplanned pattern of spread development. A compact development pattern for the future can serve to promote the utilization of the existing infrastructure and service systems in an economical way.

"This is especially important in an area of scarce and expensive fuels, and at a time when limited public funds are needed to restore and maintain, rather than duplicate what already exists.

"It is now suggested that a major portion of the state's development efforts should be directed to areas within and contiguous to existing development."

In Mount Laurel II the Supreme Court of New Jersey held that generally the existence of a

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1 municipal obligation to provide a realistic
2 opportunity for a fair share of a region's pres-
3 ent and prospective lower income housing would
4 be limited to municipalities which had been des-
5 ignated as being entirely or partly in growth
6 areas within the State Development Guide Plan
7 issued by the State Department of Community
8 Affairs.

9 The reasons for the Supreme Court
10 assigning this significance ^{to} the State Develop-
11 ment Guide Plan in Mount Laurel litigation were
12 identified as several.

13 First, as stated at Page 215 of the
14 opinion, "The State Development Guide Plan
15 represents the conscious determination of the
16 state, through the executive and legislative
17 branches, on how best to plan its future."

18 In other words, use of the designations
19 in the State Development Guide Plan in Mount
20 Laurel litigation puts the judiciary in the
21 position of deferring to the extent it is now
22 possible to legislative and executive initiatives.

23 It recognizes the important role of the
24 other branches of government in this area of
25 planning for housing in the State of New Jersey.

1 The second reason for the court assign-
2 ing this degree of significance to the designa-
3 tions in the State Development Guide Plan is that
4 doing so enables the Mount Laurel obligation to
5 be enforced in accordance with sound planning
6 concepts.

7 The prior test, that is, whether a
8 municipality was developing, was purely reflec-
9 tive of what was actually going on in the market-
10 place rather than of sound planning.

11 As the court pointed out at page 224
12 of its opinion, "The criteria will not necessarily
13 result in the imposition of the obligation in
14 accordance with sound planning.

15 "There may be areas that fit the devel-
16 oping description that should not yield to
17 inevitable future residential, commercial, and
18 industrial demand and growth.

19 "Those areas may contain prime agri-
20 cultural land, open spaces and areas of scenic
21 beauty; apart from these, their development might
22 impose unacceptable demands on public investment
23 to extend the infrastructure required to support
24 such growth.

25 "Indeed, to some extent the very

1 definition of developing suggests results that
2 are quite the opposite of sound planning, for
3 the whole purpose of planning is to prevent or
4 deflect what would otherwise be inevitable."

5 To the same effect, the court said at
6 page 238, "the constitution of the State of New
7 Jersey does not require bad planning. It does
8 not require suburban spread. It does not require
9 rural municipalities to encourage large-scale
10 housing developments.

11 "It does not require wasteful extension
12 of roads and needless construction of sewer and
13 water facilities for the out-migration of people
14 from the cities and the suburbs.

15 "There is nothing in our constitution
16 that says that we cannot satisfy our constitu-
17 tional obligation to provide lower income housing
18 and, at the same time, plan the future of the
19 state intelligently."

20 The third purpose which the court con-
21 ceived would be furthered by the use of the State
22 Development Guide Plan in determining which
23 municipalities would have a regional fair share
24 obligation was to simplify Mount Laurel litiga-
25 tion.

1 At Page 214 the court said, "We hope to
2 simplify litigation in this area. While we are
3 not overly optimistic, we think that the remedial
4 use of the State Development Guide Plan may
5 achieve that purpose."

6 The fourth reason which the court gave
7 for reliance upon the growth designations of the
8 State Development Guide Plan was certainty. In
9 criticizing the developing, non-developing
10 criteria of Mount Laurel I, the court said at
11 page 224, "There are various drawbacks to this
12 approach--" again referring to the developing,
13 non-developing municipality approach-- "to the
14 critical question of determining the existence of
15 the obligation.

16 "Uncertainty is one of them. Ideally
17 a municipality and its governing body should know
18 without question whether it is subject to the
19 Mount Laurel remedy, for without that knowledge,
20 municipalities that are borderline between
21 developing and non-developing cannot be expected
22 to comply with an obligation that may very well
23 not exist."

24 Although the court determined for these
25 four reasons that the designations of munici-

1 palities as growth or non-growth in the State
2 Development Guide Plan would ordinarily be
3 determinative of a municipality's obligation in
4 connection with the regional need for lower
5 income housing, it left the door open for a party
6 to challenge those designations on any one of
7 three grounds, and those grounds are set forth on
8 pages 240 to 241 of the opinion, and I will come
9 back to them in a moment.

10 However, the court also made it clear
11 that the burden cast upon any party attempting to
12 challenge the designations in the State Develop-
13 ment Guide Plan would be an extremely heavy one.

14 At page 215 of the opinion the court
15 said, "There shall be a heavy burden on any party
16 seeking to vary the foregoing remedial conse-
17 quences of the State Development Guide Plan
18 designations."

19 Similarly at Pages 239 to 240 the court
20 said, "While we believe important policy con-
21 siderations are involved in our decision not to
22 make the State Development Guide Plan conclusive,
23 we think it even more important to point out that
24 it will be the unusual case that concludes the
25 locus of the Mount Laurel obligation is different

1 from that found in the State Development Guide
2 Plan."

3 In this case the plaintiffs have
4 challenged the State Development Guide Plan
5 designation of Chester as lying wholly outside any
6 growth area on two grounds, first as being arbi-
7 tary and capricious, and second on the grounds
8 that there has been a significant transformation
9 of Chester since the date of the State Development
10 Guide Plan.

11 I conclude for reasons that I will now
12 set forth in detail that plaintiff's proofs have
13 fallen far short of establishing either that the
14 non-growth designation of Chester was, when made,
15 arbitrary and capricious or that there has been
16 any significant transformation of Chester since
17 the date of the State Development Guide Plan,
18 which would make that designation inappropriate
19 at the present time.

20 I will deal first of all with the
21 claim that the State Development Guide Plan
22 treatment of Chester was arbitrary and caprici-
23 ous.

24 The Supreme Court in Mount Laurel II
25 discussed this ground of attack upon the State

1 Development Guide Plan designations as follows
2 at Page 241 of its opinion. First of all, I'll
3 move a page backward to page 240, where it
4 identifies and states the exceptions as follows:

5 "Accepting the premises of the State
6 Development Guide Plan, the conclusion that the
7 municipality includes any growth area, or as much
8 growth area as is shown on the concept map, is
9 arbitrary and capricious, or alternatively, the
10 conclusion that the municipality does not contain
11 any growth area whatsoever is arbitrary and
12 capricious."

13 And then it goes on to discuss this
14 test on page 241 as follows:

15 " The first exception recognizes the
16 possibility of errors on the part of the planning
17 group that prepared the State Development Guide
18 Plan. No trial court should, however, simply
19 substitute its judgment for the State's planners
20 under that exception.

21 "Not only must the evidence show that
22 the conclusion and the classification were
23 arbitrary and capricious, but the party chal-
24 lenging the characterization must contend with
25 the obvious fact that lines must be drawn some-

1 where, and that merely to show that one municipi-
2 pality containing a growth area is remarkably
3 similar to a neighboring one that includes no
4 growth area is not enough. The party must show
5 that it was arbitrary and capricious not to place
6 the line somewhere else."

7 Now, in determining whether an area
8 should be designated as a growth area or fall
9 within one of the non-growth designations, the
10 State Development Guide Plan identifies five
11 factors which favor a municipality being placed
12 in a non-growth area, and five which favor
13 placing it in a growth area.

14 These are stated initially, at least
15 on page 28 of the State Development Guide Plan,
16 and the five factors pointing in the direction
17 of a non-growth designation are as follows:

18 Agriculturally favorable soils, public open
19 space, steep slopes, wetlands, and water supply
20 resources.

21 The five factors pointing in the
22 direction of a growth designation are sewerage,
23 public water supplies, highway and rail facili-
24 ties, intensive employment concentrations, and
25 development concentrations.

1 Now, before going through each one of
2 these ten criteria as it relates, as they relate
3 to the exclusion of all of Chester Township from
4 any growth area, a few preliminary points should
5 be made.

6 First of all, I note that it is plain-
7 tiff's position in this hearing not that all of
8 Chester should be designated a growth area but,
9 rather, that a strip running, approximately one-
10 half mile to either side of Route 206 should
11 receive that designation. And for this reason
12 the plaintiffs and the defense proofs do not
13 mesh, do not correspond with each other in all
14 instances.

15 To some extent the plaintiffs have
16 presented proofs which focus on this one-half mile
17 strip to either side of Route 206, while defen-
18 dant has presented proofs which deal with the
19 municipality as a whole.

20 I'm not by making this observation
21 suggesting that there is any inadequacy in the
22 record. Indeed, it is very full. But I do think
23 that noting this divergence at some points in
24 the record between the proofs presented by the
25 plaintiff and those presented by the defendant

1 may help someone else who has not lived through
2 this case grasp this record, if that day should
3 ever come.

4 I also observe before leaving this
5 subject that it would not be in any way incon-
6 sistent with the State Development Guide Plan or
7 Mount Laurel II to designate only a part of a
8 municipality as being in a growth area.

9 Indeed, there are numerous municipali-
10 ties that are under the State Development Guide
11 Plan partly growth and partly in a non-growth
12 area.

13 Now, the second important preliminary
14 point which I feel needs to be made, and it's a
15 point that I really will come back to because
16 it's reflected in some of the conclusions that I
17 have reached with regard to the ten individual
18 criteria for the growth versus non-growth
19 designation, is that plaintiffs, at least to
20 some extent, have sought to treat the growth and
21 non-growth criteria contained in the State
22 Development Guide Plan as a kind of checklist
23 which a given municipality or part of a
24 municipality either satisfies or does not satisfy.

25 However, I feel that it is clear from

1 the face of the State Development Guide Plan, as
2 well as from the testimony of Mr. Ginman, that
3 this is an unduly simplistic view of how the
4 ten criteria were employed in determining
5 whether or not particular areas of the State
6 should be designated growth areas.

7 It's my view that these criteria were
8 not intended to be yes or no, all or nothing
9 factors that are either present or not present
10 in a given location.

11 For example, the plaintiffs have made
12 much of the fact that Route 206 is referred to in
13 a map in the State Development Guide Plan as a
14 major highway. Whether 206 deserves that label or
15 not, it is clear to me that some highways are
16 more major than others.

17 You can't treat all, quote, major high-
18 ways as fungible for planning purposes when some
19 of those highways receiving that label are two
20 lanes, some four lanes, some six and, in fact, if
21 my recollection serves me correctly, I think
22 parts of the New Jersey Turnpike are now twelve
23 lanes.

24 All other things being equal, the
25 proximity of a six-lane highway to a given area

1 is a stronger indicia that an area is a growth
2 area than the presence of a two-lane highway.
3 It is a matter of degree.

4 There are similar problems with the
5 plaintiffs' treatment of the criteria of employ-
6 ment concentration and development concentration.
7 These two are obviously matters of degree.

8 It is evident from the maps found in
9 the State Development Guide Plan that there are
10 no employment or development concentrations any-
11 where around Chester, either in southwest Morris
12 County or northern Somerset County that begin to
13 reach the magnitude of those employment and
14 development concentrations found in the counties
15 lying to the east, for example, Essex, Hudson,
16 and portions of Union County.

17 The term "in proximity to" is also a
18 matter of degree. While in some sense one place
19 twenty minutes away from another place may be
20 said to be in proximity to that other place, that
21 is not the same degree of proximity as being
22 five minutes away, and from a planning standpoint
23 that difference may be very important.

24 It also may be very important to
25 determine what is in between the two locations

1 which are alleged to be in proximity to each
2 other. Is there development in between, or is
3 it vacant developable land, thus leading to the
4 conclusion that those areas more proximate to,
5 for example, a place of employment, ought to be
6 developed in advance of an area which is less
7 proximate?

8 Now, the presence of agriculturally
9 favorable soils, public open spaces and water
10 resources are similarly matters of degree.

11 Now, with these preliminary thoughts
12 having been expressed, it is appropriate to turn
13 to the ten criteria for the designation of areas
14 as being growth and non-growth.

15 First agricultural soils. I am satis-
16 fied that there is a significant amount of
17 agriculturally favorable soil in Chester, includ-
18 ing the immediate area around Route 206.

19 I think that is shown on Plate 14 of
20 the 1978 Chester Land Use Plan, which is D-1 in
21 evidence.

22 That same document indicates that I
23 believe approximately forty-five percent of the
24 land in Chester is under farm land assessment,
25 reflecting a significant commitment of lands for

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agriculturally related activities.

Now it appears that most of this farm-land use is not for the growing of crops but rather for grazing and other less intensive agricultural uses.

Nonetheless, it is land that is suitable and, to some extent, applied to agricultural uses.

To some extent, at least particularly in the southwest part of the municipality, this land appears to be immediately adjacent to Route 206.

Although this agricultural use of the land is not of a character which the Department of Community Affairs felt would justify designating any part of Chester as an agricultural area, it is still one factor, that is, the availability of this agriculturally-suitable land, it is still one factor militating against government action which would encourage the development of those lands, such as the Department of Community Affairs conceived would occur as a result of a designation of an area as a growth area.

The second criteria is public open space. I'm satisfied that there's a very sig-

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1 nificant amount of public open space in Chester.
2 Approximately twenty-five percent of the land in
3 the municipality is public open space, and this
4 includes Black River Wildlife Management Area,
5 parts of Hackelbarney State Park, as well as
6 several other open space areas.

7 Now, much of this land is not within one-
8 half mile of Route 206, but it is fairly close to
9 plaintiffs' proposed growth corridor, and I think
10 that planners could have a legitimate concern that
11 very intensive growth along Route 206 would have
12 an adverse spillover effect upon such open public
13 lands.

14 The third and fourth criteria relating
15 to growth or non-growth designations are the
16 presence of steep slopes and wetlands.

17 I do not consider this to be a signifi-
18 cant factor as it relates to the non-growth
19 designation of Chester, at least in the area of
20 Route 206.

21 There are some lands with steep slopes
22 and some wetlands in Chester; however, as indi-
23 cated by Plate 18 on the 1978 municipal land use
24 map, there also is much of the land along
25 Route 206 which contains neither wetlands nor

1 steep slopes, and it is clear that a growth
2 designation of an area does not mean that it
3 should all be developable.

4 The fifth criteria of the State
5 Development Guide Plan is water supply resources.
6 I am convinced that this factor does point in
7 favor of the non-growth designation of Chester.

8 Chester is in the upper Raritan Water
9 Shed, which is an important water source. It
10 also appears that much of Chester is covered by
11 rock formations and soils which do not effectively
12 filter out water pollutants.

13 Although the water supply system in the
14 general area of Chester does not appear to be
15 contaminated at the present time, there is a
16 legitimate concern that substantial new develop-
17 ment could cause pollution to the water resource
18 of the upper Raritan water shed.

19 Such pollution may come about in,
20 among other ways, from septic systems as well as
21 storm run-off of water from developments.

22 The data on just how sensitive the
23 water supply system in Chester is to pollution
24 appears to be somewhat vague and somewhat general.

25 However, there is enough there to be

1 able to characterize this as a factor calling
2 for caution in the development of the area, and
3 it supports to some extent, although not an
4 overwhelming consideration, the non-growth
5 designation of Chester.

6 Now I should emphasize that these con-
7 servation factors which I have mentioned as
8 supporting the non-growth designation of Chester,
9 including the proposed 206 Corridor, that is the
10 presence of agriculturally favorable soils and
11 the public open space and the water supply
12 resources are not so compelling as to mandate a
13 non-growth designation.

14 Chester is not the Great Swamp. It is
15 not the Pine Barrens or a prime agricultural
16 site such as parts of Hunterdon County, and for
17 this reason none of Chester was designated by the
18 Department of Community Affairs as either agri-
19 cultural or conservation area.

20 But while not so compelling as to man-
21 date a non-growth designation, these three factors
22 do provide some amount of support for the non-
23 growth designation.

24 This then takes me to the five
25 criteria identified in the State Development

1 Guide Plan as pointing in favor of a growth
2 designation.

3 First of all, transportation. There is
4 one conclusion that emerges loud and clear to me
5 from this record, and that is from a transpor-
6 tation standpoint substantial growth in the
7 Chesters would be undesirable.

8 The Department of Transportation
9 Route 206 Corridor Study makes it clear that
10 Route 206 is filled to capacity in many places
11 at the present time and that it will become
12 severely overcrowded and congested during the
13 next few years, even if the only additional
14 development which occurs is that which has
15 already received appropriate municipal approvals.

16 It also appears clear that the State
17 Department of Transportation has no plans, at
18 least through 1988, of widening Route 206 to
19 four lanes from its present configuration, which
20 I might note is predominantly two lanes, with a
21 limited four-lane area through Chester Borough,
22 and then in some locations a third lane for
23 passing or for making left turns and what-not.

24 For these reasons any substantial new
25 growth in the Chesters would only exacerbate an

1 already overcrowded road system.

2 It is appropriate to refer back to the
3 State Development Guide Plan's discussions of
4 transportation. It says highway and rail systems
5 are major public investments. The access they
6 provide both fosters and maintains development in
7 the state.

8 As a result of past investments in
9 transportation, some areas of New Jersey are more
10 accessible than others and are, therefore, rela-
11 tively more appropriate for future growth.

12 So that the significance of transporta-
13 tion is the accessibility it provides, and if
14 roadways are congested, they do not provide the
15 accessibility they would provide if they were not
16 congested.

17 Now, if the Department of Transportation
18 in its 206 Corridor study had rejected the State
19 Development Guide Plan and said that it was going
20 to widen Route 206 regardless of what the State
21 Development Guide Plan said, that might point in
22 the direction of concluding that this was a
23 major highway that would continue to provide
24 good access through the Chesters.

25 However, the whole thrust of the

1 Department of Transportation Study is one of
2 accepting the State Development Guide Plan. As a
3 matter of fact, at one point they explicitly take
4 note of it and seemed to me to be saying they're
5 accepting it, and to express the conclusion that
6 206 will not be widened in the immediate future,
7 that is, at least through 1988, and that for that
8 reason means of either limiting growth or
9 channeling growth must be explored as actively
10 as possible.

11 The report also makes clear, however,
12 that even if all of those efforts at limiting
13 growth or channeling growth are successful,
14 Route 206 is going to become increasingly more
15 congested through the end of the present decade.

16 So I agree with Mr. Ginman's conclu-
17 sion that the Department of Transportation 206
18 Corridor Study strengthens rather than weakens
19 the Department of Community Affairs' conclusion
20 that Chester, that the Chesters should be
21 excluded from any growth area.

22 I am, of course, fully aware that
23 defendants' expert, Mr. Kasler, took a different
24 view of this more favorable to the plaintiffs.
25 All I can say is that I disagree with him, and I

1 agree with Mr. Ginman.

2 Now, the availability of mass trans-
3 portation, apart from the Route 206 situation,
4 would be a factor favoring the designation of
5 Chester as a growth area.

6 The record indicates that there are
7 trains available out of Netcong, I believe it
8 was, to the north, and Peapack-Gladstone to the
9 south, although I note that the only way to get
10 there is to go either up or down Route 206, which
11 involves all the problems that I have already
12 discussed.

13 The record also indicates that busses
14 are available along Route 24 heading to the east,
15 Morristown and New York, and I guess to the west,
16 to the Long Valley Section of Washington Township.

17 The record does not indicate the
18 schedule or frequency of use of these mass trans-
19 portation facilities, and, in any event, it
20 appears undisputed that whatever may be the use
21 of these mass transportation facilities, that the
22 majority of the residents would have to use their
23 cars to get to work. They certainly would have
24 to use their cars to get to Roxbury and Mount
25 Olive and Bedminster and Bridgewater and Bernards

1 Township and Basking Ridge and the other
2 emerging employment areas that we have heard so
3 much about during this trial.

4 That, necessarily, would mean additional
5 traffic on Route 206, which, absent widening,
6 cannot handle that additional load without
7 severe congestion.

8 So the congestion problem of 206 is the
9 key transportation factor as far as I'm concerned,
10 and it supports the non-growth designation of
11 Chester Township by the Department of Community
12 Affairs.

13 Now, the sixth and seventh criteria
14 identified by the Department of Community Affairs
15 favoring a growth designation are the availability
16 of public water and public sewerage services.

17 Chester does not have public sewerage
18 services, at least for residences. I think the
19 record indicated that there was some package
20 plants for a couple of shopping centers, and
21 maybe one other commercial facility. And the
22 only public water supply it has services a hand-
23 ful of residents along one street near the
24 southern border of the municipality adjoining
25 the Peapack-Gladstone area.

1 So there is a basic absence of these
2 public services; and then, therefore, an absence
3 of these two factors that, if present, would
4 support a growth designation.

5 Now, plaintiffs essentially seek to
6 discount the significance of these two criteria
7 by urging that water and sewerage facilities
8 could be constructed or could be extended.
9 However, the same could be said about various
10 other areas which now do not have public sewerage
11 or public water.

12 The Department of Community Affairs
13 identified this as a relevant factor in determin-
14 ing whether an area should be designated a growth
15 area, and the supreme court in Mount Laurel II
16 has said that the premises of the State Develop-
17 ment Guide Plan must be accepted in determining
18 whether the determination of a particular area is
19 arbitrary and capricious.

20 I also would note that the extension
21 of water and sewer lines into Chester, or the
22 construction of new facilities are precisely the
23 type of investment in new infra-structure which
24 the court said, by its reliance upon the State
25 Development Guide Plan, should not occur in

1 limited growth areas.

2 I also would note the significant
3 relationship between the absence of public
4 sewerage system and the conservation criteria
5 I have discussed before of protection of water
6 resources.

7 The septic systems which now service
8 the township and which at least as far as can
9 now be foreseen will continue to service any
10 new development that may occur there do pose a
11 threat of some magnitude to the water aquifer.

12 Now, the eighth criteria is location
13 within or proximity to concentrations of
14 employment.

15 Chester Township itself clearly does
16 not have a concentration of employment. The
17 available statistics show less than a thousand
18 jobs in Chester Township for a 28.9 square mile
19 area.

20 That is a small employment base,
21 whether viewed in terms of the absolute number
22 or in terms of employment density per square
23 mile.

24 Chester Borough, which the Township
25 surrounds, has a much higher number of employment

1 positions per square mile. However, the total
2 number of employment positions, even in the
3 borough, is relatively small. It is slightly
4 over a thousand. And I don't think that the
5 borough can be characterized as a concentration
6 of employment either.

7 Likewise, the Flanders area of Mount
8 Olive immediately to the north and with one
9 exception I'll mention in a moment, the Peapack-
10 Gladstone, Far Hills area to the south, do not
11 contain concentrations of employment.

12 The one exception, the one employment
13 concentration fairly nearby is that represented
14 by the Beneficial Complex in -- and if my
15 recollection is correct, it's partly in Peapack
16 and partly in Gladstone, and it may be partly in
17 a third municipality. And that complex has, as
18 the record indicates, somewhere between two
19 thousand and three thousand employees. That is
20 a substantial amount of employment.

21 However, this does not lead to the
22 conclusion that growth ought to be encouraged
23 or is inevitable in every direction emanating
24 outward from this employment complex.
25

1 The planners at the Department of
2 Community Affairs made the planning judgment that
3 to the extent the presence of the Beneficial
4 Complex might serve as a catalyst for future
5 growth in the area, that that growth should and
6 could be channeled to the south towards Route 78
7 and other significant employment locations and
8 existing areas of significant residential
9 development, and also possessing some additional
10 amount of infra-structure rather than being
11 channeled toward the Chesters.

12 I can find nothing arbitrary about that
13 planning judgment. Indeed, it is consistent with
14 the overall goal of the State Development Guide
15 Plan of channeling new growth so as to in-fill
16 between existing areas of development rather than
17 to have new growth sprawl in an outward direc-
18 tion that would require costly new infra-
19 structure construction.

20 Of course, that costly new infra-
21 structure construction, when we're talking about
22 the Chesters, includes not only the water and
23 sewerage facilities, but I think most importantly
24 of all, the need that would be intensified for
25 the expansion, the widening of Route 206.

1 Plaintiffs also seem to take the posi-
2 tion that even apart from the employment provided
3 by the Beneficial Complex, that Chester should be
4 considered to be in proximity to the employment
5 concentrations found in Bedminster and Bridge-
6 water to the south and the free trade zone of
7 Mount Olive and Roxbury to the north because all
8 of these locations are within twenty to twenty-
9 five minutes' driving time of Chester Center, and
10 somewhere in that magnitude, twenty, twenty-five
11 minutes, is the statewide average commuting time
12 and is a time that is generally considered by
13 most workers to be an acceptable commuting time.

14 Now, acceptance of this theory, this
15 proposition, would completely undermine one of
16 the basic goals of the State Development Guide
17 Plan, and that is to cluster new development near
18 to existing developed areas so as to foster the
19 efficient use of the State's infra-structure,
20 and to minimize the need for investment in sub-
21 stantial infra-structure.

22 If this approach to defining proximity
23 to employment concentrations were accepted, the
24 Rockaway and Clinton corridors would probably
25 have to be extended all the way to the Pennsyl-

1 vania border because I am confident that a person
2 can go from the Pennsylvania border along Route 78
3 or Route 80 to places of substantial employment
4 within twenty-five minutes.

5 So I completely reject this approach to
6 determining proximity to a concentration of
7 employment.

8 Assuming the availability of suitable
9 land for residential development, and there seems
10 to be plenty of such land, both to the north and
11 south of Chester, it is in my judgment not arbi-
12 trary and capricious for the state government,
13 that is through its planning arm, the Department
14 of Community Affairs, to undertake to channel
15 new development to areas much closer than
16 twenty-five minutes' travel time to employment
17 concentrations.

18 The tenth and final criteria articu-
19 lated in the State Development Guide Plan is
20 proximity to existing development.

21 It is clear to me that Chester is not
22 located within or in close proximity to existing
23 development concentrations. Indeed, I think it
24 should be said that southwest Morris County and
25 northern Somerset County are relatively undevel-

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oped in their entirety.

Even those municipalities which have undergone substantial growth, such as Bridgewater and Bedminster, are relatively undeveloped compared with what exists in Essex and Hudson and Union Counties, and even parts of Morris County such as Morristown or Parsippany area.

This relatively undeveloped state is also reflected in a relatively poor infrastructure.

The situation also poses the danger of suburban sprawl in its most acute form. Put another way, since the overall area is not yet that heavily developed, there is still ample developable land immediately adjoining the relatively more developed areas along Routes 78 and 80 for the Department of Community Affairs to have rationally concluded that further growth should be channeled along those two corridors.

To a substantial extent the plaintiffs' attack upon the non-growth designation of Chester during this trial has been based upon a comparison of the growth characteristics of Chester with those of other communities or parts of communi-

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1 ties immediately to the south and to the north,
2 Peapack-Gladstone, Far Hills, Pluckemin,
3 Flanders.

4 This form of challenge to the State
5 Development Guide Plan flies directly in the face
6 of the Supreme Court's admonition in Mount
7 Laurel II, and again I'm quoting part of the
8 same excerpt that I previously quoted from
9 Page 241.

10 "Merely to show that one municipality
11 containing a growth area is remarkably similar to
12 a neighboring one that includes no growth area is
13 not enough."

14 In any event, there are differences on
15 the one hand between Chester, and on the other
16 hand Flanders, Peapack-Gladstone, Far Hills, and
17 the other communities mentioned by plaintiffs.

18 Most important of these differences is
19 that Flanders, Peapack-Gladstone, Far Hills, the
20 others, are closer to the emerging employment and
21 population centers of Bridgewater, Bedminster to
22 the south, and the free trade zone of Mount Olive
23 and Roxbury to the north.

24 They are also closer to the interstates,
25 80 and 78, which provide the most convenient

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access to the built-up counties to the

Also, Peapack-Gladstone is itself the home of a major corporate employer, Beneficial, which as I have said before has somewhere in the order of two to three thousand employees.

Now if, hypothetically, Chester and certain of the other municipalities mentioned, Far Hills, Pluckemin, Flanders, could be isolated from their surrounding areas, and if they could, for example, each one be plucked out and stuck in different places in the middle of the desert in Nevada, one properly might say a Chester possesses more growth characteristics than, for example, a Pluckemin or a Far Hills or Flanders.

However, this is not what the State Development Guide Plan is all about. The Department of Community Affairs did not view individual municipalities in isolation. Indeed, it did not look at municipal boundaries at all.

And when viewed in terms of their relationships to immediately surrounding areas, the designations of these other municipalities take on a different complexion. They are, all of them, closer to the main parts of the two corridors, that is, Route 78 and 80, than are

1 Chester.

2 And then Peapack, Far Hills, for example,
3 are directly in between the employment concen-
4 tration found at the Beneficial Complex in
5 Peapack-Gladstone and the emerging employment and
6 residential development areas of Bedminster,
7 Bridgewater, and Bernards Township. Flanders is
8 close to the free trade zone of Mount Olive as
9 well as the developing areas of Roxbury to the
10 east along Route 80.

11 And viewed in this light, there is
12 nothing irrational, arbitrary, or capricious
13 about the Department of Community Affairs having
14 drawn the growth areas where they did to include
15 Peapack-Gladstone, Far Hills, Flanders, while
16 excluding the Chesters.

17 Another primary line of attack by the
18 plaintiffs upon the designations of the State
19 Development Guide Plan was their argument that
20 the limited growth designation of Chester by the
21 Department of Community Affairs is inconsistent
22 with the treatment of Chester by other planning
23 agencies, that is, Morris County Planning Board,
24 Tri-State, and the State Department of Transpor-
25 tation.

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If there were such inconsistencies, that would not be sufficient to demonstrate that the State Development Guide Plan was arbitrary and capricious. It would merely show that another group of planners employed by other government agencies had come to a different conclusion, and we are dealing in that case with judgment calls about which different planners may reach different conclusions without any of them being arbitrary and capricious.

In any event, while there is some difference in form of presentation, and to some extent characterization, I'm satisfied that there is no basic inconsistency in the four planning documents.

Neither Morris County Planning Board, Tri-State, nor the Department of Transportation has said that growth should be encouraged in the Chesters. They have all said or implied that it should be discouraged to the extent feasible.

All that the other agencies have said was that to the extent development does occur in the Chesters, it should be channeled into relatively high density developments close to the Chester Center, and also that multi-use develop-

1 ments should be pursued where feasible.

2 This is not inconsistent with the
3 limited growth designation of Chester. The
4 limited growth under the State Development Guide
5 Plan does not mean no development or, for that
6 matter, no high density development whatsoever.

7 Mr. Ginman specifically stated that the
8 Department of Community Affairs anticipated that
9 there would be small nodes of development in
10 limited growth areas, and that it was not the
11 intention of the Department of Community Affairs
12 to prevent such developments, but rather simply
13 to avoid stimulating them by allocating state
14 resources to such, what he calls small nodes of
15 development.

16 The most basic disagreement in this
17 case between, on the one hand, plaintiffs'
18 experts, Mr. Hintz and Mr. Moskowitz, and on the
19 other hand, Mr. Ginman and defendants' expert,
20 Mr. Coppola, was philosophical. They all
21 recognized that there is substantial development
22 occurring in areas which are not that far from
23 Chester, the Beneficial Complex in Peapack-
24 Gladstone, the free trade zone in Mount Olive,
25 the A T & T complexes in Bedminster and Bernards

1 Township, and the Allen Dean project, I believe
2 located in Bridgewater, and the development in
3 Roxbury.

4 I did not understand, and perhaps I
5 misconstrued, but I did not understand Mr. Hintz
6 or Mr. Moskowitz to take serious issue with the
7 Department of Community Affairs' conclusion that
8 it would be desirable, if feasible, to prevent
9 this substantial development from extending along
10 Route 206 through the Chesters.

11 However, their philosophical dispute
12 with Mr. Ginman is that they do not think a
13 limited growth policy can work. They feel that
14 the growth pressures in this area are so strong
15 that substantial new development will occur in
16 the Chesters, regardless of what policies the
17 State may adopt, and that a limited growth policy
18 will not in fact limit growth but rather will
19 cause that growth to be less desirable from a
20 planning standpoint than if the inevitability of
21 substantial growth were recognized and efforts
22 were made to channel it in a more desirable
23 fashion.

24 When I say to channel it, I mean to
25 encourage higher density housing and multi-use

1 developments rather than detached single-family
2 houses on large lots.

3 I'm not going to address this philo-
4 sophical or planning dispute because it is
5 unnecessary to do so. The supreme court assigned
6 determinative significance to the State Develop-
7 ment Guide Plan in Mount Laurel II in large part
8 because it wanted to avoid lengthy trials in which
9 planning experts debated whether or not an area
10 was developing.

11 I read from that part of the opinion
12 that they do not intend me to make a de novo
13 determination as to which group of experts have
14 the better of the argument from a planning stand-
15 point as to whether an area is growth or non-
16 growth, but simply to make the determination
17 whether the planning determinations by the state
18 government are arbitrary and capricious.

19 Perhaps Mr. Ginman and Mr. Coppola
20 will turn out to be correct that substantial
21 growth in the Chesters can be discouraged.

22 Perhaps Mr. Moskowitz and Mr. Hintz
23 will turn out to be correct in their view that
24 substantial growth is inevitable and that the
25 limited growth designation of Chester will only

1 make that growth worse. Only time will tell
2 which of the two sets of experts are correct.

3 However, all I need decide in this
4 case is that the Department of Community Affairs'
5 view is not arbitrary and capricious, and there
6 is more than sufficient in the record from the
7 testimony of Mr. Ginman, Mr. Coppola, and
8 Mr. Keane to support the rationality of this
9 conclusion.

10 This then takes me to the question of
11 whether there has been a substantial transforma-
12 tion of Chester since the date of the State
13 Development Guide Plan, which has rendered its
14 non-growth designation inappropriate.

15 The circumstances which would allow a
16 departure from use of the State Development Guide
17 Plan due to a substantial transformation of a
18 municipality are set forth at Page 242 of the
19 Mount Laurel opinion. Actually, it starts at
20 the bottom of Page 241 and goes to the top of
21 Page 242 and reads as follows:

22 "The second exception, however,
23 requires proof of substantial change. Those
24 who prepared the SDGP and the concept map
25 obviously realized that conditions would change

1 after its publication, that planning is a dynamic
2 process, and that plans like the SDGP must remain
3 current.

4 "Changes, therefore, sufficient to
5 warrant reclassification of a municipality in
6 whole or in part should be addressed not by the
7 court but by the Division when it revises the
8 SDGP.

9 "The second exception, however, recog-
10 nizes the possibility that prior to such a
11 revision, a municipality may change sufficiently
12 so that it is inappropriate to retain its present
13 SDGP classification.

14 "If a municipality that is substanti-
15 ally rural changes only to the extent of an added
16 industrial use and a fairly large residential
17 subdivision, that might or might not constitute
18 a substantial change, depending on all of the
19 circumstances; if in addition there was further
20 development of its infra-structure and several
21 new substantial places of work and residential
22 subdivisions, that municipality's SDGP classifi-
23 cation should probably be changed."

24 Now, a threshold issue in connection
25 with the substantial transformation claim of

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1 plaintiffs is what date to use in determining
2 whether there has been a substantial transforma-
3 tion.

4 The State Development Guide Plan is
5 dated May 1980. That is the date on the cover.
6 However, plaintiffs argue that the concept maps
7 were prepared at some earlier date and that sub-
8 stantial transformation should be judged from
9 that earlier date.

10 In support of this argument, the
11 plaintiffs rely upon the court's initial state-
12 ment of the significant transformation exception,
13 and that states as follows:

14 "Since the preparation of the concept
15 map or any revision thereof, the municipality
16 has undergone a significant transformation that
17 renders the SDGP's characterization of it inap-
18 propriate, admitting that at the time of the
19 preparation of the SDGP and the concept map, or
20 any revision thereof, the classification of the
21 municipality was correct."

22 I would note that the court on the
23 following page refers to the publication of the
24 State Development Guide Plan rather than the
25 preparation or revision of the concept map. And

1 I suppose that it can be argued from that that
2 the court did not envision any distinction
3 between promulgation of the State Development
4 Guide Plan and preparation of the concept maps;
5 and, therefore, that the May 1980 date should be
6 used to determine substantial transformation
7 claims without undertaking any factual inquiry
8 as to when the concept map was prepared.

9 While that approach would be easier,
10 I cannot conclude that the court's reference to
11 the date of preparation of the concept map or
12 any revision thereof was inadvertent.

13 The court had the State Development
14 Guide Plan. It knew that the date, May 1980,
15 appears on the cover, and it would have been
16 simple enough for the court simply to have
17 referred to that date if that was what it
18 intended.

19 Therefore, I am satisfied that I must
20 determine factually when the concept map was
21 prepared or revised.

22 It also might be argued, I suppose,
23 that preparation of the map must refer to its
24 initial preparation back, it appears from the
25 record, in 1975 or 1976, and that revision can

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only refer to an actual change in the map.

However, I think that would be an unduly literal reading of the phrase, "preparation or revision of the concept map".

I think the more sensible reading is to take that phrase as referring to the point in time when the Department of Community Affairs completed its review of the criteria pertinent to the concept map and made its final determinations as to what form that map would take.

That point would be when the Department of Community Affairs ceased gathering data and, as I say, made its final decisions as to the form the map would take.

It is clear from the testimony of Mr. Ginman and the documents that he brought to court marked C-2, C-3, and C-4, that the process of updating and reviewing the concept maps as they pertain to Morris and Somerset County continued at least through the fall of 1975, that is, at least up until approximately eight months before the State Development Guide Plan was officially promulgated.

I am satisfied from Mr. Ginman's testimony that while the Department of Community

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1 Affairs in devising the concept maps started
2 with the 1971 aerial photography of the state as
3 reflected in the 1972 developed areas map con-
4 tained in the State Development Guide Plan, that
5 it continuously updated that information through
6 its own review of applications for large develop-
7 ments, I believe by statute at least fifty acres
8 and up, by information it received from the County
9 Planning Boards, and also by information it
10 received from other interested parties, such as
11 environmental groups and business groups.

12 Now I find, based upon all of this
13 evidence, that the process of preparation and
14 revision of the concept map in southwest Morris
15 County, northern Somerset County, continue, as I
16 said before, at least through the fall of 1979.

17 There is no need to be more precise as
18 to the date to decide the significant transforma-
19 tion issue in this particular case.

20 Now I think there was a particular
21 irony in the plaintiffs in this case arguing that
22 the concept maps were actually prepared in 1971
23 or 1972. That's the date when the aerial photo-
24 graphs were taken.

25 The plaintiffs, in challenging the State

1 Development Guide Plan designation of Chester as
2 arbitrary and capricious relied primarily upon
3 the existence of the extensions of the Rockaway
4 and Clinton corridors up and down Route 206, and
5 these extensions it is clear were not made until
6 1979, and they were made as a result of sub-
7 stantial additional information provided to the
8 Department of Community Affairs subsequent to the
9 initial circulation of the preliminary draft of
10 the State Development Guide Plan in 1977.

11 There's really no better evidence that
12 I can think of than these two extensions, these
13 two rather significant changes in the State
14 Development Guide Plan that the Department of
15 Community Affairs did not simply use the results
16 of the 1971 aerial photographs in determining its
17 determination of parts of the state as growth and
18 non-growth, but rather gathered substantial addi-
19 tional information concerning the characteris-
20 tics of different parts of the state during the
21 following eight years.

22 Now using late 1979 as the base, it is
23 clear that there has been no significant trans-
24 formation of Chester. Indeed, the record indi-
25 cates that there are only fifty-three building

1 permits issued over the entire period of 1980
2 through 1982. That is less than twenty a year.

3 There's no indication of any substan-
4 tial new developments, such as a major commer-
5 cial development or large residential sub-
6 division.

7 As far as the record discloses, these
8 appear to be fifty-three single-family houses.
9 Furthermore, assuming that it is appropriate to
10 look outside of Chester Township to determine the
11 occurrence of a significant transformation of an
12 area, and nothing in Mount Laurel II suggests
13 that it is appropriate to do this, there is
14 nothing which was unanticipated in 1980 that has
15 occurred in the immediately surrounding area.

16 Mr. Ginman testified that Beneficial,
17 the construction of the Beneficial Complex was
18 anticipated prior to the promulgation of the
19 State Development Guide Plan in 1980, and I find
20 that credible.

21 Indeed, it has to have been because
22 the only logical explanation for -- and
23 Mr. Ginman testified that it was the reason for
24 extending the 206 Corridor up from the Bedminster
25 area as far north as Peapack-Gladstone.

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I would note that there has been no significant new development in Chester Borough since the fall of 1979. The gross receipts of merchants there may be up slightly, but that's not what the supreme court had in mind by substantial development.

So I'm satisfied for all these reasons that the State Development Guide Plan of Chester as a non-growth area is not arbitrary and capricious, was not arbitrary and capricious in 1979, and that there has been no substantial transformation of Chester since that date which would make that designation inappropriate as of the present time.

Now there are a few final comments that I would like to make in closing or before closing. First of all, I have reached my conclusions concerning the appropriateness of the State Development Guide Plan designations of Chester wholly without regard for what the supreme court had to say about Chester in the Caputo case, and specifically that's at pages 309 to 316 of the Mount Laurel II opinion.

However, the fact that the supreme court looked at many of the same circumstances as

1 have been developed at this trial and came to the
2 conclusion that the limited growth designation
3 of Chester seemed to be appropriate only serves
4 to confirm the correctness of the decision that
5 I would have arrived at in any event.

6 Second of all, I think it should be
7 stressed that the supreme court decided in Mount
8 Laurel II to make the State Development Guide
9 Plan determinative ordinarily of the existence on
10 the part of a municipality of an obligation for
11 the regional need for lower income housing.

12 It did that for reasons that I mentioned
13 at the outset of this opinion, respect for the
14 other branches of government, and the fact that
15 the State Development Guide Plan is not simply
16 the view of a planner, but it is an official
17 planning document of the executive branch of
18 government issued pursuant to legislative author-
19 ization; and also in order for there to be
20 certainty so that everyone would know what
21 municipalities are within this obligation, which
22 are not, and also hopefully to simplify Mount
23 Laurel litigation.

24 While the supreme court left the door
25 open for challenges to the Department of Commu-

1 ity Affairs' designations, I am convinced from
2 the opinion that it intended to leave that door
3 open only to a very slight degree. Any other
4 view would seriously undermine those objectives
5 the court was seeking to achieve by the use of
6 the State Development Guide Plan in this type of
7 litigation.

8 It expressed this intent of leaving
9 the door open to challenges to the State
10 Development Guide Plan only to a very slight
11 degree in a number of ways.

12 It said that any party attempting to
13 challenge the State Development Guide Plan would
14 have a heavy burden. It said that it would be
15 an unusual case where such a challenge would be
16 successful, and it made the applicable standard
17 one of arbitrariness and capriciousness, which is
18 a common standard in the land use area, but one
19 which is hard to meet and seldom is met.

20 Although the hearing on this challenge
21 to the State Development Guide Plan took nine
22 days, the plaintiffs' proofs in my judgment fell
23 far short of demonstrating that this was the
24 unusual case where the Department of Community
25 Affairs' concept maps were arbitrary and

1 capricious.

2 I am not criticizing anyone for having
3 mounted this challenge to the State Development
4 Guide Plan designation. I know there's a cer-
5 tain tendency on the part of the litigants to
6 view their case as the unusual case.

7 At the same time I am cognizant of the
8 fact that both counsel and litigants in this case
9 are also involved in other Mount Laurel cases,
10 and I want the message to get out loud and clear
11 that the intent of the supreme court in its Mount
12 Laurel II opinion was to have the State Develop-
13 ment Guide Plan being controlling, except in the
14 most unusual of circumstances, and that those of
15 us with responsibility for hearing these cases
16 will follow that mandate of the supreme court.

17 One further final comment that I would
18 like to make, and I make it in order to avoid any
19 possible misinterpretation of this opinion at some
20 later date, and that is that all I have held in
21 this opinion is that the State Development Guide
22 Plan designation of Chester Township as a limited
23 growth area was not arbitrary or capricious, and
24 that there has been no significant transformation
25 of Chester since the fall of 1979.

1 Nothing in this opinion should be taken
2 as dictating or even suggesting how Chester Town-
3 ship should be designated by the Department of
4 Community Affairs if and when it re-does the
5 concept maps.

6 As I have said before, Mr. Moskowitz
7 and Mr. Hintz argue that substantial growth in
8 the Chesters is inevitable, and that growth would
9 be more consistent with sound planning if Chester
10 were designated as a growth area, and high density
11 and mixed use development were encouraged by the
12 designation as I have said before of this being a
13 growth area.

14 .I simply cannot say that this point of
15 view expressed by Mr. Moskowitz and Mr. Hintz is
16 an irrational or arbitrary or capricious view,
17 and I don't want anything I have said in this
18 opinion to be taken at some later point as an
19 expression of a view on the part of the court
20 that that point of view, the Hintz and Moskowitz
21 point of view, should be summarily rejected in
22 any redoing of the State Development Guide Plan
23 or that whatever development may occur or may have
24 occurred between the fall of 1979 and whenever
25 the State Development Guide Plan may be redone

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should not tip the balance in favor of redesignating just Chester as a growth area.

These are all judgments, all questions within the planning judgment of the Department of Community Affairs Planners to determine.

Now, by the same token, if the State Development Guide Plan is not updated, and the third exception to the use of the State Development Guide Plan designations comes into play, as it would on January 1 of 1985, according to the Mount Laurel II opinion, the decision here should not be construed by anyone in the future as fore-ordaining how that new challenge to the State Development Guide Plan designations should come out.

The supreme court made it clear in Mount Laurel II that there would be considerably more room for challenges to the designations of the State Development Guide Plan as of January 1, 1985 if the document is not updated by that time, and specifically the court said at page 242 of its opinion-- if my voice holds out--"The third exception recognizes that if the planning process does not remain a continuing one, the

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1 categories set forth in the SDGP might become
2 unrealistic and certainly would lose a consider-
3 able degree of their legitimacy.

4 "It is one thing for a court to defer
5 to the judgment of planners, even where it dis-
6 agrees; it is another to defer to a document that
7 is clearly out of date where deferral might
8 frustrate a constitutional obligation.

9 "In order for it to remain a viable
10 remedial standard, we believe that the SDGP should
11 be revised no later than January 1, 1985. If it
12 is not, then courts shall have considerable dis-
13 cretion to vary the locus of the Mount Laurel
14 obligation from that shown on the present SDGP
15 concept map."

16 We are not, of course, at that point;
17 but I want to make it clear that I am deciding
18 just this case and just the issue before me, and
19 nothing that I have said today should be in any
20 way taken to control anyone's future actions,
21 whether they be future actions of the Department
22 of Community Affairs in revising the State
23 Development Guide Plan, or actions of some
24 future court hearing a post-January 1, 1985
25 challenge to the designations of the State

Development Guide Plan.

Mr. Hall, would you submit an order.

MR. HALL: Surely.

THE COURT: Please.

And, Mr. Vogel, could you get me out a letter within a week or so telling me where the case stands and where your preparation for further proceedings stand, and if you could get me a response within a week or so after that, Mr. Hall, and then we can plan to confer once I have both of those letters in hand.

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CERTIFICATE

I, STANLEY GRABON, an official court reporter and notary public of the state of New Jersey do hereby certify that the foregoing is a true and accurate transcript of proceedings as reported stenographically by me at the time and place aforementioned.


Stanley Grabon, CSR
Official Court Reporter