P U B L I C H E A R I N G

ON

TENTATIVE DRAFT OF REVISION OF ZONING AND PLANNING LAW (TITLE 40).

before

County and Municipal Law Revision Commission

Held:
Assembly Chamber
State House
Trenton, New Jersey
March 22, 1961

MEMBERS OF COMMISSION PRESENT:

Assemblyman Pierce H. Deamer (Presiding)
Senator Richard R. Stout (Chairman of the Commission)
Assemblyman Vincent R. Panaro
David C. Thompson
Fred G. Stickel, III
Norman Heine

Also:

Clive Cummis (Counsel to the Commission)
Leonard Etz (Assistant Counsel)

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ASSEMBLYMAN PIERCE H. DEAMER (ACTING CHAIRMAN): I should like to open this hearing now, which is being held for the purpose of having a discussion on the preliminary draft of the Zoning and Planning Law which is proposed. Now this is only a tentative draft. It was prepared by a Sub-Committee, an Advisory Committee, and, therefore, there is plenty of room for discussion, and there will be other drafts. Constructive suggestions and criticism, of course, are welcome and everybody will have an opportunity to be heard. I ask, however, that because of the number of people here that we try to be brief in our remarks. If there are any persons who do have prepared statements, we would be glad to include them in the record.

I might point out that those who contributed their time and effort to this project, making available the information and the knowledge to the staff, were: Harold Feinberg, who is the Borough Attorney of Belmar; C. McKim Norton of Princeton, Executive Vice-President of the Regional Plan Association, Inc., New York City; Jacob Schneider of Teaneck, an attorney; Donald H. Stansfield, Chief, State-wide Planning Section, Department of Conservation and Economic Development; Walter T. Wittman, an attorney of Hackensack; Charles K. Agle, architect and planner, of Princeton; Robert G. Miller, Commissioner, of Montclair; Dr. Richard T. Frost, Professor of Political Science, of Princeton; William B. Kaufman, an attorney, of Elizabeth; William L. Brach, Esq., Corporation Counsel, City of East Orange; Fred G. Stickel, who is a member of this Commission, of Cedar Grove, member of County and Municipal Law Revision Commission; Martin Rody, who served as a consultant

to the Advisory Committee; and Professor Roger A. Cunningham of the University of Michigan Law School. All of these people made recommendations to the Advisory Committee and to the Commission staff and we had as well contributions that came in from different parts of the state from other interested persons.

Now before we actually hear from you people, I would like to introduce the members of the Commission: Assemblyman Vincent Panaro; over to the right of me at the end of the table is Clive Cummis, who is counsel to the Commission; Fred Stickel, a member of the Commission, Norman Heine; and we have David Thompson, who is also a member of the Commission.

I would first like to call upon William Brach, who is Counsel for East Orange, to present his views on this subject.

WILLIAM L. BRACH: I want to thank the Commission for the opportunity of appearing here today. It sort of gives me two bites at the apple. I have had the pleasure of serving on the Advisory Committee. Frankly, it has been one of the most enjoyable activities I think I have ever had of a professional nature. It really was a very exciting, very stimulating experience for me. I think the staff - I say this in front of everybody - has done a superb job of collating information, of preparing drafts and redrafts and re-redrafts. They have been extremely patient and extremely competent in everything they have undertaken.

The fact that I come here today to present some particular items that seem to me of paramount importance, certainly doesn't reflect on the work of the Advisory Committee. We have had meetings of the Advisory Committee and we did discuss many of these things there. However, I do feel that in certain prime respects further

thought might well be given to this draft before it is submitted for legislative consideration.

I prepared some mimeographed copies of views that I have on many points, some semi-technical or technical character, which the staff may wish to review and the Commission may wish to review in preparing any subsequent draft and I'll make those available this morning to the Commission and anyone else who may be interested.

The first point that I would like to make, with which I am certainly in favor, and I think there has been an attempt to do in this draft, is the codification of several different laws into one over-all proposal. I think there is perhaps a little further effort that might go into this in trying to bring in some of the laws in Title 55, primarily the Local Housing Authorities Act, which could well be brought into the section governing Urban Renewal Agencies. The term "urban renewal" is used generally on the Federal level, of course, and is defined in the definitions. It covers the whole gamut of activities. Certainly the public housing projects which are part of slum clearance and an integral part of relocation, and therefore a part of workable programs, might well be incorporated into this one law on Urban Renewal Agencies. I would like to suggest that some further attention be given to that. I know that this is a Title 40 Revision Commission in essence, but it might well be appropriate at this point to take the Local Housing Authorities Act out of Title 55 where it is a neighbor of the Tenement House Act and bring it into something where it is more appropriately located.

MR. STICKEL: Mr. Brach, may I stop you there? I don't know anybody in the state who is more familiar with those laws than yourself. I wonder if you would make suggestions as to what laws

in Title 55 can be brought into this act since you know this act and you know the other act. I frankly am depending upon you in many respects on this urban renewal and rehabilitation business.

MR. BRACH: I appreciate that and I certainly will amplify it if that will be of any help.

I note in the introduction that the staff suggests that repealers of quite a number of the sections of 55:14A would be appropriate. However, the balance of 55:14A might just as well be incorporated and solidified into the one provision.

The next point I would like to say I am in favor of and I think the draft makes a good start, is in creating a greater degree of pliability or flexibility for the municipalities as to their zoning and planning setup. For one thing, it provides the option to merge zoning boards with planning boards or the board of adjustments with planning boards. It also provides for a planning department. Now I do think some clarification is needed as to whether the powers vested, the powers of decision, are going to be in a department or in an officer. I think it is rather difficult to talk about an amorphous department and I think there might be some further refinement of that section to specify the powers, if that's the option, in the planning officer who can be appointed under that same section.

The one thing that I am not quite clear from the draft is as to whether by combining two sections you can end up with the result that a board of adjustment can be merged with a planning board and then you can substitute for the planning board a planning department, and therefore have the variance functions and conditional-use functions combined into a planning officer. But it seems to me by

covering two steps, you might well end up with that result. Now if that result is to be permitted - and I personally would not shy away from it for reasons that I will go into - then I think it ought to be clarified. Each step is clearly set forth, but whether the combination is permissible for a municipality is still a little bit doubtful in my mind.

Now I do favor the opportunity for a municipality that wishes to do it to have a zoning administrator. We had this discussion in the Advisory Committee and I would like to be on the record in favor of it.

By a zoning administrator, I contemplate a professional, appointed individual, who would have the power to grant variances, to have a staff to review the conditions and grant variances, and would replace the board of adjustment. Now this is a matter of local option. I think, of course, the important thing is to make sure there is an adequate appeal procedure. I suggest in some of my notes that the appeal be by a board, be it the planning board or by the board of adjustment. It might be, in lieu of that, that the county boards of zoning appeals that are set up under the proposed draft might be an adequate appeal. But I do think that as the area of variance becomes far more complicated, particularly in the major cities, and the volume becomes very large, the idea of having a single, lay board attempting on a monthly basis and on an unsalaried basis, as provided here, to handle larger volumes of appeals and appeals of critical and far-reaching nature for the zoning development is a precarious responsibility to be placed on these lay individuals and, therefore, the option should be available to utilize a zoning administrator. And in this connection, the experience in California,

particularly in the Los Angeles area and I think also in Denver, Colorado, suggests that it can be used extremely effectively. And I would like to leave that thought with the Commission.

The third point I would like to make is that I am a little bit concerned about what we have in here requiring that the zoning ordinance be based on the community development plan. I think the idea of spelling out, defining and requiring it to be written is one that was discussed and incorporated and is a good idea. However, I am wondering whether the failure to have a future land-use plan, for example, would invalidate any zoning ordinance. I am wondering what would happen to all the communities that now have zoning ordinances and fail to move ahead and adopt future land-use plans, whether they would then find that a zoning violator could properly attack the validity of the zoning ordinance a year after the bill is enacted or six months after the bill is enacted and what it does to zoning violations.

I think we have gone perhaps a little bit too far in saying that the zoning ordinance must be based upon the development plan or the future land-use plan because then what we are doing in effect is turning over the responsibilities of governing bodies on the final say as to zoning ordinances to planning boards. What would happen - and we have had this problem in our city and I am sure other communities have had it - where the governing body does not see eye to eye with the planning board and the planning board, having the sole responsibility for the future land-use plan, which is not really a legislative plan, but rather an advisory plan - what happens when the planning board adopts a future land-use plan as part of the development plan and the governing body refuses to

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mold the zoning ordinance in accordance with it in a particular respect or particular districts? Does that mean that the ordinance adopted becomes invalid because it is not based upon what the planning board says it must be based upon?

I would therefore leave with the Commission the thought that there should be a proviso here that would provide that no zoning ordinance would be rendered invalid nor any variance required nor any conditional use required as a matter of law because of the future land use plan; that would leave the control still in the elected officials and not try and shift it by this language to the appointive group and a group which in my opinion should be advisory and not legislative in function.

I would like to certainly affirm my view that the provisions for 39d as incorporated here are excellent and I think there will be general agreement, I suppose, today that this is certainly a step forward.

I suggest some possible additional criteria which the Commission might review. But I think that by and large the terminology in the draft moves us a good step forward in limiting the use variance.

The next point I would like to make for consideration is the problem of notice on variances. We are a community with a great percentage of tenants as well as owners. I do think the person who wakes up one morning and finds a parking lot built under his window and never received notice has a right to say that he was not adequately protected by the laws governing variances that permitted that parking lot to be built.

I realize that this involves difficulties and I have some suggestions to make as to how it might be worked in in a manner that would be wieldy or feasible. I think not only owners within 200 feet, but tenants who adjoin the particular premises or live on the particular premises to be affected by a variance ought to receive notice, particularly where the features of variance, noise, glare, smell or other things, would be disturbing to occupants. I think the limit might be where people have trouble searching out names, they could use the registered voters list and anyone who wasn't a registered voter who might be a tenant, of course, would be out of luck, but at least there would be a list available for residents and citizens who utilize their franchise to also be on the records for purposes of being advised of any condition surrounding the place where they live. They certainly have as much of an interest as to physical changes in the neighborhood as does the owner himself. It is not just property, it is people that we are trying to protect.

On the question of notice, I think some change ought to be made as to corporations. It seems to me that they are the difficult ones to notify under this law. You have to find a corporate officer. Now where a corporation does not comply with Title 14, you are going to be out of luck trying to find a corporate officer and I think where a corporation owns property, we ought to now realize that we can serve the person in charge of the property, in charge of the premises in behalf of the corporation because this, after all, is a property law, not just intangible rights that we are dealing with. So that I think some facilitation in serving corporations or partnerships that own property or other

associations ought to be written in.

The provisions on the county board of zoning appeals - and I was in favor of that - I think it is an excellent step forward to get a board that has some extra teeth in this field to serve as a reviewing agency - have nothing as to notice. Now I do recognize in the introduction there is a good deal said that the second draft will be more explicit as to the features that might be recommended on the county board of zoning appeals. But I certainly would wonder whether the same notice requirements for the original zoning appeal would go on the appeal to the county administrative agency. Would it just be the parties? Would it just be the persons that appeared at the hearing? Would it be the people within 200 feet? It is not very clear who would be notified of such an appeal.

I also heartily favor the basic purpose and intent on the nonconforming use section. I think there is a certain area of refinement or sophistication on the nonconforming use provisions which I would certainly welcome. For one thing, nonconforming uses are not always a disturbing feature to a neighborhood nor are they necessarily disruptive. Sometimes it is not the use itself, but certain aspects of it, the fact that it attracts a large number of cars, the fact that there is a good deal of noise. It might well be possible to permit communities to utilize other devices in minimizing the effect of nonconforming uses. We talk primarily in the draft of amortization as the remedy. Now amortization while used a great deal in other states has limitations too. It postpones the actual ultimate results as far as the community is concerned.

It doesn't answer what happens to a building that is being amortized out in the last part of the period. It is just allowed to go into disrepair and become an even worse blighting factor as the period comes to a close because the owner doesn't want to put any money back in because he is going to lose his investment anyhow. These are problems to do with amortization. Now if this is an enabling act giving communities a broader weapon to utilize on nonconforming uses, there ought to be some additional features. We certainly have to balance the interest of the private investor who has money invested as against the community need to do something about more disturbing nonconforming uses.

I would suggest two features: One is, I think the power of eminent domain ought to be utilizable to eliminate nonconforming uses. I don't know anywhere in Title 40 that there is such a provision. But if we are going to say that we can cut off a man entirely over a period of time, then certainly the power of compensating a man for putting him out of business is not out of order and I think that in conjunction with the nonconforming use section, perhaps not necessarily as part of the zoning law, but certainly as part of Title 40, there ought to be a provision enabling the community as part of their zoning and planning to utilize eminent domain, elimination of nonconforming uses.

I also don't think that the use of eminent domain should have to be tied to urban renewal areas. In a lot of our better sections we have a particular use which is a blighting influence, but it doesn't necessitate declaring a whole area an urban renewal area. So that if we could eliminate the nonconforming use, and therefore provide for some neighborhood conservation, it would be

welcome, without necessarily going through the extensive plannings, submissions, approvals that are required for urban renewal areas.

The second device that I think should be used is, communities ought to be able to not just eliminate nonconforming uses, but perhaps eliminate nonconforming features or obnoxious features of nonconforming uses and permit the use perhaps to continue. It may be, for example, that you have a commercial use in a residential area which is not necessarily the ideal. However, there may be substantial investment; to go through amortization would require a twenty-year period to make it reasonable. Now rather than to give the community an opportunity to secure immediate relief, if they could enter into an agreement and condition the continued use on putting up of screens, of "shrubbing," of landscaping, of shields against lights and other things which would alleviate the more obnoxious features - I think you would provide a workable tool for communities in minimizing or mitigating the impact of nonconforming uses.

I do have some issue, and I think I have expressed myself in the Advisory Committee, on the provision that requires in elimination of nonconforming uses giving of notices to all these nonconforming uses before the amortization period begins to run. I don't know, perhaps the staff does, but it seems to me this is a novel feature - I don't know that most of the laws in other states utilize a notice requirement. But in larger communities particularly, where we are dealing, let's say, with rooming houses and we're trying to eliminate rooming house uses in our higher-grade residential districts, to have to discover and ferret out by a systematic inspection every last rooming-house use in order to say that within

four or five years all of these nonconforming uses have to be converted to conforming uses, is putting an undue burden on the inspection forces of the municipalities involved. I think that continuing nonconforming use is a privilege. As a privilege I think that it is up to the owners of the privilege to be alert to the laws and the changes of the law. I don't think it is the burden of the municipality to have to notify the holder of the privilege that he is going to find his privilege expires within a certain period. I think it is the duty of the privilege holder to remain alert.

I would, therefore, suggest that the provision that places this burden of ferreting out in the first instance by massive inspections all of the nonconforming uses and then saying, "We have to give you notice," should be eliminated. It also poses a problem of equal protection of loss. What happens with the fellow who doesn't receive a notice? Does he continue while his next door neighbor or the person down the block having the same use finds that the days of his right to continue the use are numbered? It seems to me to open the way to favoritism and, of course, all the evils that connotes. So I would suggest a further look at that provision.

The next point I would like to make is on the use of the term "blighted." I think you may have seen in the Newark Evening News of recent vintage mention that the Planning Board of the City of Newark is considering the South Broad Street area and they are having some trouble with the term "blighted." In the demonstration grant project recently completed in Newark, recommendation was made to use some other term or permit some other term to be used

besides the word "blighted area," or "blighted, deteriorating and deteriorated" areas, I think, is used in the draft. It would certainly be my suggestion to use something that emphasizes the affirmative rather than the negative; I just throw out a term "community renewal area" as a term that might well be a term which people in the neighborhood would not feel so offended by. We have had problems in our city in the downtown area by people who took umbrage at having their area being called blighted; they just don't like to be written off. And I think that some term which recognizes the purpose of urban renewal as an effort of uplifting neighborhoods and relates itself to that rather than to demolition and removal is one which the people, particularly in conservation and rehabilitation areas, would welcome.

I think there has to be a little further look at the definitions when we get into conservation and rehabilitation because the term "blighted" generally refers or started out in its inception to areas where we are going to do clearance. Where there were deep slums, there was no question about it. Now we are getting into the problem of whether all of the conditions described in the definition of the word "blighted" necessarily exist or whether they exist in sufficient prevalence in conservation and rehabilitation areas to justify meeting that term. It seems to me that some of these powers might well be exercised in areas which may be presently good and not necessarily blighted, but nevertheless may have certain incipient features or factors which if municipal attention isn't directed to them in the form of conservation and rehabilitation programs in cooperation with the

neighborhood, that they then might fall into greater disuse. So I am not too sure whether the term "blighted," as defined, covers this later more recent phase of urban renewal - conservation and rehabilitation program adequately. I realize the Constitution is specific in using the word "blighted" in stating the public purpose. But I think that the statute is going to have to extend itself beyond the constitutional provision and rely on the basic police powers which pre-existed that section to sustain it in the courts.

Finally, and I think I have taken enough time, the last point I would like to emphasize is: I hope that the municipal design plan provisions are not going to be in lieu of other aesthetic regulations. I certainly would like to see a savings clause that would say that other aesthetic regulations under a zoning ordinance could be utilized and that these are not the exclusive means. I personally feel this is a good idea, a nice idea, but not really very workable or practical on the municipal level. We have an architectural review board. I know some of the drafters don't like the idea of architectural review boards - it sounds autocratic. We have one. It works very well in our Evergreen Place District and we certainly wouldn't want to be out of business on it. So while the drafters may not warm up to the idea of architectural review boards, we certainly wouldn't want to see legislation in that eliminated that in favor of a municipal design plan which is a little bit ethereal, at least as I look at it. While communities that want to use it should be welcome to use it, we certainly wouldn't want to be deprived of the device that we have worked out for our community.

I think that terminates the main features of my remarks.

I will leave with the Commission the draft of other further suggestions. I certainly thank everybody for the opportunity of being here and working with them through the recent months and just let them know if there is anything else that I can do or our office can we, we will be certainly delighted to do it.

ASSEMBLYMAN DEAMER: Are there any questions that any members of the Commission would like to ask Mr. Brach? Well, there being none, on behalf of the Commission I should like to thank you for the contribution you made to the Advisory Committee and for your additional suggestions and recommendations this morning. Thank you very much.

MR. THOMPSON: I am sure we will call upon you, Mr. Brach, and accept your kind offer.

ASSEMBLYMAN DEAMER: I want to say that since we assembled here, another member of the Commission has arrived. He is the chairman - Senator Richard Stout of Monmouth. The Senator has asked me to carry on this morning, so I will carry on.

We have another person here that I would like to call upon this morning, Mr. Chavooshian of the State Planning Bureau, the Department of Conservation and Economic Development.

I would like to make this suggestion to the people who are going to appear: It would be helpful in discussing the various matters if you refer to the specific section by number.

MR. B. BUDD CHAVOOSHIAN: My name is B. Budd Chavooshian, Chief of the State Planning Bureau of New Jersey in the Department of Conservation and Economic Development.

We have met with counsel, Mr. Clive Cummis of the Commission, and discussed the various features of the bill which we have reviewed

and have had lengthy discussions with him on the various observations that we have made. Therfore, for the purposes of entering our comments briefly into the record, we have a prepared paper which I would like to read.

Mr. Chairman, Members of the Commission, and Counsel: I would like to take this opportunity to commend the County and Municipal Law Revision Commission for its efforts and accomplishments toward codifying and revising the myriad items of legislation applying to our local units of government. I would especially commend your Subcommittee and your able counsel, Mr. Clive S. Cummis, for efforts in connection with the laws for municipal planning and zoning with which we at the State Planning Bureau must deal daily in our various programs of local planning. The tentative draft which is now before you represents a great deal of thought and effort. Many new concepts and many advanced proposals which would strengthen and broaden the already considerable base of local planning in New Jersey are incorporated.

The State Planning Bureau has some reservations as to specific measures and specific provisions now appearing in the draft. These reservations are those of staff persons like myself who have been working for the past five years on the day to day, but very real problems, of local planning, zoning and urban renewal in New Jersey municipalities. In these years we have dealt with more than 150 municipalities in our Local Planning Assistance Program and have prepared master plans and the bases for zoning ordinances and official maps. In these years we have undertaken to develop new approaches to the problems of urban renewal through a Federally-aided demonstration program now nearing completion. And in these years

we have recognized the need for and recommended to our Commissioner the establishment of new programs of State financial assistance to municipalities for continuing planning and for community renewal programming.

From this base of experience, we have prepared and submitted to your Counsel some forty pages of comments and suggestions relating to the tentative draft. They undoubtedly will mean for Mr. Cummis, his staff, and your subcommittees many additional hours of rethinking and rewriting. We accompanied our comments with our offer to work more closely with the subcommittee in the necessary rewriting and to undertake to prepare proposed language for certain portions of the revision. The considerable staff of the Bureau, including its more than forty professional planners, are available for these services and any work in connection with the new legislation which you may request. I am specifically appointing Mr. Alvin E. Gershen, Chief of Technical Operations of our Bureau, to serve with the Subcommittee in preparing the second draft of the revised legislation so that our specific recommendations may be properly presented and incorporated. The work of our Bureau makes the final outcome of this revision of vital and continuing urgency to us.

My comments regarding the specific provisions are very brief. May I say only that with respect to the planning, zoning and subdivision paragraphs, the following provisions, many of which have considerable merit, will require considerable thought and possibly rewriting: the relationship of zoning to the development plan, the design plan, tentative approval, the amortization of non-conforming uses, the exercise by the planning board of quasi-judicial functions presently performed by zoning boards of appeal,

the concept of a planning department and its relationship to the governing body, the use variance, and the proposed county boards of zoning appeals. On these items we wish to work more closely with your subcommittee.

With respect to the proposed urban renewal paragraphs, there are three major areas of concern which I will only enumerate. First, the relationships among the planning board or department, the urban renewal agency and the elected governing body, should be clarified in this legislation. Secondly, the Planning Bureau, working closely with and providing staff to the Meadowlands Regional Development Agency, which is the only agency in the State presently established under the regional redevelopment agency provisions of the Redevelopment Agencies Law, has some contribution to make to this provision of the present draft. Thirdly and finally, the pressing need for clarifying and expanding the powers of renewal agencies in the areas of conservation and rehabilitation are increasingly apparent. In a recent study made by the State Planning Bureau, we found three and even four times as many areas which require rehabilitation and conservation than require clearance. These powers, differing as they do from those of redevelopment, should now be designed and incorporated in legislation. Again our staff is prepared to contribute toward this work.

Although the State Planning Bureau ultimately will administer the final planning legislation and for this reason it is intimately involved in its preparation, we feel that among other organizations that are most affected by the revised legislation at least the following should serve with the Subcommittee in preparing the second and perhaps the final draft: the Bureau of Housing of the

Department of Conservation and Economic Development, the New Jersey Federation of Official Planning Boards, the New Jersey Association of Housing and Redevelopment Officials and the American Institute of Planners.

In closing may I again reiterate my personal appreciation of the most significant efforts, as represented by this tentative draft, to provide New Jersey with needed revisions in its planning, zoning and renewal legislation. The municipalities of New Jersey are probably the most sophisticated in the nation when it comes to using their local powers of land controls. The work of this Commission can make, and indeed has already made, a significant contribution toward raising the usefulness of planning, zoning and renewal to even higher standards.

Thank you very much, gentlemen, for providing me an an opportunity to appear before you.

ASSEMBLYMAN DEAMER: Thank you for your remarks, Mr. Chavooshian. I will assume for the purpose of saving time, if I am not interrupted by any members of the Commission, that they have no questions that they wish to ask the witnesses. Thank you very much, sir.

I should now like to call upon Mr. William J. Gaffney.

MR. WILLIAM J. GAFFNEY: Mr. Chairman and members of the Committee: My name is William J. Gaffney, Executive Secretary of the New Jersey Petroleum Industries Committee. And we too wish to express our appreciation to you gentlemen for the opportunity of appearing before you this morning to discuss this tentative draft.

Now the Petroleum Industries Committee includes in its membership oil companies, large and small, engaged in the sale of

petroleum products to meet the requirements of the residents of New Jersey, including home heating oil, industrial and commercial needs, as well as motor vehicle needs through service stations.

We have submitted to the Law Revision Commission on March 14th, 1961, our memorandum letter setting forth our detailed comments and recommendations on the Tentative Draft which is before us. These comments cover substantive and procedural matters and, also, attempt to set forth some editorial corrections. I am sure that the Commission would not want me to take the time to review all of our letter. However, I would like to restate at this hearing our position on several of these matters which we believe to be of particular importance. In doing so, I would not like to leave the impression that we think the other matters in our letter are unimportant.

We recommend that subsection (d) of Section 40A:7-521 on page 40 be deleted. The necessity of showing no feasible use of the property for the purposes for which it is zoned may defeat a real hardship application which complies with subsection (c).

In subsection (f) on page 40, we suggest that this should read: "The Board of Adjustment may impose reasonable conditions upon the granting of a variance or conditional use." Usually time limits will not be imposed in hardship cases and in any event they could be established under the proposed language.

We urge that subsection 40A:7-527 be revised to require the Board to render a decision with findings and reasons therefor. It is very important to insure fairness to an appellant and at the same time would encourage well considered decision.

Now Section 40A:7-528 provides for a radical departure from existing procedure. We recommend that there be no change in the present procedure of appeals from decisions of the Board of Adjustment. We believe there are several important reasons why the present procedure of appeal to the Superior Court should be retained. A court is the proper forum to decide questions of law which usually are the principal questions presented in such appeals. Moreover, the proposed section apparently would not require the County Board to observe established rules of evidence. We note that the reason stated for the creation of this new agency is an effort to limit the multiplicity of appeals possible under existing law. However, this provision would not seem to lessen the number of appeals, but simply change the forum from the Superior Court to the County Board, and indeed it promises to add more appeals to the calendar of the Superior Court, Appellate Division. In any event, the provision permitting the County Board of Zoning Appeals to take additional evidence is contrary to appellate practice and conceivably could result in additional delays to the damage and the detriment of the affected parties.

On pages 44 and 45 appear restrictive provisions for the limitation and elimination of non-conforming activities, uses or structures.

Section 40A:7-529 is a strict prohibition against the enlargement or expansion of a non-conforming activity, use or structure. It is submitted that in cases where a use exists under a term variance or special permit granted by a local agency, the Act should provide that the use may be continued by the agency which authorized

the establishment of the use. Also, there should be an express provision to allow for an application to the proper agency for permission to alter, extend, expand, reconstruct or modernize to meet, if you will, changing conditions.

In our letter we have proposed specific language revising this Section 40A:7-529 which would permit an owner to make application for such changes under proper safeguards.

Section 40A:7-531 and Section 40A:7-533 provide that a municipality may eliminate any non-conforming use or require the removal of any non-conforming use or require the removal of any non-conforming structure. As pointed out in the introductory comments to the tentative draft, this is a most controversial subject. Although these provisions are enabling in nature and not mandatory, they are objectionable because local governments may believe they can enact widespread arbitrary ordinances of this nature.

A study of the court decisions in jurisdictions which have upheld the amortization principle will, undoubtedly, reveal that the cases dealt with land with very minor improvements or with uses which constituted public nuisances, such as junkyards.

The principle behind such legislation is that there be termination of a non-conforming use over a sufficient period of years to permit amortization of investment. We submit that the entire concept is misleading and that it actually involves confiscation of property without compensation.

Amortization is no more than an accounting device like depreciation and is of importance only in measuring profits for tax purposes. The basic point is that an investor must first recover his costs before he can realize a profit. Thus, when applied to

wasting assets such as equipment or buildings, depreciation is sound for tax fairness.

However, when the depreciation principle is imposed upon land use, it has no element of fairness. The property owner whose land is to be denied an existing use sometime in the future receives no compensation or recovery of cost. He receives whatever profits he can make just as the property owner who is not in a non-conforming use area. Moreover, the value of the property may depend wholly upon the use and the value may appreciate over the years as available land for that particular use becomes scarce. A man who owns land for business use worth $100,000 today may find it has a market value many times that in the future. How can amortization at original cost or at current value compensate him for the loss of capital realization at a future date?

The question is indeed novel when amortization of a non-conforming structure is provided for even though the use may be conforming and the structure was lawful when erected. Property owners will certainly be in a position of being deprived of their property without due process of law. Also, not only will the security of mortgage holders be jeopardized, but lending institutions will be fearful of extending further mortgage loans. Such an ex post facto law would probably be declared unconstitutional by the courts.

Therefore, we recommend that both of these Sections be deleted and that the present statutory provision requiring continuance of non-conforming use be retained.

We have also recommended that Section 40A:7-532 on the restoration of non-conforming structures be revised to permit

restoration if the extent of damage or destruction is less than 75 per cent of the cost of reconstructing the entire structure. It will be noted that this suggestion departs from the formula of using assessed valuation for taxing purposes as set forth in the Tentative Draft which is likely to vary from actual market value or cost of reconstruction.

Section 40A:7-704 prohibits the issuance of a permit for building in the bed of a mapped street and provides that an owner of property which does not yield a reasonable return may apply to the Board of Adjustment, which is authorized to grant the same in such manner as will as little as practicable increase the cost of opening such street. In the first place, an owner whose property yields a reasonable return has no remedy under the statute and such a prohibition would constitute a taking of his property without due process. Moreover, even where the owner does not receive a reasonable return, the imposition of conditions would represent an unlawful taking of his property. In Rand v. City of New York, there was involved a similar provision contained in Section 35 of the General City Law of New York State. In that case the Board of Standards and Appeals imposed as a condition to permitting the plaintiff to build in the bed of a mapped street, that in the event of condemnation the cost be amortized over a 10-year period. The court granted plaintiff summary judgment, ruling that the statute was unconstitutional in its application to her property.

In principle, this type of legislation represents an unlawful taking, regardless of the length of time that the prohibition is in effect. As a practical matter, however, since the prohibition

continues indefinitely so long as the property remains in the bed of a mapped street, the real harm done to the property owner is the freezing of his property for many years, since, as a matter of practice, properties have been so mapped for long periods of time without any condemnation proceedings instituted therefor. Accordingly, it is submitted that, if the prohibition were limited to a short period of time, such as one year, commencing with the date when the property is first mapped, the burden imposed upon the property owner would not be as harsh as in the present case of a prohibition of indefinite duration.

Gentlemen, we wish to thank you for the opportunity of expressing these few thoughts today. I will be glad to sit with the Commission at any time should they decide to discuss with us in detail the more detailed brief we submitted earlier.

ASSEMBLYMAN DEAMER: Mr. Gaffney, the Commission wishes to express its thanks to you for your views on this very important subject matter.

I should now like to call upon Mr. Isadore Candeub.

MR. ISADORE CANDEUB: Gentlemen, I am here to represent the A.I.P., American Institute of Planners, New Jersey Chapter. My name is Isadore Candeub of Candeub, Fleissig and Associates, a planning firm in Newark.

The Chapter has had a number of meetings on the Title 40 revision and I have before me a letter prepared by the President, Mr. Robert Catlin. I would like to read the letter as written and then submit this to you. Later in the day I expect to have some mimeographed copies of the letter which are being prepared right now. In addition I do have some remarks of my own which I would

appreciate entering in the record.

The letter reads as follows:

"Gentlemen: The New Jersey Chapter of the American Institute of Planners is very grateful to have the opportunity to appear and present its views on the proposed revision of Title 40 as it affects Planning and Zoning. There are several proposed innovations and technical changes which the chapter finds interesting and basically worthwhile. We feel, however, that the proposed draft in its present form has several sections that should be rewritten and clarified. The final draft should leave no doubt as to the full purpose and implication of the new concepts it embodies.

"Some of the proposed innovations or technical changes which we find quite interesting are:

"1. The combining of the various planning-oriented statutes into a single act;

"2. The amortization of non-conforming uses;

"3. Permitting the creation of Planning Departments;

"4. The creation of a county board of zoning appeals;

"5. Relating zoning to a future land use plan;

"6. The attempt to standardize provisions for notice and hearing;

"7. The restrictions placed upon the granting of use variances;

"8. The power of the planning board to refuse subdivision approval for the development of land not suitable for its intended purpose.

"We feel that the following items must be carefully considered in redrafting the proposal:

"1. The provision for notice and hearing in the various sections should be written to remove the present ambiguity and inconsistency;

"2. The revised draft should make clear that zoning should be based upon, but not necessarily identical to, a future land use plan;

"3. If the planning board is to be allowed to exercise the powers of the zoning board of adjustment, there is a need for a clearer explanation of the procedures to be used by the planning board in exercising these powers;

"4. The functioning of the planning department needs to be explained in more detail. The planning director must be professionally qualified and such qualifications should be determined by legislation;

"5. We do not feel that permitting only Class IV members of the planning board to vote is a sound provision;

"6. Because of recent litigation the whole concept of tentative approval needs further study. (That is in reference to subdivision approvals.)

"7. Standards for the amortization of non-conforming uses should be spelled out in greater detail in order to protect the right of the property owner;

"8. In permitting a municipality to have a municipal design plan, greater explanation is necessary to define the extent of the powers involved in order to protect the individual property owner.

"The New Jersey Chapter of the American Institute of Planners desires to cooperate in every way possible with the Title 40 Revision Commission. In this respect the Chapter would be willing to review and comment upon any proposals or ideas under consideration

and offer its services in any way.

"We trust that these observations and comments will be given your consideration. It is our hope that the Commission will consider a revision of the proposed draft and that it will take under advisement a proposal to hold another public hearing on the revised draft before submitting it to the legislature.

"Respectfully submitted, Robert Catlin, President, New Jersey Chapter of the American Institute of Planners."

Now I have a few comments, some of which actually were covered by Bill Brach just earlier. My comments pertain to the "blight" definition which is 40A:7-102. This is basically the same "blight" definition that we have been trying to work under for the last ten or twelve years in the State of New Jersey. And in addition to the bad aspects of the word "blight" which go back to the old social term "slum" and create enormous problems locally when an area for redevelopment is defined, the other aspect is that the definition as it stands is very difficult to interpret both to boards of one type or another, but more particularly to the citizens at large. I have had this job before many public hearings and I find that the effect of the terminology is that local people consider this to be sort of lawyer's jargon to cover up the taking of their property without any real understanding of what the words mean.

Now I feel that if we are getting into this rewriting on a large scale, we should give consideration to a clearer expression of what the term means. And I think also that we should also take into account the new philosophy of urban renewal, which is city

improvement, city betterment, work of a comprehensive nature, and not merely the elimination of spot items of very bad housing or very bad slum conditions. I think we should have a definition which goes perhaps beyond the provisions here and which expresses more of the philosophy of planning and social purpose and economic purpose in what we are doing in urban renewal today.

I think also as you find later on in the determination of "blight," which is 40A:7-801 on pages 67 and 68, where the determination has to be made in terms of the old standards of juvenile delinquency and health, morality and so forth, that there should be a recognition that an area be determined as blighted because of other factors and other needs that the city has for improving this area, which gets into the entire concept of rehabilitation as well as clearance.

I have a couple of other minor comments. In 40A:7-206 on page 19, in this draft there is reference toward the bottom of the page in sections (e) and (g) to items that I think may create some confusion. I think that many boards, many planning boards that get involved in building codes are complete amateurs at the drawing up of a building code and I question whether they can do much better with the ordinary housing code since they are not ordinarily involved in the operations of such a code. Our experience has been that a committee of experts or made up of various groups in the city are better equipped to prepare such a code.

In item (g) - "Prepare the necessary studies and determine what areas in the municipality are blighted or deteriorating areas as provided for elsewhere in this chapter." There has always been some confusion as to this aspect too because ordinarily the funds

for detailed studies of blight are granted to housing authorities or redevelopment agencies and there is always the question of just what the role of the planning board is in making such studies. I would hope that this would be further clarified here.

The same point can be made for the next item, item (h), on page 20, in making and adopting plans for redevelopment, conservation and rehabilitation etc. There is the role that the planning board does and should play, but I think here too there may be an element of confusion as to what the planning board does and what the other agencies do.

I have one other very minor comment with regard to the item of the workable program, which is defined in Section 102 on page 10, and further discussed in Section 809. The federal designation is now "community improvement program." I just wonder whether this identification "workable program" might be changed to be identical with the federal designation.

Thank you very much for giving me this opportunity.

MR. STICKEL: May I ask a question, Mr. Chairman?

ASSEMBLYMAN DEAMER: Yes, sir.

MR. STICKEL: Mr. Candeub, I have never been satisfied as a member of this Commission or as a members of this Advisory Committee on this particular act that we have done too good a job on this redevelopment and urban renewal. Basically all we have done is to take the existing legislation and rearrange it and put it in here. I don't know that there is anybody on the staff or on the subcommittee who is conversant with all of these provisions or urban renewal and rehabilitation. My question to you is: Is

there a group to whom we could turn because all we have done is this continuing of the present legislation, which you have criticized, but it's what is on the books now? If we want to do a good job on it, I think we need some help by those people who are familiar with the legislation like Bill Brach and maybe yourself and some others. But is there any group or agency that we could turn to for help in this regard?

MR. CANDEUB: Well, I think the two groups in the state that would probably be best able to help you would be, of course, the National Association of Housing Officials, their chapter here in the state, and, of course, the American Institute of Planners. I might say that I would be very happy to volunteer such help as I could give. I have lived with this thing for some time, as you know, and I was involved in this courtcase in Long Branch and, of course, this one now in Elizabeth.

MR. STICKEL: Is there any law that is operating in another state that you know is better than ours?

MR. CANDEUB: Well, I believe, that the designation in Connecticut is in terms of redevelopment or rehabilitation areas; they get away from the term "blight." Now legally I don't know whether that is possible.

MR. STICKEL: I don't mean particularly on that one point; I mean any one law of another state that is looked upon with the idea that it is a model law or it is working properly.

MR. CANDEUB: I don't believe there is any one state today that has a model law for one simple reason, that basically all of the legislation in the wording - in fact, the wording here - goes back to about 1948 because I remember I worked on the legislation

in 1948-49 that was finally adopted, the Redevelopment Agencies Act here. Now this goes back to the wording that we had, borrowed from the federal people to some degree and borrowed from Pennsylvania and borrowed from Rhode Island, early legislation. This borrowing process actually was carried out nationwide so that all of the states almost have the same father on their definition of "blight."

Now we have gone so much further since then that we have to come back and I think that the legislation nationwide should be changed in regard to the definition of "blight." I think that we are now using "redevelopment," "rehabilitation" as an instrument of executing master-plan objectives the same as we are using "zoning" and we are not using it as a hammer to eliminate slum area as such. We are using it in a creative fashion. That should be reflected in legislation. Unfortunately it has not been to date because the legislation is still a carry-over from when redevelopment was merely something to get rid of slums. That was the main objective. I think it is time that we sat down and rethought the process and function of urban renewal in a comprehensive fashion and maybe New Jersey might create model legislation.

MR. STICKEL: Can you and Bill Brach and some of the other people who are familiar with this give us some suggestions as to how we might go about this?

MR. CANDEUB: Well, I think we'd be very happy to. I'd be very happy to, certainly.

MR. STICKEL: Our thought was the same as yours, that this is a tool of the over-all planning process and should be part of this law, but it has just been moved over and it is in need of

revision.

ASSEMBLYMAN DEAMER: Mr. Stickel, perhaps the persons whom Mr. Candeub mentioned and you have mentioned can meet with the Advisory Committee and offer assistance in this area which seems to be in some doubt. I thank you very much.

MR. HEINE: May I ask one question, please? With regard to the definition of the word "blight," what have you to say as to whether or not the term or the expression over the past few years, several years since it has been used, has now been defined to become a work or art and everybody has a conception of what the word means? Now if we change the language, aren't we going to get involved in a new round of court decisions that will in any event refer back to the word "blight" if we use substituting language?

MR. CANDEUB: We may get involved in court decisions. I have no doubt that we will. On the other hand, if we can do a better job than what we have now in terms of definition, we should certainly have many less headaches. You see right now on every project we have to anticipate possible court action for the reason that there is always an element of question as to whether an area fully meets the blight requirements because the requirements are not spelled out that well that you can say that there is no reasonable question, no reasonable doubt.

Now, whether or not we can eliminate some of the problems connected with the word "blight" by changing the definition, I don't know. The word "blight" today in New Jersey is almost synonymous with "slum" unfortunately. It wasn't intended that way, but it is. If we could go beyond the word "blight" and recast this definition to something sensible, then we may achieve a great deal in eliminating

a lot of court action because a lot of court action is based on the fact that you have damaged or somebody thinks they are going to have their property value damaged. I think if we can change the tone and implications of an area defined for rehabilitation, that this can be avoided.

Also we are getting something which is really very peculiar. We are trying to remove deteriorated and blighting conditions in areas which are basically good areas, yet in order to do this, we have to first declare an area blighted. This is peculiar because basically in our rehabilitation areas we are saying on one side that we consider the area to be pretty good, otherwise it is not worth saving. Yet for legal purposes, right now at least, we have to go out and make a finding that the area is "blighted." This confuses an awful lot of people.

ASSEMBLYMAN DEAMER: Well, Mr. Candeub, it is very difficult to set up a standard then for what is blighted and what is not blighted by reason of the difference of opinion or the degree ---

MR. CANDEUB: Well, I think that we have reached the point where we can set such a standard. As a matter of fact, we are doing this all the time in terms of the information that we present to the Federal government with regard to a project area's eligibility. So that the basis for a standard has now been established and pretty firmly established. But this basis is a far cry from the state legislation that we are applying and that we have to live with day by day in these project areas.

ASSEMBLYMAN DEAMER: Any further questions? (No response.)

Thank you very much, Mr. Candeub.

I should like to call upon Mr. Ernest Erber.

MR. ERNEST ERBER: My name is Ernest Erber, Areas Director, Regional Plan Association of the New York Region. I also am appearing here wearing a second hat as executive director of the Passaic Valley Citizens' Planning Association.

I should actually for the record say that I represent the Regional Plan Association's New Jersey Committee with offices at 605 Broad Street, Newark.

The Regional Plan Association has been interested in the improvement of planning legislation in the three states within portions of which the New York Region falls, namely, New Jersey, New York and Connecticut, and from time to time the Regional Plan Association has sought to raise for public consideration problems which we feel have been fruitful in advancing new appreciation of some of these problems. And we are of the opinion that the State of New Jersey perhaps has pioneered more concepts within the last ten years in the field of planning, zoning and urban renewal legislation than most of the other states in the Union and in this sense I think that your Commission here can be rightly proud of the draft which is now before us because I think this represents another long step forward for the State of New Jersey in bringing the state statutes into line with the kind of tools that are needed on a municipal level to tackle the ever more complex problems of urban and suburban development.

Mr. C. McKim Norton, the Executive Vice President of the Regional Plan Association, regrets that he is not able to be here today. Our own staff at the Regional Plan has been immersed in other projects in the last months, particularly the preparation of

a major report for the Senate's Interstate Commerce Committee on the matter of commuter transportation which you probably noticed as it hit the headlines in the newspapers in the last two days. And as a result we have not been able to give your draft the kind of careful review which we hope to be able to do in the weeks ahead. We, therefore, would ask with your kind permission to be permitted to file a written brief setting forth some of the more particular views which the Regional Plan Association might advance on the draft before you.

However, for the record here today, I want to state on behalf of the Regional Plan Association that we consider that the draft is a tremendous achievement in that it has brought together within one chapter all the tools that the municipality works with in this field and it has done it in such a comprehensive and comprehensible way that I believe that this in itself will give us a much better working basis in municipal law.

The Regional Plan Association is particularly impressed with the proposal for a county board of appeals in the area of zoning. Without going into the particulars of your own proposal and how it would actually operate, we think that the mere fact that the board of adjustment procedures are moved to a county level in an administrative sense short of an actual court of law is a major breakthrough and we hope that it will mark a broadening of horizons on the part of municipal officials and the citizenry generally to begin to see our planning problems in terms of a wider range of relationships with neighboring municipalities, the county and the state than has been the case in the past. In this sense, we think that there has been a very interesting judicial history in

the State of New Jersey which has given us a tremendous underpinning for the concepts of regional land-use regulation, beginning with the Duffcon Case, going on to the Bedminster Case in terms of four-acre zoning, and then again recently in the Cresskill-Dumont Case. All of these milestones, which perhaps your own counsel Mr. Stickel is better informed on in terms of their legal implication, their judicial implications, have built up a concept of the regional interdependence of land use and the regional relationship in terms of the location of a particular municipality in terms of distance to populated centers, transportation and other facilities. So that the courts have held that it makes a great deal of difference as to whether you are in a somewhat rural portion of Somerset County as to the minimum size of lot that is written into your local zoning ordinance or whether you are in a very populous industrial portion, let's say, of Hudson County or Passaic County, as to whether a particular minimum lot size is considered reasonable or not.

We of the Regional Plan Association feel that if your excellent draft can be improved upon, it would be in the direction of augmenting even more this regional concept of land-use control. In this respect, we wish very respectfully to refer to your attention the recently-passed Van Lare Act in the State of New York. This is General Municipal Law Section 239-1 and 239-m which became effective as of January 1st of this year. The particular legislation which I refer to creates a basis in state law for the coordination of municipal zoning and what it does is that it requires that any proposed zoning regulation, new or amended, which would change the district classification of or the regulations applying to real property or any proposed special permit or variance affecting

land or building within 500 feet of every city, town or village boundary, (2) of any county or state park or other recreation area, (3) of a right of way of any county or state parkway, thruway, etc., (4) the right of way of any stream, etc., and (5) the boundary of any county- or state-owned land on which a public building or institution is situated, that these would be subject to review by a county planning agency.

I feel what this provides for is a measure of county planning control in those vital areas where municipal zoning regulations affect the regulations of a neighboring municipality or of public rights of way which are county- or state-owned or streams or so on, and that this is a first long step toward introducing an element of control over land use in the municipality beyond the control of the local municipal governing body.

Now we feel that with the projections of population growth for the New York-New Jersey-Connecticut region, with the projections for the growing economic complexity of the suburbs where they no longer are simply residential communities, but where every suburb is trying to zone for industrial parks or for shopping centers, that we have reached the stage where a very serious look ought to be taken at fashioning the kind of state legislation which would introduce an element of control on a level of government higher than the municipal level in the area of zoning and land use.

I have also a series of specific comments on various portions of the draft. A number of them have been made by some of the witnesses who have preceeded me, especially Mr. Brach and Mr. Candeub; others I understand are on the list, one being William Holster, City Manager of Clifton. Since I have had the opportunity

of discussing my particular views with Mr. Holster and he has advanced some of his suggestions to me, I will therefore in the interest of time defer to Mr. Holster in the review of these specific problems as they affect local zoning. In this latter area, many of the problems which I have commented on were based on experiences which we have gained as planning consultants to the City of Clifton and since Mr. Holster serves on the Planning Board of the City of Clifton, he is as conversant with them as I am so I will defer going into them at this point.

Again both on behalf of the Regional Plan Association and our Passaic Valley Citizens' Planning Association, I wish to thank your Commission for the opportunity to appear here and express these views.

ASSEMBLYMAN DEAMER: Thank you, Mr. Erber. Any questions? (No response.)

The next witness I should like to call upon is Mr. Sydney S. Souter.

We are going to declare a recess as near to one o'clock as we can and then reconvene at two.

MR. SYDNEY S. SOUTER: Gentlemen, my name is Sydney Souter, representing the North Lawrence Citizens' Association, which unlike the previous groups represented here is a group of laymen, property owners and citizens living in the northern section of Lawrence Township in Mercer County.

Basically the Citizens' Association is interested in three aspects of the proposed draft: One, the preservation of the integrity of zoning laws; two, the prevention of favoritism; and, three, the establishment of public confidence in local planning and zoning.

It is on these three topices that I will confine my discussion.

First of all, I would like to congratulate and commend the Commission for their work and to let you know that the laymen who have read this are most enthusiastic about it and think it is a definite improvement over existing law.

The suggestions of our Association are contained in a letter which is before you and I would request that this letter be made part of the proceedings.

Briefly our suggestions are as follows:

First of all in so far as 40A:7-104, notice of hearings, is concerned, contained on page 11, it is recommended that Subparagraph (a) pertaining to public notice be revised to read as follows: "Public notice shall be given not more than 15 days nor less than 5 days..." It is further recommended that the third paragraph of Subparagraph (b) providing for personal notice be amended as follows: "Such notice shall be served at least 10 days prior to said hearing."

We recommend this because in our experience it has been found that between 5 and 10 days' notice is required for public hearings to enable interested persons to inform the public concerning any proposed changes and to organize and guide either public support or public opposition. It is felt that only with 3 or 5 days' notice, public opposition or support will become disorganized and ineffectual, and therefore the wishes of the people will not be adequately expressed.

The next recommendation is as to 40A:7-105, contained on page 12, conflict of interest. It is recommended that this section be expanded to exclude any employee of any state, county or municipal

agency, or any other board or commission created pursuant to this chapter or concerned herewith, from appearing or representing any person, firm, corporation or any entity in any manner. It is further recommended that attorneys, engineers, planners and other professional individuals who are retained both by the municipality and/or the county within which the municipality is located, and by the individual making an application, be also excluded from appearing on behalf of any such application.

The reason for this recommendation is the possibility that a county planner, for example, may design a proposed subdivision for an individual firm or corporation, and then pass upon this very subdivision as a member of or advisor to a municipal agency, or that an engineering firm, for example, may be retained both by the municipality and by the firm, corporation or individual appearing before the same municipality, and that the engineer's plans may then in turn be accepted subject to his own approval.

In other words, there may be, as indeed there now are, instances where persons involved in municipal planning find themselves in a position of creating a plan and then passing on this plan as advisors to the very municipality by which the plan is being considered.

This is a serious problem we feel and is contrary to the public's interest and should be taken care of in this revised planning and zoning law.

Our next recommendation refers to 40A:7-107, removal for neglect of duty. It is recommended that failure to attend at least 60 per cent of the meetings of an agency, board or commission created in accordance with this chapter be made a reason for automatic

disqualification, whether the person so failing to attend is appointed as a citizen or is appointed as a member of the municipality. The reason for this is that in many instances planning board positions are filled with individuals who, while they profess an interest in planning and zoning, in reality attend little or no meetings during the course of a year. In fact, there are instances that we know of where members of some planning boards attend only the reorganization meeting at the beginning of the year and fail to attend any meetings thereafter. We feel that these people should not be permitted to continue as members of such an important body as a planning board.

Turning our attention now to 40A:7-202, which appears on page 15. It is recommended that the requirements for members of Class IV be expanded so as to limit, not only members holding other municipal office, but also to limit members holding other state and county offices.

This is to insure that Class IV members are drawn from the public at large and not because of their political affiliation within the state or county - even though they may hold no political office within the municipality itself.

Unless this prohibition is included, there is a great possibility that Class IV members will consist not of citizens drawn from the public at large, but from county or state office holders of the same political affiliation as the mayor and governing body of the municipality.

Obviously a planning board made up thusly is suspect in the mind of the general public, even though these suspicions may be entirely unfounded or unjustified. If the public at large is to have any faith and confidence in local planning and zoning boards,

great care must be taken to insure that nothing is permitted which will in any way detract from complete public acceptance of the integrity of the members.

For these reasons, it is further recommended that the exception permitting members of the Board of Adjustment to also be Class IV members of the planning board be removed from the act. We feel this removal is further justified by the relatively heavy workloads of both the planning and zoning boards.

It is felt that Class IV members of the planning board must be free to devote a major portion of their time and attention to planning within their own municipality and that serving on other boards or commissions limits their time to a great extent.

There is no objection, however, to the provision allowing one member to be a member of the Board of Education.

We wish to commend most strongly the last sentence in Subparagraph (a) giving only Class IV members voting privileges and we urge that this provision of the act be not changed.

As to section 40A:7-204, meetings and hearings, it is recommended that the planning board be required to give public notice of all of its meetings and that the last sentence in the first paragraph be amended to read as follows: "The board is obliged to give public notice of all meetings."

It is further recommended that the second sentence of the first paragraph reading "All meetings shall be open to the public," be expanded to include conferences and informal discussions with applicants.

Under the existing planning act and practice, developers

and other individuals, firms or corporations interested in variances, subdivisions or modifications of the planning and zoning within the municipality now hold, and are encouraged to hold, private, closed conferences with the planning board to discuss "informally" the plans they are about to submit.

At these private conferences the public is excluded and arguments and reasons which may be persuasive to the members of the planning commissions, but which will not necessarily be acceptable to the general public, may be advanced without any knowledge on the part of the public. And I emphasize "may be advanced." We have no indication that this has ever happened, but it is a matter which destroys public confidence in the planning board. It is for this reason, even though the lack of public confidence may not be completely justified, that we would urge that all such meetings and conferences be open to the public.

Therefore, we recommend that the law provide that all conferences, discussions, meetings, etc. concerning any proposal to be brought before the planning board wherein two or more members of the planning board are present be open to the public and that notice thereof be given to the public.

This should not, however, be so construed as to prohibit the planning expert, engineer, or attorney of the person, firm or corporation seeking a subdivision or modification of the zoning law from consulting with the planning expert, engineer or attorney retained by the planning board and the municipality to determine in advance the particular requirements of the municipality in which the proposed subdivision is to be located.

Turning our attention now to the zoning law, 40A:7-505,

we pulled this one out particularly to recommend its enactment as is.

And turning to 40A:7-515, it is recommended that Subparagraph (a) be amended by striking out the words "who shall not hold any elective office or position in the municipality" and substituting therefor "who shall not hold any elective or appointive office or any position within the municipality or the county within which the municipality is located." The reason for this is the same as set forth in our objections to 40A:7-105.

Now, gentlemen, we make these recommendation not to be obstructive, but to be constructive and we do so for the three reasons that I set forth at the beginning, namely, that we desire to see the preservation of the integrity of the zoning laws, we are vitally interested in the prevention of favoritism, and we are very much concerned with the establishment of a true public confidence in local planning and zoning. Thank you very much.

ASSEMBLYMAN DEAMER: I want to thank you very much, Mr. Souter.

I think we have time without exceeding our time limit to call one more witness. Mr. Marcus S. Wright. Do you think you can handle this in about twenty minutes or so, sir?

MR. MARCUS S. WRIGHT: Yes, sir, shorter than that.

My name is Marcus Wright and I am President of the South River Sand Company in Old Bridge, Middlesex County.

I am not going to specifically refer to the proposed act; I would just like to pass on some comments and thinking if I may as it would affect members of the industrial sand industry in the

state. I have spoken to a few of them and we are quite concerned with the implications of what we have before us and I would like to pass on these comments for your consideration if I may.

The President has given great attention to the need for conservation of natural resources in this country. We will probably see a lot more emphasis on that as time goes on as this new administration in Washington takes effect and gets into these matters more deeply.

It is very interesting to note the result of a long-range survey the General Electric Company has made. They have made a population survey for the next hundred and fifty years. This survey, which I have not seen, but I have been told about, shows that it it is entirely probable that the area on a line from New York City to Lancaster, Pennsylvania, will be almost entirely covered with homes within the next hundred and fifty years.

Now we must have realistic zoning laws with respect to mining commodities such as gravel, sand, quarry products - quarry products are such items as crushed stone and lime. We have to have very realistic zoning laws so that we can achieve maximum utilization of these natural resources which in time, if we cannot realistically determine long range what our requirements are going to be and how it is going to affect the cost of building, of living, can be a very expensive thing. Now, for example, as we all know in construction of homes, factories - any kind of construction - there are great quantities of gravel and sand and other quarry products - crushed stone and what have you - used. If the mining industry generally speaking is going to be regarded as a nuisance and if zoning laws are going to be such that it is

going to be a matter of eventually driving out and closing up all of our mining operations in the state gradually bit by bit over a period of 20, 40, 60 years, we are going to find that the many products that are used in construction and in industry for manufacture of various products where these components are used - the cost of these items is going to be increased possibly three to five times because they are going to have to be brought in from great distances.

Now these products that I have mentioned, gravel, stone, general quarry products, are by nature a bulky item, but they are quite cheap as compared, for example, with iron and copper ore, of which we don't have in this state too much, very little. And if we are going to, long range now, set up laws that are going to drive these present gravel, sand, quarry products producers out of business or restrict them to such an extent that it will be unprofitable to produce these items through restrictive zoning laws, we are going to have, as I mentioned, three to five times increase in prices of these products with a result that the cost of living is going to be driven up a great deal.

As we see it today, this is not going to be too much of a problem in the next 20 or 40 years, but we are building something here that in 100 years and 150 years and possibly 200 years can cause a great deal of trouble by driving the cost of these various articles up, simply because they will have to be brought from great distances.

I encourage you gentlemen, if you will please, in your over-all thinking with these proposed changes to please bear this in mind - over very, very many years the implications of what can

happen in generations to come.

I would like to conclude my remarks by offering, if you would like to study it - I have the details - the first witness mentioned it - it shows what happened in the County of Los Angeles, how mineral resources were dwindling and what the county did about it and it shows how surveys were made of the available resources and that these resources were zoned in such a manner that they could be utilized, that maximum utilization could be made of the resources at hand to allow the consumer to have the benefit of these various resources. If you would like, I would be pleased to follow my comments up with a written statement and submit it to you. And if you think I might be of assistance later on in an advisory capacity, I would be pleased to help you if I can. I do not represent the trade association to which our company belongs, but I do happen to be a member of the public relations committe of the National Industrial Sand Association. I emphasize I am not bringing that Association's views here. But I do have access to many zoning laws, cases and so forth throughout the United States and I would be very pleased to help you.

I would just like to add this one more comment before I thank you for allowing me to appear as a suggestion: England and Germany have had these problems of zoning with respect to mining for possibly seventy-five to one hundred years. I do not happen to be very familiar with them, but basically it works this way, that the resources, the natural resources that are available, are guarded by zoning laws that will allow them to be utilized for the best economic effect of the citizens of the country. Possibly there may

some information available there and if you are interested, I could probably dig something up for you.

I would like to close my remarks and thank you very much for these few minutes.

ASSEMBLYMAN DEAMER: Thank you, Mr. Wright, for your remarks and also for your offer of assistance.

I believe we have one witness here who has to leave and can't be with us this afternoon. I understand he will not consume any more than approximately ten minutes of time. Therefore, I would like to call upon Mr. Jeffer..

HERMAN M. JEFFER: I appreciate the courtesy shown to me. I represent Samuel Braen Industries of Wyckoff, which is engaged in the crushed stone business, the asphalt business, ready-mix concrete, sand and gravel business, and has fourteen locations in separate municipalities within this state and a number of locations outside of this state.

We come here to give our views to this Committee on the section of the proposed statute which deals with amortization of nonconforming uses, namely, 529 through 535. We are hopeful that after you hear our views as well as the views of the other people who will testify here before you, you will eliminate this provision altogether from your proposed statute dealing with zoning. The present zoning laws have caused enough consternation to the industry regarding nonconforming uses and we believe that if the proposed sections are enacted into law, it will cause chaos in the industry for a number of reasons.

First, under the proposed section of the statute you are permitting each municipality, each little town, each hamlet, to

decide whether or not it is wise from their point of view to permit the continuance or the operation of a quarry, sand pit, ready-mix installation or any other type of installation related to that.

Now a glance at the reported cases in New Jersey indicates that there has been extensive litigation wherein various municipalities have attempted to eliminate this industry from its borders already and we are not so naive as to believe that if the present zoning statute is enacted, they won't jump at the chance to eliminate us altogether. And if the statute is enacted, they will have a fairly good chance of succeeding.

I think if this thing is carried to its ultimate result where every little town and hamlet could decide for its own purposes, selfishly or otherwise, whether it is good to have a quarry in its town, you might wind up with this very ludicrous result whereby all of the quarries and sand pits and operations of a related nature would be eliminated from the entire state. Now you start out with a proposition that you want to benefit the general public and I am sure that you will agree with me that if this industry is eliminated from the state by one device or another, this certainly will not result in the general benefit of the public.

The industry itself, of course, is of paramount importance to any kind of a federal or state road-building plan and from a purely economic point of view the extraction of stone and sand alone, the production, is a business which involves over $40,000,000 a year. Now to permit all of these various towns to pass legislation which is going to seriously affect a business of this size certainly is not going to result in the general welfare of the people. And I believe that you gentlemen realize that if this zoning act is

enacted into law, you can reasonably expect that the various towns and the people living within those towns are going to be more concerned with their individual problems than they are with the problems of the entire state or the Nation.

Well, you say that you can safeguard against such abuses as this, well, I have examined the proposal and I frankly do not find such safeguards. The only two standards which the ordinance must comply with are: Number one, it must specify the period of time in which the nonconforming use must be eliminated; and number two, provide a reasonable formula whereby such elimination may be fixed to permit the amortization of investment. In plain English this simply means they have to provide you with a reasonable time to get out. This I do not regard as being proper standards for any municipality which is composed largely of lay people not thoroughly familiar with the legislative process to enact such far-reaching legislation with such a minimum of standards.

We know from experience that the zoning laws are not best administered by those who are most enthusiastic about it. And this failure to provide adequate standards leaves the field wide open for the municipalities.

What does the phrase "amortization of investment" mean? It is not contained in the list of definitions in the beginning of the act. Is this "amortization of investment" phrase used in the accounting sense or the legal sense or some other sense? And what is a reasonable formula? This varies from time to time. What is the reasonable period? In a period of inflation one period of amortization might be wise. In a period of deflation an entirely

different period would be applicable.

Now if I read section 535 correctly, it appears to me that once such an amortization provision is enacted, if a change in conditions requires a change in the period of amortization, this subsequent amendment will not affect the original period set up. Now you are asking the gentlemen who sit on the various municipal governing bodies to be so far-seeing and all-knowing as to be able to project the consequences of their act into eternity. I believe from this point of view the proposed section is unsound.

One of the stated purposes of the entire revision is to eliminate or reduce much of the litigation which we presently have on our court calendars dealing with zoning problems, which now occupy some thirty per cent of the court calendar. If every small hamlet, little community that exists in New Jersey, five hundred and some odd number of them, can pass an ordinance of such far-reaching consequences, gentlemen, I can assure you that the amount of litigation that we presently have in our courts will look like a trickle compared to what we will have.

The principal case, I think, which is relied on by the advocates of this amortization theory is a New York case, Harbison versus the City of Buffalo. This involved an amortization ordinance. In that case the type of obnoxious activity that they wanted to regulate was the storage of steel drums outside of the building. After a lot of talk by the court about the permissibility of adopting such ordinances, they didn't decide whether it was constitutional or unconstitutional or permissive legislation or not permissive legislation; they sent it back for a trial of certain material issues. I would just like to point out to you what those

material issues are so as to indicate to you the type of litigation and difficulty that you are opening up with the passage of a statute like we have here for our consideration. There were six of them. They said that it had to go back to the trial court for the trial court to determine these issues: "One, the relative value of the land and the improvements separately. Two, evidence relating to the nature of surrounding neighborhood, the value and conditions of the improvements on the premises. Three, the nearest area to which petitioners might relocate. Four, the cost of such relocation. Five, any other reasonable costs which bear upon the kind and amount of damages which petitioners might sustain. And, six, whether petitioners might be able to continue operation of their business if not allowed to continue storage of barrels or steel drums outside their frame dwelling." All of these particular issues had to be resolved simply to decide the question whether or not they could pass an ordinance prohibiting the storage of steel drums outside the building. The court concluded and said: "It is only after such issues have been resolved and upon such evidence that it may be ascertained whether the resultant injury to petitioners would be so substantial that the ordinance would be unconstitutional as applied to the particular facts of this case."

I cannot conceive of a situation where a local board could determine that a quarry could relocate some other place in some other town over which it had no jurisdiction. This particular proposal here is opening up a Pandora's box of all kinds of difficulties. The court, of course, sent it back for the retrial. I do not know what the result of it is - I haven't read any reports on it - or whether it ever was taken back upon appeal again. But

the decision was a four to three decision. In other words, nearly one-half of the court thought that this ordinance should be declared unconstitutional forthwith, there should be no retrial of any material issues.

I would just like to read a short portion of the dissenting opinion by Van Voorhees, which I think sums up this thing quite adequately: In speaking of the amortization theory, he says, "This theory to justify extinguishing nonconforming uses means less the more one thinks about it. It offers little more promise of ultimate success than the other theories which have been tried and abandoned. In the first place, the periods of time vary so widely in the cases which have been cited from different states where it has been tried and have so little relation to the useful lives of the structure that this theory cannot be used to reconcile these discordant decisions. Moreover the term 'amortization' as thus employed has not the same meaning which it carries in law or accounting. It is not even used by analogy. It is just a catch phrase and the reasoning is reduced to argument by metaphor. Not only has no effort been made in the reported cases where this theory has been applied to determine what is the useful life of the structure, but almost all were decided under ordinances or statutes which prescribed the same time limit for many different kinds of improvements. This demonstrates that it is not attempted to measure the life of a particular building or type of building and that the word 'amortization' is used as an empty shibboleth. This comment applies to the ordinance at issue on this appeal. There could be no presumption that all junk yards or all wrecking or dismantling establishments and all improvements assessed for tax purposes at not more than $500 will

or have any tendency to depreciate to zero in three years. This shows that the ordinance in suit could not possibly have been based on the amortization theory. Moreover, this theory, if it were seriously advanced, would imply that the owner should not keep up his property by making necessary replacements to restore against the ravages of time. Such replacements would be money thrown away. The amortization theory would thus discourage owners of nonconforming uses to allow them to decay and become slums. Although the courts of other states are divided on this question, the better reason seems to me to be on the side of the rule heretofore established in this state, wherefore, I vote to affirm." The rule heretofore established in the State of New York is similar to the rule established in New Jersey that a subsequent zoning ordinance cannot affect a use then in existence at the time of the enactment of that ordinance.

Gentlemen, I think you are dealing with a situation that has far-reaching consequences. The gentleman who just preceded me here indicated something of the great extent of this problem that might occur in the next 150 years, 200 years. I believe if you are going to enact the legislation of the type proposed, this has to be taken into consideration.

I strongly urge this body and this Commission to eliminate this provision dealing with the amortization of nonconforming uses altogether from its proposed zoning law.

I want to thank all of you for the opportunity here of letting you know what our views are. I also speak as a counsel for the Board of Adjustment and I know what various problems can

be incurred in even the simplest cases and I suggest that you certainly reconsider this provision and if at all possible eliminate it or substitute it with something more satisfactory. Thank you.

ASSEMBLYMAN DEAMER: Thank you, Mr. Jeffer, for your remarks.

Now we are going to recess until two o'clock. We have listed here six more witnesses. Now if there are any more people who intend to testify, I should like you to come up here so we have your names and we can work this out for the balance of the afternoon.

(Recess for lunch.)

AFTER RECESS

ASSEMBLYMAN DEAMER: Do you have a telegram there, Mr. Stickel?

MR. STICKEL: Yes, Mr. Chairman, I have a telegram addressed to the County and Municipal Law Revision Commission, Assembly Chamber, State House, Trenton, New Jersey: (Reading)

"Regret that a previous commitment prevents our attendance at the hearing on the draft of a proposed zoning and planning law for New Jersey. We compliment you for the outstanding achievement as represented by the tentative draft. However, we do earnestly suggest that consideration be given to modify Section 40A:7-531 - elimination of nonconforming activities or use so as to prevent any action which might work a hardship on an established nonconforming activity which had been previously legally permitted by ordinance. We question whether any amortization formula could be devised which would be equitable without destroying capital assets or forcing any activity out of business. Sincerely, William F. Bertschinger, President, New Jersey Association of Real Estate Boards."

ASSEMBLYMAN DEAMER: Thank you.

This morning I identified all the members of the Commission with the exception of myself. I am Pearce H. Deamer, Jr. I am an Assemblyman and Vice-Chairman of the Commission.

I would like to call upon Mr. William Roach.

W I L L I A M R O A C H: Mr. Chairman and gentlemen, I am William Roach, Planning Director of the Somerset County Planning Board, speaking on behalf of the Board of Chosen Freeholders of our county.

The county is naturally interested in all of the proposals made in your draft but I will confine my remarks to those areas where there is a direct county interest. Some of them will be in forms of suggestions to be incorporated in the law, some will be observations as to proposals you have made.

One proposal we would make would be that in those sections dealing with the municipal development plan and the municipal official map - Sections 300 and 700 by reference - that provision be made in these sections for municipalities to adopt by reference any official county plan or state plan for such facilities as state highways, county parks, etc. We feel that this would greatly enhance the coordination of planning efforts on all levels and certainly enhance the county and state development programs. So a suggestion that this option be made available to municipalities to adopt certain proposals by reference.

The second observation has to do with Section 500 - that section dealing with municipal zoning. Our county feels quite strongly that the county should have some review authority, possibly approval authority, over municipal zoning as it relates to zoning along municipal boundaries, state highways, municipal roads and other municipal lands. The county has certain duties and responsibilities for providing a secondary highway system, and we feel it only right that we have something to say about the land use activities that go on along these roads, to the end that they are able to continue to serve their basic function of carrying traffic.

And also in Section 500, counties naturally have an interest in the proposed county board of zoning appeals. We can see a real need for such an agency, but we question the comment made in your introductory remarks that such a board must be comprised of lawyers. It is our feeling that perhaps broader representation from other professions, such as engineering, planning, architecture, and possibly other lay representation, might help this board do a more effective job.

Then, in Section 600, that portion of the proposed draft dealing with local land subdivision review, we feel that the present county powers for land subdivision review and approval should be cross-referenced so that there is no misunderstanding on the municipal level or in the mind of the developer that the county also has certain land subdivision review and approval authorities.

These in very brief form are the three major observations that are made by our county at this time.

Thank you very much.

MR. STICKEL: I would just like to say, Mr. Roach, I think you are familiar with the fact that so far as approval of local zoning ordinances by the counties, such would be unconstitutional as our Constitution is presently set up. So to that extent I don't know that this Commission can do much in that regard. As far as the County Board of Zoning Appeals is concerned, it was our thought that where a County Planning Board or a County Director such as yourself, with a staff, that staff would be the expert for the board, and rather than put members of the planning profession, etc., on the board itself, we felt that the board

ought to be strictly a judicial body, manned by lawyers who heard the testimony presented by both sides and had the expert advice, just as much as the Public Utility Commission does on their staff, so that the members of the board would be able to evaluate the expert testimony offered on both sides. So that is at least our present thinking.

MR. ROACH: That is certainly helpful, because we endorse the concept, and your background thinking was not in depth on this and it was just this observation.

MR. STICKEL: Well, we haven't firmed up the County Board of Zoning Appeals at all as yet, because, as Mr. Deamer indicated, all of this is in the thought stage and we thought we would put everything out and let everybody have their say on it and then we would see where we go from there.

ASSEMBLYMAN DEAMER: Incidentally, Mr. Thompson just pointed out that the structure of this is quite similar to the Division of Tax Appeals, where you have all lawyers sitting there and the questions to be decided are of course as to the value of real estate, but the experts are the ones who go on the stand and testify.

Thank you very much, Mr. Roach.

Mr. Owen Pearce.

O W E N P E A R C E: Mr. Chairman and members of the Commission, I am Owen B. Pierce; I represent the Bennett Sand and Gravel Company whose operations are concentrated in Wall Township in Monmouth County, although they do have operations in Ocean County as well.

I am here to express the concern which my client has

and I think concern which it holds in common with most of the sand and gravel industry as to the effect of the proposal that nonconforming uses be amortized. I think that I can sum up our position on this proposal in three very brief points:

Number 1, we feel that the propsed revision as it is presently worded, in any event, has great potentiality for abuse by the local municipalities. Number 2, we question the constitutionality of the provision, particularly as applied to the sort of industry which we represent here. Third, we feel that the provision as it stands now would permit municipalities to effectively abolish sand and gravel operations and that to do so would be a grave detriment to the public interest.

Now to be a bit more specific, I think it is well known that many zoning ordinances and many local zoning bodies are operating today in an experimental or an embryonic stage. It is well known, I think, that many zoning ordinances are conceived and applied with little regard for the basic principles which zoning is intended to further. I am particularly concerned about the requirement or the goal that zoning is to further the most effective and efficient use of the land. I think the situation of the sand and gravel industry well illustrates my point in that, in a very large number of instances, sand and gravel operations, while they have admitted economic and social value, have been classified as nonconforming uses under existing zoning ordinances. This is the situation with my client, the Bennett Sand and Gravel Company, which has five operations presently, all of them classified as nonconforming uses under existing zoning ordinances.

Now, the provisions as they appear in the revision - and this has been mentioned by previous speakers and I need not belabor the point - but they provide apparently no firm guide lines for their exercise by the municipalities. I am uncertain as to the definition of the amortization of investment. I would suggest that, if that means that an individual operation is to be permitted to continue operations only so long as is necessary to permit recovery of the initial invesment, to the extent that this overlooks the potential value or in fact the actual value of their property and their investment, that this would be a taking which I believe would be unconstitutional. Similarly, if this is intended to mean that the local body is to ascertain or attempt to ascertain the useful life of the operation in question and then to require that it close up shop at the end of this life as it is determined, I suggest again that as applied to the sand and gravel industry in particular it is unworkable and I say again unconstitutional. I think the reason is fairly obvious. We are dealing here with a wasting asset; the sand and gravel deposits which are being mined are by their very nature self-liquidating, and I think that it would be next to impossible to, at any particular point of time, or on the basis of any information available at that time, to determine the useful life of the deposit involved. In my particular area, the New Jersey shore, we have practically limitless resources of sand. I would challenge anyone to particularly predict the useful time in which we could mine that sand. So for that reason I feel that the provision is unworkable and unconstitutional as applied to our industry.

Third, I believe that the sand and gravel industry has definite social and economic value. I would refer in particular to a letter submitted to Mr. Cummis by the Houdaille Construction Materials Company, which covers the broad questions involved in these provisions I think very excellently, and we endorse the contents of that letter.

To bring the case down to point, my client supplies the sand and gravel primarily to local contractors. It supplies very little to large contractors who might be building highways and such. My client is able to supply these materials at the best available price because of its convenience and because of the minimal transportation costs involved.

Now, should this provision be enacted and should the municipality take action to put my client out of business, my client naturally would suffer, but I would suggest that the municipality and the area would suffer as well, and I would urge the Commission to let the law remain as it is in this respect and not to place this power in the hands of the localities. I think that the existing law adequately protects both the interests of the nonconforming operators and also the interests of the municipalities in comprehensive zoning and land use.

Again I urge that the present law be permitted to remain intact and that the proposals not be enacted.

Gentlemen, thank you for the opportunity to appear before you.

MR. STICKEL: Mr. Pearce, I would just like to have the record straight. Mr. Jeffers stated earlier that the Commission was relying upon the Harbison case in New York. I want it to be known that we are not relying solely on the

Harbison case and, for your information, there are 13 states in the United States where this theory of nonconforming use elimination has been upheld, as well as by the United States Supreme Court, and even in cases involving the extractive industry.

I would like to ask you whether it isn't true at the present time that, under existing zoning, soil removal ordinances, and regulatory ordinances, municipalities could put you out of business today.

MR. PEARCE: I believe that is true, yes.

MR. STICKEL: So the power they have today in that regard is no greater than they would have under these circumstances, provided in every case the exercise of that power is reasonable.

MR. PEARCE: I would tend to agree with you, yes.

MR. STICKEL: Thank you.

ASSEMBLYMAN DEAMER: Are there any further questions by the Commission? (No response)

Thank you very much, Mr. Pearce.

I would like to call upon Mr. William Holster as the next witness.

W I L L I A M H O L S T E R: Mr. Chairman and gentlemen of the Commission. I am Bill Holster, City Manager of Clifton. We would like to add our plaudits to the others that have been given to you on the effective and meritorious job that you have done on the codification of the zoning and planning ordinances. Most of the items which I have listed were spoken on previously, and I do not want to belabor the record. Also I might say that we have presented a paper on

which we have listed our suggestions. But I would like to comment briefly on a few things.

MR. THOMPSON: Excuse me, but would you tell us whom you represent?

MR. HOLSTER: Well, I represent the City of Clifton and myself, sir.

MR. STICKEL: He is also a member of the State Advisory Planning Commission.

MR. HOLSTER: I don't represent them though.

Section 40A:7-200. This is the section on page 15 which grants the power to the governing body of allocating powers to the Planning Board of the Board of Adjustment. We feel, although it may be proper and more practical to transfer certain powers of the Board of Adjustment - from the Board of Adjustment to the Planning Board - because of their administrative aspects, it appears to us that the Board of Adjustment should continue to be an appeals board. We feel that in this way, it would maintain the integrity of the appeal function of this quasi-judicial body.

Section 40A:7-201, page 15. This is the section which says that any municipality may create a planning department. This section has merit and the only fault we can find is that we feel it may be too broad and may give considerable power in the hands of one person. I might note that I am saying this as a sensitive City Manager. Although 75 per cent of the planning decisions may be routine, we feel that the public might be best served if the remaining decisions had a broader review which might require the thinking of persons in various fields rather than persons trained purely

in the theory of planning. And, of course, this was mentioned before in which they said that some sort of appeals board may be the answer here.

Section 40A:7-202, page 16. This is restricting the voting privileges to Class IV. We think this is in direct opposition, of course, to the previous section, 201, creating a planning department. We feel that all members should have the right of vote on a planning board. We also suggest to you that there is a decision pending - I believe it is in the county or superior court of Passaic County - on the appointment of planning board members, which would affect this legislation tremendously.

Section 40A:7-503, page 29. This is a section and actually there was considerable discussion on it, which says that the zoning ordinance shall be based upon the following. We think that this might raise many questions on the interpretation by the courts as to what you mean by "based upon: (1) An existing land use map..." and "(2) A future land use map," because we feel that there are variances between the two items.

I might throw out just one other thing, gentlemen, before I conclude, and that is, we would like you to consider in this legislation if you can, or will, the elimination of nonconforming lots. I know you all have this problem and we have a legal ruling on it in our community in that we cannot, the city could not, acquire nonconforming lots. I am talking about 25-foot lots which may appear on our tax maps under the present statutes. We recognize that this problem could be cleared up by a very strict board of adjustment, but we

do think that there is room for legislation in this matter.

I would like to thank you for allowing me to appear, gentlemen.

MR. STICKEL: Bill, may I ask you one question? In your first criticism, do I understand that you feel that there should be a board of adjustment under any and all circumstances and that we shouldn't make it permissive to give municipalities the right to combine the boards if they so desire?

MR. HOLSTER: I think this generally is so. I think you should be able to give certain duties now resting within the Board of Adjustment to the Planning Board because of their administrative aspects.

MR. STICKEL: But you do think there should be two separate bodies?

MR. HOLSTER: I do, sir.

MR. THOMPSON: I wonder if I could ask a question. I don't know whether you heard Bill Brach earlier, but he suggested consideration to giving municipalities the power of condemnation for such purposes. Would that type of proposal answer your third suggestion?

MR. HOLSTER: I think it would be a step in the right direction.

MR. STICKEL: What would the city do with them after they got these 25-foot lots thrown out?

MR. HOLSTER: Well, we have to sell them. We have it right now; there are some of the lots that we own that are abutting two property owners. Right now we are going to sell and allow them to subdivide or we may subdivide them

first into 12-1/2 foot lots. We are interested primarily in light, air, and so forth, clean areas. Of course, we would have a stipulation that no separate building may be built upon this.

MR. THOMPSON: You would probably have to have an additional provision on the sale of such property, wouldn't you?

MR. HOLSTER: Yes, sir.

MR. THOMPSON: The existing provision, I assume would not be adequate.

MR. HOLSTER: That is our understanding at the present time.

ASSEMBLYMAN DEAMER: Well, the existing provisions aren't adequate because of properties put up for public sale, and to make any limitation would, of course, defeat the very purpose of public sale.

MR. HOLSTER: No, I think the question was whether or not we can properly condemn under the present law and this is the question we have right now. Our attorney feels that we cannot.

MR. STICKEL: I think he's right.

MR. THOMPSON: The disposition is also another problem.

MR. HOLSTER: Yes, sir. I'm sorry, yes, sir. There are two questions.

ASSEMBLYMAN DEAMER: Thank you very much, Mr. Holster. I would like to call upon Mr. Samuel Alcorn, Jr.

S A M U E L ALL C O R N, J R.: I should like first to state that I think the Committee has undertaken a tremendous task and by and large has done a commendable job.

I have, as you know, submitted a detailed letter of criticism and I had not planned to attend today. However, there were a number of items that my governing body thought were of sufficient importance to Montclair - and I neglected to state that my name is Alcorn and I am Town Attorney for the Town of Montclair and that I was requested to attend. I might also add that I am accompanied by Mr. Robert G. Miller who is our Commissioner of Public Affairs in Montclair and who also happens to be a member of the Committee, and also by our Town Planner, Mr. Robert F. Edwards. I trust that the notation of certain items today will not be deemed to be an oversight or an overlooking of other items which I will not mention and which were contained in my letter.

The more significant items, to take them up seriatum - the first main concern to me was, in reading the entire draft as a whole, that there seemed to be a withdrawal of the jurisdiction and control over zoning and planning from the present jurisdiction of the municipal governing bodies and, to a large extent, a transference of that control, and in effect a dominance, to the Planning Board.

Just let me cite a few of the instances which I think will illustrate that proposition: In Section 40A:7-202, the draft takes away the right to vote from the municipal official members of the Planning Board. You are aware, of course, that the Planning Board is now made up, and under the new draft is made up, I believe, of the Mayor ex officio, can include a member of the municipal governing body, and a municipal

administrative official. Under the proposed draft, although they are to be members, they are members in name only; they have no power to vote, nor are they even to be counted in determining a quorum.

Secondly, the draft removes the authority of the local governing body which it now has to hear appeals from Planning Board actions.

Thirdly, the power to grant or to deny use variances has been withdrawn from the governing body. Now, I appreciate that that power under the draft presently rests in the Board of Adjustment, but I point out to you that under 40A:7-200 the powers of the Board of Adjustment may be exercised by the Planning Board, so that again you have the Planning Board exercising, finally now, the power to grant or to deny variances and the governing body has nothing to say about it, and if you go through with having the County Board of Appeals, the governing body doesn't even have appellate jurisdiction.

Fourthly, although the draft permits the adoption of the municipal design plan ordinance, again the governing body may not adopt it until it has been prepared by the Planning Board.

Fifthly, authority is given to the Planning Board, as well as to the other agencies mentioned in the draft, to itself provide for a panel of alternatives. That is not a power, it seems to me, that should reside in the Planning Board. It is a power that the governing body, it would seem to me, should have.

Now, lastly, the draft empowers the Planning Board to prepare building and housing codes. A previous speaker

has indicated pretty much my feeling about that.

I just can't get over the thought that the governing body is at least equally concerned with zoning and planning as the Planning Board, and it is the responsible body and the most responsive body to the citizens of the community whose interests, after all, the members of the governing body are representing, and I think it to be a very dangerous thing to do to put all these powers in a Planning Board the members of which will be appointed for six years; they are not subject to a vote of the electorate or anything else, and to give them this power, as I said in my letter, will make them masters of their own creators.

Secondly, there is a serious conflict, as I read the draft, in Sections 200 and 201, it provides for the establishment of a Planning Department which, as I read the statute, if established, takes the place of the Planning Board and has all the powers of the Planning Board. The same section goes on and says that if such a Planning Department is established, the governing body, I believe - I can't remember who appoints them - but there shall be appointed a Planning Officer, and the same sections go on and say that the Planning Officer now shall have all the powers of the Planning Board. Now, my question is, who has the powers of the Planning Board when you have a Planning Department and a Planning Officer - the Planning Department or the Planning Officer? And if the Planning Officer is to have those powers, doesn't he therefore have the power to approve subdivisions, to adopt development plans? And if the Board of Adjustment powers have been referred over, does he have the power to

grant variances? I think that certainly that should be clarified and, if that is so, if this Planning Officer is to have those powers, then I seriously contest it or object to it. I think it's a very, very bad thing.

My third area of criticism deals with the provisions in the draft with respect to the Board of Adjustment, and I have three objections there. I think that the standards and requirements that have been set up in this draft which an applicant must meet in order to get a variance are practically impossible of attainment, so that what has been done has, in effect, eliminated that variance. Let me just read to you the requirement that an applicant must meet. First of all, there must be undue hardship; there must be a showing of undue hardship by reason of the physical condition of the property. Secondly, after establishing the undue hardship by reason of this physical condition, he must show that the physical condition is unique. Thirdly, and these are accumulative, variances must not be such as would essentially alter the character of the locality; and, fourthly, the applicant must then also show that there is no feasible use of the property for the purposes for which it is zoned.

Now it is my considered judgment that with such requirement, as I said before, it is impossible to prove them all in 99 out of 100 cases. And I say that realizing that we all know that the present standards under 40:55-39D of special reasons are too liberal. But I do think that this is much too restrictive.

Secondly, with respect to the Board of Adjustment, as I indicated earlier, the draft provides for the grant or

denial of the variance in the Board of Adjustment itself. That, of course, is not now the situation on a use variance. The Board of Adjustment has the power merely to recommend and the governing body has the power to either approve or disapprove a recommendation.

Well, so much for that. I can see justification for putting that final power in the local Adjustment Board although I am not particularly sympathetic toward it. I do say this, however: You have given them that power, or the draft gives them that power rather, and then you don't permit an appeal to the local governing body. You take it to some county Board of Zoning Appeals. Now, I think we all realize and know that variances deal with local problems which are peculiar not only to the municipality in which the property is situated but also to the neighborhood, an even smaller area. Now, the members of your governing body certainly are more intimately acquainted and have a greater interest in maintaining the zoning integrity of their community and that particular neighborhood than, it seems to me, would a county board of zoning appeals who may not even have a member from that municipality on the board. It just doesn't seem to me to be logical. My feeling there is that we either should retain the present setup of permitting the board of adjustment to recommend, with the governing body having the final say, or, if you wish to give the final say to the Board of Adjustment then at least give the right of appeal to the governing body, or appellate jurisdiction to the governing body, rather than to this board which is supposed to be like a county board of taxation. We are all acquainted with county

boards of taxation, and quite frankly I think I would rather have my cases decided by the governing body.

My third comment with respect to the Board of Adjustment is the provision in which the draft provides in Section 517 that the rules of practice and procedure for boards of adjustment shall be promulgated by the Division of Planning in the State Department of Economic Development and Conservation. Quite frankly, I think that undoubtedly the Planning Division has many expert planners but I don't think they are particularly expert in the field of developing rules of practice and procedure. We have at the present time through many years of court decisions a fairly well established set of basic procedure before boards of adjustment, but if the Committee feels they are not sufficient or they are improper, or for any other reason require a change, then it seems to me that this statute is the place where those rules of practice and procedure should be set forth, not by a group of planners.

My next comment deals with the sections on the elimination of nonconforming uses. There has been a considerable amount of comment here, and as a municipal attorney my own feeling is that the elimination of nonconforming uses is basically a very sound proposition, but I cannot see that it is proper or fair to eliminate nonconforming uses where you do not have just compensation or some compensation to the person whose structure and investment is being eliminated. Now, you all know how easy it is to make what is today a conforming use a nonconforming use. It requires a simple legislative act by a 5 or 7 or 9-man governing body; sometimes a 3-man governing body, and to permit a municipal

governing body to come in and suddenly re-zone on a perfectly perhaps sound basis and put someone out of business who has just finished, let's say, building a million and a half dollar industrial plant, and tell him in five years, "Mr. Smith, you're through." Now, with no compensation, to my mind, that is not the American system as far as I'm concerned. I think also that the scope of the statute is much too broad, and there are no standards. That has already been commented on and I will not bore you with any further comments.

My next comment deals with the subdivision section. Now, there I am very much concerned with this tentative approval proposition that you have in there. As it reads, a builder or developer can come in and get tentative approval for a development. Now the effect of that under this draft is to freeze zoning in so far as concerns that property for a period of three years; in other words, your municipality and your governing body are completely at a loss to do anything no matter what change in circumstances may occur, no matter what may develop. As I pointed out in my letter, that is the answer to the building contractor's prayer, but I don't think that it's fair to the municipality and I see no real need for it or basis for it.

Finally, there are numerous innovations that I observed in the sections dealing with zoning, including the gift of the power to adopt design ordinances. I think, along with some of the earlier speakers, that many areas of both portions of the draft are much too broad in scope and don't have proper standards set forth, and I certainly urge that they be reexamined. Just to point out a few of them,

the draft provides, in connection with zoning, districts within districts. What standards are to be used? Conditional use - what is conditional use and what standards are to be used there in granting it? It seems to me again in that type of thing that all you are doing is legalizing spot zoning. In the standards that are set up, they talk about spatial distribution. I don't know what that means. I have seen it used in connection with planning acts in other States but I have never seen it used in connection with standards to guide the adoption of zoning ordinances.

Now, the same thing with regard to your municipal design plan ordinance. As I read it, it is exceedingly broad. It could easily be interpreted to mean that some group of officials in the municipality who have been so empowered can tell you or me that we may not build this particular type of house on this particular piece of ground, because it gives them the power to set forth architectural characteristics, landscape treatment, etc. I think that that power is an exceedingly dangerous one unless it is clearly restricted by definite standards set forth in the draft.

Now I have no further comment, and I want to thank you gentlemen for permitting me to appear before you.

MR. STICKEL: Mr.Allcorn, may I ask you a couple of questions?

MR.ALLCORN: Yes, surely.

MR. STICKEL: In the first place, you seem to be complaining that we are taking power away from the municipality in the exercise of its planning powers, and then at the end of your talk you are saying we are giving too much power

to the municipality by this legislation. Isn't that about the sum and substance of it?

MR. ALLCORN: No, I'm not saying that, Mr. Stickel. I am saying that you are removing from the control of the municipal governing body and transferring to the Planning Board powers that the Planning Board should not have without supervision by the governing body.

MR. STICKEL: Yes, but the rest of your argument was that the powers that we were conferring upon a municipality to adopt ordinances are too much.

MR. ALLCORN: Therefore, it is too broad unless you have proper standards.

MR. STICKEL: The standards would have to be set up by the local municipality in its own ordinance.

MR. ALLCORN: I think not. I think, in order for the statute to be any good, Mr. Stickel, you are going to have to put your standards in your statute, from what I understand the constitutional law to be.

ASSEMBLYMAN DEAMER: Mr. Allcorn, were you referring there to the esthetic consideration when you mentioned the standards?

MR. ALLCORN: Yes, and the power which the statute gives to deal with architectural characteristics, Mr. Chairman, layout of site, landscape treatment; in other words, where I may put a bush, whether I may put it on this side of the door or not. I realize that I am using extremes but nevertheless the language in this draft is that extreme.

MR. THOMPSON: Mr. Allcorn, one further question: On this nonconforming use amortization as it is called, do

I understand you to be opposed to that as it is represented in some 14 other jurisdctions or as it applies in places such as Richmond?

MR. ALLCORN: Let me put it this way, Mr. Thompson. I am opposed to it unless provision is made for compensation to the individual. I think nonconforming uses in most instances should be eliminated, but this you are doing on behalf of the public because you, as public representatives, believe that the public wishes it. Well, if the public wishes it, fine, but let us not forget the individual rights and, if you are going to take my factory because the public thinks that this should be an all-residential zone, all right - I don't like it; I'll have to move - but I do think that I should be paid for my investment and my structure, and so forth; that's all. That's the basis of my opposition.

ASSEMBLYMAN PANARO: Do you feel that there ought not be any control as to archiectural design, lawns, and landscaping, etc.?

MR. ALLCORN: Well, let me put it this way: My feeling is that I am concerned about these cheap look-alike developments. There, if you can draft your restrictions to that type of thing, yes; I'm certainly not opposed to it but, when it comes to telling me that if I buy a lot in an established neighborhood and because it has dwellings principally of colonial design, let us say, I cannot put up a modern dwelling, a single ranch type, or something like that, or that I must landscape my property in such a fashion as to hide it if I'm going to do it, then I think that legislation goes too far.

MR. STICKEL: The legislation doesn't go that far.

MR. ALLCORN: I'm not sure it doesn't.

MR. STICKEL: Well, it sets up a method not of architectural control but design control similar to that established in other states, such as in Massachusetts, where they permit the establishment of historical districts and the control of buildings and what not in those historical districts so as to preserve the character of the district. That's all that this is designed to do. Now, again, I appreciate your comments, but I think that all we are trying to do here is to set up enabling legislation so that 567 municipalities may operate under it, and you must appreciate that what goes on in Montclair may not be comparable to South Jersey and, therefore, we have to draw broad enabling legislation which will let each municipality set up their own ordinances and their own standards to guide their own growth.

MR. ALLCORN: Well, I can appreciate that different communities have different problems, Mr. Stickel. But let me read to you the language of Section 510. It says, "Any municipality may, by ordinance, adopt a municipal design plan as part of its development plan or zoning ordinance. a. Such design plan may cover proposals affecting visual aspects of any or all of the following: scenic areas, vistas"- I don't know what a vista is, frankly.

MR. STICKEL: Well, before we get any further -

MR. ALLCORN: Well, wait a minute now. "Architectural characteristics"- you are talking about architectural characteristics - "architectural characteristics" and I'm quoting, "street furniture, site layout,... landscape treatment, three-

dimensional relationships of structure" - if that doesn't give the municipalities the power to do what I said it might very well do, I don't know what does. If you're going to restrict it, if you want it restricted to within a certain area, then I think the statute should say so. That's all.

MR. STICKEL: Well, I'm saying this, Mr.Allcorn, that the ordinance on which this design plan, or the ordinance which carries out this design plan can only be adopted (1) after a master plan has been adopted by the municipality and (2) after a municipality by ordinance has adopted a design plan and the ordinance carries it out so that the people have a right to say in what respect, and the local officials have a right to say in what respect they are going to control design within the framework of the enabling legislation. I feel that the people and elected officials should have that power and the seat of all power is in the people to start with, and if they and their elected officials are of the mind to adopt such an ordinance that is for the best interest of the community as a whole, I don't want to deny them that right.

MR. ALLCORN: Well, I don't want to deny them that right either, Mr. Stickel, but it seems to me that if you are putting in here something which permits a group in Montclair to tell me that I can't have my house on my lot in that particular area in the design in which I have it, I think you're going pretty darn far.

MR. STICKEL: Even if the rest of the community feels differently?

MR.ALLCORN: Well, it's not the rest of the community at all. You see, what you are overlooking is this planning

board. The planning board adopts the master plan and, another thing, you've made that thing in here mandatory of adoption by a community and by a planning board. Today, as you know, it's permissive. Why a municipality should have to adopt a development plan, I certainly don't know. And why it should have to adopt a future land use plan which, in my opinion frankly, is going to devastate land values if you don't do it right - and it may very well not do it right - I don't understand. You cannot adopt a design plan ordinance until the planning board has adopted it.

MR. STICKEL: That's right.

MR. ALLCORN: That's what you've provided. Don't tell me it's in the hands of the people, because it's not. It's in the hands of the planners.

MR. STICKEL: It's in the hands of the governing body to adopt the ordinance.

MR. ALLCORN: Well, I suppose it is, but it just seems to me that it goes much beyond any delegation of powers that I have ever seen in New Jersey to local officials, whether in planning and zoning areas or in any other areas.

MR. THOMPSON: I don't want to impose upon you and I know we've taken a lot of your time already, but I wonder, in view of your long experience in various public roles, if you could give us the benefit of your thoughts as they affect not only this part of Title 40 but others that come up here, because there seems to be some concern as to how much so-called home rule should be given to a municipality. Frequently people argue for it when they want it home and they are against it on other things. I wonder if some of your comments

today are not directed along those lines. You've said you are opposed to too much home rule in the area of esthetics. On the other hand, you feel that there should be more home rule in the elected officials. Is that consistent, do you feel? And what is your general belief on the over-all picture of not only this but the whole Title 40?

MR. ALLCORN: Well, as I understand my comments, I have not said there is too much home rule on the one hand, on esthetics, and too little home rule on the other aspects, by which I assume you are talking about this planning business that I mentioned initially. All I have said, Mr. Thompson, was that at present your governing body enjoys certain powers under your zoning and planning act, which I think properly reside there. They have the power to adopt zoning ordinances whether the Planning Board recommends them or not. They have the power of passing in an appellate position on subdivision approvals or denials by the Planning Board. They have the power to approve or deny finally grants or recommendations of use variances, and so on. All I said there was merely that that power should remain where it is; it should not go over to the Planning Board. Now, to my mind, I have not, by saying that, said that there is not enough home rule. I have said, yes, that I think that putting the power - by statute giving this power to a municipality to itself empower some group to pass upon architectural characteristics, landscape treatment, vistas, street furniture, site layout, arrangement of buildings on property, without sufficiently clear and definite standards is too broad, and I do think so, and I say that not because of my own philosophy of home rule

but because of what I understand the basis of home rule to be in New Jersey; namely, that of a very limited one. We are not, as you know, one of the so-called home-rule states. As I understand the law in this State, our municipalities have only those powers which are given to them expressly and those which flow incidentally from the expressed powers or those powers which they have by necessity. So I have grown up with that, and perhaps I have adopted that as my philosophy; I don't know. Since you put the question that way, then let me say this: I think that very possibly, if the grant of authority so far as design plan is concerned, remains in the form in which it is presently set forth, it might very well be held to be unconstitutional because of the fact that the standards are not sufficiently definite.

MR. STICKEL: Do you believe that the philosophy of this Commission that we should give as much home rule to municipalities as possible is improper and that we should stick with the present limited home rule?

MR. ALLCORN: I didn't say that, Mr. Stickel. I addressed myself to specific items.

MR. STICKEL: Well, I ask you that question, if you care to answer it.

MR. ALLCORN: Your question was what, sir?

MR. STICKEL: Do you believe that the philosophy of this Commission that we should give as much home rule to municipalities as possible to solve their own problems is improper and that we should stick to the present limited aspects of home rule?

MR. THOMPSON: That's a problem we face throughout -

MR. ALLCORN: I appreciate that. I think it is going to depend, Mr. Stickel, on the individual problem, on the individual aspect of the legislation.

MR. STICKEL: Our philosophy has been, on this Commission, at least to date, that we don't want to deny any power to a municipality if, as experience has proven throughout the years, they need it.

MR. ALLCORN: All right, but experience has proven that we don't want these cheap look-alike developments. That, I agree with, and I said that initially. But I think you've gone too far; that's all.

MR. STICKEL: But the cheap look-alike ordinances are of very questionable validity, as you well know, and they are not the proper subject matter of zoning.

MR. ALLCORN: I don't know; you're telling me, in other words, then, that the only thing you can do is to give the municipality unlimited power, and I don't think that is so.

MR. STICKEL: We are saying in effect that under this system, if you are going to exercise that power instead of just adopting an ordinance saying that every other house must look different on no plan whatsoever, then in the first instance you must have a plan which is (1) acceptable to the Planning Board, (2) acceptable to the public, and (3) acceptable to the elected officials.

MR. ALLCORN: But on what basis? Who establishes the standards? What standards? Are you going to tell me that I can't -

MR. STICKEL: The local officials will have to establish them.

MR. ALLCORN: Are you, as a member of the local official body of Cedar Grove going to tell me that I cannot, after I have spent $10,000 for a lot, I cannot put up a ranch type dwelling?

MR. STICKEL: That goes to the reasonableness of the ordinance as drafted.

MR. ALLCORN: Well, no, it doesn't. I don't think you have the power to give them that power (1), and secondly if the Legislature does have the power to give them that power, I think it should not be given.

MR. STICKEL: You don't think that power should be given -

MR. ALLCORN: Not to the extent it is given here, no, I certainly do not.

ASSEMBLYMAN DEAMER: I gather from what you say, Mr. Alcorn, that you are not opposed to giving esthetic consideration to this problem.

MR. ALLCORN: Oh, very definitely not.

ASSEMBLYMAN DEAMER: It's just that you feel that there should be a reasonable standard and that that reasonable standard cannot be arrived at by having every individual community decide what is reasonable and what is the standard.

MR. ALLCORN: That's right.

ASSEMBLYMAN DEAMER: And what you may fear is that some day they will tell you what color to paint your house.

MR. ALLCORN: Or where to plant this bush; exactly.

ASSEMBLYMAN DEAMER: Yes. I think I appreciate your remarks and I appreciate your feeling, because you do believe too that you want to get away from the development

that has come into New Jersey where everything looks alike, and it affects the value of the community, and you want at the same time to be able to be assured that in every community the same standard is going to exist.

MR. ALLCORN: Exactly, and you won't have too many opportunities for arbitrary and improper action locally.

ASSEMBLYMAN PANARO: Do you conceive it to be a valid exercise of a municipal governing body to prohibit certain types of dwellings, for example, if you have an area that is predominantly early American? Would it be impossible or not, under an ordinance passed pursuant to this statute, to prohibit, for example, some other type of architecture? Is that what your objection is?

MR. ALLCORN: Well, that was merely an illustration that I used as what I understand this statute enables a municipality to do, yes. That is exactly what I used as an illustration, and I think it's too broad.

ASSEMBLYMAN DEAMER: Just one other question: Do you feel that this kind of a consideration is probably more applicable in the way of deed restrictions?

MR. ALLCORN: I am not sure that I understand -

ASSEMBLYMAN DEAMER: Well, we are talking about esthetic considerations and we are talking about developments. Do you feel that the esthetic consideration is more applicable to a private situation than a restriction in a deed?

MR. ALLCORN: No, because there, you see, that is purely a matter of private dealings between two individuals. Your municipality and your government generally have no control in that situation. Here we are dealing with the question of

giving your local body some measure of control over something which I think has the beginnings of our next slum areas, given 10 or 25 years from now; namely, your look-alikes.

ASSEMBLYMAN PANARO: On this tentative approval, do I understand you to say that they should do away with the distinction between tentative approval and the time approval, or just limit the time less than the 3 years set forth in the proposal.

MR. ALLCORN: My position on that is that I see absolutely no need for tentative approval whatever in so far as the results which are to flow from it are, according to the present draft.

MR. STICKEL: Well, wasn't the present case decided -

MR. ALLCORN: I don't care what case was decided; I don't think that the statute when it was originally enacted was intended to do that.

MR. STICKEL: It was exactly that.

MR. ALLCORN: Well, perhaps it was, but if it was, then I disagree with it. Whether that's present law or new here, I just don't think that anybody has the right to come in and freeze zoning, which includes use and includes lot sizes, setbacks, and everything else with respect to a particular piece of property, for three years. Nobody can tell what's going to happen in that intervening period. And this tells the municipality, "You may not change your zoning regulations in any respect with respect to this property for the next 3 years ." And I think it's dangerous.

MR. STICKEL: Only as to that property.

MR. ALLCORN: Well, yes, of course.

ASSEMBLYMAN PANARO: What would you do with a developer who has spent considerable sums of money in engineering fees, etc.?

MR. ALLCORN: Well, you know, sir, when we go into business we all take a certain amount of risks. When I opened my law office, I took a risk. And I think that we each in our own business or profession operate it in the best and most economical fashion in order to take the least risk, and if a man wants to go in the building development business, that he may certainly do, but I do think he has got to assume the risks that normally attend that, that's all. And I certainly don't think that you've got to impose on the public for his benefit, and his benefit alone, with no equal benefit or greater benefit to the public - no benefit to the public so far as I can see - just for his individual benefit. That, I object to.

ASSEMBLYMAN PANARO: Don't you think there could be a compromise effected with reference to the time element? In other words -

MR. ALLCORN: On the time element? Well, look, I'm against it at all. It's three years now under this new case, you see -

MR. STICKEL: Three years, and it's less - the present law is more than is in the present act. There is no limitation in the present law.

MR. ALLCORN: Well, I'm still opposed to it, and since we're changing there is no reason why we have got to give the building contractors and the developers any more protection than they presently have. If we think it's too much, why can't we withdraw it from them.

MR. STICKEL: They remain to be heard from.

ASSEMBLYMAN DEAMER: The next witness I'll call is Roscoe H. Fuller.

MR. ROSCOE H. FULLER: Mr. Chairman and gentlemen of the Commission: My name is Roscoe Fuller. I am chairman of the Planning Board of Morristown. Also here is the town attorney Marco Stirone who is available for your questions if you wish.

The draft of the Municipal Planning and Zoning Law has been under study by a committee of our Planning Board. Unfortunately the chairman of that committee is out of the country and it has been impossible for us to receive their report. We should therefore appreciate an opportunity to submit that at a later date in writing if we may.

Pending that, however, we should like very much to commend the members of the Commission on having done an outstandingly good job. We think this proposed law offers a great advance over what we have heretofore had.

There are a few comments that I should like to offer. Specifically, in section 7-521 under use variances, we should like to see those even more stringent than the draft provided us. We have been troubled in our town and other towns have been, of course, with a great many use variances. Of course, they involve differences of opinion as such things always do. But we feel that if the granting of use variances were more specifically limited, it would be of benefit to the people of the state.

Under section 7-603, which involves the time within which the planning board must act, the time is suggested as 45 days; that can be a serious handicap with municipal bodies such as planning

boards composed of lay people, especially when, as sometimes happens, they hold no meetings during a month in the summer. It would be beneficial, I believe, to change that to 60 days.

Also under 7-603, the matter of three year tentative approval, we think goes a little further than need be. We would rather see that reduced to two years, our feeling being that if a developer is unable to bring a final plan for approval within a two-year period, his interest in the development is not as immediate as it should be and two years seems to us an entirely reasonable time.

Consideration might also be given in that connection to the matter of change of ownership. As I read the draft, that isn't covered. But we have seen cases where tentative approval was granted under certain conditions as to grading and others, but not conditional approval in a legal sense, the conditions being a matter of agreement between the board and the developer.

In a few cases the property has changed hands one or more times between the tentative or final stage and sometimes later and it has had the effect of glossing over the conditions to which the first owner agreed. It would appear that serious thought might be given to allowing a two-year period if the property remains in the same ownership with the thought that did the ownership change, the new owners should appear for reapproval.

Under 7-107, removal of members of planning boards or such bodies for nonfeasance - that as I read it allows little more discretion than heretofore in removing people who don't do the job they are appointed to do. It is extremely difficult, as I am sure you all know, to remove a person under those conditions. It involves hearings and usually a great deal of public furor. I believe it

would be to the advantage of the state and the municipalities having such boards if the law specifically stated that non-attendance at three successive meetings without adequate excuse be prima-facie evidence of non-feasance so that a person would automatically or could automatically be removed following that series of affairs.

In the urban redevelopment section, sections 7-102 and 7-801 and those following, I would like to repeat some of the things that have been said earlier today on the terminology.

We have found in our own efforts to promote urban redevelopment plans that people are extremely sensitive to words. We realize that the proposed law, as does the federal law, lists four or five successive terms with the word "or," which, of course, strictly means that any one of those terms might apply. The natural tendency of people writing up these applications is to follow the manual verbatim and put all four in; people being usually not careful readers of such things, immediately jump to the conclusion that everyone within the study area is in a slum or a blighted home. And it arouses a considerable degree of opposition, unjustifiably. It is impractical, or seems to us to be impractical, to explain to every citizen the precise legal meaning of terms such as blight, and since it is a sensitive matter, I would propose that we find better words or different words, such as "areas subject to improvement" or something of that sort, which take more concern for people's sensibilities while having no serious difference in meaning.

I would like particularly to commend the Commission on its inclusion of the provisions 7-510 to 514 on the municipal design plan. We think that excellent. We have, in fact, under consideration an ordinance covering municipal design, which, if it becomes enacted

will come under the police powers rather than the planning powers, those being the only ones as we understand it currently permissible. But a thing that could be put into that section which could perhaps tighten it up could specifically list as one of the reasons for a municipal design plan or a determination under that plan an adverse effect upon the value of surrounding property. That isn't specifically mentioned - of course, it is implied - but it is thought that specific mention of that might be beneficial.

Another one, but one particularly we would like to commend, is the one on elimination of nonconforming uses. The possibility of doing that we think highly desirable for the benefit of the citizens in any community. One may fear, of course, that it would be used improperly, but it seems to me that confidence in the elected officials and the appointed planning officials in a town should be sufficient or the remedies available to the people sufficient, that that power wouldn't be misused. It is a section fraught with some danger, of course, in case the officials in an area might appear to be vindictive in a particular case. It might be that it should be more clearly spelled out. The basic idea we think is completely good.

Thank you, gentlemen, for the privilege of speaking to you.

MR. THOMPSON: Thank you very much, Mr. Fuller.

MR. STICKEL: I have one question. I gather you interpret or Mr. Stirone interprets the three-year limitation as being one that, if tentative approval is given, it must be for a three-year period.

MR. FULLER: That was my interpretation of it.

MR. STICKEL: That is not my interpretation, but you may

be right. That's what makes a horse race; that's what makes law suits.

If the provision provided that you could grant it for not more than three years with the right to extend it within that three-year period, wouldn't that satisfy you? It would give you a little more flexibility. You could give it for one year or a year and one-half or two years. Then, if the situation as you indicated, the change of ownership came up, you could on application extend it.

MR. FULLER: That would appear to cover it very nicely.

MR. STICKEL: It would appear to cover it. Thank you.

MR. THOMPSON: We would be very happy to have whatever memorandum the Morristown Planning Board would care to send down. I would only like to say that we would appreciate it if you could send it to us as soon as possible. We are trying to adhere to a fairly tight schedule. We wish to take into consideration and have the staff review all the comments made here today and all the communications we have received. We then hope to get a second draft out and consider that further at another hearing. So if you could have that down to us as soon as possible, it would be appreciated.

MR. FULLER: We shall be happy to do so.

MR. THOMPSON: Mr. Alvin Geser. (No response.)

Mr. Herbert Weissberger.

MR. HERBERT WEISSBERGER: My name is Herbert Weissberger. I am an attorney and I am a member of the Zoning Board of Adjustment of the Borough of Metuchen and also secretary of that board. However, the statements which I will make reflect my personal views and they are not intended to reflect the views of the Zoning Board of which I am a member.

My statement concerns just three provisions of the proposed law. First, 40A:7-105 with respect to conflict of interest - the restrictions in this section do not seem to clearly set forth the area of the restrictions. If the proposal intends that no member or employee of any agency, board or commission of one municipality may appear for or represent any firm, corporation or other entity in any matter pending before any agency, board or commission of any other municipality, then in my view this restriction is too broad. It would seem that lawyers, realtors and engineers, for example, do have certain desirable professional qualifications for service on zoning boards, and this appears to have been recognized since such persons with these qualifications are often selected to serve on zoning boards and, of course, planning boards. Yet by the very nature of their professions, they regularly appear before zoning boards and planning boards on behalf of clients, either representing such clients or as expert witnesses.

The board restrictions proposed by this section would prevent such qualified people from accepting appointments to those agencies, boards or commissions since the sacrifice required would probably be too great.

I would recommend that following provision: "No member or employee of any agency, board or commission created pursuant to this chapter or any municipal employee or official exercising any of the powers of this chapter shall appear for or represent any person, firm, corporation or other entity in any matter pending before such agency, board or commission or their agents of the municipality in which such member, employee or official serves or is

employed."

Next I refer to section 505, changes in zoning plan, protest, and adoption over protest. The following comment concerns the provision for a change in zoning by petition to the planning board. It would seem that this particular provision is not consistent with the provision that is made in the case of a protest against a proposed change.

In the case of a protest, the majority vote required of the governing body is affected by a protest signed by the owners of 20 per cent or more "either of the area of the lots or land included in such proposed change," or of the lots or land in the adjacent area, as specifically provided in the proposal.

Yet, in the case of a petition by a taxpayer for a change in zoning, the petition must be signed by 20 per cent of the landowners in all directions within a specified distance, or by 20 per cent of all landowners in the particular zone. So it seems that in the former case the size of a parcel of land owned by a particular owner adds weight to that owner's effectiveness in making a protest, but in the latter case an owner of a very large piece of land within a particular area or zone district might not be able to act effectively if the land in the surrounding area or in the other part of the zone district is divided into small parcels. Theoretically, a landowner who might, for example, own 75 per cent of the land in a particular zone district could not petition for a change in zoning unless he obtained the signatures of 20 per cent of the owners in that zone district even where all of the other owners in that particular zone district owned, in toto, only 25 per cent of the land in that district. Of course, such a large

landowner might use the subterfuge of subdividing a small piece of his own land so that he himself would be the owner of all of the land within 500 feet of that subdivided lot. But, then should a statutory scheme be enacted which by its terms creates a motive for and encourages subterfuge?

The particular provision of this section concerning petition to the planning board would seem to be inequitable and I would suggest the following:

"Any taxpayer of the municipality may petition the planning board for a change in zoning, provided the petition is signed by the owners of 20 per cent or more either of the area of the lots or land within 500 feet of the property in question, or of the area of all of the land in a particular zone district."

My next comment concerns section 528, appeals from the board of adjustment. This portion of the statement is concerned with that part of this section which provides that the board of zoning appeals shall review the proceedings of the board of adjustment solely on the record of the board of adjustment except when additional evidence is needed for an adequate determination of the issue in which case such testimony may be taken before the board of appeals.

In many, if not most municipalities, proceedings before local boards of adjustment are very informal in nature. Often the boards rely on their own knowledge of the area. They rely on statements made by the attorney or by the applicant or on statements made by members of the public who appear in opposition to the variance. The taking of testimony in the true sense before most

boards does not constitute the form of proceedings that they usually follow, even though the hearing is supposed to be quasi-judicial in nature.

This informal type of procedure is not necessarily bad and, in fact, has quite a bit to recommend it. Members of local zoning boards are quite familiar with the nature of their community and are able to bring their local knowledge to bear in making their determinations. It also gives members of the public an opportunity to be heard in an informal manner in order to make their objections known to the board. This procedure has considerable merit in most applications which are presented to boards of adjustment and it provides an expeditious forum for the disposition of routine variance applications.

But even in those municipalities which require a stenographic record to be made, it is still difficult to carry out a hearing in a true judicial manner. The public rightly wants an opportunity to come down when they receive notice to be heard. They usually do not appear by attorney, and it is very difficult for the board to actually have these people present their statements and be cross examined in a proper manner.

Nevertheless, I feel that the proceedings before local boards should be preserved and, in fact, the informal nature should be preserved for the value that it has at the local level. But, where the applicant or any objector is aggrieved by the determination of the board, such an aggrieved party should have an opportunity to have a hearing before a county board of appeals de novo.

If no party is aggrieved by the local proceeding, then the

local proceeding has served its purpose. He need go no further. It is only in those cases where somebody is aggrieved. Who is going to make determination and under what standards are they going to operate as to whether or not the record made below in the local board was sufficient so that no new testimony need be taken before the county board or to the contrary that new testimony ought to be taken? Couldn't they take the position that it is up to the applicant, for example, to make out his case no matter what the circumstances were and, if he didn't make it, why permit new testimony to be taken?

I would make two suggestions. The first one is the one I prefer most. The second would be an alternate.

My first suggestion is that the review of the proceedings of the board of adjustment before the board of zoning appeals be a plenary hearing de novo.

My second suggestion is as follows: If in the hearing before the board of adjustment from which the appeal is being taken a stenographic record was made by a certified shorthand reporter, the review of the proceedings of the board of adjustment by the board of zoning appeals shall be heard de novo on the record and in such case an original and a copy of the transcript shall be filed by the appellant with the clerk of the board within ten days after the filing of the notice of appeal. In all other cases in which no such stenographic record was made in the hearing before the board of adjustment, the review of the proceedings of the board of adjustment by the board of zoning appeals shall be by a plenary hearing do novo.

I just have one other remark I would like to make which I

think goes to the basic philosophy involved in the promulgation of zoning statutes. It seems to me that people responsible for enacting enabling laws and zoning laws and ordinances have lost sight of the fact that basically zoning laws are an invasion of the right of private property. It is true that they are a warranted invasion. It is true that it is a necessary invasion to preserve the health, welfare, and serve the social and economic needs of the municipality. But I think if we don't overlook this basic fact and permit that to temper the zoning laws that are enacted and that is, that no law shall be enacted which goes beyond the necessity of promoting the general welfare, we would be acting more properly.

A remark that was made by an earlier speaker highlights this, I think. He said that a nonconforming use is a privilege. Now the moment that legislative bodies consider land use a privilege, I think we have lost sight of the entire concept of the right of private property as it exists today in our democracy.

I also think that while the will of the majority of any community with respect to the enactment of zoning laws, design plans and so forth is material, we also must not forget that one great feature of our democratic form of government is the preservation of the rights of the individual and minorities against the tyranny of the majority.

ASSEMBLYMAN DEAMER: Any questions? Thank you, Mr. Weissberger.

Now we have come to the end of the list of the witnesses which was made up this morning and I wondered whether there are any other persons here who would like to be heard and testify.

MR. JOSEPH: I am Mr. Joseph of Houdaille. I advised your Commission yesterday ---

ASSEMBLYMAN DEAMER: Will you come up here, sir. Will you state your name, please.

MR. WILLIAM E. JOSEPH: My name is William Joseph and I am Assistant to the President of the Houdaille Construction Materials, Incorporated, at Morristown, New Jersey.

An earlier speaker before, in fact, the first speaker, mentioned the fact that he appreciated the opportunity to take two bites out of the apple. I want to tell you that I am appreciative of the fact that I can take the first bite out of the apple. But in delaying this first bite this late in the session, I hope I won't prove too wearisome or repetitious to your group here. Of course, many of the statements that I have to say have been said in a different fashion by other speakers.

MR. STICKEL: We all have copies of your report.

MR. JOSEPH: Yes. However, I would like the opportunity and privilege of this group to submit within the next few days a list of approximately twenty-five companies operating in the State of New Jersey who wish to associate themselves with the position I am going to take right here now. I am in the process of assembling that because I got into this very late and it will take me several days to do so.

On February 27th we wrote to your body to express the concern of this company, and of our industry, over one of the major proposals in the tentative draft of section 40A:7-531, which permits the elimination of a nonconforming activity or use,

and sections 533, 534, and 535, which authorize municipalities to amortize nonconforming uses.

In addition, the tentative draft proposes to eliminate the existing section 40:55-48, which requires the continuance of nonconforming uses in existence at the time of adoption of a zoning ordinance.

At this time we wish to reaffirm our objections to sections 40A-531, 533, 534, and 535, and to urge you strongly to retain the existing section 40:55-48.

In brief the proposals relating to nonconforming uses would permit municipalities: First, to adopt zoning ordinances which convert established and legal uses into nonconforming uses; and, secondly, to arrange for the complete elimination of such uses over a period of years. No restrictions have been placed on the municipalities other than that the specified time must be "reasonable."

Granting this great combination of powers to the municipalities poses the danger of widespread economic loss, both to individual firms and to the public, through the systematic destruction of essential business activities. This would be particularly true of our industry since our operations can exist only at locations where the necessary mineral resources are available since they require substantial investment in land, buildings and equipment and since our operations must be planned over long periods of time.

ASSEMBLYMAN DEAMER: I beg your pardon, sir. I understand that you have already submitted that for the record, haven't you?

MR. JOSEPH: Yes.

ASSEMBLYMAN DEAMER: That is rather a lengthy document, isn't it?

MR. JOSEPH: Yes.

ASSEMBLYMAN DEAMER: It runs about 16 pages.

MR. JOSEPH: No, 5 pages.

ASSEMBLYMAN DEAMER: Oh, I was told it was about 16 pages. All right, sir.

MR. STICKEL: If we already have it as part of the record, is it necessary we read it over again?

MR. JOSEPH: Well, as much as you would any other statement that is made here. If it is your pleasure, we will refrain.

ASSEMBLYMAN DEAMER: Well, let's proceed. You read it.

MR. JOSEPH: I don't think maybe I should in the light of your viewpoint.

ASSEMBLYMAN DEAMER: You proceed with it. We certainly want you to have a ---

MR. THOMPSON: I was wondering this: Would it be possible for you instead of reading that which we already have, to explain generally your position and the extent to which it differs or expands on the position taken by other spokesmen earlier representing, as I understand it, substantially the same type of activity?

MR. JOSEPH. Yes. There is no question of that. I am representing 25 companies. I felt as though I had an obligation to them.

ASSEMBLYMAN DEAMER: May I say this: I think whether you read it or not, the report is going to be completely considered by the Commission. I think that is what we want to ---

MR. STICKEL: Many of us have already read it.

MR. CUMMIS: As soon as it was received I read it and we began to study it and consider it. I think yours was the first

report and comment sent in to the Commission in written form and it was the first one to receive consideration by the staff.

MR. JOSEPH: Well, all I wish is that I had been advised that way. I certainly had some other important activities.

MR. THOMPSON: Are your present locations nonconforming uses?

MR. JOSEPH: Well, we have 32 locations. We are vitally interested in this thing, our own company.

MR. STICKEL: Well, are they all nonconforming uses?

MR. JOSEPH: No, they are not. Some are and some are not. But the threat over them as exists in the power to amend certainly poses a threat of nonconforming uses over all of them.

MR. STICKEL: You heard the question I asked the other gentleman earlier. Under the present setup of the present municipal law - and I have been involved personally in many of these cases, both by zoning and by soil removal and by regulation of quarries - you can more effectively be put out of business than through the nonconforming use aspect of this regulation. Isn't that true?

MR. JOSEPH: I don't get your point, Mr. Stickel.

MR. STICKEL: Well, through the zoning ordinances or through the power that the municipalities presently have to zone and to eliminate quarries and through the power of soil removal ordinances which many of your industries have already attacked in the courts unsuccessfully, and through the regulation by the state and otherwise, you could effectively be put out of business much more effectively than through the elimination of a nonconforming

use. Isn't that true?

MR. JOSEPH: No, I don't concede that.

MR. STICKEL: Well, in what respect is that wrong? How would you be more put out of business by this aspect than you would if they said you could have no more quarries?

MR. JOSEPH: Well, you couldn't come along -- if you are conforming at the present time, you can be made nonconforming.

MR. STICKEL: Yes. But that nonconforming would only be as to the land you were presently operating on. Isn't that right?

MR. JOSEPH: Well, we are operating on all our properties.

MR. STICKEL: Yes. But if X, Y, Z municipalities should pass an ordinance tomorrow and say no more quarries in this area.--

MR. JOSEPH: That couldn't put us out of business.

MR. STICKEL: It couldn't put you out of business, except for the land that you are presently quarrying.

MR. JOSEPH: Well, we have some pretty big lands, enough to last us one hundred years or more. We are in many locations. If we are nonconforming, we would prefer to be conforming and to do everything necessary to be so.

MR. STICKEL: Yes. But you wouldn't be any less nonconforming if the ordinance tomorrow should eliminate all quarries in that area. Isn't that right?

MR. JOSEPH: They could make us nonconforming, sure, by the power to amend.

MR. STICKEL: Right.

MR. JOSEPH: But presently the power to amortize does not exist.

MR. STICKEL: But they could eliminate you greater by their

power to eliminate you entirely.

MR. JOSEPH: They can't eliminate us entirely, no.

MR. STICKEL: Well, they can eliminate you to the extent that you can't go beyond the land you are presently quarrying.

MR. JOSEPH: We believe that those lands are adequate in most of our cases to last up to one hundred years or more.

MR. STICKEL: Well then, if the amortization period were for that length of time, you would have no objection?

MR. JOSEPH: Well, that is one of the weaknesses, we feel, in the amortization principle. There is no protection in here that would guarantee anything like one hundred years. There are no cases that have been brought before any of the courts on such large investments of funds.

MR. STICKEL: That doesn't go to the principle of nonconforming use; that goes to its operation, does it not?

MR. JOSEPH: I am sorry. I don't get your point, Mr. Stickel.

MR. STICKEL: Well, that goes to the question as to whether the amortization period as established in each individual case is adequate.

MR. JOSEPH: That's right. That is one of the things ---

MR. STICKEL: It doesn't go to the theory of elimination of nonconforming uses.

MR. JOSEPH: Sure. We are not in favor of elimination of nonconforming uses. We want to make our position known on that too.

MR. STICKEL: In other words, you don't want any nonconforming uses eliminated?

MR. JOSEPH: Certainly we are not in favor of it.

MR. STICKEL: To the extent that you are nonconforming today, you can't go beyond what your present operation is.

MR. JOSEPH: That's right. We don't want the threat hung over us, as many of the other industries likewise feel hangs over them, that the fact that you are in nonconforming at the present time would permit the amortization extension that is proposed in the revised draft.

MR. STICKEL: But that goes to whatever period may be established, does it not?

MR. JOSEPH: Well, that's right.

MR. STICKEL: But that goes to the operation of the law, not to the law itself.

MR. JOSEPH: Well, we are not in favor of the law, firstly; and secondly, we are not in favor of the way it is drafted in the looseness of it without ---

MR. STICKEL: How would you suggest that it be redrafted?

MR. JOSEPH: Well, we have some ideas on that. If your group were interested in them, we would be ready to discuss them.

MR. STICKEL: As I understood it, you wanted to be exempted from all of these provisions.

MR. JOSEPH: We certainly under the present law hope that we are exempt. But if there is going to be a law, we hope it is done within the scope of some very protective standards.

MR. STICKEL: You can appreciate if we were to give exemption to your industry, that then the next thing, all the gas stations would come in and want exemption and everybody else would want exemption and the first thing you would have no zoning at all.

MR. JOSEPH: That was the basis of my talk which I have

given here, which you already have --

MR. STICKEL: Yes.

MR. JOSEPH: (Continuing) -- is that our operation is unique in the fact that it is a mineral resource and I think some of the other speakers have introduced that. It is not the same. You can't pack up a quarry and move it into the next county or the next state. You just can't do that. You can do that with a gasoline station. You can move it from one corner in a certain town to another corner in another town. But you can't do that with a mineral resource. It has to be extracted only at the place where it appears.

ASSEMBLYMAN DEAMER: You said you would be glad to send us your ideas. Aren't they incorporated in that?

MR. JOSEPH: We have not offered any additional data other than ---

MR. STICKEL: They are just opposed to it. There are no ideas ---

MR. JOSEPH: We felt as though at this point it had gone this far, that it was important that we oppose that particular position.

MR. THOMPSON: Would you care to give us at this time any outline or suggestion as to the type of proposals which you might contemplate?

MR. JOSEPH: Well, we believe the amortization certainly requires a lot of study and that certainly has been presented by a number of the earlier speakers on both sides of the case who have felt the hazard of this thing. We want to make sure that if we have a quarry or a sand and gravel operation which has been planned

for a hundred years - and we plan them that long ahead - our interest and investment on that basis is going to be protected. We have a potential value in a quarry until the last ton of stone is extracted and we feel there is no protection in this law, the way it is written, that such an investment would be protected. We just don't believe that. But you could have standards set up where such provisions could be made in the mining industry.

ASSEMBLYMAN DEAMER: Well, why can't we receive from you then your ideas on those standards?

MR. JOSEPH: I would be very happy to submit them. I don't want to give the impression that we are opposed to planning. Our company is one of the progressive ones in the extractive industry and we are with planning one hundred per cent. We believe if it is intelligently done, the community can be protected as well as ourselves.

MR. STICKEL: That is all we are doing is trying to give the community the tools with which to intelligently plan.

MR. JOSEPH: Well, I don't think we would be a part of that and I don't think that the way it is drafted now -- I have great reservations.

MR. CUMMIS: As I understand it, in relation to Mr. Stickel's question, your objection is not necessarily to the principle of the amortization of a nonconforming use; your fear is that the application of this statute would be so unreasonable as to wipe out your investment interest under the municipal ordinances that might be promulgated in those municipalities where you have quarries or gravel pits and that what you are looking for is an assurance that at least in the state enabling law, if it permits amortization,

there would be sufficient protection and reasonable standards to make sure that that investment that you have would be protected and not wiped out.

MR. JOSEPH: Our fear is identical with the fears expressed by the earlier speakers.

MR. CUMMIS: You haven't answered the question. Is it that you are opposed to the principle of amortization regardless of what standards are placed in the law or is it that you agree with the principle, but that you are concerned that the present recommendation does not contain sufficient standards?

MR. JOSEPH: I do not believe the amortization principle as it is drafted in the present draft, without any standards, is a wise one. I think you are letting yourself open to many legal battles and unless and until we saw the type of protection and standards that the amortization principle included, I could not make a commitment at this point.

MR. STICKEL: Wait a minute. Does your industry have any connection with similar industries in other states where they have this nonconforming -- this elimination of nonconforming use principle?

MR. JOSEPH: Yes.

MR. STICKEL: Well, can't you find out for us there what the procedure and what the experience have been in those states because, as I understand it, the experience in those states which have this similar provision at the present time is not what you have put forth in this letter.

MR. JOSEPH: We disagree with the statement that you indicate that in these states that the amortization principle has

been upheld by the courts.

MR. STICKEL: It has. You look at Los Angeles County versus Gage.

MR. JOSEPH: We know of no large case involving a large investment of money where it has yet reached a decision.

MR. STICKEL: Los Angeles County versus Gage, a decision of the Supreme Court of California in 1959, which was upheld by the United States Supreme Court. I suggest that you look at that.

MR. JOSEPH: We will.

ASSEMBLYMAN DEAMER: Mr. Joseph, if you will furnish that information to the Commission as soon as you can, we would appreciate it. Perhaps by doing so, you can be helpful to us and helpful to yourself.

Before we conclude the hearing, I just want to announce that as the result, of course, of this additional information and knowledge and recommendations and suggestions that have been made this afternoon by people who have been interested enough to come here and testify, another draft, a second draft, will be made and another hearing will be held on Wednesday, April 26th, at eleven o'clock.

MR. STICKEL: Mr. Chairman, I think you also ought to announce that the staff and the Commission have already received some 25 or 30 other comments which will also be gone over prior to that time.

MR. CUMMIS: And made part of this record.

ASSEMBLYMAN DEAMER: Before we finally conclude, I should like to call on Mr. Stickel who has been the chairman of the Advisory Committee and has been knee deep in this subject matter and

I think that perhaps he can make some concluding remarks that will be helpful to all of us.

MR. STICKEL: I don't know whether, Mr. Chairman, that gentleman up there wanted to have anything to say.

MR. BULLITT: I had a brief comment I wanted to make.

ASSEMBLYMAN DEAMER: We will have you come down here and make your comment.

MR. JOHN C. BULLITT: My name is John Bullitt. I have sent some comments to ---

ASSEMBLYMAN DEAMER: Whom do you represent here?

MR. BULLITT: I represent myself only. I am a member of the Municipal Council of Franklin Township, and an interested citizen.

MR. CUMMIS: We have received your comments in letter form and we have already begun to study them.

MR. BULLITT: Our Manager, Mr. Sommers, had hoped to be here, but he was called to a court proceeding today. He had some comments, but I believe he has also written them to you.

MR. CUMMIS: Yes.

ASSEMBLYMAN DEAMER: Is this in addition to your communication?

MR. BULLITT: This is just a one-page brief comment on some of the comments that I wrote to Mr. Cummis.

ASSEMBLYMAN DEAMER: Proceed then, sir.

MR. BULLITT: I just wanted to say that on the question of open spaces, we know it is swiftly disappearing in New Jersey and most of our municipalities can't afford at this time with the rising school costs to make adequate open-space provision for future

generations and I hope that the state will take leadership in this field.

It seemed to me that the development of flood planes, swamps and other areas desirable for public use which are designated by the state or counties for acquisition should be restricted. In this way areas which are not desirable for residential or industrial construction may be acquired for the public at reasonable cost and if they can't be acquired at reasonable cost, we can be sure they are not going to be acquired at all.

Some statutory recognition of the validity and desirability of cluster or density zoning as it is sometimes called, in which density remains the same, but lot size is reduced, with the saved land becoming open space, would be helpful in encouraging exploration of a very promising but relatively untried technique for preservation of open space.

Much has been written about cluster zoning, but little done. If the state would officially recognize this most promising device for acquiring open space at low cost, it might finally become a reality.

Thank you very much.

ASSEMBLYMAN DEAMER: Thank you, sir.

Before I call upon Mr. Stickel, I was wondering whether any other members of the Commission would like to make any remarks for the record. (No response.)

Proceed then, Mr. Stickel.

MR. FRED G. STICKEL, III: Mr. Chairman and fellow members of the Commission and Mr. Cummis and Mr. Etz here, I would like

to thank all the members of the Commission and all the members of the Subcommittee who worked many hours on this draft.

I for one am rather pleased with the response that we have had. We started off this job of trying to put this thing together with some trepidation. The only thing we could do to start with was to put down the problems because no one could agree on what the answers were. So we first had to agree what the problems were. And I am rather pleased that as a result of about six months' work by the members of the Subcommittee, in which we have followed this procedure, we have tried to take every concept in the planning and zoning field that is presently in use in New Jersey and in other states and tried to work it into a preliminary draft with the idea of seeing to what extent the public - that is you and the rest of the people of the state - would accept these concepts as part of enabling legislation. I am rather pleased to see that the rather forward steps that we have taken have been generally accepted, with the exception of maybe this nonconforming use idea and a couple of the others. No one of us felt that this particular draft was the last word. It was drafted primarily to put it in the form in which it is because we felt that this law ought to be all in one law, not spread all over the books and that all of the tools of zoning and planning ought to be in one place.

I say that I am pleased that there has been general acceptance as to that format and as to the various concepts we have incorporated in here.

I am sure that with all the comments we have had, both sent in and here today, that we can whip this into more acceptable shape to all of us and I hope - I don't think we are ever going to please

everybody - but I am hopeful that by the representative processes of giving and taking and seeing the other fellow's side, we can come up with a law that is a model throughout the country and one that New Jersey can be well proud of and that municipalities will be able to use to better advantage for the public welfare. Thank you.

ASSEMBLYMAN DEAMER: Mr. Stickel, on behalf of the Commission, we wish to thank you and also the members of the staff and Advisory Committee for the work they have done on this very difficult subject.

MR. CUMMIS: Just prior to the close, I would like to indicate that the second draft of this zoning and planning law will be distributed publicly once more throughout the state --

MR. STICKEL: If the money holds out.

MR. CUMMIS: (Continuing) -- prior to the second public hearing.

ASSEMBLYMAN DEAMER: The business of this hearing being completed, we will adjourn.

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