

Adjourned Public Hearing

Town Clerk's Office

Feb. 14, 1958 8:00 P.M.

Present: Messrs. Coyle,
Renken,
Jeffrey,
Welchman

Fred P. Rolland, Esq. appeared on behalf of the petitioner and introduced Mr. Robert Eidelsberg.

Mr. Eidelsberg, after being sworn by Supervisor Coyle, upon questioning by Mr. Rolland, answered as follows:

Q: Will you state your full name.

A: Robert Eidelsberg.

Mr. Eidelsberg, I show you a petition for an extension to the New City-West Nyack Water Supply District, which petition is made by the Nyack Development Corporation.

Q: Is this your signature, Mr. Eidelsberg?

A: Yes.

Q: What is your capacity with the Nyack Development Corporation?

A: Secretary.

Q: Did you sign this petition on behalf of Nyack Development Corporation in your capacity as Secretary?

A: Yes.

Q: Will this extension benefit all the property owners within the proposed district?

A: Yes.

Q: Are all the property owners who will benefit from this proposed extension included within the limits of the proposed district or extension:

A: Yes.

Q: Do you believe it is in the public interest to grant in whole or in part the proposed extension?

A: Yes.

Q: In what way will this proposed extension benefit the property owners involved?

A: It will provide fire protection for the safety and well-being of property and lives - also reduction in fire rates.

Mr. Charles J. Davies, Richard L. Wells, Thomas D. Kegelman, and Joseph P. Campbell, Officers and members of the Cherry Hill Home Owners Association representing 48 of the 54 families in the development, all stated that they had heard the questions and concurred with the answers given by Mr. Eidelsberg.

Mr. Welchman moved that hearing be closed.

Seconded by Mr. Jeffrey.

On roll call, the vote was as follows:

AYES: Messrs. Coyle,
Renken,
Jeffrey,
Welchman.

NAYES: None.

Signed:

Charles F. Adams, Jr.
Deputy Town Clerk

PUBLIC HEARING

Town Clerk's Office

Feb. 14, 1958

8:30 P.M.

Present: Messrs. Coyle,
Renken,
Jeffrey,
Welchman

Supervisor Coyle called the hearing to order.

The Clerk read the notice of Public Hearing in reference to Section 5.13 of the Zoning Ordinance.

The Town Attorney stated that the Building Inspector had requested that this section of the ordinance be amended by adding the word - "minimum".

There being no one appearing either for or against this amendment, Mr. Welchman moved that the hearing be closed.

Seconded by Mr. Renken

On roll call, the vote was as follows:

AYES: Messrs. Coyle,
Renken,
Jeffrey,
Welchman.

NAYES: None.

Signed:

Charles R. Adams, Jr.
Deputy Town Clerk.

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SPECIAL TOWN BOARD MEETING

Town Clerk's Office

Feb. 14, 1958

8:30 P.M.

Present: Messrs. Coyle,
Renken,
Jeffrey
Welchman

Supervisor Coyle called the meeting to order.

Mr. Welchman moved the following resolution:

RESOLVED, that decision on amendment of sect. 5.13, Clarkstown Zoning Ordinance be reserved.

Seconded by Mr. Renken.

On roll call, the vote was as follows:

AYES: Messrs. Coyle,
Renken,
Jeffrey,
Welchman.

NAYES: None.

The Board signed the order extending the New City West Nyack Water Supply District to include Cherry Hill Estates.

There being no further business to come before the Board, on motion of Mr. Welchman, seconded by Mr. Renken and unanimously carried, the meeting was adjourned.

Signed:

Charles R. Adams, Jr.
Deputy Town Clerk.

PUBLIC HEARING

Town Clerk's Office

Feb. 14, 1958

9:00 P.M.

Present: Messrs. Coyle,
Renken,
Welchman,
Jeffrey.

Supervisor called the Hearing to order.

The Deputy Clerk read a notice of hearing to consider application of The Dells, Inc., for a change of the Building Zone Ordinance by redistricting property of the applicant from an RA-1 and RA district, to an R-1 district.

Mr. Renken moved the following resolution:

RESOLVED: That this hearing be adjourned to the Supreme Court Chambers at the Rockland County Court House.

Seconded by Mr. Welchman.

On roll call, the vote was as follows:

AYES: Messrs. Coyle,
Renken,
Welchman,
Jeffrey.

NAYES: None.

ABSENT: Danko.

The Hearing was then moved to the Supreme Court Chambers at the Rockland County Court House, and the following minutes were taken by Lucille Mandel, C.S.R., 1503 Teller Ave., New York 57, N.Y., signed transcript of which was filed with the Town Clerk;

TOWN OF CLARKSTOWN - COUNTY OF ROCKLAND

-----X
 :
 IN THE MATTER OF THE PETITION :
 :
 OF :
 :
 THE DELLS, INC. :
 :
 For an amendment to the Zoning Ordinance :
 of the Town of Clarkstown, in respect to :
 premises situate on the westerly side of :
 Route 304 and Zukor Road, the easterly :
 side of Little Tor Road and the southerly :
 side of Phillips Hill Road, New City, :
 Town of Clarkstown, Rockland County, :
 New York. :

County Court House,
New City, New York,
February 14, 1958, 9 P.M.

P R E S E N T:

- JOHN W. COYLE, Supervisor of the Town of Clarkstown
- JOSEPH WELCHMAN, Councilman, Town of Clarkstown
- ALASTAIR JEFFRY, Councilman, Town of Clarkstown
- JOHN RENKEN, Councilman, Town of Clarkstown
- EVERETT J. JOHNS, ESQ.,
Town Attorney, Town of Clarkstown,
40 Maple Street, New City, N.Y.

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JACOB PESNER, ESQ.,
27 North Madison Avenue,
Spring Valley, New York.
Attorney for the Petitioner.

MR. COYLE: This meeting of the Town Board of the Town of Clarkstown will come to order.

The Town Clerk will read the notice of hearing.

TOWN CLERK: This notice has already been read at the Town Clerk's office, but we will repeat it for the gathering here. "Notice is hereby given that a public hearing will be held by the Town Board of the Town of Clarkstown, Rockland County, New York, at the Town Clerk's Office, Main Street, New City, in said town on the 14th day of February, 1958, at 9 p.m., Eastern Standard Time, to consider the application of The Dells, Inc. for a change of the Building Zoning Ordinance of the Town of Clarkstown by restricting property of the applicant from R-A-1 to an R-A District. The said property of the subject of the application is located at New City, New York, in the said town and is described herein the notice."

MR. JOHNS: We will mark that as an exhibit. (Notice referred to received and marked Petitioner's Exhibit 1.)

MR. JOHNS: I have an affidavit of posting of the notice by David John Stone, sworn to February 5, 1958. I want to enter it as Exhibit 2. (Affidavit referred to received and marked Petitioner's Exhibit 2.)

MR. COYLE: Ladies and gentlemen, the petitioner will proceed with his part of the hearing and when the proper time arrives you will be given the opportunity of addressing any questions or making any statements through me as chairman of the meeting.

MR. PESNER: This is a petition by the Dells, Inc., a corporation which owns approximately 760 acres described in the petition, of which a map is set forth before you.

I would like to call Mr. Bernard Nemeroff as a witness for the petitioner.

BERNARD G. NEMEROFF, Little Tor Road, New City, New York, having been first duly sworn, testified as follows:

EXAMINATION BY MR. PESNER:

Q: Mr. Nemeroff, are you associated with Dells, Inc.?

A Yes, I am the president.

Q What is the petitioner in this hearing?

A It is.

Q I show you a petition sworn to on the 9th day of December, 1957, and I ask you if that is your signature as president?

A It is.

MR. PESNER: I offer the petition as an exhibit. (Petition referred to received and marked Petitioner's Exhibit 3.)

Q Mr. Nemeroff, when did The Dells, Inc. purchase the property in question?

A I believe in 1949.

Q Was there zoning in existence in the Town of Clarkstown at that time?

A There was.

Q Of the area described in the petition, divided into the two parcels, namely, Parcel 1 and Parcel 2, and I call your attention to this map that is spread out before the Board and ask you if that description reflects this survey?

A Yes, the description is reflected there. To the east of Zukor Road is Parcel 1. To the west of Zukor Road is Parcel 2.

Q Can you tell us what zone this property is in under the present zoning ordinance of the Town of Clarkstown?

A In R-A-1 and R-A.

Q Under the present zoning ordinance that is 40,000 square feet per building lot and 80,000 square feet?

A That is correct, sir.

Q At the time you purchased the property there was in existence, you testified, a zoning ordinance of the Town of Clarkstown?

A There was, sir.

Q At the time you purchased the property there was in existence, you testified, a zoning ordinance of the Town of Clarkstown?

A There was, sir.

Q I show you this building zone map of the Town of Clarkstown and ask you if that is the zoning ordinance that was in effect when you purchased the property?

A Yes, that was dated March 4, 1939.

Q I refer you to the first page in the ordinance and ask you if this ordinance provided the following: "In providing fines and penalties for violation so as to promote the health, safety, morals and general welfare of the Town of Clarkstown."

A It did so provide in said ordinance.

Q At that time what district was the property in when you bought it?

A Residence A.

Q Residence A. Besides Residence A, the part to the west of Zukor Road, which is part of Parcel 2, appears to be in two additional zones beside "A". One appears on the map as Business A and one appears as Residence C. I refer you to the map and ask you if that is so?

A Yes, that is so indicated on the map.

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Q Would you please tell us what the premises under parcel 1 and 2 consist of at the present time?

A At the present time approximately 160 acres are used as a golf and country club with about 50 hotel rooms, a golf course, swimming pool, tennis courts, general recreation area for a private club, and has been so used for many years. The balance of the acreage, which is about 600 acres, is undeveloped. It is partially used as farmland and it is rented to a gentleman that farms the property who lives near the property. About 200 acres are farmed, I believe, more or less.

Q Are there any private residences on there?

A On the property are five private residences, three of them on Little Tor Road, one on Route 304, and one on Zukor Road. Excuse me, there is a sixth private residence also on Zukor Road used by a Dave Johnson, who is employed by the club.

MR. PESNER: I offer the Zoning Ordinance of the Town of Clarkstown under date of April 4, 1939 as an exhibit.

MR. JOHNS: With one stipulation, Mr. Pesner. This ordinance only as it applies to the petitioner's property, because it has been subsequently amended.

MR. PESNER: Yes, only as it applies to the petitioner's property. (Ordinance referred to received and marked Petitioner's Exhibit 4.)

A Mr. Nemeroff, has this Zoning Ordinance of 1939 been amended, to your knowledge?

A I believe there was in 1955, on September 13th.

Q You hold here a copy of the ordinance?

A I have a copy of it.

MR. PESNER: I do not think we have to put it in evidence.

MR. JOHNS: I would like it in.

MR. PESNER: We would like to put in the present Zoning Ordinance of the Town of Clarkstown with the map attached as part of our exhibits. (Zoning Ordinance and attached map referred to received and marked Petitioner's Exhibit 5.)

Q Now, in the amended ordinance of 1955 your property then went from Residence-A and Business A, and Residence C, into R-A-1 and R-A ; is that correct?

A That is correct, sir.

Q There is no provision there for a business area of any kind?

A No, except this. There is a provision for country club in the Zoning Act .

Q I did not ask you that. I asked you is there specifically an area zoned for business?

A No, there is not.

Q In your petition, Mr. Nemeroff, you state that because of the application and interpretation of the present zoning laws of the Town of Clarkstown your corporation has suffered and will continue to suffer undue hardship unless you secure immediate relief through this application. Now, since the amendment of 1955 have you placed your property on the market for sale?

A In many different, ways, yes.

Q Would you explain to the Board what efforts you have made?

A Well, Number One, when the zoning regulation first came out I placed the property with several real estate agents in the county and several in New York City for sale in acre plot, particularly the property along, known as Parcel 2, between Zukor Road and Little Tor Road.

Q That is Parcel 1.

MR. JOHNS: Mr. Pesner, you are referring to this map continually. Shouldn't it be marked as an exhibit?

MR. PESNER: That is a copy of the main map. Very well, we will put this in as one of our exhibits. (Map referred to received and marked Petitioner's Exhibit 6.)

A (Continuing) Which is known as Parcel 1. That parcel was offered for sale in acre plots or more. No offers were forthcoming, in fact, from the brokers in New York City not one offer at any price was made at any time during the last two and a half years because of the one acre zoning stating that they could not build houses on one acre zoning.

Q Did you discuss a possibility of developing this area with builders known as Tanney & Allen?

A With Tanney & Allen and with various other builders in the community.

Q Did you get a receptive reply from them?

A Only in the acreage, if the zoning regulations were less than one acre zoning, at a third of an acre, and some said at a half of an acre, but they didn't develop it because of the zoning regulations.

We also tried to put a school in there known as Wiltwyck School. That deal did not go through.

We had an offer from the Sports car Association who wanted to put a sports car track in. That didn't go through.

We had had talk about a cemetery corporation who was interested in some of the property. That deal did not go through.

Q Did you make an application to rezone a parcel of Parcel 1 before the Planning Board of the Town of Clarkstown?

A No, an application was made before the Town Board about a year and a half ago for rezoning Parcel 1, and at that time I had builders interested, namely, Tanney & Allen, who had a plan of development of this property. The average plot would have been three-quarters of an acre and the zoning then ran from the smaller plot, which was a half an acre, running to an acre and a quarter. The plot plan was submitted to the Town Board at that time and the application was denied.

Q You have represented other people as an attorney in the purchase of real property?

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A I have, sir.

Q You have bought several parcels in and about the County of Rockland, as well as elsewhere?

A I have, sir.

Q Are you familiar with real estate values in and about Rockland County?

A Very much, sir.

Q Are you familiar with the real estate values in and about New City?

A I am, sir.

Q Can you state what in your opinion the reasonable value for acreage is in this vicinity?

A Acreage zoned at one acre --

Q I did not ask you that. I just want to know what figure you will evaluate acreage at generally?

A Well, I think the question, Mr. Pesner, is a bit too general. It depends on the type of acre.

Q You classify it.

A Property closer to New City zoned for a third of an acre could, I have heard that there have been deals made for houses, particularly --

MR. JOHNS: No testimony as to what you have heard.

Q What you know.

A I know. I have not actually drawn the contract but I have known the purchasers and I have known the seller. One-third of an acre plot for homes on Little Tor Road have sold for as much as \$3,000 a plot. Acre-zoning, that is particularly between Hempstead Road and Phillips Hill Road, closer to Hempstead Road, on acre-zoning, acres have sold for as much as \$4,000 an acre, but in very small parcels, principally an acre or two acres.

On large parcels there have been very few sales in acre-zoning that I have known about and I know most of the owners of the acreage property around my property. None of it has been sold because builders or developers cannot develop a piece of property with acre-zoning and put in the requirements as demanded by the Board of Health for sewerage, water, et cetera.

There are around my piece of property about five plots from 80 acres and up. They are all in that condition. Not an acre has been sold out of any of these plots to my knowledge.

Q You have approximately 760 acres?

A That is correct, sir.

Q In your petition you set forth that twenty-five percent of the area would not be used for developing purposes. I refer you to Paragraph 15 of your petition and ask you if you will explain to the Board how that twenty-five per cent will be used?

A Well, it would be my purpose, if I were to develop the entire piece of property, to keep the present golf course, the club, and keep sufficient area around there to develop additional rooms for members and probably to keep part of the property in Parcel 2 which leads to the creek called -- I think it is the Demarest Kill -- bounding the westerly side of the property, keep that property which is swampy for future development and an additional golf course or recreation area.

We have plans for one spot there to get rid of the swamp to build a lake of about forty acres at some future time.

In other words, Parcel No. 2 would be hardly developed or touched at all for any housing for at least five years and maybe much more more, depending on business conditions.

Parcel No. 1 would be developed, if we had the proper zoning, with housing along 304 primarily, and the property around Little Tor Road, to plan for some future development within two or three years for housing -- what type I don't know, depending on what the roads will be in the community, what effect or impact the opening of the completed inter-state parkway will have on the community, what effect the widening of Little Tor Road will have on the surrounding property.

Most of the property between Phillips Hill Road and Hempstead Road has been developed or is in the process of being developed. If the neighborhood retains its same quality and character the property will be developed in keeping with this characted because it would be the most profitable way to develop. If the neighborhood stays the way it is presently, with the type of cheap homes that they have there now, other plans will have to be made.

Q How many acres do you intend to have set aside for the operation of the country club?

A Well, basinally there are now 150 acres for the country club. If I were to enlarge the scope of the country club I would have to add at least another 125 acres for a golf course of a different type. We have some ideas we would like to develop.

Q At the present time in your petition you have set aside 150 acres for the club?

A That's right.

Q And an additional thirty acres of park area around Plum Creek?

A That's correct, sir.

Q In the proposal, in your petition, you set aside an area of about twenty acres for a school site, depending upon the selection by the school or town authorities?

A Well, twenty acres would be made available at the proper place with conferences with the school board, because no one knows presently what type of schools will be needed or how big they would have to be, et cetera, et cetera.

Q Mr. Nemeroff, in the operation of this property since you purchased it, are you in a position to tell this Board your tax picture for the past nine years?

A Yes. I have this on a calendar year basis, not a fiscal year basis, because the taxes as we get the bills coming in, I think they are on a fiscal, not a calendar basis, but these are the actual amounts paid.

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1949 we started out with \$21,000. 1956 we went to approximately \$31,000. That's per annum. That included land and school taxes. I don't have the complete setup for 1957, but it was higher by about four or five thousand dollars, if I remember correctly.

Q During the course of these nine years or seven years that you are operating, will you tell us of your operation cost and maintenance?

A We have lost over \$200,000 in the operation of the club and the entire property.

Q Has any of the land been sold since you own it?

A Yes. I sold four acres to the school, to the Street School, and I sold several acres to Mitch Leventhal who had some property near the club and had a house there and wanted some additional property. I sold that about seven years ago. Wait, I sold one acre to the former planning director, Richard May.

MR. JOHNS: Mr. Pesner, these references you made and referred to in your petition, are you submitting them as exhibits? You refer in Paragraph 12, support thereof will be submitted by affidavits and otherwise. You have alluded to them.

MR. PESNER: It is in "otherwise" that we are submitting them.

THE WITNESS: These are very rough.

MR. PESNER: The taxes are a matter of record. I just asked to have them here so we could indicate the cost of the tax factor in owning the property.

THE WITNESS: These were given to me by the County Treasurer's office as far as taxes are concerned. As far as my figures are concerned on losses, they are figures taken off from the financial statements of the corporation given to me by a certified public accountant, who has been our accountant for nine years.

May I just qualify this? The losses in one year ran \$16,000, and the highest profit year was one year when \$15,000 was made. Another year when \$5,700 was made. The other years had losses ranging from \$4,000 to \$61,000.

MR. JOHNS: What is that, during, after, and between your own ownership?

THE WITNESS: All during my own ownership.

Q Mr. Nemeroff, I show you a series of photographs and ask you if you can identify these photographs?

A These are dwellings that are on a periphery of the property owned by The Bells, Inc. They were taken to show the nature and character of the type of homes and I think the number, although I think there are small photographs which, with the permission of the Board, I can obtain as larger photographs so that each house will be clearly shown. There are about 108 houses.

MR. JOHNS: For what purpose, Mr. Pesner?

MR. PESNER: Well, the question is, in asking for a change of zoning we want to show that the proposed use will in no way be detrimental to the character of the neighborhood; that we are complying with what is there in that the use that we propose will in no way affect the property adversely.

MR. JOHNS: Just for identification purposes, there are quite a few of them?

THE WITNESS: 108. They are put on sheets. I might qualify them this way, if you please, Mr. Johns. I believe around the property in the nine years I have been there, three houses have been built aside from the little houses in Lake Lucille. One was built by Richard May and I think that house is in the neighborhood of \$25,000. One was built by the Smiths across the street on Little Tor Road. That house, I should imagine, is in the neighborhood of \$30,000.

MR. JOHNS: I did not want to get technical on the introduction of this. All I want to know is if it is to be introduced as an exhibit that the location of these houses Mr. Nemeroff will testify he knows about, as to each individual house, the location of them within a certain area from this proposed change.

THE WITNESS: These houses are no more than several hundred feet from the property and are the only houses surrounding the property. There may be several more, but they are no better or worse than these houses.

MR. JOHNS: You know every individual one of these houses by sight?

THE WITNESS: I ordered these pictures taken this way and I know them by sight.

MR. PESNER: I think they ought to be put in so certainly the Board can have them before them.

MR. JOHNS: I am not offering any technical objection.

MR. PESNER: I appreciate that, but I am clarifying it. It is in the petition and we have gone to the effort to show what the surrounding area is. We offer the photos.

THE WITNESS: May we offer them subject to this, subject to the enlargement of those negatives. I did not want to clutter up the record at this point, but if at some time it will be necessary, I would like to have permission to enlarge those negatives.

MR. JOHNS: We will accept that as a petitioner's exhibit.

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(Ten sheets of photographs referred to received and marked Petitioner's Exhibit 7.)

Q Mr. Nemeroff, as of this moment you have no plan for a subdivision of the property for development?

A I have absolutely none.

Q As you understand your application, with your entire acreage zoned in two zones, namely, 40,000 square feet and 80,000 square feet for building purposes, you feel restricted and in a position where you cannot move your real property?

A I have tried with at least twenty-five people and it is impossible to sell the property at anything like a fair price. I have asked as little as \$2,250 an acre, and as much as \$4,000 an acre, the lower price being based on larger pieces of property, the larger price being based on smaller plots.

The problem is one of sewers under our public health law, one of water, and none of these improvements can be put in without having enough houses on the acreage to support the payment for these improvements.

Q Mr. Nemeroff, just so that the record will show, would you say that \$2,500 an acre is a reasonable figure for acreage in the vicinity?

A I think it is too cheap for acreage in the vicinity.

Q Would you say it is not excessive?

A Definitely not excessive. I don't think you could buy anything in the vicinity for \$2,500 an acre.

MR. PESNER: For the record I want to show that the petitioner owns 760 acres and that \$2,500 an acre, which I ask the Board to consider as a very fair figure for acreage in this vicinity --

MR. JOHNS: Is this a question?

MR. PESNER: I am stating it for the record.

MR. JOHNS: Will you please ask it in question form?

MR. PESNER: I asked the question and now I have established that \$2,500 in his opinion is below the average figure for acreage. I just want --

MR. JOHNS: I do not want to prolong this, but I think it has been stated and the statement is now superfluous.

MR. PESNER: Except I want to put a number in here. It is difficult to appreciate what we are talking about when you talk about another person's property. 760 acres, at \$2,500 an acre is \$1,900,000. It is a lot of money. I want to state for the record on the basis of Mr. Nemeroff's testimony that land value that runs into that figure cannot be moved. There must be a reason for it and I think it is a town problem and the Town Board should take it into consideration.

MR. JOHNS: I do not think we can now necessarily take it into consideration. I would prefer that you direct questions to the petitioner.

Q. Mr. Nemeroff, at \$2,500 an acre, exclusive of the buildings, exclusive of the construction of the golf course and the swimming, the formal gardens, would you say that \$1,900,000 is a very reasonable figure for 760 acres in your area.

A Yes, at the going price of acreage, yes.

Q What value would you put on the buildings and golf course, not in acreage, but the construction of the golf course as such and a swimming?

A Well, I could qualify it this way. I had a conference at Louis Nizer's office, the attorney for Adolph Zukor, and he informed me just three weeks ago that eight and a half million dollars was spent by them for the acquisition of the property and building the improvements. I know that presently just to build a golf course, just the building of the golf course, would cost in the neighborhood of \$400,000 to build the equivalent of our golf course

Q Exclusive of the land?

A Exclusive of the land. The improvements for the hotel rooms we have, would be about half a million dollars. The restaurants and other buildings would be about \$300,000. The pool, \$150,000. I am just guessing at some of these figures. I have heard them from builders and others.

Q So that this asset at the present time is running at a tax cost of somewhere in the neighborhood of \$30,000 at the present time?

A Several thousand dollars more than that.

Q The only operation that you have there is the operation of the country club?

A That is correct, sir.

Q In seeking this change of zoning and setting out this twenty-five per cent of the property as you indicated for the golf course, the park and the school site, would leave you approximately 550 acres?

A Yes.

Q On an R-1 zone you would then be in a 15,000 square feet acreage; is that correct?

A I don't --

Q In an R-1 zone that you are seeking you would then be in a 15,000 square foot building lot?

A Yes, that's what I am asking you.

Q Is there any other zone between the 15,000 and the 40,000 and the 80,000 that you are in now?

A No, that's all.

Q So this is the next highest zone; is that correct?

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A That is correct, sir.
MR. PESNER: That is all.

EXAMINATION BY MR. JOHNS:

Q MR. Nemeroff, you stated that this is all the property owned by The Dells, Inc., is that correct? All the property in this petition, is that all your property that is owned in this area?

A When you say mine or the corporation?

Q Does The Dells, Inc. own any property not included in this petition?

A I don't think so, Mr. Johns.

Q In that area?

A None there, but we just transferred the Elms. It was transferred to the Dells.

MR. PESNER: You are not referring to that, are you?

MR. JOHNS: NO.

A (Continuing) I think our description covered all the property owned by The Dells as set forth on this map. It is about 760 acres.

Q The particular zones that you just referred to, R-1, 15,000 square feet, if this application was granted you would be permitted under the R-1 Section to build on 15,000 square feet; is that correct?

A I presume so, if I were permitted to do so, yes.

Q The fact that you made reference to the reservation of twenty-five per cent of the total acreage still doesn't necessarily follow that you could not build on that area; is that correct? You couldn't build on that one-third if the building zone was changed?

A I think your question is unfair. I have stated what I wanted in that particular. This Board doesn't have to grant me R-1 zoning for that acreage I have kept out. You could make that R-A zoning, which is 80,000 square feet, if you wish. So I couldn't build on 15,000 square feet plots.

Q The original question to you was that your application here was to R-1 zone; is that correct?

MR. PESNER: That's correct, but I think the record should show that the application is all inclusive. It is for an R-1 zone with the reservation of that twenty-five per cent as set forth in the petition. However, the Town would want to protect itself against that, is a matter for them to decide. As Mr. Nemeroff said, you could put it in an R-A zone.

A I also not, Mr. Johns, by today's paper that the Town took a letter on a down-zoning petition and I had made this offer before and it was stated that a letter could not be accepted by the Town Board. Is that so, Mr. Johns?

Q I did not ask you that question. We are alluding to this particular petition. I wish you to refer to the petition, Mr. Nemeroff, at Paragraphs 8, 9, and 12. Are you familiar with Paragraphs 8, 9, and 12?

A Yes, sir.

Q You refer in those paragraphs to the fact that there is unlimited damage and depreciation of value to your property and that it will continue?

A That's correct, sir.

Q I call your attention to Paragraph 15, Subdivision 3, which states the total of such acreage to be used is approximately twenty-five per cent -- this is the section that you referred to -- twenty-five per cent of the property owned by the petitioner herein, and if the petition herein is granted and residences are built on said rezoned property, the total number of residences built on such rezoned property will be no more than the number of dwelling units which could be built on the property under the present zoning regulations.

A That is appreciably correct, and we shall give you the figures.

Q I just want you to reconcile Paragraphs 8, 9, and 12, where you say there is unlimited damage to you from the present existing zoning.

A Would you like an explanation?

Q I would like you to reconcile those paragraphs.

A Under the present acre zoning this acreage cannot be sold for this reason. To develop more than a limited number of acres, I don't know if it is fifty or one hundred, there must be sewerage, sewers provided, there must be public water provided, you must have utilities and you must have roads. To build them under one acre zoning is prohibitive because you would have to have houses based on the cost of land and improvements, and it would have to run \$35,000, \$40,000 a house. Out of the total amount of houses built in Clarkstown after the rezoning in 1955, not more than five per cent, I have been informed by the County Planning Board, has been built on an acre or more. Ninety-five per cent of the homes have been built on 15,000 square feet.

Q You are not answering my question.

A I am going to. I have to qualify the question. If you will permit me I will go ahead and answer it now. This property is so large that if part of it was kept for a golf course, recreation area and housing was developed at the parts of the property that could take housing and take roads, take sewers and take water, in other words, the greatest home developing should go over in Parcel 1 between Zukor Road and Little Tor Road, no more houses would be built in this area and they would be properly build with the proper facilities, than to be built on the entire piece of property if you were to build homes all the way through the 760 acres. Does that answer your question?

Q I am sorry, it doesn't.

(Discussion off the record.)

A May I explain it this way, Mr. Johns? The property could so be set up, if I got the 15,000 feet zoning, that it could be sold, this part of the property, Parcel 1, could be sold and houses built there. The other parts of the property could be kept as golf, recreation area.

Q Not under your application?

A I beg to differ with you.

Q Your application, and I ask you again the first question I put to you, this application is for the property owned by The Dells, Inc. for a down-zoning from the present zoning to R-1?

A That's correct, sir.

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Q If granted it would result in a 15,000 square foot acreage?
 A Not for the entire piece of property.

Q But the application which you swore to, that is the application which you request?
 A But I also state in Paragraph 15 that I will maintain twenty-five per cent of the property as follows. Now, knowing that this is 35 or 40 acres, that will be set aside as a park (indicating), knowing that on this piece of property you will have the best type of property for homes, and this piece of property, Parcel 2, you will not have the best type, this is actually what I would request if we sat down to iron out this entire problem (indicating).

Q How far is this property, approximately, from the center of New City, I say the Town, local area here?

A The Phillips Hill side of the property I should judge is about a mile and a quarter, mile and a half.

Q That is the nearest point?

A To New City, to what I would call the New First National Store.

Q And the farthest point?

A Could be three miles.

Q In between the one mile, and the three miles, to your knowledge are there other properties, large parcels of land in the present zoned area, that The Dells, Inc. is in?

A I think no, most of the property surrounding me -- is that what you are referring to?

Q Between this area here, that I refer to, and the Dells, between the one-half and the three mile, do you know of properties that are zoned in the same area as the Dells?

A If you are talking between Phillips Hill Road and Hempstead Road there are properties zoned for one acre. Yes. There are also properties zoned for a third of an acre.

Q Would you say they were large acres?

A Yes. Not zoned for a third of an acre, zoned for an acre.

Q That is between?

A Hempstead Road and Phillips Hill Road, which is between the southerly end of the property and Hempstead Road.

EXAMINATION BY MR. RENKEN:

Q Mr. Nemeroff, in regard to this property, there is no public water supply in that area, is there?

A No, but I have large wells and I could supply public water and more public water could be drawn from Hempstead Road. It is not prohibitive and it would be cheaper than putting in wells.

Q Have you explored this?

A Oh, yes.

Q You have?

A Yes.

Q Your intention would probably be --

A It would be uneconomic to build any other way without putting in public water or public sewers. I am quite certain that the health laws of the State of New York would require a parcel this large to have its own sewer system and I have been told by engineers that because of the terrain, because of Plum Creek and because of other things on the property, a sewerage system would go very well. Public water would go very well. We have one well presently that supplies the entire club. We have a 250,000 gallon reservoir and a 450 feet deep well, I think. In that neighborhood, anyway.

Q As I understand it, you purchased your parcel in its entirety and there are 760 acres?

A That's correct, sir.

Q This petition that you have before us covers the entire 760 acres?

A I have no alternative.

Q In other words, your request is for a change in the entire 760 acres?

A That is correct, sir.

Q However, you have stated here that there are certain portions that you do believe you will hold out?

A I would of necessity have to hold out.

Q As far as developing is concerned?

A Yes. It would not be my intention, Mr. Renken, to develop 760 acres. It would be ridiculous to break up maybe a million and a half dollars worth of improvements to put houses on them. I make this point because I have previously come before this very Board, not with the very same personnel, and have asked to rezone part of the parcel and that was denied and the minimum they presented was a half acre and ran to an acre and a quarter, as I said before. May I say this, because of your previous experience with this petition, ninety-five per cent of the building going on presently in Clarkstown is on a third of an acre and homes running from \$20,000 and less. Now, that's no reflection on the people that buy the homes, but that was not my intention for development, as I stated before, and I state it now.

Q You also mentioned in your testimony that you had in your mind to set aside twenty acres, I believe you said, for schools?

A I understood that for a property this large which would require eventually somewhere in the neighborhood of 400 homes, that twenty acres would be the requirements for a suitable school area. That would be reserved. I would confer, naturally. This is not a plan that I am submitting here. This is a petition for rezoning. Of course, I would then have to come before the Planning Board to set forth the plans such as other properties do.

MR. PESNER: I may add that in that event you must comply with the ordinance and submit the plan and then comply with the other phases of the zoning ordinance. So this is only a question now of bringing it to a zone where we could operate property practically, and Mr. Johns' question before -- and I think we can clarify it here -- Mr. Nemeroff's petition says that he is suffering a present loss, an undue hardship, and Mr. Johns says if you are not going to build anymore buildings under the new zoning than

you can now, why won't you be suffering the same handicap? Is that correct?

MR. JOHNS: That is true.

MR. PESNER: Now, the answer to that, and that is why I mentioned before the price of this property, of what it is worth on anybody's figure, and they can set their own price on acreage in the area, the difference is that even if we can build the same number of homes you cannot build practically on an acre zoning. We can't sell it. We can't get anybody to buy it, to invest the money and build the buildings.

But if we were in an R-15 we would at least sell the property and get a reasonable return on our investment. That is the difference. Under R-15 we could dispose of the property and develop it properly.

MR. JOHNS: This is by way of explanation only?

MR. PESNER: Yes. It should be noted that the entire 760 acres of the petitioner, that is I think the largest single owner in Clarkstown is only in the highest two residential zones. Now, there is no justification for that shown anywhere of how a man can operate or maintain his property in any intelligent manner in the present economy.

MR. JOHNS: I do not want to interrupt, but you are getting argumentative.

BY MR. RENKEN: (Continued)

Q Let's get back to the twenty acres that you would supposedly set aside for a school?
A What do you mean by "supposedly"?

Q Is it your contention that you would offer to the local school district?

A No, no. Yes, yes, of course.

Q Did I understand you to say in the earlier part of your testimony that you know of acreage in this area that was on the market at \$8,000 an acre which was not moving -- did I understand you to say that?

A No, I said this. That some of the acreage, some of the building plots on Little Tor Road, I have been told, Little Tor near Hempstead, and I think you would know as well as anybody else, in that improved area have sold for \$3,500 and I have heard even more for a third of an acre. That's over near the developments, in that neighborhood. I am the next block to that. I know of no sales of an acre.

I would like to explain that a little further.

Q You know of no sales in the area where it was zoned for one acre zoning?

A Not a sale. I have offered myself for three years and I think many people in this room know that I offered for sale on one or two or four or five plots from \$2,200 up and I have sold one to Richard May.

Q Do you feel that this property that is in a one acre zone is not selling because it is a one acre zone or possibly the price tag may be too high?

A No, one acre zone. There is a certain cost of sewer lines, streets, per foot, water. You are in the real estate business. You know that. Any everybody in the business knows it. If you are going to draw it for houses in one acre frontage, it is going to be more expensive to put in those improvements than if you had two houses to divide the cost of the sewers, the streets and the water. It is quite that simple.

Q I understand. You have answered my question.

EXAMINATION BY MR. JOHNS:

Q Around, March, April, May, and June of 1955 were you in Rockland County?

A I was.

Q Did you receive notice either to your personal knowledge or by publication in the paper, or by advertisement, that the Town of Clarkstown was amending their zoning ordinance?

A I did, sir.

Q Did you appear at any of the public meetings?

A I did not, sir.

Q Did you make any objections, formally or informally, to the Zoning Commission at the time?

A Made no objections, just made inquiry.

Q Did you make any objections to the Town Board on the night of the adoption?

A I did not, I believe in zoning.

Q One further question I have, Mr. Nemeroff.

The increase in the density of the area sought to be changed would or would not be greatly increased by this proposal?

A It would be no increased under my proposed plan than it would be if I built houses on acre zoning of every acre we own. In other words, if I have 760 acres for developments, I would build no more homes on what I would or would build than I would if I could build on the entire 760. If you are asking me if there would be more population than there is presently, yes.

Q The density in the area sought to be changed, would it be increased, or wouldn't it be, yes or no?

A No, of course not.

Q You testified earlier regarding a one-third acre value from your opinion in the sales of real estate and known values in this particular area --

MR. PESNER: I object to the question. I think it is improperly stated. He testified and we can check the record, that lots were sold for \$3,500 and those lots were 15,000 square feet. You must understand they are improved lots on a filed subdivision that were sold for \$3,500.

MR. JOHNS: Mr. Nemeroff did not testify to that effect.

MR. PESNER: Yes, he did. Those lots were sold and they were a third of an acre.

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THE WITNESS: Yes, I did, and I told you where they were, near the Catley development.

MR. COYLE: That is all, Mr. Nemeroff. Is Mr. James Ward present?

MR. JOHNS: Mr. Pesner, I would like to call the County Planning Director. However, he is at Haverstraw at a hearing at the present time and he said he would get down here as soon as he could. I would like to proceed with the objections, with the right to call Mr. Ward when and if he comes in.

MR. PESNER: I have no objection.

You might inquire if there is anybody here in favor of the petition?

MR. COYLE: Is there anyone here who wishes to speak in favor of the petition? I assume there are quite a number of persons present who wish to be heard in opposition. If there are any groups represented by one counsel, I think it would be well to hear them first. It will cover more of the people here and might cover what they intend to say.

HUGO ROBUS, JR., President of Clarkstown Central School having been first duly sworn, testified as follows:

THE WITNESS: I would like to testify as a man with three hats tonight, if I may. First I would like to testify as a member of the School Board. I would like to bring before you some figures which we in the School District have compiled which will tend to show the type of impact that this kind of development will have on the school tax structure in the Town of Clarkstown, in the Central School District, as a matter of fact in the whole township.

MR. PESNER: At this time, Mr. Supervisor I enter an objection to the testimony as totally irrelevant to the issue. The school impact of people moving into a community has absolutely nothing to do with the zoning of an area or to the town. The testimony of the petitioner and the petition itself has set forth that the density would be no greater under the proposed change, than if we stay and develop under the proposed change, than if we stay and develop in acre zone, but because of the practical hardship and the economic structure that prevents your use of the property in acre we are making the application. It is a matter of record. The Courts have held time and again that the number of people that come into a community and have to attend the school has nothing whatsoever to do with how we zone and use our property.

MR. JOHNS: Mr. Pesner --

MR. PESNER: I have entered my objection.

MR. JOHNS: If the testimony is to the effect that the density would not be increased and if that were proven, then you should have no objection to testimony by the School District, and Mr. Robus should proceed.

MR. PESNER: We are objecting to the type of testimony because it has no place and the Board should not consider it. I am only trying to save time for everybody. We all know if more people come in you have to have more children and more children means more schools. I am arguing on my motion and I want it on the record. On this we have plenty of Court authority. I object strenuously because it is wasting time and a lot of time for a lot of people. If you want to concede for the record that if more people come into Clarkstown we will need more schools, I will so stipulate.

MR. ROBUS: Let Mr. Robus testify regarding the school situation and if necessary we will give it the weight it is due.

MR. PESNER: I respectfully except.

THE WITNESS: I should like to state some facts first. The fact is that we have no capacity in the schools for taking care of any type of community growth such as the one which is projected before us this evening. Our schools are at capacity now. We have just finished a building program and those buildings, those new buildings, are full. It is only fair that the Town Board should know these facts, and that the taxpayers should know the facts, the fact that the petition is requesting third of an acre zoning in the 760 acres poses quite a problem because of the fact that it is possible within the meaning of the zoning law to erect a great number of houses on those 760 acres, not just the ones which are proposed and promised, but are possible under the law.

1,500 homes would be a very modest number of homes to erect on 760 acres, on a third of an acre zoning. 1,500 homes would produce upwards of 3,000 children. 3,000 children would need schools to go to. Our present New City school, which is a large school, cost in the neighborhood of \$1,000,000 and houses 630 children. This means that we would probably be faced in the years ahead with the erection of a large number of elementary schools which would entail a large capital outlay by the voters of this district. Not only for the erection of these schools, but for the operation of the schools.

I ask you to consider the fact that \$600 is about the price we pay for the education of one child in our school each year. We feel that the Clarkstown District would be put under great hardship were it faced with the problem of adding some 3,000 children to its schools. We feel that the education would suffer, and this is something that we are very responsible for, and we feel that the tax structure would suffer accordingly.

Our present rate of growth is about 500 pupils a year, which means one new school a year on the whole, whether it be elementary school or junior high school or senior high school or addition thereto. This is our present rate of growth. This about \$1,000,000 capital outlay a year as we are going now and this does not include the additional cost of teachers, books and supplies as regular operating expenses.

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Now, these are huge expenses. They run into the millions of dollars, and is something which the voters would have to face sooner or later.

I don't know whether I have done anything to add to your information, but there is one more problem which faces us and which I think you should know about, and that is the fact that the school bonded debt is over the ten per cent true valuation number in the Town of Clarkstown and, therefore, every vote we pass for a new school or for any capital outlay whatsoever has to have a two-third positive vote, and so it is becoming increasingly difficult to get new schools to house the children that are living in our district.

In round numbers those are our problems.

If I may, I would like to close my testimony as a member of the School Board and proceed as a member of the now defunct Zone Advisory Commission which was appointed by the Town Board to help it to produce a new zoning ordinance, an amendment to the old zoning ordinance, I should say. If it is all right with you I will just make one or two statements in line with that.

MR. COYLE: Proceed.

THE WITNESS: I would like to emphasize the fact that when this new zoning ordinance was brought into effect, before it was brought into effect, we had public hearings all over the Town of Clarkstown for the purpose of allowing the residents to express their opinions, and we had many opinions, both pro and con. At no time did Mr. Kemmeroff appear to either object or to support the proposals of the new zoning ordinance. Now, I don't know that I have left out anything, except to say that judging by my own tax schedule and the taxes I pay, I feel that \$31,000 on a ten million dollar investment is rather slight according to my standards.

MR. JOHNS: Are you finished?

THE WITNESS: Yes.

EXAMINATION BY MR. JOHNS:

Q From your experience on the Zoning Advisory Commission you are also familiar with the final draft of the Zoning Ordinance of the Town of Clarkstown?

A Yes, sir.

Q You are a resident of the Town of Clarkstown?

A Yes, sir.

Q Since the amendment have you been satisfied with the use that has been put upon and placed upon the Clarkstown Ordinance?

A As it applies to me personally or to the district generally?

Q To the district generally.

A I would say yes. I have been satisfied. There have been minor disagreements, but they are disagreements that I was not too familiar with at that point.

EXAMINATION BY MR. PESNER:

Q Mr. Robus, when did you come to Clarkstown?

A In 1918.

Q Where do you live?

A On South Mountain Road, about a mile west of the intersection with 304.

Q Mr. Robus, in 1957 you say that there was an increase of 500 pupils in the New City school system?

A In the Clarkstown school system.

Q Clarkstown No. 1?

A I have the full figures. As of a year ago we had actual enrollment of 2,720 children, and right now our actual enrollment is 3,095.

Q So that within the year it is about 270?

A Oh, no, sir, it is 375, about.

Q 375?

A Approximately, yes.

Q And in the year before that, in 1956, what was the enrollment?

A 417.

Q That was the increase?

A That was the increase.

Q And in 1955 what was it then?

A Over the previous year?

Q What was the increase in 1955 over the previous year?

A My figures show that it was 1,130.

Q That was --

A I am sorry. That was cumulative increase of 1955, '56, over the school year of 1949-50.

Q Do you know what the increase was in each of the years 1955 and 1956?

A Well, our enrollment in the school year 1955-56 was 2,303, and our enrollment in March of 1957 was 2,720. And our enrollment as of today is 3,092.

Q Do you have the figures for 1954?

A No, I don't have them broken down here.

Q You do not have any figures prior to 1955?

A Not with me. I can get them for you. As I say, I have a cumulative total.

Q Do you know whether the rate was greater before 1955 or since 1955?

A It has been about fifteen per cent in the elementary schools during the past two years and ten per cent in the high school in the past two years.

Q Greater than it was prior to 1955?

A Greater than it was prior to 1955.

Q Can you explain to the Board that with all of this up-zoning since 1955 the increase is greater now than it was prior?

A Yes, I think so. It is quite easy. There is a large body of land in the town of Clarkstown which was zoned for third of an acre developing. It has taken place on that third of an acre land and we are now getting the results in the school system.

Q So it is your testimony, as I follow it, that if it is zoned for one-third of an acre, it will definitely develop much more rapidly?

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A I would say so, yes.

Q Do you know how much of the area that is in acre zone has developed at all?

A I have no idea at all. I have not been in touch with those figures.

Q Do you know of any?

A Yes, the development up on Little Tor Road.

Q Where?

A Mr. Oatley's.

Q Do you know what that zone is?

A No.

Q Would you be surprised that that is R-1 zone of 15,000 square feet in the majority?

A Is it really? I didn't realize.

Q Did you appear at a hearing in the Town of Clarkstown yesterday?

A No.

Q Do you know that an application was made to change a zone from R-A or R-A-1 to the R-1 zone? Did you appear at that hearing and testify that the impact on the school was so tremendous, like you did tonight? Did you appear?

A I may have. I don't know. Would you tell me which one it was?

Q There was a hearing before the Town of Clarkstown, the same board, Deer Park?

A Yes, I have appeared in that case.

Q Did you appear there?

A I have appeared before the Planning Board in the case of the Deer Park development.

Q Did you explain to them that you have this impact in the schools and they should not grant that?

A That is quite correct, I certainly did.

Q Did you know that the Town Board granted that?

A I certainly do. I read the papers.

Q Do you know of the area on 304 as it goes easterly toward Haverstraw somewhere in the vicinity of the Christy Airport?

A Yes.

Q There was a development there, I believe it is called Country Club Estates?

A Yes.

Q Did you know that that was rezoned?

A Yes, I knew it had been rezoned.

Q Did you appear at that hearing to testify against it?

A No, I didn't.

Q Mr. Robus, isn't it a fact that we sit on the fringe or are a part or parcel of a metropolitan area and that growth is going to take place?

A That is correct. I reserve the right to make a comment on that particular section of the question in a minute, if I may.

Q Mr. Robus, isn't it a fact that without The Dells, Inc. putting any building on over the past nine years that required any children going to school, that the tax rate has been going up and the number of children have been increasing in the school system; isn't that true?

A Oh, obviously.

Q So that it isn't because of Mr. Nemeroff that the schools have become crowded and the tax rate has gone up?

A No, I don't treat this at all lightly.

Q Believe me, I don't, either.

A I am trying to bring before the Board testimony which will help them to come to a decision.

Q When you make a statement on the stand that in your position it is not too much for a man to pay \$31,000 when he has a million dollar investment, you are not taking it lightly.

MR. JOHNS: Is this a question?

MR. PESNER: This is a question and I have a right to make a comment when he makes a comment.

MR. JOHNS: Please ask a question.

MR. PESNER: I am not going to be subjected to a lot of laughing by people who think it is funny.

MR. JOHNS: Please ask a question.

MR. PESNER: I will, but I will lay the background for it.

Q Is it your opinion as the president of the Board of Education that the method of preventing the expanding of the school system is by zoning?

A That sort of is like asking when did you stop beating your wife?

Q Can you answer it or not?

A I have never maintained and I never will maintain that I want to stop the expansion of the school system, but I do want to control the expansion of the school system so that the education within it will maintain its high standards.

Q Mr. Robus, I want to ask you this question. You made of this apparently some sort of study?

A That's correct.

Q Do you know what area in this Central School District was, and you are president of the Board, as I understand it, do you know what area is not in an R-A or R-A-1 zone that is available for building purposes?

A Not without looking at the zoning map offhand.

Q If you looked at the zoning map would you be able to tell what is available and for what building? Does that show what is already built?

A Well, if you would compare it with the plot plans

Q Did you do that?

A With what in purpose, what particular point are you bringing out? I don't understand.

Q I will go back to your testimony. You testified that this Board, this Town Board, should take into consideration the impact that such a subdivision, or such a development,

if it would be allowed --

A Yes.

Q This is not an application for a subdivision. This is an application for a rezoning.

A Yes.

Q And in the petition by The Bells, Inc. it is stated that the effect, the density, would be no greater except that it would be more economically practical for this man to use his property. Now, if we built a house on each acre and built 700 homes this would mean 1400 children, in your figure?

A That's correct, yes.

Q What would that do to your school system?

A It would give us an equal amount of educational and constructional problems. There is no question about that.

Q What would happen in the areas where apartment houses are permitted?

A In here (indicating)?

Q In any of the areas in your school district?

A Surely, we have considered it.

Q How many apartment houses could be constructed in your school district within the next year?

A At the present time, none, because we don't have space to take care of the children which would become members of our school district.

Q Are you telling me that if we built an apartment house and we required the education of another 100 children you would not take them into your school?

A We would take them.

Q Have you made a study of this possibility?

A We have made continuous studies of change in the school system. We have to for several reasons. We have to because it is our job to see that the children are transferred to school and where they come from. We have to know which school it would be better to take them to. We have to cross district lines. It would be foolish to push a greater number of children in one school when possibly we would have room in another school. Those times are coming to an end now.

Q The possibility of building more than a single family house in your present zone?

A That is correct.

Q This also will affect the school system?

A Absolutely.

Q Do you have any proposal for stopping that instead of just this area (indicating)?

A Mr. Pesner, we have no intention whatsoever of trying in any way to withhold our support of the law. However, we feel that it is our duty to the present residents of this district to provide them with the best education for the dollars that they spend, and in our estimation a large group of children being deposited on our school system within the next few years would decrease from the value of our education.

Q Would you say that the educational system today is worse than it was ten years ago when we had less children?

A We just completed six new buildings so I think we are doing pretty well.

Q Last year did you have six new buildings?

A No, but the fall of last season we had to go on double session and education suffered.

Q Ten years you didn't have that?

A That's right.

Q So the education ten years ago was better than it is now?

A That's your words.

Q In other words, the crowding would have no value except that it would be better to have more space per pupil?

A You say that is no value?

Q Yes, I say it is better to have more space.

A It is better to be a single session.

Q Do you know of any area within the metropolitan area where it doesn't have the same problem we are discussing now, the school question in relation to the growth of the community?

A That's right. And it is up to each of them to do their best.

Q You were a member of the advisory committee that studied this zoning?

A Yes.

Q Part of this property was in a commercial zone?

A Yes.

Q That would have allowed the use for something other than residences?

A That's right.

Q You did not feel it was advisable to keep it that way?

A When the Zoning Advisory Committee finished with this map we had a great many areas in which we had provided for adequate commercial and industrial expansion, and for one reason and another some of that land was eliminated from this map before it was passed and adopted as the law of the town.

Q In other words, you recommended a greater portion for industrial and commercial purposes?

A That is correct.

Q You now feel that this doesn't reflect your thinking?

A I think it reflects our thinking to a degree, to a large degree, but there were certain provisions that we had thought out that the Town Board in its wisdom thought fit to see differently on and they were the ones who had the power to pass this law and they modified it as they saw fit.

Q Do you read the petition that is presented to the Board on this application?

A Yes.

Q Did you notice that there is a question in there about the allocation of property for recreation, park and school purposes?

A Yes.

Q So that the density of population would be no greater?

A Yes.

Q Do you feel that in any way is helpful?

A Well, this has come up before, that when a petition has been made to lower the zoning on a large number of acres you can make all the promises you want, but the law still says

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that you can develop it at a third of an acre, all on the 760 acres, doesn't it? Maybe I am wrong on that.

Q No, no, you are definitely wrong on that.

MR. JOHN: If you are not too familiar with the answer to the question, just state you are not too familiar and I think it will be better.

Q My question to you is, in preparing rezoning you were discussing the density of population, the purpose of development of the town, so you have an idea of what the future growth of the town would be?

A Yes.

Q In relation to density of population it develops into this. We are talking about the density of population to be no greater, but the economic factor would be greater, so we could at least move the property and make it an economical fact. On that basis, with the same number of people using it and the same number of children ultimately getting to the school and reserving twenty-five per cent of the property not to be built on under any restriction the town wishes, which as the petitioner has said can be put in the R-A zone for 30,000 square feet, if you wish -- that's all right with us, we are not here to use subterfuge. We put it in the petition in writing.

MR. JOHNS: The petition will speak for itself. You keep alluding to it.

MR. PESNER: I must refer him to it.

Q We intend not to increase the density. This is not an application for a subdivision. It is an application for relief because we feel the pressure our --

MR. JOHNS: Is this a question, Mr. Pesner?

MR. PESNER: Mr. Johns, I have a perfect right to explain the background of the question to a man who testified that he was on the advisory committee that drew this zoning ordinance.

MR. JOHNS: You are making statements.

MR. PESNER: I have a right to make the statement as to what they took into consideration in adopting the zoning ordinance. He is not testifying as a layman. He is testifying as a member of the legislative committee who adopted this ordinance.

MR. JOHNS: You are stating things with which he may or may not agree.

MR. PESNER: Let him state.

Q In relation to zoning ordinance you must have taken into consideration the density of population and growth?

A Yes.

Q Under this petition that is our application. I am asking you, does that in any way affect the school situation with the same density of population?

A Well, in answer to your hypothetical question, we are obviously faced with the fact that this 760 acres can be developed on the basis of one acre zoning. What else can I say?

Q I will try to find out. Is it your understanding, having studied this proposed zoning before it was adopted, that it was more difficult, more costly to subdivide an area into acre developments than it is on smaller developments; was that considered by your group?

A Oh, certainly it was considered. The fact that it would be more costly to subdivide on the one acre zoning as we are discussing.

Q So that now isn't it your testimony that you would not go along with the idea of density of population because that would destroy the factor that you used in determining what this zone should be, to this extent: That while the density of population would be the same, it would be used more readily because of the availability of one-third acre zoning, 15,000 square feet, whereas it cannot be so readily disposed of at an acre plot?

A May I say you are oversimplifying the thing. I think we took into our consideration the fact that one acre plots would probably develop more slowly -- and this is the statement that I had hoped to be able to make -- when we helped to develop this zoning ordinance and map it was our earnest desire to help control the growth, not stop the growth. We hoped to control the growth of Clarkstown so that the residents, the present residents and the residents who are moving into our new developments don't have to absorb a sudden financial wallop, but that the thing can be taken in easy stages.

So I would say in answer to your question that when we provided for two acre zoning, where I live, at one acre zoning, it was our feeling that the zoning ordinance was not a static affair, but that it was a controlling ordinance. And it is my only personal opinion that a change in zoning such as the one you proposed would to a great degree negate the meaning of this zoning ordinance, and we would no longer have controlled community growth.

Q You stated that it was not intended to be static. It was only for control?

A Yes, that is correct.

Q You indicate by that that you anticipate there would be changes as the time went on; is that right?

A Yes, Mr. Pesner, certainly.

Q Were you present when Mr. Memeroff of The Dells, Inc. made an application to change the zoning for only a part of this property?

A Yes, I was present.

Q Did you oppose that one?

A No, I didn't oppose it.

Q Did you appear at that hearing?

A I was present. I didn't appear and testify.

Q Did you testify?

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A No, I did not testify.

Q Did you know that that was refused?

A Yes, I know it was refused. Which petition?

Q I am not talking about Wiltwyck School. I am talking about 100 acres for a subdivision.

A Yes, I was there. I didn't testify.

Q That was more in line with what you are talking about now, not being static but progressing as we go, taking a parcel as we go.

A Again you are oversimplifying. You see there is land available for a third of an acre development in the Town of Clarkstown.

Q How many acres do you own where you live?

A About four.

Q That's all zoned --

A Two acre.

Q Two acre zone. Do you have the question, if you wanted to sell half of your property, you would be able to sell the two acres for one house?

A Well, it would be very difficult because the road presents a problem.

Q Well, assuming. The question we are presented with is a little different. We own 760 acres, all of it is in acre or two acre zoning. We have no relief at all. This is a little different than four acres. We have asked the Town Board to reconsider the revising of the zoning of this so that we would not increase the density, we would set aside the twenty-five per cent for development, but we are asking for relief because of this hardship which you, yourself, have mentioned the fact that the acre zoning will progress slower. I want to ask you this question before I leave you. Do you know of any area in the Town of Clarkstown since 1955 that has developed in the acre or two acre zone outside of an individual house; is there any development in the Town of Clarkstown on any R-A or R-A-1 zone?

A I don't know.

MR. PESNER: Thank you very much.

EXAMINATION BY MR. JOHNS:

Q Just one question, Mr. Robus. The Zoning Advisory Commission, their primary concern, was it not their primary concern to promulgate a comprehensive zoning plan for the Town of Clarkstown under the enabling provisions of the town law?

A That is correct, yes. If I may make one statement, I would like to say that the discussion between Mr. Pesner and myself has been, between Mr. Pesner and myself as an individual, I have not expressed the views of the School Board, except at the beginning of my presentation when I presented the figures and statistics.

MR. COYLE: Yes, thank you, Mr. Robus. (Whereupon a five-minute recess was declared)

MR. COYLE: Is Mr. James Ward present? (No response).

A VOICE: I would like to appear for the North Clarkstown Civic Association. My name is John Kennedy. I would like to make a statement for these people.

JOHN KENNEDY, Suffern, New York, for the North Clarkstown Civic Association, having been first duly sworn, testified as follows:

THE WITNESS: I would first like to present several papers. They all read the same, except each one has different signatures on them. They are protests under Section 265 of the Town Law by owners of property either within 100 feet of this land or on the other side of the road within 100 feet of this land.

The effect of this protest, which is made by far over the twenty per cent is to require at least a four to one vote in order to effect this zoning change.

MR. COYLE: You state that this does represent more than twenty per cent?

THE WITNESS: Yes, of course that is subject to verification, but I don't think there is any question but that it does.

MR. JOHNS: There is no other proof to your statement that it represents over twenty per cent?

THE WITNESS: No, except that it states so in here (indicating).

MR. JOHNS: What I am getting at, it is subject to check by our offices as to the percentage and compliance with Section 265 of the Town Law?

THE WITNESS: Oh, absolutely, if there is anybody on here that doesn't comply, it doesn't count.

MR. JOHNS: Show it to Mr. Pesner.

MR. PESNER: I would have to object to this protest to the extent that it is proposed. Each one of these is on a separate sheet and each one of these must be taken separately. Now, when a petition in protest states that the undersigned constitute twenty-per cent or more of the area, and there are two names, I say that this is inadequate to represent twenty per cent of the area surrounding this 760 acres and each one of these is an individual setup. Each one of these says that the undersigned represent twenty per cent or more of the area, and in and of itself, is inadequate to comply with the provision of Section 265 of the Town Law and should not be entered in at this hearing for the purpose mentioned by Mr. Kennedy, to require a four to one vote of the Town board.

THE WITNESS: I disagree with you entirely, Mr. Pesner. That's perhaps a legal question.

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MR. JOHNS: I will accept it with the provision --

THE WITNESS: I am offering these as one petition. Naturally, you have to have different copies for signature.

MR. JOHNS: I will accept it as an objector's exhibit, subject to the Town Attorney's review of the petition under Section 265 of the Town Law.

MR. PESNER: And if it is going to be marked, may we indicate the number of pages there. (14 sheets referred to received and marked Objector's Exhibit A.)

THE WITNESS: Now, one consideration that is usually brought up by property owners when they oppose zoning changes is that they are afraid that the proposed change would be adverse to them personally, rather selfish consideration if you like, but nevertheless, a valid and proper one. And that is true in this case. But I am not going to belabor that point. I think that the Board, all living in Clarkstown, and I don't, is probably more familiar than I am with the unique characters of that northern part of Clarkstown, and the natural beauty and the general characterization of the area.

What I am more concerned about is consideration of what effect the proposed zoning plan, adopted in 1955 for the development of the whole town.

Now, we do not oppose progress. We don't oppose expansion. We don't even necessarily oppose building on small lots. As a matter of fact, we feel that that is desirable in the community as a whole. It is inevitable in any suburban area. It is inevitable in Rockland County and inevitable in Clarkstown.

The problem is how best to control this growth. How best to make an orderly plan for the development of the town and that is what the Zoning Ordinance of 1955 was designed to do. In that respect it is a great advance over the old zoning ordinance which didn't even purport to set lot sizes at all. This was a primitive type of ordinance.

Now, this zoning ordinance was gone into great detail by the advisory committee, by outside experts of the Town Board, by all manner of parties interested in the Town of Clarkstown. They took into consideration a great number of factors as they were required in fact to do under the zoning statutes. One factor, as a matter of fact, the facilitation of adequate school facilities. That's only one factor. And Mr. Robus was entirely correct in emphasizing that because that's the one most dear to his heart.

Other factors were considered when this zoning ordinance was adopted, such as transportation in the area, water, sewerage and other public requirements.

Now, it was decided when this ordinance was passed that the best method of planning for the future growth of Clarkstown, was one which would adopt the approach of spreading out more or less gradually perhaps from existing population centers. Now, this approach tied in with the one that concerns itself with the facilitation of adequate facilities because when you plan in that method of expansion out of existing centers, you are to some extent minimizing the growing pains of the times. You have some facilities in those centers that can be extended. The costs would be far greater if you suddenly adopt a new center and place it in the middle of nowhere, so to speak, where there was no particular population center at all. It is like extending your supply lines in the military sense.

This is, after all, very close to the northern limits of the town and it is not in the most logical place for expansion at this time. It may be in the future. The Zoning Ordinance contemplates ultimately a population of some 90,000 people as it is written, to a large extent to channel this growth in R-1 and R-2 and R-A-1-X zone. This channeling effect is for the foreseeable future. In other words, it would provide adequate expansion possibilities for the town for a number of years to come. Thereafter it may be wise, it may be feasible to extend a similar approach to the presently more outlying areas, but that time is not yet.

Incidentally, the petition contains allegations that this zoning ordinance has practically stifled growth in Clarkstown. Well, that is hardly the case when out of a potential of 90,000 population under the existing zoning ordinance, some 60,000 would be accommodated ultimately in R-1 zones including the R-A-1-X, which would ultimately be changed into R-1. This is about three times, I guess, the present population of the town and obviously I think provides plenty of room for expansion, plenty of room for relatively low cost homes, plenty of room for a base for industrial workers to come in and possibly lower the tax space for the entire community.

We feel that to adopt 760, or 550 acres new population center would entirely upset the plans and the plan of the existing zoning ordinance, and we feel that that is the chief consideration which this Board should consider.

There has been no direct allegation, perhaps, that one, or even two acre zoning is invalid, although it seems that such a claim is implicit in what both the petition says and what the testimony has been from the petitioner tonight. One and two acre zoning is not in itself invalid. It has been upheld in many communities, in many cases, and it is perfectly proper zoning.

The petitioner, especially in his petition, is apparently seeking to demonstrate that the existing zoning ordinance is unconstitutional. Well, we don't feel that it is unconstitutional, but if it is merely affecting this zoning change, it is not going to save it. If there is anything invalid about this zoning ordinance it is inherent in the general plan, I would say.

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On the other hand, we feel that there are strong arguments from a legal point of view that can be made against the validity of any change in this property into an R-1 zone.

MR. JOHNS: Mr. Kennedy, would you not give us your particular legal opinion, aside from the facts of the matter.

THE WITNESS: If I could beg your indulgence for about thirty seconds to make one particular point on that. We feel that what they are asking for would itself be invalid, and I would just like to briefly state the reasons for that. In the first place, it would be spot zoning, I would say. What rational plan would dictate that just the particular area of the petitioner's property should be zoned R-1?

Furthermore, there is a presumption of validity to the existing ordinance and to the existing zone boundaries which were gone into very carefully. There have been some recent cases which indicate that where a change is made there is a much stronger burden in order to justify the change than to justify the ordinance as a whole.

MR. JOHNS: May I ask whether you have prepared a legal brief in connection with this?

THE WITNESS: I have a memorandum which states the case I am referring to.

MR. JOHNS: Do you have a memorandum as such which I would accept from you on behalf of the association without going into all of the legal accepts?

MR. PESNER: Have you a copy?

THE WITNESS: Yes, I have. The case I am referring to is the Sands Point case which held simply that in the case of an amendment to zoning ordinance there has to be some proof that you made a mistake in the first place, or else that the character of the area has so changed as to require rezoning.

MR. JOHNS: I want, without objection, Mr. Pesner, to enter this as an objector's exhibit. (Document referred to received and marked Objector's Exhibit E.)

MR. JOHNS: I will accept that from you as a legal memorandum by you on behalf of the association. You will not have to refer back to the legal points anymore, because I will be able to advise the Board on them.

THE WITNESS: Incidentally, I figured up myself from the pamphlet put out by the Zoning Advisory Commission that ultimately some thirty-five per cent of the land of the town would be in a R-1 zone, not an insignificant result. That includes the so-called "X" zones which are earmarked for ultimate --

MR. JOHNS: You are speaking about current areas, right now?

THE WITNESS: Well, right now there is about nineteen per cent, I believe, in either R-1 or R-2, maybe a little bit more, roughly twenty per cent, with an additional fifteen per cent or so earmarked for that classification.

Now, the petitioner makes a lot of claims of hardship. A zoning ordinance is bound to affect properties and affect property values to some extent. You can't get away from it. Whenever you zone property you do have that effect. Now, the petitioner's hardship would not seem to be particularly greater than anybody else is in the R-1 zone, and when you consider the fact of the tremendous land appreciation since the petitioner acquired the property, I think it is to see that even if the property were sold as R-1 he would be making a terrific profit, which is exactly the opposite, I believe, of hardship.

MR. JOHNS: May I interrupt and ask you, when you making these references will you be more specific in alluding to what it "seems to." It is not as specific as I would like it for the record.

THE WITNESS: I am referring now to the well-known rise in property values since 1949.

MR. JOHNS: I think a specific statement would be better on the record.

THE WITNESS: We also feel that the offers set out in the petition are somewhat disingenuous. In the first place, the golf course is not exactly a philanthropic institution. I presume they intend to withhold that because they prefer to do it that way, because they want to operate their golf course and hopefully to make profit out of it.

With respect to the acres earmarked for park purpose that is no more than a Planning Board would require, in any event. The Planning Board has the power to require land to be set aside for parks.

With respect to the twenty acres for school purposes, I was a little naive. When I first read the petition I thought the petitioner was going to give that to the schools, but according to Mr. Nemeroff, I guess he is going to sell it to the schools.

Now, I could not follow Mr. Nemeroff's mathematics when Mr. Pesner tried to show that the density of population would not be increased in this area if he gets his change to R-1. His reasoning seemed to be, well, there will be only 550 or 560 acres really in R-1. The rest he would be content if you didn't change the zoning for, and that you couldn't build any more homes evidently in there than you could if you build them on one acre plots in the 760 acres. As a matter of fact, he stated that 400 homes he thought could be built in R-1 in the 550 acres. Well, if he intends to build 400 homes he could build it on the one acre land. That would leave 160 acres still for road purposes and park anything else.

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If, in fact, he built on one-third acre plots he would at least double that figure of 400. I am simply unable, and I utterly failed to follow the mathematics in that respect.

Now, Mr. Nemeroff also claimed that somehow or other, even if the zoning change came about the type of houses and number of houses would be regulated by him somehow. Maybe that's how he arrived at so low a figure. But, on the other hand, I think he stated that he intended not to build the houses himself, but sell perhaps to a developer, in which case it would be in the hands of the developer, and most of developers I have had anything to do with try to get as much as they can out of a particular piece of land.

Mr. Nemeroff also complained, if that is the correct word, about his inability to sell any of this land and blamed it on the Zoning Ordinance. Well, even if that were true it would be irrelevant because the consideration before this Board is what is proper zoning, but there have been, I understand, many cases where people have tried to buy land in this particular area from The Dells, Inc. and have been turned down, and if the Board considers it important, I can call somebody who can testify to that in this case.

I think perhaps Mr. Nemeroff has been rather demanding in what he wants. In other words, he must have set up some sort of restrictions which have made it impossible for him to sell his land. Possibly he didn't want to sell in relatively small pieces. Possibly he wanted to sell only the whole thing. Well, if he is going to sell the whole thing, that's going to take a million dollars, and that's a lot.

MR. JOHNS: The record will speak for itself. I do not think we should characterize the testimony. Anything you alluded to regarding the testimony, the record will speak for itself.

THE WITNESS: I think that about completes my presentation of the arguments from the point of view of the North Clarkstown Civic Association in favor of rejecting this request for rezoning.

EXAMINATION BY MR. JOHNS:

Q You referred to small lots before. Would you explain that, that the association you speak for was in favor of small lots.

A I don't remember that I said that.

Q I have noted it down, and it may be I misquoted you, but I have "small lots" with a question mark. Did you say that?

A Well, I think I would emphasize the question mark on that.

Q If you didn't say it, what did you say?

A What I did say is that we are not opposed to small lot development per se. We are in favor of progress and expansion.

Q What do you mean by small lots?

A Small lots I speak in a relative sense. In this zoning ordinance a small lot would be a 15,000 square footer, a large lot would be a 40,000 square footer. It is relative to the lots available under the Zoning Ordinance.

Q You do not take objection to the down-zoning of the R-1, 15,000 square feet, in and of itself?

A If it is dictated by rational land planning for the Town of Clarkstown, and we feel that all the indications point to it. In itself we are not opposed to development on 15,000 square foot lots, and we feel that the existing ordinance has followed that line of approach quite successfully.

Q Are you in favor of the reduction to R-1, of the 550 off acres referred to in the petition here?

A No, we are not.

Q That is because of the reasons you have stated here?

A That's right.

EXAMINATION BY MR. PESNER:

Q Mr. Kennedy, you read the petition of the petitioner here. Did you see anything in that petition that questions the constitutionality of the Zoning Ordinance?

A It does not state that in so many words, but the implication is there.

Q Would you please refer to the petition and show me where it infers the unconstitutionality of this Zoning Ordinance outside of your statement?

A I remember reading the words arbitrary and capricious.

Q What made that unconstitutional?

A Arbitrary and capricious is always invalid.

Q Not necessarily.

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MR. JOHNS: Just read the petition.

Q I am asking you to tell me where in that petition we say it is unconstitutional?

MR. JOHNS: I will refer you to a paragraph.

A The first one that hits my eyes, Paragraph 11, regulations of the Town of Clarkstown which are applicable to the property of the petitioner herein are so implied and interpreted as to benefit a limited number of property users in the Town of Clarkstown, and to the detriment of the petitioner herein.

Q Where does it say it is unconstitutional?

A It does not say it in so many words.

Q This is an application for an amendment of a zoning ordinance and in presenting it we have given our reasons. Now, you stated in your discourse that it anticipated in good zoning that changes are made as progress is made. This is about two and a half years since that ordinance was adopted. Mr. Nemeroff, on behalf of his corporation, feels that this is the time he must make his application. You stated that this is not the time. Would you explain when the time will be?

A That's difficult to say. I think the Zoning Ordinance, as it was set up in 1955 is designed to serve the needs of the Town of Clarkstown for ten, at least ten years, probably more.

Q Without amendment?

A Without this kind of amendment.

Q Without amendment of change of zone?

A I dare say that there probably have been amendments that have been proper already. There never has been an amendment proposed of this size or nature.

Q Do you know of anybody in the Town of Clarkstown that owns 760 acres?

A No, I don't.

Q Will, then, how could there possibly be?

A There couldn't be another case just like this one, but that doesn't prove that this one may not be incorrect.

Q Do you know that last week they made a decision down-zoning to R-1 that I referred to with the last witness?

A I only heard you refer to it.

Q Did you know it took place?

A I didn't, to my own knowledge.

Q If I show it to you in the newspaper will you accept it?

A I am perfectly willing to accept it.

Q Did you know of another application where they down-zoned it from R-A to R-A-1.

A We are arguing now.

Q I am not arguing. I am asking a question.

A You asked me, and I don't know.

Q You just made a statement that this ordinance was adopted and is good without change for ten years?

A Without even knowing the case you referred to, I dare say there are many considerations in that case which are different from this case.

Q Sure, it was a different applicant with his own property. You said Mr. Nemeroff said there would be 400 homes. You could be wrong?

A I could be wrong, but I thought I heard 400.

Q He never said it. All the testimony was --

A I have it written on my pad.

Q That doesn't make it right. The testimony of Mr. Nemeroff; and the allegations in the petition, are that the density of population would be no more than under the R-1 zone if we get it, than it would be if we built on the entire acreage in the R-A and R-A-1.

MR. JOHNS: If the record so indicates.

Q Do you accept that?

A I accept that he says it. I merely indicated that I, for the life of me, couldn't follow the mathematics.

Q It is in the petition.

A That doesn't make it correct. I was questioning the correctness of the mathematics.

MR. PESNER: I think, Mr. Supervisor, and gentlemen of the Board, let's get the record clear. I stated at the beginning, and I repeat it now, that this petition must be read in its entirety. It cannot be assumed that this is an application for an R-1 zone, period. It is an application for an R-1 zone because that is the only next zone that there is in the ordinance, and in connection with that the petition states, and the petitioner so stated under oath, that there would be set aside enough land, and in the use of the land, if granted, the density of the population would be no greater than it would be if we used the entire area in its present zoning. If it is granted, it must be granted with that understanding and binding on the property owner. We are not hedging. I am saying again, and that is the only inference that must be drawn from the petition and the testimony.

THE WITNESS: You wouldn't dispute the right to question the mathematics?

MR. JOHNS: Mr. Kennedy and Mr. Pesner, if there are going to be references not to more statements, I will have to ask you to be sworn.

MR. PESNER: I beg your pardon, and I am making a statement that is on the record. I am presenting the petition and I am calling the attention of the board to it. You want me sworn?

MR. JOHNS: If you are making reference to statements other than what has been put in the record.

MR. PESNER: Exactly, when I say something that is not in the record.

Q Mr. Kennedy, you are familiar with zoning practice, as such, are you not?

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A I have familiarized myself somewhat with zoning.

Q You know it is perfectly proper under zoning to allow the use of an area in smaller lot sizes as long as the density of population is not increased; do you know that to be a fact?

A I don't quite follow the question. I know as a fact that occasionally zoning changes are granted, occasionally properties are down-zoned.

Q Do you know as a matter of law, do you know as a matter of fact, that this ordinance that we are discussing provides that you may have smaller lots than called for in the ordinance, providing the density of population is not increased?

A I would say this. I know the density of population is one factor to be considered in any zoning ordinance and requested rezoning change.

Q Mr. Kennedy, am I correct in stating that you testified that this is an improper application on the ground that it is in effect spot zoning?

A I think this application has that character.

Q Is it your testimony that an area of 760 acres is spot zoning?

A I think it is exceedingly unlikely that a particular 760 acre parcel, that just happens to be owned by this petitioner, would be the best way to develop the land.

Q I didn't ask you that question. I asked you simply one question, is 760 acres spot zoning in your opinion?

A I think it may very well be.

Q Do you know of any area in the town of Clarkstown that is presently zoned that consists of more than 760 acres?

A I do not, but I don't think that is particularly relevant.

Q Do you know of any commercial area set aside that consists of 760 acres?

A I do not know.

Q Do you know of an R-1 zone, not owned by any one person, but in one area owned by many people, that compares?

A I am willing to concede that the petitioner owns a very large piece of land.

Q I know it. I know how big it is. I am referring now to spot zoning. I don't want the Board to be misled, especially by you. Now, I am asking you as an attorney to make a statement, is it your opinion that 760 acres can be considered spot zoning?

A I think it can very well be. You can have large islands in large seas, or you can have small islands in small seas.

Q Mr. Kennedy, you made an analysis, you say, of how many homes can be built in the Town of Clarkstown in the present residential areas?

A I didn't put it in the number of homes. I put it in the number of people.

Q How did you get to the number of people?

A I used the figure that the Zoning Advisory Commission used of 3.3.

Q Per what?

A Per home.

Q Well, can you divide the 3.3 per home into the number and tell me how many homes you were considering?

A I think it would be something over 18,000.

Q In addition to what we now have?

A No, total.

Q How many do we now have?

A Well, what is the population, about 22,000?

Q I do not know. I am asking you.

A I would guess you would probably have about 7,000 homes. Dividing roughly in my head.

Q The total would include what there is right now?

A Yes.

Q How many do we have now?

A I really know the present statistics. I am merely stating the recounting in statistics that the Zoning Advisory Commission came up with.

Q Who is the Zoning Advisory Commission, who are they? I do not know, seriously.

Is it a local group or state or what?

A Don't you know?

Q No.

A Never heard of them?

Q No. Who is it?

A They are a group of citizens in the Town of Clarkstown who are engaged in helping prepare the 1955 Zoning Ordinance.

Q Was Mr. Robus one?

A Mr. Robus was one.

Q Now, Mr. Robus testified that it is an average of two children per house, and you are testifying it is 3.3 per family. That's a little different.

A Well, most houses have adults in it, too. That brings it up.

Q That is what I want to know. 3.3 includes the adults and children?

A That's the figure they used.

Q So either there are less children because there is sure to be a mother and a father in this deal. Now, Mr. Kennedy, on the basis of 7,000 homes total can you tell this Board how many homes there are in the Town of Clarkstown at the present time?

A I don't know.

Q Do you know whether or not the proposed change would bring us over the limit?

A What limit?

Q Of 7,000 homes.

A That's not a limit.

Q What was the 7,000 mentioned before?

A You asked me how many houses were in the Town of Clarkstown now and I made a guess of 7,000.

Q Let's go back to your testimony. You gave us testimony about the population, about the growth of the Town of Clarkstown. Repeat it, please.

A My testimony was that when the R-1, R-2 and X zones are ultimately built up as foreseen by this zoning ordinance, there would be approximately 18,000 homes in those areas. Those

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18,000 homes at 3.3 people per home would give us approximately 60,000, which is quite a growth. That was my point.

Q That does not allow for any growth in the R-A or R-A-1?

A No, that growth is not counted. I was only talking about the R-1, R-2 and the X zones.

Q I read with interest, though hastily, this writing that you put in as Objector's Exhibit B, in which you say that zoning is bound to affect realty land values. It is perfectly possible to develop land on 40,000 square foot lots and it is being done in Clarkstown. Would you please tell me where it is being done in Clarkstown on 40,000 square foot lots as a subdivision?

A I heard Mr. Nemeroff say that five per cent is being developed on one acre lots, something to that effect. That's not exactly insignificant.

Q You did not prepare this writing on what Mr. Nemeroff testified to tonight, did you?

A Well, I can mention a couple of developments, I think.

Q Please do.

A One is Woodland Hills.

Q Where is that located?

A That is on Little Tor Road.

Q How many homes are in there?

A I have no idea.

Q How many lots are involved?

A I don't know.

Q How many acres are involved?

A I don't know, but it is a development.

Q Do you know of any other place?

A I think there is one called Red Rock Acres.

Q Where is that?

A I don't know.

Q How many acres was that?

A I don't know any of these statistics, Mr. Pesner. Those things are a matter of record.

Q Are you familiar with the area around the property of the petitioner?

A Well, I have probably driven past there a few times, maybe.

Q You know it fairly well, don't you?

A I have driven past there. I wouldn't say I am an expert on the characterizations.

Q Do you know what land is available for building within one mile of this area, about how many acres?

A No, I don't know. I don't know what you mean by available.

Q In R-1 or R-A-1-A zoning?

A Well, I think that's on the map.

Q This is the property we are talking about. (Indicating).

A I think there is very little land within those zones.

Q Do you see any within a mile?

A Well, I think there might be some. But I think that reinforces the claim that that is spot zoning, if you are going to create this large island.

Q But you do not see any in that vicinity, do you?

A I see some certainly within a mile.

Q There is a marking on there, isn't that 2,000 feet?

A That's within a mile.

Q There is an area there that is in 15,000 square feet, isn't that so (indicating)?

A Well, that would be, that's more than 2,000, that's about --

Q This is R-1?

A That's R-A-1-X. Along Route 304, yes. There is a narrow strip, 300 feet along Route 304.

Q On both sides?

A But I think you are only asking me to testify what is on the map.

Q I am asking you to testify what you know. You got this information someplace. I want to know. Now, you testified in your opinion that zoning should stem from a center and radiate out. Is it your understanding that the town of Clarkstown has only one center, or are there several centers from which it radiates?

A No, I think there are several centers.

Q Would you say there has to be a certain distance between centers?

A No.

Q There is no method of determining that; isn't that right?

A No.

Q So that new centers are possible?

A Of course, I am not the zoning expert, but I believe the position they took was to take the existing centers and plan for orderly growth out from there.

Q About how far?

A First you have R-1 zones and R-X zones and then you shade up.

Q Is the R-1 developed on the 15,000 square feet when the R-A-1-X came in for amendment because, as I understand it, the X means that this is marked for possible change to reduce it to the R-1 -- isn't that true; isn't that your understanding?

A Yes.

Q As that area comes in and says we would like to change this to R-1, and they would then build on 15,000 square feet -- is that correct?

A That's correct.

Q --then what happens to the area that is R-A and R-A-1 that has to build on 40,000 square feet next to the neighborhood where all the houses are on 15,000 feet? Is that practical?

A It is certainly possible. I think there is no question that the development would proceed at its lower pace.

Q That isn't the question. We are now questioning whether, in your opinion, it affects the property in the R-A and R-A-1 zones by having an R-15 next to them?

A Is this an adequate answer, I think that most developments would rather have R-1 land than R-A-1 land.

Q We know that. I am asking you this. When the R-A-1-X is amended to R-1, and that's all in 15,000 square feet, what happens to the area that is zoned that is next to it?

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A What happens now?

Q What stays in the 10,000 and 30,000 square feet; is that correct?

A Well, if you change one of the existing R-A-1-X to R-1 that doesn't change anything except that particular piece.

Q But that is the proposal of the ordinance; isn't that so?

A That's right.

Q So then you would have the R-A and R-A-1 adjacent to an R-A-1 zone and that is perfectly good planning.

A Possibly. It is designed that way, yes.

Q So there is nothing wrong with having the R-1 next to the R-A or to the R-A-1?

A When that time comes and it is nowhere near yet, it may be wise to look over the ordinance again and maybe there will be some changes.

Q Will you please refer to the Clarkstown Zoning Ordinance and tell me when the time is available? You are telling me this is not the time. I want to know when is the time?

A The ordinance attempts to insure orderly growth.

Q When?

A Right now.

Q Of course. Can I come in with an R-A-X under the present zoning with the intent in mind that it was drawn for change and have it changed to R-1, under the present zoning?

A If you meet the requirements.

Q If I meet the requirements, isn't that true?

A Right.

Q So I could, next to an R-1 zone, now, today, this is the time I am talking about?

A I don't know what you are asking me.

Q You just said, and you testified at the beginning, that this is not the time?

A I will concede that if an application should ever be made for this area to the south, some 2,000 feet or more --

MR. JOHNS: What area are you designating?

THE WITNESS: I am willing to concede that the R-A-X area, which starts some 2,000 feet south of the petitioner's property -- no, I don't concede that, even if that were developed, still the petitioner's property wouldn't border on an R-1. It would be 2,000 feet away.

Q We are not discussing the petitioner. I am talking about R-A-1 property would be adjacent to R-1?

A That is certainly perfectly possible.

Q No question it could happen now? This is the time?

A No question but that there has to be a boundary line.

Q You say it is not the time for Mr. Nemeroff to make the application, isn't that right?

A Right.

Q Do you have any idea when that time will be?

A That's very hard to say.

Q Will it be next week?

A I rather doubt it.

Q Next year?

A Probably not.

Q What are the prerequisites, in your opinion, of what is the necessary time?

MR. JOHNS: If you do not know, Mr. Kennedy, we are getting into arguments.

MR. PESNER: He testified that this is not the time. I want to know when is the time.

MR. RENKEN: He did not so testify.

A I should say that after the town goes through the expansion possibilities or to considerable extent goes through the expansion possibly permitted under this ordinance, it might then be the time to revise it or to consider revising it. I am not even saying that then it should be revised.

MR. PESNER: No further questions.

MR. COYLE: Is there anyone else present who represents several persons?

A VOICE: My name is Tyson Matlack. I am here on behalf of the Central Clarkstown Residents Association.

MR. JOHNS: Are you just submitting something to the Board, or are you going to give us facts for which you should be sworn?

MR. MATLACK: I just want to read a communication from our Board of Directors.

MR. PESNER: I must object to this, Mr. Supervisor. We are given no opportunity at all to talk to these people that want to testify in this matter. It is a simple matter for me to come in here with a letter from 5,000 people that do not give a hoot or holler about the area and say they are for it. We have to be given an opportunity to talk to these people.

MR. JOHNS: I think you should be sworn and whatever you want to state, state so under oath and it will be subject to whatever questions counsel may have.

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TYSON MATLACK, Pheasant Drive, West Nyack, New York, having first been duly sworn, testified as follows:

THE WITNESS: "The Central Clarkstown Residents Association, through its Board of Directors, is desirous of placing before this Board its official position with respect to the current application of The Dells, Inc." (Whereupon the witness read from a document then marked Objector's Exhibit C.)

MR. PESNER: Please let the record note that this exhibit was accepted over my objection.

EXAMINATION BY MR. JOHNS:

Q You said you speak for the Clarkstown Residents Association, Mr. Matlack?

A Yes, the Board of Directors.

Q Are you familiar with the property sought to be changed here in the application of the petitioner; are you familiar with the property in a general way, location?

A Yes.

Q With the particular zoning of this area as it is now?

A Yes, I think so. I think it is one and two acre zoning, right?

Q That's correct. Are you familiar in a general way with the Zoning Ordinance of the Town of Clarkstown?

A No, I don't come here as an expert on the Zoning Ordinance.

EXAMINATION BY MR. PESNER:

Q Mr. Matlack, in this letter you state, or this association states, "We do feel that this growth of our township should be in accordance with the Zoning Ordinance passed in 1955 and we believe that the ordinance could constantly be renewed and that changes should be made in the light of current conditions." That's what it says here. Now, you say, however, that this application is contrary to the purposes of the Zoning Ordinance. This is an application by The Dells, Inc. Would you please explain to this Board what conditions are lacking that you say are necessary in order to change it?

A No, no. I don't do that.

Q You don't know?

A I don't come here as an expert and I am just communicating to you the feelings expressed by our Board of Directors.

Q Well, I see you have a post office address in West Nyack. I imagine that is the secretary or somebody?

A That's right.

Q Where do you live?

A I live off Pheasant Drive.

Q Where is that?

A That's off Parrot Road.

Q I mean the location.

A It is about a mile from New City.

Q Going south?

A Down where Blue Ridge Road is, where the reservoir is, yes. I live right near the reservoir.

Q Do you know what zone that is in?

A Yes, I think so.

Q How long do you live there?

A Since 1953.

Q Did you check the zoning before you moved into the Clarkstown area?

A Yes, I did.

Q Were you satisfied that there was zoning in existence?

A I was satisfied that they were making progress on the zoning.

Q Were you in a Residence A zone at the time you bought?

A No, I don't know.

Q What zone were you in?

MR. JOHNS: I will object to this line of questioning.

MR. PESNER: I have to examine the man.

MR. JOHNS: How is this pertinent to your application?

MR. PESNER: When you tell me what pertinence this has that you are willing to put it in as an exhibit -- I say this should not be in the record and should never have been read.

MR. COYLE: Your objection is recorded.

MR. PESNER: I know, but you have taken it. If you preclude me from showing it has no value, then you accept it as face value.

MR. JOHNS: Your line of questioning is not material right now as to whether Mr. Matlack knew what zone he was in.

MR. PESNER: Here you have an organization representing 100 some odd people and I don't know where they come from. If you want to take this in and preclude me from searching out what this represents, then I want my objection to be noted that you are trying to prevent me from showing to this Board that you are being influenced by a group of people who have nothing to do with this, but they are worried about taxes. That's what you are doing.

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MR. JOHNS: I object to your statement. I am not going to permit the line of questioning as to the residential zone of Mr. Matlack or the people that reside there.

MR. PESNER: I respectfully object to your objection.

Q. Mr. Matlack you live on Blue Ridge Road about how far from this property?

A I don't live on Blue Ridge Road.

Q Or off Pheasant Drive?

A Yes.

Q About how far from the property in question?

A I live about a mile and a half from here.

Q So that is about two and a half miles from the nearest point of this property?

A Yes.

Q Do you know where the members of the Central Clarks town Residents Association live?

A Yes, generally.

Q Do any of them live in this vicinity of the property?

A Yes.

Q How many?

A I don't know.

Q Did you appear at the hearing before this Town Board on the application of Deerwood Park for a down-zoning of an area from R-A-1 to R-1 similar to this?

A No.

Q Did your association appear?

A No, I don't think so.

Q Do you know of any objection that they had to that change?

A In Deerwood?

Q Yes

A I don't know of any.

Q Did your association appear in any other hearing before the Town Board for change of zone that you know of?

A Yes.

Q Which one?

A We always attend zoning.

Q I asked you about Deerwood Park and you said you did not do that one. What one did you appear in?

A Well, I have to rely on my memory now.

Q Please do.

A I recall we stated our opposition to Mr. Nemeroff's petition before, which was stated in the letter.

Q On which one? Was it for the school?

A It was a warm night over here.

Q That was when they applied for 100 acres to be rezoned?

A Yes.

Q You appeared in opposition to that?

A Yes, we did.

Q Did you appear in opposition to the Wiltwyck School application?

A Yes, we did.

Q But you didn't appear in opposition to this Deerwood Park?

A No.

MR. PESNER: That is all.

MR. COYLE: Is there anyone else present who represents a group or several persons?
(no answer)

MR. COYLE: Is there anyone present who has something other than what would be repetitive.

EDWARD HARKAVY, Buena Vista Road, New City, New York, having been first duly sworn, testified as follows:

THE WITNESS: I wanted to say that the evidence as brought by the petition seemed to me to justify a decision directly contrary to the one he has been asking for. The petitioner has come before this Board claiming to be a prudent investor who has been personally and financially hurt by the change in the zoning ordinance, and he prays for relief.

I claim that on the basis of the evidence that he has shown that during the six years that he claimed to have held this property under the old zoning ordinance, which he now wishes to be reinstated, he either would not or could not take advantage of it is a way that he regarded as justified business.

The impression also from the evidence that he himself gave us was that at the present time he is \$200.00 less able and/or willing to carry out the promise that he is making.

The further impression of the same lack of credibility and perhaps even credit has been given to this countryside, local countryside, that is, myself included, by the site of another property bought and owned by him and still by him, The Elms Hotel, which has been --

MR. PESNER: I object.

MR. COYLE: Yes.

MR. JOHNS: Will you stick to the facts that are pertinent to this application.

THE WITNESS: The facts I feel were pertinent.

MR. JOHNS: Would you tell us, without characterizing any testimony or making reference to any other properties other than the subject matter here?

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THE WITNESS: The statement that I have alluded to and on the basis of which I make what I think to be a common sense judgment are the statement brought by the petitioner himself. It seems that with the facts as presented by him that any credit he asks for from this Board --

MR. JOHNS: I am sorry, you are characterizing the testimony of the witness and I cannot accept that. The testimony as adduced here will be remembered by the Board without characterization from you or anybody else. You may have a personal feeling on that, but I cannot let that in the record. If you will state the facts that are pertinent, that will help this Board on this application, I would say it would be pertinent.

THE WITNESS: I merely stated that the facts were those that the petitioner himself brought up, that during the six years of his tenure under the rule that he now wishes to have reinstated, he either would not or could not develop the property -- this is his own statement -- as he would like. At the present time he is to the extent of \$200,000 less capable or willing by his own admission of carrying it out. I would, therefore, scrutinize any claim that he makes as to credibility, acreage, population, density, intentions as to gifts or conditions to the county, be scrutinized with the utmost care.

MR. JOHNS: Have you anything else to state factually?

THE WITNESS: No.

EXAMINATION BY MR. PESNER:

Q Just one question, Mr. Harkavy. Mr. Harkavy, is it your testimony that two and a half years ago, if the owner of the property didn't want to do anything with his property, he should not want to do it now; is that your testimony?

A If he wouldn't?

Q If he didn't want to do anything with it two and a half years ago, he shouldn't apply now, because he didn't do it then?

A No, he may do anything that he pleases, but if he did not then, isn't the presumption a proper one that he would for six years under the old rules?

Q You mean having kept still in 1955 he shouldn't do anything until 1961?

A Six years of holding the property. You said he bought the property in '49, and the rules were changed in 1955. For six years he either would not or could not, according to you, do anything with this property. Now he asks for the reinstatement of the very same order.

Q That is not true. This is an application to change it to an R-1 zone. There was no R-1 zone in 1955.

A Then under a greater degree of business leeway he still during the six years before 1955 either would not or could not take a business advantage of it.

Q He would not. That is true. Now, two and a half years have gone by since the adoption of this zoning ordinance. Circumstances are such that he is required to do something. Do you question his right to come before the Board?

A Indeed, I do, because it doesn't seem the rules were entered into capriciously. To take anything from it -- that the county by abrogating its rules, abrogated his rights to take advantage of higher prices. In other words, he is not a prudent investor.

MR. RENKEN: I think we have an application for rezoning and why people are opposed or for it. I am not interested in how much money Mr. Nemeroff made or lost or why he did not do something six years ago. We want to know whether you are for or against it and what the reasons are.

THE WITNESS: I am opposed to it because Mr. Nemeroff, the owner of this property, has failed to take advantage of easier or similar conditions before.

MR. COYLE: Is there anyone else present who wishes to be heard and who has some other point to cover that has not already been covered, not repetitious?

WALTER FLEISHER, Buena Vista Road, New City, New York, having first been duly sworn, testified as follows:

THE WITNESS: One point I would like to make that hasn't been covered, is that the petition is drawn falsely or shouldn't be presented at all. Either it represents to zone the entire acreage at R-1. The other conditions stated are not necessary. If he wants to develop it in the way he says --

MR. PESNER: Just a moment. I want to object unless this man qualifies himself as an expert.

MR. COYLE: That will be covered as far as the Board is concerned. This is a petition for the whole property.

THE WITNESS: The whole property for R-1?

MR. COYLE: That's right.

THE WITNESS: Then the other statements in there about what he might do --

MR. COYLE: The Board understands the petition.

MR. JOHNS: The validity of the petition and the contents and the testimony of the petitioner have already been heard by the Board. If you have anything new to add in reference to the matter which the Board has already taken into consideration, we will be glad to hear it.

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THE WITNESS: The point I make is he seemed to be relieved under the ordinance without making the petition.

MR. JOHNS: The testimony is not what it seems. The Board will remember the testimony given by the different witnesses here and as covered by the record. If you have anything further I again ask you to bring it forward. I am not trying to keep you from testifying. We want to listen to them. But not something that has been repeated.

THE WITNESS: I hadn't heard this point raised. That's the reason I wanted to raise it.

MR. JOHNS: Is there anything else you wish to bring out?

THE WITNESS: You seem to think they have all been covered.

MR. JOHNS: I do not want to give you the understanding that all the points have been covered. I do not want to leave that impression with you. If you have any other facts which you wish to bring forward, you may do so.

THE WITNESS: I will only bring forth the fact that as a resident and a close neighbor of this property I am opposed to the petition for many of the reasons said here tonight.

MR. PESNER: No questions.

MR. COYLE: Is there any other person who wishes to be heard and some other point they wish to make which has not been covered?

MRS. WILLIAM BALLANTINE, South Mountain Road, New City, having first been duly sworn testified as follows:

THE WITNESS: It is perhaps not testimony. It is an opinion. Does that qualify? I am of the opinion that I speak for many, that this is an emotional feeling that we all hold.

MR. JOHNS: You should speak for yourself, if you do not mind.

THE WITNESS: I speak for myself. I believe that patently Mr. Nemeroff, we object to this because we believe Mr. Nemeroff is using us in order to grandize himself selfishly.

MR. PESNER: I object to this.

MR. COYLE: I cannot let you go on.

THE WITNESS: It is very rude, I know. It is because of our concept of our community.

MR. PESNER: I object to that.

MR. JOHNS: I will have to sustain the objection.

MR. RENKEN: Is this lady opposed?

THE WITNESS: I am opposed.

MR. RENKEN: Do you have a good reason why?

THE WITNESS: Yes, I feel that he is trying to burden us with his own personal problems.

MR. RENKEN: I do not think that is a good reason.

THE WITNESS: We fought for this and it only recently has been concrete, our concept of our community.

MR. JOHNS: Do you have any questions, Mr. Pesner?

MR. PESNER: No, I object.

THE WITNESS: Your objection is justifiable.

MR. COYLE: Is there anyone else who wishes to be heard on any point that has not been made?

A VOICE: Would I be out of order to ask a question? I would like to know if it is within your jurisdiction to grant this petition with qualifications, if you should grant this petition would it cover just the 750 acres down-zoned?

MR. JOHNS: If this board were to grant a change of zone from present zoning to R-1 the entire acreage, in my opinion, could be developed on the one-third acre basis. We would not have any right to refuse the issuance of a building permit. It has been held illegal to grant any zoning change on any condition.

MR. PESNER: I want to make a statement for the record, that I disagree with the statement made by counsel. The petition speaks for itself and we are talking about the density of population which is in our petition, and if granted, it would be granted on that basis.

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The testimony of the petitioner, Mr. Nemeroff, specifically stated that if the Board were of the opinion that the area to be set aside could not be restricted by stipulation, they could zone it in the highest residential zone of the Town of Clarkstown, two-acre zone, and it is certainly part of this petition.

MR. COYLE: That is on the record. We have heard it.

MR. NEMEROFF: You made a statement -- and I am also counsel for the corporation, as well as its president --

MR. JOHNS: Will you speak to the chairman?

MR. NEMEROFF: Mr. Supervisor, may I ask Mr. Johns how in this deal with Clarkstown did he accept a letter as a stipulation from the builder?

MR. PESNER: I do not want to get involved. It is a matter of record.

MR. COYLE: For the public who are here, this particular thing has been referred to several times tonight, that was a change of zoning from an R-A-1-X. The letter is simply a copy of a letter that they presented originally to the Planning Board and we wanted it in the file. It has no binding effect that I know.

MR. PESNER: It has nothing to do with our hearing.

MR. COYLE: It has nothing to do with this hearing.

ALAN ANDERSON, South Mountain Road, New City, having been first duly sworn, testified as follows:

THE WITNESS: I would like to ask some questions about these photographs.

MR. JOHNS: I will state, Mr. Anderson, those photographs were submitted here for what value and consideration the Board will give them, for purposes of identification, and the technicalities involving photographs were not gone into here at this hearing. There is to be no cross-examination on your behalf on the part of these photographs. If there are some questions we might be able to answer without so-called shutting you off, I would be happy to inasmuch as I know about it or possibly could ask the Board or the petitioner.

THE WITNESS: I wanted to ask what the photographs are supposed to prove. That was the question I had. If I ask that question --

MR. PESNER: It was stated.

MR. COYLE: That was all stated and it is in the record, what they were intended to prove.

MR. PESNER: Just the pictures of the homes around the periphery.

THE WITNESS: If I remember, this statement was that this was to prove that allowing this amendment would not change the character of the neighborhood. Was that the substance of the statement?

MR. JOHNS: The record will show. I am not going to attempt to paraphrase what was said several hours ago.

MR. PESNER: They had nothing to do with the pictures. The pictures were introduced so the Board would have a general picture of the scope around the area.

THE WITNESS: There was a statement made with the production of these pictures.

MR. COYLE: If you have something to state in regard to these pictures, please do so.

THE WITNESS: I am sorry Mr. Pesner's memory is so short.

MR. JOHNS: I would prefer you would not comment on memories.

THE WITNESS: I would only state that from my personal knowledge of many of the houses, and that is that there is an extremely wide range of building represented on these photographs, if these are the pictures around Mr. Nemeroff's property, they represent an enormous range of building, some going back before World War I, some of them rather recent. In price range it goes from shacks to \$60,000 houses. So I fail to see the point that it makes in regard to establishing any character.

MR. COYLE: Is that what you wanted to give us?

THE WITNESS: Yes.

MR. COYLE: Thank you.

MR. PESNER: Mr. Supervisor and gentlemen of the Town Board, when this petition was presented it is my understanding that the Town Board submitted it to the Planning Board of the Town of Clarkstown for its review and we believe that the record should disclose what their recommendations were and we should be given an opportunity to attack or agree and accept their recommendations.

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Now, it is part and parcel of the ordinance that you submit it to the Planning Board and it should be a part of this hearing.

MR. JOHNS: This particular section of the ordinance, the Town Board sought to take advantage of, it has received its communication and it is going to rest there in my opinion. You can take any exception you want.

MR. PESNER: Then I except for the record.

MR. LENKEM: I move that the hearing be closed and that the Board reserve decision.

MR. COYLE: Hearing closed. Decision of the Board is reserved.

I do hereby certify that the foregoing is a true and accurate transcript of the proceedings taken by me on February 2, 1958

March 13, 1958 S/ Lucille Mandel, C.S.P.