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Mr. Chambers: Again, Your Honor, we're going to the same point that the court referred to in the Norfolk school case. If this pattern has existed in the City of Charlotte, the School Board is going to have to do something else to desegregate the schools in the system. We are not seeking in this action an injunction against the city zoning.

Court: Mr. Lanning on Thursday didn't want to tell me what that something else was. Are you prepared to tell me what you want the Board to do?

Mr. Chambers: Your Honor, we submitted three plans, any one of which might be modified by the School Board. [554] My preference would be four schools serving all the students in the school system. That's my preference and I don't speak as an educator. That's why we tried to get someone who knew a little more than I did what ought to be done and there is available to the school system the agency under Title 4, and to the Court.

Court: What is that?

Mr. Chambers: An agency that will assist the Court in designing a plan that should be implemented in the City of Charlotte.

Court: You're not making any recommendations to the Court yet, are you?

Mr. Chambers: We made four recommendations with Drs. Larsen, Finger and Passey.

Court: You go ahead. This is only the second case I've ever tried when lawyers never would tell me what they wanted the Court to do.

Mr. Chambers: I'll tell you what we want you to do but I don't presume to be an educational expert and we tried to call some people to show different

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alternatives. Really it isn't our responsibility to design the thing, it's the School's Board's. We just drew up some possibilities that could be considered by the Board in designing what plan it ought to bring in.

Court: What I'm going to try to do is to hear whatever [555] he says, not in terms of expert opinions because in my mind recent history is not a matter of expert opinion. But I'm going to try to listen to him for the purpose of trying to get information about what the result of various governmental actions has been. You can ask questions going beyond that if you like but I don't believe I've got any business considering opinion as to why folks did this.

Mr. Chambers: Your Honor, we would tender Mr. Rabin as an expert and maybe in our examination the Court will see why we're talking about recent history. That's why I request you to let us show what we're trying to show and decide whether it ought to be admitted.

Court: Go ahead.

Q. Mr. Rabin, you were giving us your general impressions of the city activities on the housing pattern. A. Yes. I think, as I said, first I should describe what the activities were, what I looked at. I didn't look at all the activities of local government.

Court: I don't want general impressions. I thought we were going to have someone to testify about factual conclusions based upon statistics applied. General impressions, this is just preaching and preaching is good for many purposes but it doesn't help to decide a question of this sort.

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[556] Mr. Chambers: Your Honor, I think this could properly be defined as his opinion.

Q. Why don't you give us your opinions, then, Mr. Rabin?

Mr. Waggoner: If the Court please, we object.

Court: This is not the point, Mr. Chambers. The witness can help the Court by describing in detail the history which he has read from the books because it's fairly voluminous, but drawing some olympian opinion why all this was done or what the overall effect of it has done is not something that helps at all.

Mr. Chambers: What we're trying to show at this stage is an outline of the effect of the city activities in the areas he's going to talk about on the racial housing patterns in the City of Charlotte and I submit that he is perfectly competent to testify.

Court: The evidence as solicited by that question is incompetent and I believe I have indicated what I believe is an approach you can follow that will help the Court. Somebody simply giving abstract opinions about this doesn't help me a bit, but if you want him to review these exhibits in detail and indicate that he knows more about them than we do, that will help me. But simply somebody drawing conclusions from the hasty review of the mass of data like this, this doesn't help the Court in any question that the Court's got to decide.

[557] Mr. Chambers: First of all, we would say it wasn't a hasty review that Mr. Rabin made but in view of the Court's feeling that we ought to go into detail about the facts, we will go into detail about the facts. We were just trying to set up a

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pattern for how we were examining the witness and trying to set some outline for the Court to follow, but we will go into details on the other matters.

Court: If he can summarize these exhibits, which I hope he can, in a factual manner, this would be helpful, but I don't think impressions or general opinions is going to be helpful at all, in addition to which they are totally incompetent from an evidentiary standpoint.

Q. Mr. Rabin, would you describe for the Court what areas of city activities you considered? A. I looked at city planning, comprehensive planning, zoning, urban renewal, public housing construction and highway planning and construction.

Q. What did city planning consist of? A. As I indicated earlier, in city planning I looked at plans and documents prepared by the Charlotte-Mecklenburg Planning Commission. These consisted of the document entitled The Next Twenty Years, which is the comprehensive development plan; the plan for the greater Charlotte central area, which is the downtown business district development plan; a document [558] which I believe is entitled Blight in Charlotte. Anyway, it is dated September, 1962, and it's one of the exhibits.

Court: What was the title of that?

A. Blight in Charlotte. It's the second document from the top there. I examined these documents, the proposals they made in relation to the distribution of residents by racial groups and the changes that took place in that distribution as revealed by the United States census, the analysis

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survey which was taken here during the past year in Charlotte. Now, if I might refer to those . . . . also, Your Honor, may I point out the very specific relationship between these activities and schools?

Q. We'll come into that, Mr. Rabin. First of all, is this document Plaintiff's Exhibit 12 the one you referred to as the city planning for the next twenty years? A. Yes.

Q. Now, does this document contain a map that you also considered? A. Yes, it does.

Q. And what is the map entitled? A. The map is entitled General Development Plan and it summarizes pictorially the recommendations of the plan.

Q. Can you explain for the record the coloring of the map? A. Yes. The yellow areas depict the recommended areas for residential development; the green areas the major public and semi-public uses; the pink areas office-institutional; the deep red area the central business district; the bright red, [559] the general business and the blue areas commercial-industrial; and then there is a designation for flood plain areas.

Q. Now, the document you referred to as Residential Blight is Plaintiff's Exhibit 15. Would you explain for the record what this document shows? A. Yes. This document, which is dated September, 1962, describes each census tract within the City of Charlotte as of the date of the document and contains information each census tract on housing conditions, present and future land use and zoning, the tenure and race of the residents living in each census tract and the existence or non-existence of overcrowding and poor streets within each census tract, and then each one contains also a general description of the character and development of the tract itself.

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Court: Who prepared this Blight in Charlotte?

A. The Charlotte-Mecklenburg Planning Commission.

Court: That's Exhibit 15?
Mr. Chambers: Exhibit 15.

Q. Looking, for instance, at Census Tract 4 on this exhibit, what is this census tract depicting at the top of the page 12 for Census Tract 4? A. It shows housing conditions as they existed at the time of the publication of this study within that census tract.

Q. What does the bottom census tract show on Page 12 of Census Tract 4? [560] A. Present and future land use.

Q. What does the top census tract on Page 13 of Census Tract 4 show? A. It shows the tenure and race of the residents in the census tract as of the time of the study.

Q. How does this tract show the race of the residents? A. Those residential areas which are predominantly occupied by non-whites are bounded by a red line.

Q. That goes around the streets of the non-white residents? A. It goes around the area which is occupied by non-whites.

Q. What does the bottom census tract on Page 13 of Census Tract 4 show? A. It shows overcrowding within dwellings and shows the location of inadequate streets.

Court: How do they define inadequate streets?

A. The definition is given here as streets of inadequate width.

Court: Like the main streets in Philadelphia?

A. There are some narrow streets downtown.

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Court: What's the name of that street that runs along parallel to the big one? What's the name of the big hotel towards the east?

A. Bellview-Stratford.

Court: The one about six blocks east of that?

A. Ben Franklin.

Court: What's the name of that street that runs in [561] front of the Ben Franklin?

A. Chestnut.

Court: That's an inadequate street, I reckon.

A. Not by these standards. This is 30 feet or less. This is very inadequate and that is only a little inadequate.

Court: Is the street in front of the Ben Franklin Hotel 30 feet wide?

A. Oh, yes. When they say width of street they are talking about the distance from property line to property line, not the width of the actual carriageway.

Court: I just wanted to know if you've got one standard for middle-sized cities and one for big cities.

A. This standard is not mine. This standard which I am describing is the standard used by the Charlotte-Mecklenburg Planning Commission which is streets rights of way of 30 feet or less. I don't know whether it would be the standard I would use.

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Q. In connection with city planning, did you consider any other document? A. Yes. I considered the Greater Charlotte Central Area Plan which is a more detailed version of the section on central area which appears in the plan entitled The Next Twenty Years.

> Court: Unfortunately that never rose to the level of government action, did it, Mr. Chambers?
>
> Mr. Chambers: I don't think it did, Your Honor. There were some variations approved in the bond issue of [562] 1967 or '68. We'd like to mark this as Plaintiff's Exhibit 40.

Q. Mr. Rabin, in looking at those documents would you tell the Court what those documents show factually? A. They show the proposals which the Planning Commission had developed for the use of land within the area covered by the plan and, quite obviously, we all recognize that plans have no controlling force, that is, these are recommendations for the use of land in the area. The only elements of the plan which develop any compelling force are those elements which relate to facilities or land uses which are normally provided by government, things such as roads or public building. Quite naturally the development of residential or industrial land is subject to the decision-making of private developers within, of course, whatever the other legal constraints are which the city imposes. But the plan very definitely sets a direction in the recommendations which it develops and it's those recommendations which are particularly significant in this case.

> Mr. Waggoner: If the Court please, we object and move to strike his answer. This is an area of

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speculation. Various committees meet and make recommendations and they may gather dust on the shelf. If any of the material is pertinent it would be the official action adopted by some governmental body.

[563] Mr. Chambers: Your Honor, first of all I disagree very much with Mr. Waggoner's position, but we would like for the Court to just let us go ahead and develop the case and then decide whether you want to admit the evidence or not. I submit that if the City of Charlotte has an official body called the City Planning Commission and it works, then this is the action of the City of Charlotte. Any agency of the City of Charlotte is an agency of the City of Charlotte and the City of Charlotte is responsible for its activities, and what it plans or what it says is competent with respect to what the city proposes to do or has done.

Mr. Barkley: The city is not responsible unless it adopts it.

Court: What is the legal basis upon which you are contending that the action of unofficial planners for the City of Charlotte or the Federal Government is binding upon the School Board?

Mr. Chambers: I contend that on the basis of the Brewer case and on the basis of Green and on the basis of Rainey and Monroe.

Court: There is some language in Brewer, the second opinion, one of those sort of rush block problems nobody has ever decided to which you have to elaborate rightfully to get to the point you're making here. [564] Has there been any case that ever addressed itself to that subject? I'm not asking you

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to tell me how much new ground you're setting out to clear.

Mr. Chambers: Your Honor, the one case that approached it somewhat was the case out of Duval County, Board of Public Instruction of Duval County versus Braxton.

Court: They didn't hold anything that would support this contention, did they?

Mr. Chambers: The question there concerned the use of school district lines in the racial housing pattern situation. The Fifth Circuit has had several cases on that. The Fourth Circuit's most recent opinion was in the Norfolk School case.

Mr. Barkley: In Brewer case, as I recall, they adopted the city precinct plan for their lines.

Mr. Chambers: I submit that if the Court finds there has been public or private discrimination in the development of the housing pattern, something else has to be done. I submit that that was not just thrown into the opinion just to be thrown into the opinion.

Court: It was thrown in just to keep the question open, as I read it. Is that the only authority on this subject. I just wanted to know what you think of your legal position here.

Mr. Chambers: I think our legal position goes back to [565] 1954 when the court was talking about separate but equal. At that time it was clearly talking about compulsory segregation of the students in the schools. In 1968 in the Rainey case and the Green cases the courts are talking about other factors which make for continued segregation of students in the schools and it is binding on the School

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Board, whether it is action of the city, action of private individuals or what have you, all of these actions have to be taken into consideration by the Board in designing the plan it tries to implement and it has to establish to the court's satisfaction that the plan it's proposing will eliminate black and white schools in the system.

Court: So what you're really saying is that you want the Court to hold that any predominantly black school in Charlotte is unlawful.

Mr. Chambers: That's correct, and any predominantly white school.

Court: What would be going pretty far, wouldn't it?

Mr. Chambers: I don't think so, Your Honor.

Court: Has anybody ever held that?

Mr. Chambers: The Court might differ with me but that's the way I read Green and that's the way I read Rainey and Brewer. Your Honor, I think really we have to go back and look at the whole history of school [566] desegregation. We started off talking about state constitutional provisions requiring separate schools. We then get into public accommodation and we strike that down because that continues segregated schools and then we get into freedom of choice and we strike that down because that continues segregated schools. We then begin to look at all the other factors.

Court: Why did we strike down freedom of choice?

Mr. Chambers: It has been outlawed where it does not eliminate the all black and all white schools.

Court: There have been statements and opinions, as I read them, where freedom of choice with a view

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to perpetuate segregation won't stand. We all agree with that. If there are elements of that result in the freedom of choice plan here, they need to be explored.

Mr. Chambers: It says more than that, Your Honor. Rainey wasn't dealing with freedom of choice necessarily. These cases are looking at what the Board comes in with. Anything that perpetuates a segregated, all black or all white school, is unconstitutional.

Court: Well, is your theory dependent upon some improperly motivated decisions by the city ten or fifteen or twenty years ago?

Mr. Chambers: It would be effected by it, Your Honor, because whatever housing pattern results from the action [567] of the city must be considered by the School Board in designing the plan it proposes to follow.

Court: Is the purity of the motives a factor in your problem?

Mr. Chambers: I'm not questioning the motives, Your Honor, I'm questioning only the results.

Court: So you say that if a thousand black families decided to build a school on an island in the Catawba River the School Board would have to provide for that island a school with 70% white and 30% black students?

Mr. Chambers: Is the Catawba River in Mecklenburg County?

Court: Half of it is.

Mr. Chambers: Your Honor, I'd say that under Griffin and under the recent Supreme Court decisions it would have to do that. And I go further and

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say either we're going to do that or provide a separate school system for that island in the Catawba River and let them have their own system.

Court: I don't suggest you start that.

Mr. Chambers: I'm not suggesting that, I'm saying that this is what we're going to unless we are doing something about it.

Court: This would be the easiest way to avoid all responsibility on the part of the citizens of [568] Mecklenburg County.

Mr. Chambers: That's correct, Your Honor.

Court: Well, I think the best way for us to get through with this witness this week is for me to hear whatever you want him to say with your understanding that I don't see very much of what he can say is going to help me nor be competent for me to consider. But if he can provide a road map through these exhibits, which the question suggests that he really can, he can be helpful. I'm just going to tell Mr. Waggoner to let's listen to it all and I'm going to have to listen to it with a very jaundiced ear because I'm having trouble seeing where it can be properly considered except as it marshalls the facts and figures, instead of simply opinions.

Mr. Chambers: We hope to submit a brief to the Court following this hearing where we will try to show the relevance of his testimony to the proceeding.

Court: Mr. Waggoner, if you withhold your objections and I'll withhold mine and we'll find out what Mr. Chambers wants to get from the witness. But you have the right to take objection and exception to the evidence that is incompetent. If you wish, you can make objections as you go and I'll just over-

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rule all of them and we'll get along with the testimony.

[569] Q. Mr. Rabin, we were looking at the city planning and you were giving us what the city planners were proposing. A. Yes. This map here, I'd like to refer to the map which is in the back of the plan entitled The Next Twenty Years and which summarizes the proposals made in the plan. This map should actually be looked at in comparison to a map which appears on Page 16 in the document itself because the comparison of these two maps indicates the major kind of change in land uses within the planning areas that are recommended. The map on Page 16 shows existing and proposed industrial land. The existing industrial areas are shown in a deep brown color and the proposed industrial lands are shown in a light brown color. Now, this is the same land which is shown in a deep blue—both of these together—on the large map which is contained in the back of the book. Looking at the small map one immediately sees that the volume of industrial land, which it is proposed to develop, is several times the volume of existing industrial land within the county. Now, I am in no way questioning the decisions which led to the determination of the amount of land needed. I am just pointing out that the amount of industrial land called for is several times, perhaps five times the amount of industrial land now in use within the county. The next things I would point out are the sections of the city from which this proposed industrial land is to be taken. Almost entirely this industrial land is taken out of [570] what might be called the western half of Charlotte. Now, since I am going to refer to this division again I am going to be specific about what I'm using as a line. I am

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saying that beginning on North Tryon . . . . do you want me to show this on a map?

Court: No, I can hear it.

A. Running down Tryon into the center to the point near where Tryon Street is near the line of the Southern Railway, south of the very center of town, and then proceeding along the line of the Southern Railway out of the city in that direction, that I have used this line to distinguish between what I shall call the eastern half and the western half of Charlotte. This proposed industrial development does two things. One, it creates a wide belt of industrial land separating the two halves. This belt of land runs entirely through the city, separating the two halves, and the other thing that it does as I indicated earlier, was to take substantial areas of land which are already in use as residential areas from the western portion of the city. Now, it was noted before that this has no compelling force. I want to point out as I go along that this has been formalized by a zoning ordinance, but this precedes the 1962 zoning ordinance. This planning document was developed in 1960 so that this is the major impact. The secondary effect of this document is to outline the proposed interstate highway system and the major [571] arterial streets in the Charlotte area and again one can see that the major north-south route -I-77—tends to reinforce this north-south division by running adjacent to and parallel to the industrial band which runs through the city.

Q. Mr. Rabin, from your study, so that we can keep the record clear, what is the racial composition of this western half that you're talking about? A. Well, in general it is the area in which Negroes live.

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Court: What time are you talking about now?
Mr. Chambers: Today, 1968.

A. In 1968 this is the general area of the city in which most or almost all Negroes live.

Q. What is the racial composition of the eastern area? A. The racial composition of the eastern area is predominantly white with the exception of the one area Griertown which is in the 24 census tract.

Q. Did you notice anything about the proposed zoning for the Griertown area? A. Well, yes. I think that within the city the only industrial land proposed on the eastern side is on the northern edge of Griertown.

Q. What is the effect of this industrial zoning on the northern edge of Griertown? A. This is not zoning we're talking about.

Q. Proposed zoning. [572] A. This proposed use of land, if implemented, would create a barrier. It would create a zone of non-residential use, a zone of adverse use certainly adjacent to a residential area between Griertown and the area to the north.

Q. Would those areas to the north be white or Negro? A. They are at present white.

Q. You indicated that the proposed zoning would displace the present residential areas with industrial zoning? A. The land which is proposed to be used for new industrial development consists in large part of land which is presently developed and occupied residentially. That is more clearly shown in this document, which takes on a tract by tract basis the present uses of land and describes this in comparison to their future zoning. If we go to the tract which you referred to just a moment ago, Census Tract #4 which is on Pages 12 and 13, one can see that. . . .

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Court: What part of town is Census Tract #4?

A. I have to have a good look at a map.

Court: Can you read the names of some of the streets in it?

A. Most of it is west of Tryon Street.

Mr. Chambers: That's South Graham Street, South Tryon Street, over to. . . .

A. Most of it is on the west side of Tryon and a bit of it. . . .

Court: How far north does this go?

[573] A. A bit of it goes up to Second Street and the southern limits are Summit Avenue and Park Avenue.

Mr. Chambers: Some of it goes up as far as 7th Street, this area here. Down here it's 2nd Street.

Court: This is an area south and west of the Square starting along 2nd Street and running down Morehead?

Court: I just wanted to know what part of town you were talking about.

A. Southwest of the central business district. As this clearly indicates the top map in the upper lefthand corner shows existing housing conditions and the map opposite it at the top on the other page shows that the housing is predominantly non-white occupied, but the map at the bottom of Page 12 indicates that almost none of the area is now zoned for residential. Now we're talking about zoning, not planning. This document indicates the legal use of the

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land as defined by the zoning ordinance is now non-residential.

Q. Would the proposed future use also be non-residential? A. The future use is implicit in the zoning laws.

Q. Would you look at Census Tract 52. Would you tell us if you see any proposed changing in the zoning in Census Tract 52?

Court: Tell us the area of 52.

A. That is in the northwest section.

Court: Are there street names?

[574] A. It's completely surrounded by railroad.

Court: Mr. Chambers, where is 52? What's the name of the streets?

A. Between Graham and Tryon.

Mr. Chambers: Up as far as Atando Street, Graham and Tryon.

A. This tract shows the drawing on the left showing existing housing conditions, the shaded areas being the areas in which housing now exists. The second drawing shows those section of the housing districts which are zoned to remain as housing, and the third map shows those areas of the housing which were non-white occupied. Quite clearly comparing the third drawing to the second it is clearly indicated that just the housing occupied by non-whites has now been zoned non-residential.

Q. Would you look at Census Tracts 43 and 44? A. Cen-

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sus Tract 43 is on Page 53 and it is also located in the western portion. It's the far western corner, northwestern corner of the city. The streets in there are Thrift Road, Hovis Circle. It's bounded on the north by the P & N Railway and on the west by the city limits and on the east by I-85. Again the maps show the same kind of development that the first map showed, the shaded areas which are occupied by housing, the second map shows the areas which are zoned for housing and in this case all of the undeveloped area is additionally zoned for housing in addition to the areas which [575] were occupied by housing. While the third map clearly indicates that there were at this time no non-whites.

Court: What is the time you're talking about?

A. September, 1962, was the date of the publication of this document.

Q. Does the map show the race of the people who live there? A. Yes. It shows the race of the residents as all white. Census Tract #44, which is just to the east of this tract . . .

Court: The one you've been talking about is 43?

A. Yes. This is just to the east of this tract across the P & N Railway tracks and this is indicated here as a census tract which had both white and Negro residential areas in it, but the proposed zoning eliminates from the residential zoning those areas which were occupied by Negroes. They are now zoned non-residential.

Court: Have there been any areas occupied by white people in 1962 that have been zoned industrial?

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A. Only, as I indicated, those areas immediately adjacent to Griertown on the north. This is the only area, this area shown right here, in which proposed industrial development is taking place and also in the census tracts on the east side of the line, which I described earlier, in the areas adjoining the line. There is industrial zoning, some of which may be occupied by white house-owners at the present.

Court: You're testifying what the map shows. What [576] does the map show? Does the map show the areas occupied seven years ago by white people have been zoned industrial or are proposed to be zoned industrial?

A. Predominantly, no. There may be such areas but the discrepancy in the volume is very significant.

Court: Did you just testify that east of Tryon Street there were some areas that you refer to as white that have been recommended for industrial zoning?

A. Adjacent to Griertown.

Court: What about the place which you indicated on the east side of Tryon Street?

A. Census Trace #4. No, that's just about all non-white right now, sir.

Q. Mr. Rabin, how can city planning effect housing patterns?

Mr. Waggoner: Objection.

Court: The objection is sustained. I think that question simply says what are the limits to the kind

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of laws that a city council may take a notion to pass.

Mr. Chambers: That's not our position, Your Honor. Your Honor, if we call a doctor in to testify he can testify that a man probably died because he got a blunt instrument hit him beside the head. We only call in another person as an expert to talk about effects of action on housing patterns.

Court: What people can do by city planning is not [577] pertinent here. You asked him what can be the effect of city planning on housing patterns. The objection is sustained.

Mr. Chambers: May I show what the answer would have been had the Court allowed him to answer?

Court: No. I think the question is what he infers from the papers has been the effect, not what might be in some imaginary circumstance.

Q. Mr. Rabin, what in your opinion was the effect of city planning on the housing pattern?

Mr. Waggoner: Objection.

Court: The objection is sustained. If it is shown to have an effect I think this is the duty of the Court to infer or not to infer from whatever competent evidence there is. You have a witness who hasn't the faintest idea about the subject and is speculating upon the same basis as the Court is being invited to speculate.

Mr. Chambers: Your Honor, would the Court again allow me to show what the witness would have answered?

Court: The objection is sustained. You go ahead and answer for the record.

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A. I would say that the most telling effect is that the recommendations of the plan were two years later reflected in a zoning ordinance which adopted most of the recommendations of the [578] plan and legalized the restrictions on the use of the land which were only proposals in the plan.

Q. Now, Mr. Rabin, going to zoning, in your study did you look at the zoning ordinance of 1947? A. Yes, I did, the map, not the text of the ordinance itself.

Q. This is Plaintiff's Exhibit #9, is that correct? A. Yes.

Q. Now, would you tell the Court what this map shows? A. This map shows the City of Charlotte as it was bounded and divides the city up into five districts, which are defined as single family residence, business #2, industrial, business #1, and residential #2.

Q. Now, just for illustration did you prepare a document to show the boundary lines of the City of Charlotte for 1947? A. Yes, I did.

> Mr. Chambers: We'd like to get this marked as Plaintiff's Exhibit #41.
>
> Court: What kind of map is that, Mr. Chambers?
>
> Mr. Chambers: It's a map of the City of Charlotte downtown.
>
> Court: Who made it?
>
> Mr. Chambers: This was prepared by the Champion Map Corporation, Charlotte, North Carolina.

Q. Mr. Rabin, does the green outline on this map show the city boundaries in 1947? [579] A. The green lines show the boundaries as they are shown on this map.

Q. Now, did you notice anything . . .

> Court: Does the green outline show what you read to be 1947 boundaries of the city?

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A. On this map they are not described. There is a line which simply encloses the area which is zoned. I assume that it's the city boundary. The title of the map is City Building-Zoning Map for Charlotte, 1947, and I think it's reasonable to assume the line is the city boundary and that is the line I duplicated, but I don't know.

Court: Well, what's the number of the exhibit you copied the lines from?

A. Exhibit #9.

Court: You took #9 and saw something on there you thought was the 1947 city boundary?

A. Yes, sir.

Court: And you put a green line on Exhibit 41 to show on Exhibit 41 what you think the '47 boundary was?

A. Yes, sir.

Q. Mr. Rabin, will you tell the Court what you found on Exhibit 9? A. Well, I compared this map to the map, the census racial distribution—I don't know what the exhibit number is, it's in evidence—and examined the proposed zones in comparison to [580] the then existing uses of land and I found that with the exception of two small areas —one is called Double Oaks which is an area just east of Statesville Road and north of Oaklawn Avenue, a very small area there, and an area just southeast of the central business district which I believe is known as Cherry—with the exception of those two areas, all other Negro residential

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areas of the city were zoned industrial by this 1947 zoning map. Those are the only two then Negro residential areas of the city which were zoned residential.

Q. What indications on the map show industrial zoning? A. A dashed line shows industrial zoning; a slanted line shows single family residence—and by the way none of the Negro residential areas are zoned single family residences—the crossed hash lines are business #2; the dotted areas are business #1; the blank areas are residence #2, other than single family.

Q. And the zoning map of 1947 zones basically all of the Negro residential areas as industrial? A. Yes.

Q. What is the effect of that, Mr. Rabin? A. The effect of that is to do several things. First of all, it makes the land on which people live accessible to other uses, even desirable for other uses. It also permits the rapid deterioration of the quality of the land—and this is [581] clearly evident from the amount of industrial development which has taken place in areas of Negro residences. It's quite common. One drives around and finds residences and industry adjacent to each other. It's unquestionably a fact that many of the industries have a blighting effect on the housing which adjoins them. Consequently, there is an effect on the value of housing and although it might be contended that a residential property inside an industrial zone reasonably might be enhanced, it certainly could be contended that the residence which remains across the street from the industrial zone, and if it continues to be zoned residential, is deprived of value by virtue of the zoning of the areas across the street as industrial and the threat of the introduction of blighting or noxious uses into that area.

Q. When was the next change in the zoning in the City

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of Charlotte? A. The next change that I examined was in 1962. This was a major change and adoption of a new ordinance. I would assume that in the intervening time between 1947 and 1962 there were amendments to this map which I did not examine.

Court: Our City Council meets every Monday to amend zoning ordinance.

Q. Mr. Rabin, I show you Plaintiff's Exhibit 10 and ask you if this is the 1962 zoning ordinance you were talking about. A. Yes, it is.

[582] Q. I show you also Plaintiff's Exhibit 10 and ask you if this exhibit depicts the zoning as set out in the zoning ordinance? A. No, it doesn't. The large map is a key map to a series of smaller maps which depict the zoning, as the new ordinance is a very detailed kind of thing, and there are sixty sheets each of which outlines the zoning of a single tract and those tracts are numbered according to the designations on this map and they do not correspond to earlier ward lines or census tract lines. They are lines determined in some other way by the Planning Commission. This is the key map to the census sheets.

Q. These small sixty sheets you are referring to are included in this exhibit. Are these the sheets you're talking about? A. Yes, they are.

Court: This is a big map rolled up and sixty little maps, is it? What is the number of that?

Mr. Chambers: It's Exhibit 10.

Court: Are the sixty smaller zoned maps part of Exhibit 10?

Q. Mr. Rabin, will you tell the Court what the 1962 ordi-

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nance does? A. The ordinance which we are referring to now deals with an area considerably larger than the area dealt with in the 1947 zoning ordinance. This ordinance zones land, not only within [583] the present boundaries of the City of Charlotte, which are considerably larger than they were in 1947, but also beyond those boundaries out into Mecklenburg County. Of the sixty sheets which comprise the entire zoning map, approximately thirty of them cover the area within the City of Charlotte.

Q. Now, you indicated a moment ago an industrial zone that runs from North Tryon Street to the southwest Charlotte. Did you examine the residential zoning on the east and west side of this? A. Yes. I took the approximately thirty sheets which comprise the city itself and I divided them up into two groups, those falling on the east side of the line I described earlier and those falling on the west side. Only one of the zoning tracts, that is, Tract #18, is bisected by that line. All of the others either fall to one side or the other of the line, and I tabulated these census tracts according to the following characteristics. I noted what the predominant zoned use was; I noted what the subsidiary zoned uses were; and I noted what the overall character and general nature of the residential uses were. I found that the zoning on the east and west side differs very significantly. Zoning on the west side of the line which I described, the residential zoning, is considerably more dense than the zoning on the east side of the line. All of the residential zoning in the thirteen zoning tracts—and they are tracts number, 2, 3, 4, 5, 11, 12, 13, 14, 15, 16, 17, [584] and the western portion of 18. The residential zoning in all of those tracts is either R-6, R-6 multi-family, R-9 or R-9 multi-family. On the east side of the line which I described residential zoning is predominantly R-12 and

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R-15, considerably less dense. I think this assumes some significance from a statement which is contained in the comprehensive plan which clearly sets forth the idea on Page 23. It says: The plan proposes that the density of population be held to comparatively low levels to avoid the unfavorable consequences of crowding too many people too close together on too little land. Yards and open spaces, a quiet, restful atmosphere and family privacy result from low population density.

Q. Mr. Rabin, what is meant by R-6? A. R-6 is a single family residential district in which 6000 square feet of land are required to accommodate one family.

Q. What is meant by R-12? A. R-12 is a single family residential family district where 12,000 square feet are required to accommodate one family.

Q. And R-15 would require 15,000 square feet? A. That's correct.

Q. Your testimony is that there is no R-12 or R-15 in the west side or predominantly Negro side of Charlotte? A. That's correct.

Q. And that the zoning in the east side is predominantly R-12 or R-15? [585] A. That's correct.

Q. I think you also testified that your industrial zoning in the City of Charlotte is primarily in the west side, the Negro side. A. Of the thirteen zoning tracts on the west side, all of them have industrial zoning in them and five out of the thirteen range anywhere from ¼ to over ½ industrially zoned. All of the remaining have lesser amounts of industrial zoning in them.

> Court: Do these thirteen tracts that you are talking about include all of the city west of Tryon Street and the railroad tracks?

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A. Yes, they do. On the east side there are fifteen tracts and their numbers are 6, 7, 8, 9, 10, 18, 19, 20, 21, 22, 23, 24, 26, 27 and 32. I would note that 18 is only part, only the eastern part of that tract. There is no tract on the eastern portion which has a major part of its area industrial. All of the tracts on the eastern portion adjoining the western portion have industrial lands on their western edges and, in addition, the tract which is #22 and which is immediately to the north of Griertown, has industrial uses along its southern boundary which is the northern edge of Griertown. I would say one other difference which I noted is that office zoning, that is, the permitted use of the location of offices generally in residential areas—this is as distinguished from offices in the [586] central business district—twelve of the fifteen zoning tracts on the east side permitted office uses, while four of the thirteen zoning tracts on the west side have permitted office uses.

Q. Mr. Rabin, what effect would the more densely zoning areas have on property values? A. Well, quite obviously where a great amount of land is required to build a house the cost of housing is going to be higher. Where a lesser amount of land is required to build, the cost of housing is going to be lower.

Q. Did you note in the zoning on the west side where there was multi-family zoning? A. Yes, there is a great deal of multi-family zoning. In fact, eleven of the thirteen tracts on the west side have multi-family zoning.

Q. Now, moving to Urban Renewal, did you study documents pertaining to Urban Renewal in the City of Charlotte? A. Yes, I did. There is a document which is an exhibit which displays the extent and location of all of the Urban Renewal projects.

Q. Are you referring to Plaintiff's Exhibit 14? A. Yes.

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Q. That exhibit shows the present Urban Renewal areas in the City of Charlotte? A. Yes, it does.

[587] Q. Does it also show where the families who were relocated were relocated? A. Yes, it does.

Q. Would you tell the Court what those documents show? A. Well, taking the map of Urban Renewal areas first, all of the Urban Renewal areas and consequently all of the displacement from the Urban Renewal areas took place in what were Negro residential areas at the time of the initiation of those projects. The relocation figures which were furnished. . . .

> Court: How do you define a Negro residential area?

A. One which is predominantly occupied by Negroes as shown by the figures given by the census.

Q. One further point, Mr. Rabin on that, do the figures for relocation of people in Urban Renewal appear in the Workable Program submitted by the City of Charlotte? A. Yes, they do.

Q. Go ahead. A. Somewhere under here I have another map.

> Mr. Chambers: I'd like to get this exhibit marked as Plaintiff's Exhibit 42.
>
> Court: Is that another Champion map?
>
> Mr. Chambers: Another Champion map.

Q. Mr. Rabin, tell us what this map shows, Plaintiff's Exhibit 42. A. Yes. This map has on it in yellow the areas which appear in blue as industrial on the comprehensive plan. It has on it [588] in red the location of all

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of the existing public housing projects. It has on it in blue the locations of proposed public housing projects for which sites have been identified by the Housing Authority. It has on it in green the locations of schools which are predominantly Negro in enrollment. It has on it numbers which represent the number of households relocated by the Relocation Office to the neighborhood on which the number appears.

Court: Say that again.

A. It has on it numbers which indicate the number of households which have been relocated either from Urban Renewal or highway construction to the area on the map.

Court: The number appears where the people now live?

A. Yes, sir. The map identifies the location of several overcrowded schools.

Court: How are they identified?

A. They are identified by numbers which appear next to the school which give the present enrollment over the rated capacity.

Q. What do the figures with respect to Urban Renewal and relocation show, Mr. Rabin? A. As I indicated to start with, all of the original displacement took place from Negro residential areas and all of the relocation, with the exception of 189 families, took place into Negro residential areas. Those 189 families were all relocated into one area which was at the time the relocation process [589] began an area of low income white residence called Villa Heights,

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I believe . . . . yes, and this is an area in the vicinity of 20th and Parkwood which has since become a predominantly Negro area. All of the other relocation activities have moved people into what were areas of Negro concentration before.

Q. Mr. Rabin, what was the effect of this relocation on classroom facilities in the schools? A. Well, the map clearly shows. . . .

> Mr. Barkley: If the Court please, I believe I'll object to that. This man hasn't been here to get that information himself. All he knows is something he read and we'd like to know what he's read.
>
> Court: Are there figures in the record on which this. . . .
>
> Mr. Chambers: That's correct, defendant's answers to interrogatories, Plaintiff's Exhibit 1, already in evidence.
>
> Court: Well, as I understand it, he's giving me a road map through these exhibits and I'm trying to take some notes on it so I can find the exhibits.

Q. Have you looked at the figures that show how many people were moved into crowded schools or what this did to the schools? A. What I have looked at, Your Honor, is the areas into which people have moved and I have looked at the then enrollment of those schools as it was effected by the number of people [590] who then lived in the area.

> Court: Did you look at other areas in town to make any kind of comparison how schools were or were not crowded in other areas?

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A. No. I was trying to determine only whether there was a relationship between the movement of people by the relocation office and the overcrowding of the schools into which they had been moved. I did not look at areas to which no one had been moved.

Court: You're not suggesting that crowding in schools is confined to the areas you referred to as Negro areas, are you?

A. No, sir. I am aware of the fact that there is overcrowding in schools which are predominantly white. What I'm trying to show is that some overcrowding is the direct consequences of public action.

Court: And you say that map contains on it your copying of the figures from the statistics showing the comparison of school capacities with students enrolled in several schools in that area.

A. I would say so. The two I would cite are the Northwest Junior High School, which is as the map indicates completly surrounded by relocation figures, and the Barringer School which is similarly surrounded by relocation figures. It's quite clear that a great bulk of the displacements have been [591] moved into the areas served by these two schools.

Mr. Barkley: I believe I'll object to that and move it be stricken out. I believe the evidence will show that the Barringer School, for example, was due to the Negroes themselves voluntarily branching out, as is the custom here.

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Mr. Chambers: Your Honor, I don't know where that appears.

Mr. Barkley: It doesn't show it was the result of the zoning plan.

Mr. Chambers: We're talking about relocation.

Court: Mr. Rabin, I'm not asking for you to draw conclusions from this data but I'm simply asking you if you have figures which show the number of relocated people who were moved into the school areas you have talked about here.

A. Yes, sir.

Court: And you do not have figures on how many people moved for other reasons in or out of those areas.

A. No, sir.

Court: Your figures simply reflect the fact that, disregarding mobile classroom units, the schools in those areas on a chart have a rated capacity of so many students and you find more than that enrolled there.

A. Yes, sir.

[592] Court: Let's take a break.

SHORT RECESS

Court: With reference to this Exhibit 42, which is a map of Charlotte, can you tell me the number of the exhibit from which you got the figures as to the crowded conditions in the schools?

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A. Not by number, no, sir.

Mr. Chambers: It's Plaintiff's Exhibit #1, Table 1. That's the enrollment in the school, Your Honor, and the student capacity is Table #2.

Mr. Waggoner: These two exhibits don't use the same legends. One is based on census tracts and the other one is based on school districts which do not coincide.

Mr. Chambers: Which map?

Mr. Waggoner: I thought you were talking about this population on this.

A. The material I'm referring to is simply taken from the table furnished by the school which lists the enrollment during the 1968-69 school year and it lists the capacity of that particular school. It's neither zoning tract or census tract, it's just data specifically referring to the school itself. The figures on the relocation were also not related to census tracts or zoning tracts. Those figures, as provided by Exhibit #14, that describes by neighborhood name, such as Brooklyn, Cherry, Clanton Park, and so on, the neighborhood [593] to which a certain number of families—I want to emphasize that. I think Your Honor said before these numbers represent the number of persons. The numbers on this Exhibit #42 represent the number of families who have been relocated, not the number of individuals.

Court: How can one look at this map and see what figure represents families transferred into an area and what figure represents what you say is the excess of school population over the rated capacity?

A. There are only two of those noted, 932 enrolled as com-

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pared to 801 capacity for this Northwest Junior High School, and the other one is Barringer which is 799 as opposed to 616 capacity. All of the other figures are relocation figures.

Court: That simplifies that.

Q. Mr. Rabin, moving to public housing, does your Exhibit 42 map show the present public housing in the City of Charlotte? A. Yes, it does.

Q. How are they shown on the exhibit? A. These are designated by red areas at the location of the public housing. These projects also appear on the Exhibit #14 which is the map of Urban Renewal projects and shows those public housing projects shaded in gray existing within the area covered by the map.

Q. Now, does your Exhibit 42 also show the proposed public housing? [594] A. Yes, it does.

Q. How does it show those proposed housings? A. It doesn't show all of the proposed. It shows only those proposed public housing projects for which sites have been identified. It's my understanding that there are authorizations for units in excess of what's represented by these sites but no sites have yet been selected for those. These represent all of the sites which have been designated and they are shaded in light blue on this Exhibit #42.

Q. Mr. Rabin, what does that exhibit show in terms of the racial composition of the area where the public housing is located and where they are projected to be located? A. All of the public housing with the exception of the existing housing for the elderly structure which is adjacent to the central business district, all of the others are located in Negro residential areas and all of the proposed public

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housing is also in the western section. Three of the five sites proposed for public housing are quite close to the Barringer School which I referred to before as having been an area into which a good deal of relocation has been carried out by the Relocation Office. As a consequence it's my opinion that school has become overcrowded.

Q. Mr. Rabin, what do your figures show with respect to the racial composition of residents in public housing? A. Well, according to the Workable Program for Charlotte all of [595] the housing projects except the housing for the elderly are predominantly occupied by Negroes. I can site the actual figures for you.

Court: What are the figures?

A. Piedmont Courts has 368 units of which 256 are black occupied, 112 are white occupied; Fairview Homes has 468 units of which 468 units are black occupied; Southside Homes has 400 units of which 400 units are black occupied; Belvedere has 200 units of which 122 are black occupied and 78 white occupied; Earle Village has 409 units of which 409 units are black occupied; and Erwin Towers, which is the housing for the elderly project I just referred to, has 175 units, 2 of which are black occupied and 173 of which are white occupied.

Q. Mr. Rabin, did you also look at the streets and proposed streets and highways for the City of Charlotte? A. I looked at the major thoroughfare plan, that is, primarily those proposals for the construction of highways, U. S. highways and interstate highways, within the city.

Q. Are these also shown on Plaintiff's Exhibit #13? A. Yes, they are.

Q. Would you tell the Court what this exhibit and your study have shown? A. Well, as within Urban Renewal

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virtually all of the displacement for the acquisition of the right of way for these roads has involved the movement of non-white families and has been [596] virtually no displacement for the roads which involved white families. The second factor is that the major interstate road which runs through the city—I-77—tends to reinforce this industrial band which runs from north to south through the city, which I referred to before, by running parallel and adjacent to it, thereby adding to the physical barrier which would separate east and west Charlotte.

Mr. Chambers: Your Honor, I have two questions and one question that I proposed to ask Mr. Rabin I think the Court has indicated he considers it incompetent.

Court: Go ahead and ask it and I'll rule it out and let him answer it.

Q. Mr. Rabin, from your study with respect to the five areas that we have discussed do you have any opinion about the effect of the city activities in these areas and the racial housing pattern as it presently exists?

Mr. Waggoner: Objection.

Court: He's making the assumption that if the activities reflected in the exhibits have taken place what is the effect of it.

Mr. Chambers: Is the Court asking plaintiffs—

Court: No, I'm simply thinking about the question. You're asking a question, I suppose, which is too broad. It seems to me, though, that you could ask him that if the Court assumes that all of the activity [597] reflected in these exhibits has taken place,

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what, if any, effect would it have upon or has it had upon the housing paterns. I think that would be a competent subject for speculation.

Q. Mr. Rabin, if the Court should find that the matters you have testified to with respect to city activities and actions have, in fact, taken place, what effect, if any, would these activities have on the racial housing patterns in the City of Charlotte?

Mr. Waggoner: Objection.
Court: I believe I'll overrule that objection.

A. First of all, I think these activities have had the effect of perpetuating the separation of racially distinct areas of residence. Some of these things, of course, have in fact taken place and are not, I think, matters of my opinion and those should be separated from what the consequences of what has not yet taken place.

Court: What he is asking you is historically, not speculatively about the future, but what has been, if any, the effect on the racial housing pattern.

A. I think the effect has been to perpetuate the separation of racially distinct residential areas. I think the effect has also been to create physical barriers which did not exist before between those racially distinct residential areas. I think the effect has been to reduce the quality of the [598] residential environment in areas predominantly occupied by black people.

Court: I think I'm going to have to sustain the objection to that because without some personal

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knowledge of the residential environment I believe you're going to feel that. Stick to the question.

A. Your Honor, I have some personal knowledge of areas which have been effected by industrial construction.

Court: I'm not asking you to answer that question. I'm instructing you not to continue to answer that part of it. This deals with personal knowledge. It goes beyond the scope, I think, of a proper answer to the question.

Mr. Chambers: That will be all, then, Mr. Rabin.

Cross Examination by Mr. Waggoner:

Q. Mr. Rabin, as I understand, you have based your opinion in part on Plaintiff's Exhibit #4, on the overlay marked Plaintiff's Exhibit 4, is that corect? A. In part, yes.

Q. Let me ask you with reference to Census Tract #51. Do you know the number of people within Census Tract #51? A. No, I do not.

Q. You do not know the racial composition of that? A. I can by referring to my papers.

[599] Q. Do you know the degree of Negroes or percentage of Negroes who live in Census Tract #53? A. If you allow me a minute, I can tell you that, yes.

Q. All right, sir. A. The non-white population of Census Tract 53, the percentage according to the 1960 was 3.6%.

Q. What is this based upon? What information in the record do you base this upon? A. The '60 census. I don't know whether that has been entered in the record or not.

Q. But your information, then, is based on the 1960 census, is that correct? A. Yes.

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Q. And you do not know whether or not the '60 census is in the record. A. No, I don't.

Q. Now, with reference to the proposed Twenty Year Plan, which is Plaintiff's Exhibit # . . .

> Court: Where is Tract 53, Mr. Waggoner?
>
> Mr. Waggoner: Tract 53, Your Honor, is roughly the Hidden Valley area.

A. Exhibit 12 is The Next Twenty Years.

Q. All right, sir, would you come down to the map, please, sir. (The witness does so.) Now, I believe you testified that most of the industrial location will displace Negroes as they [600] are presently situated in the city, is that correct? A. Yes, sir.

Q. All right, sir. I direct your attention to the map attached to Exhibit 14 and ask you to refer to a large area adjoining N. C. 16, the P & N Railroad and this area which appears to be a rather substantial area in the northwestern part of the city and ask if there any Negro population in that area at the present time. A. Whether there is any Negro population in that area at the present I couldn't specifically say, but this does not reflect exactly the area which is zoned industrial, the 1960 Comprehensive Plan.

Q. This is a comprehensive plan but this is the one you testified with reference to. A. Oh, no, I testified with reference to the amount of industrial land zoned in each one of the zoning tracts on the map which you just removed. This is a recommendation and the statement that I made was that in general the 1962 zoning laws followed the recommendations set forth in this plan, but in specific detail they differ.

Q. Is there any difference in this area? A. We would have to examine that. That can be done.

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Q. Do this for me, please.

Court: Mr. Rabin, isn't that the map you were testifying from a while ago?

[601] A. Yes.

Court: Is that one of the maps you were using in your testimony?

A. Yes, it is, but it's not the map to which I related the zoning of the industrial areas. That was Exhibit 10.

Court: Well, the planning map is the one . . . go ahead.

A. Do you want to point out to me on this map which areas we're concerned about?

Q. Bounded by a creek on the east. A. Let me qualify one more thing. All three of the areas are outside the City of Charlotte and I stated in my statement on the stand that I examined only those thirty tracts which lie within the City of Charlotte. I made no examination of the areas. Here's the city line right here, 15, 43, 39 . . .

Court: Well, in order to get past that semantic difficulty, the school district includes the entire county. Will you examine the map that counsel is showing you and answer whatever questions he's putting about the contents of the map.

A. Area 15 is zoned R-9, I-2, R-6 and I-2. All of the industrial zoning with the exception of one small part in the lower corner is in undeveloped land. The residential zon-

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ing is in land presently residentially developed and a good deal of land which is undeveloped.

Court: How big is that area?

[602] A. The area we just looked at is this one which is bounded by Beatties Ford Road, Peachtree Road, Cobbs Hill something . . .

Court: Mr. Waggoner, is there a scale on the map you have in your hand?

Mr. Waggoner: Yes, sir, there is a scale.

A. On here 2,000 feet to the inch, on this map.

Mr. Waggoner: This one has a scale in thousands of feet and it appears that I would estimate 3½ inches to each two miles, roughly, two inches to a mile.

Q. Before you pass on from #15, I'll ask you if the residential areas zoned R-6 do not adjoin Beatties Ford Road. A. Yes, it does.

Q. Is that not a predominantly Negro community? A. I don't know.

Q. I'll ask you if the great bulk of map #15 is zoned industrial. A. I would say that half of it is zoned industrial.

Q. And half residential, is that correct? A. That's correct. There is a buffer of office uses and multi-family uses running between the two.

Q. All right, sir, I direct your attention next to zoning map #43. A. Zoning map #43 is on two sides of Bellhaven Blvd. With the exception of an entirely undeveloped area in the southern portion, the rest of it is zoned R-9 and R-12.

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I would estimate that the industrial zoning is about a fifth or a sixth [603] of the entire area.

Court: Mr. Waggoner, to save a little confusion on my part will you give me the census tract numbers of the areas that you have been asking him about which, I take it, you say involves some industrial zoning.

Mr. Waggoner: If the Court please, the only numbers that appear here are 44 . . .

Court: Let me see the little map you've got so I can get them in my hand, the one you have in your hand.

Q. The map we have just discussed is what number? A. 43.

Court: This is not marked. Is this a part of the exhibit?

Mr. Waggoner: This is my copy. This is the one that was in evidence, Your Honor.

Q. I next direct your attention to zoning map 39. I'll ask you if probably ¾ of that zoning map is zoned industrial. A. I'd say most of that zoning tract is zoned industrial, yes, and most of that zoning tract is also undeveloped and the areas which are developed are zoned R-6 and some of the undeveloped land is zoned R-9 multi-family.

Q. I next direct your attention to zoning map #42.

Court: Where is 39?

Mr. Waggoner: This is 39.

Court: Tell me what part of town.

[604] Mr. Waggoner: This is on the Piedmont-Northern Railway and Bellhaven Blvd.

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Court: 43 is also in that neighborhood.

Mr. Waggoner: Yes, sir. 15 is also there.

Mr. Chambers: I'd like to interpose an objection to this because I don't think it's relevant to the testimony we were bringing out on the matter of racial housing patterns in the City of Charlotte. I would like to interpose that objection. We were talking about what action of the city within the City of Charlotte effected the housing patterns. We are confronted with the purple drawing on that overlay within the City of Charlotte.

Mr. Waggoner: Some of the areas we have been discussing lie within the city limits.

Court: It doesn't make any difference whether they lie within or without. If any of it is relevant, all of it is. The school district is the county. Where the notion we're trying the city case alone arose, I don't know.

Mr. Chambers: Your Honor, the question, though, is whether the racial housing patterns within the city have been developed through or encouraged by action of the city.

Court: Do you want to try it on just that bald [605] proposition?

Mr. Chambers: No, no. We have our great problem right here in the City of Charlotte.

Court: Granted. The objection is overruled. Go ahead.

. With reference to #42, I'll ask you the area lying adjacent to the Piedmont and Northern Railway, how is it zoned? A. I see the Seaboard. Some of it is zoned industrial, some of it is zoned R-9 multi-family; I would say some of it is zoned business 1. The uses vary. Taking

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the frontage as a whole, I would say, oh, half or a little bit more is industrial and the other half is residential.

Q. In this area I'd like to ask you about one further map, #39. Is there any industrial zoning in this zoning area? A. Yes, there is.

Q. Would it be fair to say it's roughly ⅓ to ½ of the area of this map? A. Yes.

Q. So then we have clustered in zoning map areas 15, 43, 42 and 39 substantial areas of industrial zoning, is this not correct? A. I think I pointed out in my testimony that large areas west of the line, which I pointed out, were planned for industrial use and these areas were in excess of the land now being used for industry. These areas that you picked are all in that area I discussed.

Q. All right, sir. Now will you point out on the zoning map the [606] area of greatest concentration of Negroes within the county? A. I could do that more easily on the census tract map.

Q. All right, sir, let's take this one down. A. These areas in here.

Q. You're referring to what census tract numbers? A. 5, 47, 49, there is a concentration. Of course, the other thing that—

Q. Will you just go ahead and list the numbers, please. A. The other point that has to be made is that concentration doesn't necessarily coincide with the boundary.

Court: He's asking you to read the map.

A. I have pointed those out here and here, census tracts 47, 5, 49. I have observed large concentrations in 8 and in 9.

Court: When you talk about census tracts you lose me. If you'll talk about where in the city.

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A. 8 and 9 is the Villa Heights area; census tracts 5, 49, 47, 46, 48 are the census tracts going roughly north from the central business district, University Park, Lincoln Heights, that area. This area is also concentrated.

Court: Are you going by the color of the map?

A. No, sir, I have been in Grier Heights. By the way, again there is a situation in which the non-white population does not coincide with the limits of the census tract itself. The non-white population is pretty much limited to the north side of whatever that road is.

[607] Court: Most of that is a big field, isn't it?

A. Yes. There is a park on the south side of the road and a good deal of undeveloped land and some ballfields down in here, but it gives a misleading impression of the distribution or population to put the shading in.

Court: Griertown occupies a small portion of the north end of that census tract and the rest of it is undeveloped land.

A. Yes, sir. Well, there is developed land down here.

Court: Most of the rest of it, then.

A. Yes, sir.

Q. I specifically direct your attention to Census Tract #48, which encompasses the area of West Charlotte, Census Tract 46 which encompasses the school of University Park, and Census Tract #47 which encompasses the part of the old Biddleville School area, and ask you if any

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one of those census tracts have been substantially zoned industrial by the Planning Commission. Please refer to your maps. A. Again we'd have to look back at the maps. Would you help me to identify the relative numbers in the other maps. Perhaps if you put one on the floor we can do that.

Q. I direct your attention to zoning map 4.

> Court: Mr. Waggoner, you're looking at the zoning maps and he's looking at the census tracts.

A. We're trying to relate the two.

[608] Q. Has some industrial zoning. . . . A. Not a whole lot, although the southern and eastern boundaries.

Q. I'll ask you if it comprises as much as 10% of the zoning map. A. Oh, no.

Q. So then in the heart of a predominantly Negro area we have all residential zoning, do we not? A. Surrounded by industrial zoning.

> Court: His question was whether the area he referred to is residentially zoned.

A. I wouldn't say without looking at some of the other . . . we have just looked at one of the maps. This particular zoning tract is predominantly residentially zoned.

> Court: How much of it is other than residential?
>
> Mr. Waggoner: We can read from the map the boundaries shown here. On zoning map #4 the northern boundary crosses U. S. Highway 29 bypass perhaps a quarter of a mile; then it follows along Newland Road to Erwin Creek, along Erwin Creek to West Trade Street. At West Trade Street it

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follows Tuckaseegee Road and then follows Piedmont & Northern Railroad and then it follows Stewart Creek up to Hoskins Creek, which is the northern limit. If the Court please, it is roughly this area here.

A. Actually it's a piece right out of the center like that, comes right down there. It includes part of 48, just about all of [609] 46. . . .

Q. You're referring to census tracts? A. Yes. This zoning tract 5 includes. . . .

Court: I'll tell you what let's do about that. These words will be meaningless to me apart from the maps and I think it would be far more useful if counsel would just take a map and point out the parts of the map they want the Court to consider, if this question is competent. I think I'm looking at what you're talking about and I think the blue area is an area which lies just to the right of the New Mount Holly Road, but I'm not certain, Highway 16. A little sliver of blue along the north side of Bellhaven Blvd., is that what you're talking about as the industrial encroachment within that industrial area?

A. This area only has industrial, like that, at the very bottom of it.

Mr. Waggoner: If the Court please, we will relate this to school districts, if that would be helpful.

Court: This map here, which was mentioned as being a portion of Exhibit 14, was identified, I think, as a map of the Planning Commission going back somewhere around 1960.

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Mr. Waggoner: And they said these recommendations were made and adopted almost without exception.

[610] A. I didn't say that. I said they generally follow almost without exception. The zoning map in general reflects the recommendations of the 1960 plans, only these particular maps. They specifically illustrate how it's zoned. That map does not.

Mr. Waggoner: If the Court please, I would like to pursue this further in view of the statement that only Negroes will be displaced by the proposed zoning. It's a laborious process. . . .

A. I didn't say that. I said that the proposed industrial land is west of the line which I described. I did not say what you were saying. I said that there is a band of industrial land. . . .

Court: Never mind repeating the testimony. You are illustrating the difficulty of having to try to manage testimony which is not testimony but descriptions of testimony, but I think it's been helpful in understanding the maps. Go on and answer the rest of the questions.

Q. With reference to Census Tract #53 I'll ask you if it isn't substantially zoned industrial.

Mr. Waggoner: If the Court please, that covers four zoning maps and I hate to put the Court to the time and delay on this.

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A. The zoning tract 18 includes most of 53, part of 14 and part of 13 and comes over to a line which is represented by Sugar [611] Creek, so that this thing we're talking about, Sugar Creek is right here.

Q. I'm asking you for the— A. That's #18, is that correct.

Q. 18 covers part of it, yes. A. It covers more than all of it—excuse me, it doesn't cover this bit of 53 at the very west of the section.

Q. Can you relate that to the census tract? A. This is Tryon coming down here and that area is zoned, except for a bit in the south, almost entirely residential.

Q. Would you say as much as ¼ of that is zoned industrial? A. No, sir, I wouldn't.

Q. What percentage would you attribute to it?

Court: What census tract are you in?

A. This is a map covering 53, 14, 13—

Q. You didn't understand my question. I asked about Census Tract 53. A. That's entirely residential.

Q. I ask you to move closer to town towards census tract 52, the next one in.

Court: I'm confused by your answer that census tract 53 is entirely residential.

A. Here is the map.

Court: You're looking at a different bunch of papers, go ahead. You're looking at a zoning map and I'm [612] asking about a census tract.

A. Yes, I'm sorry. These in general are larger than the census tract maps and tend to include either more than one

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tract or parts of several tracts, which this one does. It does not include the far eastern portion of tract #53, I mean west. It doesn't include the far western portion of tract 53.

Q. I'll ask you if the western portion of zoning map 18 does not contain all industrial or substantially so. A. The western portion of tract #18 has home industrial zoning in the southwest corner.

Q. Would you next go to zoning map #17, if you will, please. With reference to map #17, which as I understand it contains the western portion of Census Tract 53, I'll ask you if the greater portion of that zoning map is not zoned industrial. A. Yes, it is.

Q. I'll ask you what the racial composition of Census Tract #53 is, I'll ask you if it isn't less than 20% Negro? A. That may be so. I can't tell by this map where those Negroes live. For example—

Q. Will you just answer the question.

> Mr. Chambers: Your Honor, I think the witness is entitled to explain his answer.
>
> Court: He hasn't answered the question.

A. I can't say whether this portion or that portion is where the Negroes live. This census tract is on two zoning map sheets.

> [613] Court: All he's asking you is what the papers show, the same papers you have been testifying about. What do the papers show in response to his question?

Q. I'll ask you if substantially developed residential areas are not zoned industrial. A. That's correct.

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Q. This is an area having less than 20% Negro, is that correct? A. I don't know that. The census tract has less than 20% Negro. This is only a portion of the census tract.

Q. You may return to the stand, please, sir. (The witness does so.)

Court: Which is the bigger unit, census tract or zoning map in most cases?

A. Zoning map.

Court: Zoning tracts are bigger than the census tracts?

A. Yes, sir.

Court: Just for comparison, let me see the zoning map you were just referring to. What was the number of that?

Mr. Waggoner: 17 and 18.

Q. Is it fair to say that the proposed zoning or the zoning now in existence in the City of Charlotte includes industrial zoning for both black and white areas? A. Would you repeat that, please?

Q. Is it fair to say that the industrial zoning in the zoning [614] area in the industrial areas include not only white but black neighborhoods? A. I'm not sure I understand what you mean by include. By include do you mean that they zone existing residential land for industrial use? Is that what you mean?

Q. Yes. A. May I qualify my answer?

Q. Certainly. If you answer the question first, then you may qualify it. A. The answer to the question is yes. My

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observations are that considerably more developed residential land is taken from existing black resident areas than white.

Q. Let me ask you this, are the value of the homes that have been newly zoned industrial, are these valuable homes in dollars and cents? A. This is going to depend entirely on demand. I think that the effect on adjacent homes is far more specific than the effect on homes which lie within the industrial area.

Q. Are the homes that are located in proposed industrial areas homes of substantial value? A. This will vary.

Q. Will you answer my question and then qualify it, please. A. In the inner area they are of less value than they are in the outlying, more expensive, recent subdivisions. Unless you mean are they of more value by virtue of the industrial [615] zoning.

Q. No. I'm asking you if the homes that are physically within the industrial boundaries are not less valuable than the normal or average home in the City of Charlotte. A. I would say that generalization simply could not be made, since the industrial band runs over such a wide quality of housing.

Q. You stated that you had gone around these homes and had seen them and you know the city. We'd like to get an answer to my question. A. I answered your question. I said I don't think that it would be reasonable to generalize.

> Court: Do you have an opinion on the answer to the question that he put whether the land that was zoned industrial, whether the houses in industrial areas are more valuable or less valuable than houses in other areas?

A. Generally less valuable.

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Q. Thank you. Now, the proposed industrial zoning roughly follows the existing rail lines in this city, does it not? A. Not all of it. It follows some of them along great parts of their length and it follows some of them only at intermittent locations.

Q. Is it not true that in your study of Charlotte that the industrial location along the main line of the Southern Railway [616] starting at Concord and going to Gastonia or Columbia, as the case may be, had industrial developments along them since the railroads came here? A. That's historically true but not necessarily good planning.

Q. I'll ask you if it is not normal to expand existing industrial areas rather than spot them all over the city. A. I made no suggestion about spotting them. I am merely suggesting that historical trends, which directly related all industry to waterways or rail lines, no longer applies to modern practices in industry and many industries no longer require any direct proximity to those kinds of transportation facilities. That's all I'm suggesting.

Q. Is it not true that many businesses do require access to rail? A. Some businesses do, yes.

Q. Is it not also desirable to build your interstate highways and circulators in areas that have a lower land cost? A. I don't believe it's desirable to run an interstate highway through a city. There's no reason for it.

Q. Then you would differ with the city planners in that aspect of the plans? A. Yes, sir, yes, sir.

Q. Do you see a conscious design to further separate the races by barriers of highways? A. I wouldn't speculate about that.

Q. With reference to the displaced people who were moved out of [617] Brooklyn, are you familiar with the Urban Renewal in Brooklyn? A. Yes, sir.

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Q. Where these people went and where they stayed are two different things, are they not? A. I don't know that, no.

Q. As an urban planner you find that the lower income people are substantial movers, do you not? A. I find that lower income people are substantially moved by public action, yes, repeatedly.

Q. And you're saying that any time a low income person moves it's because of some governmental action? A. No, sir, I didn't say that. I said that I find that low income people are repeatedly moved by public action such as Urban Renewal, code enforcement, highway construction, eminent domain proceedings for all kinds of public facilities.

Q. You mentioned code enforcement. Is this not an attempt on the part of governing authorities to upgrade the type of home these people live in? A. Not necessarily. It's an attempt to prevent people from living in substandard housing. It's not necessarily an attempt to upgrade their housing or that house. The object and, in fact, the result is very often the demolition of the property in which the people live and their displacement.

Q. Did you see the kind of homes people were living in in Brooklyn? A. No, sir, I didn't. It was torn down largely before I got here. [618] However, I have seen some of the homes they have been relocated into.

Q. Have you seen the homes they are living in in Biddleville? A. I don't know that area specifically so I couldn't say.

Q. Have you seen the kind of homes they are living in in Barringer Woods? A. Yes.

Q. Have you examined the kind of homes that are in the West Charlotte School District area? A. No, I don't

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know the West Charlotte School District area specifically so I couldn't say.

Q. I'll ask you if you didn't find some excellent homes in all Negro districts. A. Yes, sir, of course.

Q. Now, in the course of your examination of the records in this case—

> Court: Mr. Waggoner, you think you'll be at this for some time?
>
> Mr. Waggoner: If the Court please, I have about twenty more minutes I'd like to pursue.
>
> Court: I'm agreeable to staying with it until we finish with Mr. Rabin or coming back at 2:00 o'clock, whichever you gentlemen prefer. I'd rather finish now if it can be done without pressing anybody.
>
> Mr. Chambers: I'd like to do it.
>
> [619] Mr. Barkley: I spoke to the Court Friday and I told the Court again this morning—
>
> Court: We opened court early hoping we could get through before you had to leave, Mr. Barkley. If and when you have to leave, you may go. We'll continue right now and you feel free to go when you have to.

Q. Now, in your study of the history of location of homes in or near industries, do you find that industry always follows the homes into a community? A. No, not necessarily.

Q. Are you familiar with the fact that Charlotte was surrounded by a number of outlying mills which have now been incorporated in the city limits? A. No, I am not.

Q. So you have no real opinion as to how the areas became industrial, whether they were residential and then

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became industrial or were industrial and the residents just came to them, are you? A. I would assume—

Court: The question is what you know, not what you assume.

A. Repeat the question, please.

Q. Read the question back, please.

(The Court Reporter reads the question on Line 15 above.)

A. I have an opinion, yes.

[620] Q. What is your opinion? A. My opinion is that the early development was that industry and the housing of people who worked in it developed side by side years ago.

Q. This was the mill village concept, was it not? A. Yes.

Q. Does not industry often seek the lowest cost building to tear down and locate on the land?

Mr. Chambers: Your Honor, I object to that.

Mr. Waggoner: He's an industrial planner or urban planner.

Court: Overruled.

A. First of all, I have no knowledge that industry seeks buildings to tear down. I am aware that industry has to seek land in industrially zoned areas and I am aware that industrially zoned land with any kind of a building on it is going to cost more than similarly zoned land without any building on it. Therefore, it seems quite reasonable that industry seeking to locate would seek to locate on land on which they don't have to incur the expense of tearing down an existing building.

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Q. Do I understand you to say—and this is without qualification—that industry will pay more for undeveloped land no matter where it's located? A. I didn't say anything resembling that. I said customarily land with no buildings on it—in fact, I said the opposite—[621] land with no buildings on it customarily costs more than simlarly zoned and located land with existing buildings on it that must be torn down. If I've got to buy a building site and I can buy a piece of vacant land for X-dollars and I can buy a similarly located piece of land with buildings on it that I have to pay for and then have to bear the expense of tearing down, I'm going to buy the less expensive vacant land on which to build.

Court: Have you ever bought any industrial land?

A. No, sir.

Court: Let's go on to something that he's supposed to know about.

Q. As an urban planner have you found that Negro families ordinarily have more children than white families?

Mr. Chambers: Objection. That has absolutely no relevance.

Mr. Waggoner: If the Court please, Barringer School was criticized for—

Court: The objection is overruled. Go ahead and answer the question, if you know.

A. I find that Negro families have about the same number of children as white Catholic families.

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Q. What about an urban southern Protestant community? A. Fertility does seem to be a bit lower among the white folks down here.

> [622] Court: I think taking the state at large it was about 5.2 children per family twenty years ago. I don't know what it is now. Can you answer his question?

A. Well, taking census figures as a generalization about 3.10 is white family average size, about 3.8 average black family size.

Q. So you will find in a changing neighborhood from white to black that there is usually some taxing of the school facility, don't you? A. If young families with children are moving in, yes. If you are displacing elderly people and white families with children are moving out, you might have the opposite effect. This would depend on the age range in which the people are who are being displaced.

> Court: Is this asking you for an answer to a question that you don't know the answer to?

A. I think that the question is not worded in specific enough terms.

> Court: Let's go on to another question. We can look up the birth rate if we need to, Mr. Waggoner. I had sixteen aunts and uncles at one time on one side so I don't believe the birth rate inquiry is going to point to anything material.

Q. One further thing. You're aware of the fact that Plaintiff's Exhibit #4 does not purport to be a study of

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the entire City [623] of Charlotte. A. Identify Plaintiff's Exhibit 4.

Q. This is the overlay we referred to. A. Well, this is true but I have looked at the census data and have it here and if it needs to be made an exhibit, possibly it can be. This lists all of the census districts and the percentages of their white and non-white population.

Q. And you are familiar with the fact that the publication called Blighted Areas September, 1962, did not purport to be a study of the entire city, too. A. That's correct. It's a study of blighted areas.

Q. It only studied certain census tracts that were designated in there, is that correct? A. Yes, sir. I don't know the exact proportion. As the map in the beginning shows, it substantially covers the entire western part of the city.

Q. You read the preface to the study, did you not? A. I don't recall it. Yes, I did read it but I couldn't quote from it without looking at it.

Q. These two rather incomplete studies form a substantial part of the conclusions you have drawn, do they not? A. Plus my observations. I rather extensively have driven around and through the eastern sections of the city as well.

Mr. Waggoner: No further questions.

[624] *Redirect Examination by Mr. Chambers*:

Q. One question, Mr. Rabin. You say that that blighted area map considers only those areas in the western side? A. I didn't say that. I said that it covers all of the western section. It reaches over, as you can see, into the central business district area and over to include Griertown, but other than that it's substantially the entire western portion of the city.

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Q. Does it follow somewhat, too, the same belt you were talking about running from south to north? A. Yes, sir, it does.

Mr. Chambers: Nothing further.

Mr. Waggoner: If the Court please, I'd like to ask him just a few more questions.

Recross Examination by Mr. Waggoner:

Q. You are familiar with the fact that the City of Charlotte has a land area of approximately 64.8 miles, are you not? A. I am now, if that is so.

Q. I'll ask you if Washington, D.C., does not have a land area of approximately 62 square miles. A. That's true.

Q. So Charlotte is a bigger land area than Washington, D.C. A. Yes.

Mr. Waggoner: No further questions.

[625] Mr. Chambers: Nothing further.

Court: Mr. Rabin, thank you very much for coming.

Mr. Chambers: Your Honor, I'd like to make sure we have all our exhibits back before the Court.

Court: You probably would like to take all exhibits on the bench here and put them altogether. Do the defendants have any further evidence?

Mr. Waggoner: If the Court please, I am considering two exhibits here which are taken from the American Jurisprudence Lawyers Desk Book. It shows the population of land areas of the various cities for comparison purposes. We also have the areas of the states and the only purpose there is to show the land area of the District of Columbia.

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Court: All right. Have you got the land area of this school district?

Mr. Waggoner: 542 square miles.

Mr. Chambers: We'll stipulate that but I don't know the relevance of the land area for Washington.

Mr. Waggoner: Your witness had a lot to say about school district and we wanted to show that he had a rather small area.

Court: The Washington district has about 45% more pupils than the Charlotte-Mecklenburg District.

Mr. Waggoner: Yes, sir.

Court: Roughly half again as many in Washington.

[626] Mr. Waggoner: We will offer these.

Court: Some question came up about the census figures. Is there in this batch of exhibits anything which shows how many people lived in these various census tract areas when the 1960 census was made?

Mr. Chambers: It shows the percentage of non-white residents in the various census tracts. We didn't introduce a copy of the 1960 census.

Court: How about somebody introducing that.

Mr. Chambers: All right. Your Honor, this is shown in this document giving the facts and figures of the population and economic data for the City of Charlotte dated March, 1968. We would like permission to introduce a copy of the 1960 census.

Court: I would appreciate it if you would.

Mr. Waggoner: If the Court please, we would like to introduce a composite exhibit, Defendant's Exhibit #9, which indicates the population of the United States cities over 100,000 people and also

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contains a land area designation.

Court: Is that the latest figures?

Mr. Waggoner: This is 1960. These are the latest figures that we have.

Court: Well, the World Almanac has a lot of those figures up to date.

Mr. Wagonner: We will substitute if that will be all [627] right.

Mr. Chambers: It's my understanding, too, that there is a supplement dated 1968 to the 1960 census

Mr. Rabin: I understand that there has been some annexation since 1960 so that any figures which the '60 census might give as the population of Charlotte would be distorted to the extent that the area has been added to and additional population not caused by migration or birth.

Court: Current estimates, taking those things into account, run about 255 or 260 thousand in the city limits and a third of a million in the county. If somebody has got the latest dope on that, I'd like to have it for whatever use it may be.

Mr. Rabin: Any data which is taken from the '60 census should then include those tracts which in 1960 were outside the city but which now by annexation have been included so you would get a true picture of the area we're talking about.

Court: As a matter of curiosity I looked up the population of Rhode Island and found that it's undoubtedly considerably less now than the population of Charlotte. It was about 10,000 more nine years back and the witness said it wasn't growing, so I suppose Charlotte is about a fourth again as big as Providence.

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Mr. Waggoner: They have an 18 square mile school district, though. 17.9 is the area of Providence.

[628] Court: I want to keep this record open a little while and if there is no objection, I'll keep it open until further notice. I may find in studying these data that there is a lot of other information that is readily available from public sources that ought to be looked at. I doubt that I will discover anything really pertinent that isn't somewhere in the mass of exhibits. The record will remain open and if either of you discover you'd like to introduce or have the Court consider something, the record will be open until further notice for that purpose. Is the pupil assignment plan fully described in the exhibits?

Mr. Chambers: The present one, Your Honor?

Court: The present one. It's portions of your Exhibit 1, I know. The items I have in mind are the answers to interrogatories 2, 3, 4, 5 and 6, I guess.

Mr. Waggoner: Your Honor, we have a publication that is given to the schools called Pupil Assignment Guidelines.

Court: How about introducing that so I can study it if I don't get the answers to the questions.

Mr. Wagonner: We will offer Pupil Assignment Guidelines June, 1967, as Defendant's Exhibit 10.

Court: There is also a paper on faculty assignment which is the answer to interrogatory #8 and there is a [629] good deal of testimony on that subject. Is there any other learning on the subject of employing and assigning teachers that I ought to know about?

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Mr. Chambers: Your Honor, there was an amendment to the North Carolina General Statutes in 1967. What we hope to do, with the Court's permission, is to submit to the Court on Monday a brief setting forth our position relative to the whole suit along with proposed findings and we would in that brief call the Court's attention to the General Statutes applicable to teacher employment.

Court: All right. The only information we have in the record on transportation is that the 23,000 county pupils being transported with a day to day cost of about $19.00 a year, plus the initial outlay for buses. Are there any more figures on that subject that would be of any particular pertinence?

Mr. Chambers: I don't think so, Your Honor. It might be that we could secure from the City bus company the number of students who are transported to and from school each day.

Court: That figure is in one of the exhibits that the defendants produced, 23,000.

Mr. Chambers: I'm talking about on the City buses rather than on the school buses. There is some testimony in the record that some of the students within the city who are not entitled to ride the school buses are being transported to [630] school by the Charlotte City buses.

Court: At city expense?

Mr. Chambers: No, at their own expense. I said that might be of some relevance but we didn't get those figures before.

Court: If the School Board wanted to go into the business of transporting more children, wouldn't they have to face the problem with either the Legis-

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lature or constitution to get the money for that purpose?

Mr. Chambers: Unless the School Board decided to provide local funds for that purpose. The present statute does not authorize students within the city to be transported on the regular basis and if the School Board decided to get into the business of transporting students, they would either have to provide funds locally or go to the Legislature and get some statutory amendment. I know there is presently pending before Judge Stanley a suit challenging the statute of the state refusing to give transportation for students within the city.

Court: I was wondering if that issue was being tested or proposed to be tested because you ask yourself why the state would take money from the cities and spend it purely on the basis of whether you live within or without a municipality.

Mr. Chambers: It is being challenged now. The case [631] was argued and submitted to Judge Stanley.

Court: He didn't tell you how he was going to rule, did he?

Mr. Chambers: I didn't participate in the case. The case was brought by the American Civil Liberties Union.

Court: Is it a suit to restrain the spending of money to transport rural pupils?

Mr. Chambers: It's a suit to enjoin the State from continuing to appropriate funds to transport students in the county unless it provides bus transportation for students in the city. It's really an affirmative suit to get bus transportation for students in the city.

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Court: I don't suppose there's any need in my racking my brains to think of any further questions. I'll remember the other questions after we've all broken up, but I will feel free to call counsel on both sides for any further information necessary if anything else develops that appears to be of value. Mr. Hicks reads more law than I do and he very correctly says have you given me already the names of the cases you think are the leading cases and I ought to get familiar with them?

Mr. Chambers: Your Honor, we plan to present those on Monday. What we were hoping to do in the brief was to try to trace the basis of our contentions and set out the authority we think would support what we are suggesting here. There [632] have been two recent Fifth Circuit opinions that involved areas here. The names escape me but I'll be glad to call Mr. Hicks and give them to him. They are not printed yet in the report.

Court: Is there anything later or farther out than the sentence I was quoting to you this morning from the Fourth Circuit opinion?

Mr. Chambers: There is a case out of Illinois.

Court: I mean from the Supreme Court or from the Fourth Circuit.

Mr. Chambers: Not from the Supreme Court. There's nothing later than the Green case.

Court: I read the 180,000 word opinion and I didn't see anything in it that was any farther out than that little vague suggestion in the second Brewer case. That's what you're basing this morning's evidence on, the Brewer case, isn't it?

Mr. Chambers: That's correct.

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Court: That's where they said the District Court should consider these things.

Mr. Chambers: We would contend that it ought not make any difference whether there had been discrimination or not in the sale or rental of houses, that as long as you have this kind of housing pattern it ought to require that something else be done. I was thinking of a case in Mississippi. They [633] had a situation where whites staying on one side of town and Negroes on the other and they had a railroad running through the town as the dividing line and the School Board said we're going to integrate and drew school district lines right down the railroad track. That case went on for about eight years and the court decided they have to do more than that. There was no inquiry in the court whether this housing pattern developed from private or public discrimination.

Court: I thought a week ago when I suggested to you that I didn't think this type of evidence was material that it didn't make any difference as far as present living is concerned whether it got into this situation through one reason or another. The second Brewer opinion, which I didn't have in mind at that time, suggests that might make a difference. I'm not sure that it's good law. I'm not sure that we ought to have to go back and examine the thinking of everybody who had a little part in the present social situation in order to reach a conclusion as to whether something can or can't be done about it.

Mr. Chambers: It makes for difficult inquiry but that's what the court indicated might be done.

Court: I'm not sure that I agree with Judge Butzner's suggestion there. Well, unless there is some-

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thing further on this we'll meet again Friday afternoon. I [634] believe, isn't it, on the Anson County case?

Mr. Chambers: Yes, sir. Mr. Stein will be here Friday afternoon and I'll be ready to go with the court to Anson County Saturday morning.

Court: We had some fool notion such as that and I think we may follow through on it. Do you have evidence to present in the Anson County case?

Mr. Chambers: It's all taken in depositions and I think we can probably close the case in about an hour.

Court: Have the depositions been filed?

Mr. Chambers: They have not been filed, Your Honor. Mrs. Ferster took the depositions and she was completing the depositions for this case and she's working on the depositions for that case. Your Honor, I have one final thing.

Mr. Waggoner: I just read this.

Mr. Chambers: He knows what they are. These are principals' preliminary reports for 1968-69 and they have been certified by Mr. William Peak, the Director of Statistical Service for the State Department of Public Instruction.

Court: What am I supposed to do. . . .

Mr. Chambers: We're going to decipher that for you, Your Honor, and tell you what we're trying to show you. This is Plaintiff's Exhibit 44.

Mr. Wagonner: I have never seen these. It would be helpful to us to know what they contend. They are presented [635] at the tail end of the case and then great conclusions are going to be drawn from them. I have no idea what he's driving at. It seems

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to me that we're entitled to some fair notice of what is involved in this lawsuit.

Mr. Chambers: Mr. Wagonner, we came by your office and went over all these exhibits and that included that. We had to order that from the State Department.

Court: I've been trying to find out what you want the Court to do for a week.

Mr. Chambers: Well, we tried to set out at the beginning of the hearing a statement of our basic contentions and what we would like the Court to do. We will try to set it out more extensively in a brief. We will try to file it by Monday.

Mr. Waggoner: It puts us to the point of preparing a brief on each little inference that might be drawn from this evidence. Would it be possible to get their brief and then, in effect, have an answer for it so we know what they're driving at.

Court: I'm thinking this might be more useful to everybody because if we do this, it will put the plaintiffs under the burden of being concrete instead of general in their request for relief. I don't want to stretch out the completion of the lawyer's part of the handling of this phase of the case, but I do think [636] it might be well to have a little gap between your filing of your request for findings of fact and proposed order and brief and the filing by the defendants. Are you going to be able to make the Monday time?

Mr. Chambers: Your Honor, we are going to try. I am going to plan to start working on it tonight.

Court: Let's modify that original arrangement to this extent, that you will be expected to file by Mon-

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day or show good reason for not doing it and that the defendants will have five days after that to file their own requested findings. Does that take a little of the strain off of everybody?

Mr. Wagonner: Yes, sir.

Court: Let's take a recess.

RECESS

Wednesday, March 26, 1969—

Mr. Wagonner: At this time we would like to examine Mr. William McIntyre.

WILLIAM E. MCINTYRE, a witness for the defendant, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Wagonner:

Q. Will you give us your name and residence, please, sir? A. William E. McIntyre, 200 Middleton Drive, Charlotte.

[637] Q. What is your official position with the Charlotte-Mecklenburg Planning Commission? A. Planning Director.

Q. How long have you held that position? A. Since January, 1955.

Q. What is your educational background? A. I graduated the University of Michigan 1938. I took post-graduate work there the following year.

Q. Have you held prior employment before coming to Charlotte in 1955? A. Yes. Before I came to Charlotte in 1955 I was employed by the Cleveland City Planning

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Commission, Cleveland, Ohio, as a City Planner. Before that I was employed by the Tennessee State Planning Commission as a City Planner.

Q. What was the condition of zoning in the City of Charlotte when you came here in 1955? A. In 1955 when I came here the City of Charlotte was zoned. It was zoned by an ordinance enacted by the City Council in 1947.

Q. Do you know how the 1947 zoning was developed? A. I know from having been told by various people who were here on the scene when I came in 1955 who were also on the scene in 1947. I have not had any direct contact with the people who prepared the 1947 ordinance but with people who were associated with people who prepared it.

Q. Would you tell us what you know of 1947 zoning? [638] A. The 1947 zoning plan was prepared by an engineer who was employed by the city. I believe the man's name was Marshall, and the zoning ordinance that he prepared covered the city as it existed at that time. The ordinance was a fairly simple one as compared to the ordinance we have today in that it established fewer classifications of uses than we now have. It had two residential districts, I think it had two business districts and two industrial districts, I believe.

Q. In that zoning code, as I understand it, residence could be built in industrial zones, is that correct? A. That's right.

Q. Now, did your office engage in any efforts to improve on the 1947 zoning? A. Yes. One of our basic purposes after we started our planning operation in 1955 was to prepare a general development plan for the city and the perimeter area that had been established around the city at that time, to prepare a general development plan, which is a guide to growth and development and then, on the

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basis of that general development plan, to establish zoning as one means of carrying out the plan.

Q. What criteria did you use zoning in preparing the new code with reference to residential housing? A. Well, we used a variety of criteria. Basically, of course, as in most zoning, we started off with surveys and studies of the community as it existed at that time so that we would [639] understand what types of development were located where. This naturally covered the residential sections of the area as they were established at that time. We surveyed these residential areas, not only to find out where residential neighborhood and development was located but also to find out the kind of development that it was in terms of density. We have a fairly wide range of residential densities here and we wanted to establish residential categories of densities via the zoning ordinance that would be compatible with the residential development that was on the ground at that time insofar as possible, and then we wanted to plan for the expansion and enlargement of the established residential areas to accommodate the new and additional population that we expected to see come into the community out to the year 1980.

Q. Now, as I understand it the criteria for zoning in a large part were dictated by the existing land uses, is that correct? A. Yes, to a very large extent they were dictated by land use. They were predominantly determined by the existing land use where we were dealing with large, built-up and established urban areas.

Q. Would this be true not only for residential but office and business and industrial categories? A. It was true, certainly, for office, business and industrial categories, but I think we always have to keep in mind that we are not only planning for what is there but also for what [640]

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is to come with the growth and development of the community. But certainly our zoning plan was guided very much by the types of development, industrial, business or office, that we found in various locations at that time.

Q. What effect, if any, did the industrial zoning proposed and subsequently adopted have with reference to the 1947 industrial zoning areas? A. There was a very substantial cut-back from industrial zoning to residential zoning particularly as it related to some of the residential areas that were already established in the community. We found that quite a few areas that were established as residential sections had been zoned as industrial areas by the 1947 ordinance and we were concerned to forestall the invasion of industrial development into these areas by changing the zoning of those areas from industrial to residential.

Q. Would it be fair to say that you substantially reduced the amount of industrial zoning in the residential areas? A. Yes.

Q. Do you have in mind any particular areas? A. Well, I remember that the section known as Greenville was entirely zoned industrial by the 1947 ordinance and we eliminated most of the industrial zoning that covered that area. The section known as Brooklyn in the city was entirely zoned industrial by the 1947 ordinance and we eliminated that [641] industrial zoning and changed it to combination of business and office zoning in view of the forthcoming redevelopment of that particular area that was known at that time. We changed from industrial to residential some sections of First Ward also.

Q. With reference to the 1947 zoning code, were there substantial inroads of industry to residential areas? A. No, I don't think there was very substantial inroads of

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industry into the residential areas, particularly those that I have described. We changed from an industrial zoning to a residential zoning.

Q. In coming up with your present zoning map were racial considerations involved to any degree? A. No.

Q. I next hand you a map from Plaintiff's Exhibit 12, which is captioned General Development Plan, which I understand to be the twenty year projection of zoning for your office. I'll ask you if the zoning indicated on that map is substantially identical with existing zoning in the City of Charlotte and perimeter area. A. I think I must correct the impression of what this map is. This is not a zoning map so I can't respond to your question which implied that this is a zoning map. This is a general development plan map. It is an indication of the planned uses of land and of the major traffic arteries that would be [642] compatible with and would serve the planned uses of land. This map provided us with the basis to formulate zoning for the area on a planned basis, on the basis of an established plan for the community. Now, I've forgotten your question.

Q. All right, sir. With reference to the area in blue which the legend indicates to be commercial and industrial are these blue areas substantially identical with the existing zoning ordinances of Charlotte-Mecklenburg Planning Commission? A. Very substantially. There are some changes, few changes here and there, but they are comparatively small in the context of the total industrial zoning scheme.

Q. Would there be as much as a 5% deviation from this? A. Possibly. I don't think it would be much more.

Q. Is the business zoning or business land use indicated on this map substantially in accordance with existing zoning? A. I think substantially, yes.

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Q. With reference to residential, is it substantially in accordance with existing zoning? A. Substantially, yes.

Q. Does this general development plan reasonably depict the existing zoning in the City of Charlotte today? A. Yes. I think it should be pointed out, however, again that this is a general development plan and the zoning is much more specific and much more precise with respect to individual properties. The zoning is developed on a much more detailed [643] map. As a matter of fact, it's developed on about 63 or 68 section sheets where we can see every lot and every last street in some detail. Also I think it ought to be pointed out another difference between this map and the other zoning is that this map proposed residential areas in general. The zoning map specifies what kind of residential areas in terms of single family, multi-family and in terms of the density of the residential areas.

Court: You say this map shows all residential areas in the same color whereas the zoning is in grades of residence.

A. Yes, sir.

Court: Concentration?

A. Right.

Court: The substantial portions of this are in yellow, are they?

A. Yes, sir.

Q. Do you employ zoning districts in preparation of zoning? A. Yes. We establish a district structure as a basis for zoning the area.

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Q. With reference to your general map, which indicates area 1, 2, 3, 4 and so on, are these zoning districts? A. You're not referring to this map.

Q. No. A. Yes. Those maps do show zoning districts.

[644] Q. Would you give me a definition of zoning districts as used by your office? A. A zoning district is an area in which there are specific regulations established for that district that are different from the regulations that are established for other districts. By way of illustration in terms of residential zoning districts, in the present ordinance we have R-6 districts, R-9, R-12, R-15.

Court: What do those mean?

A. The R-6 district means that a minimum lot size is required for a residence—

Court: Yes, I remember. That 6 indicates lot area in thousands of square feet.

A. Yes, sir.

Court: If a piece of land is zoned R-6 it means that any single family house in that area has got to have 6000 feet of real estate under it.

A. Yes, sir. Also, continuing in response to your question, using the same structure, R-6, R-9, R-12, within each of these districts there are different dimensional requirements that are established for set-back of buildings, amount of yard space, offsets from side and rear property lines, and to some extent there are differences in uses permitted within the district, although the district is essentially a residential one.

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[645] Q. As I understand the zoning maps maintained in the Building Inspection Office, there is a key map and then there are pages within that book. Are these zoning districts? A. Yes.

Q. Each one of the pages would be a separate zoning district? A. Oh, no. Each page shows the zoning of the territory that is on that page. Now, on one page you may have quite a number of different types of zoning districts. In other words, the maps aren't structured, the area isn't divided up by a set of maps showing only one district on a map. The area is divided up by geographic sections and then the map shows whatever zoning districts happen to fall within that section of the community.

Q. Would it be fair to say these are conveniently sized areas that will fit on one of the zoning map pages? A. Yes.

Court: District is the term to indicate the use of the land instead of a general geographical section of the city.

A. Yes, sir.

Court: You may have an R-1 district adjacent to an office and business district in the next block.

A. Right.

Court: But it would all show on one section of the zoning map.

[646] A. Yes, sir.

Q. Mr. McIntyre, some criticism has been made of this existing zoning, stating that an industrial buffer zone sep-

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arates the southeastern and northeastern parts of the city. Why does this industrial zone exist through the center of the community? A. Well, the industrial zoning exists through the center of the community for many reasons. Many of these reasons, of course, are historical ones. Through the center of the city and running practically parallel with the industrial zones that divide the city, you'll notice that we have one, two, three or more major traffic arteries that parallel this so-called industrial buffer zone, which I think is not a buffer zone. Also some of the mainline railroads, particularly the Southern Railway and the Norfolk & Southern Railroad, traverse this corridor. The existence of the railroads through that area for a great number of years resulted in a fair amount of industry concentrating within that corridor. When we did the surveys for the land development plan that we have here and for the zoning that followed it, we found a very substantial amount of industry already established in that corridor that cuts across the city from northeast to southwest. The fact that the industry was already there really established the core of this feature. It was really on the ground before any comprehensive planning was done in the area.

Q. I next direct your attention to the area south of Wilkinson [647] Blvd. which is zoned industrial. What criteria were used in establishing that as an industrial area? A. Three criteria, or four, really. One, existing industrial uses in the area; two, a railroad practically paralleling Wilkinson Blvd. to the south. Wilkinson Blvd. itself is a heavy duty traffic artery which is an asset for industrial development, to bring the heavy concentrations of traffic into and out of the industrial area, and is a highly useful facility for industrial development in that corridor; and finally, on the westerly side of the area south of Wil-

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kinson Blvd. and south of the Southern Railway you will notice that's the location of the airport and the airport with its noise and industrial character dictated that the land immediately north of the airport be used for industry rather than for residence which would have been bothered considerably by the noise emanating from the airport and the aircraft flying overhead.

Q. I next direct your attention to the area bounded roughly by Graham Street, Interstate 85 and Statesville Road. What criteria were used in establishing that as an industrial area? A. That area had several characteristics that in our judgment indicated it would be better used for industry than residence. On the Statesville side of the area there had long been established a city dump which would not make the area very suitable for residential development in the immediate proximity. [648] The southerly portion of the area there was established Attando Industrial Park. North Graham Street and the Southern Railroad on the easterly side of the area provided a plus for industrial development and use, and Interstate 85 also provided a useful facility for the industrial type development.

Q. When this area was zoned was there any substantial residential development in this area? A. There was scattered residential development in this area. It was quite scattered, very thin, and taking the area as a whole, it was essentially a vacant area.

Q. I next direct your attention to the area bounded roughly by Piedmont & Northern Railway and N. C. 16 and the contiguous area zoned industrial and ask you what criteria were used in zoning that area industrial. A. Again, our industrial zoning was in part conditioned on the fact that there was industrial development in the area at the time. The area is traversed by two railroads, Piedmont &

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Northern Railroad and the Seaboard Railroad, and N. C. 16 and Mount Holly Road were major traffic arteries which it's desirable to have to provide access into and out of industrial areas.

Q. I'll ask you if there is a tank farm located in this area. A. Yes. On the westerly end of that area colored in blue there is an oil tank farm.

> [649] Court: You're talking about the oil depot at Thrift?
>
> Mr. Waggoner: Yes, sir.

Q. Mr. McIntyre, some criticism has been made with reference to the zoning roughly bounded by Statesville Avenue, Highway 16 and Interstate 85 with reference to smaller lots for the zoning in that area. Could you tell the Court the reason for such zoning? A. Well, when the zoning was done again we were influenced to a very substantial degree by the established pattern of development and the established pattern of the development in that area consisted of comparatively small lots. I think the lots were generally probably in the vicinity of 6000 square feet, plus or minus. Naturally no area is developed with a completely uniform size lot, but the lots did range towards the lower level of lot size.

Q. Then was the purpose of zoning to merely zone in accordance with existing land use there? A. Yes.

Q. Did you participate with the Redevelopment Commission in its action in having the Brooklyn area removed of houses? A. Yes. The Planning Commission has the responsibility under State law of certifying that an area is blighted before the Redevelopment Commission can go into the area and acquire it. We did, then, make a finding that

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the Brooklyn area was a blighted area under the provisions of North Carolina statutes [650] and therefore eligible for redevelopment.

Q. What criteria did you use in establishing areas of blight? A. We used the criteria that are established by the State law and that is that we must find, in order to determine that an area is blighted we must find it is old, dilapidated, deteriorated, obsolete, and a finding also be made that because of the age and obsolescence of the physical structures in the area that these produce adverse consequences in terms of health, morals, safety, welfare, as they effect the people of the area.

Q. And you certify this to the Urban Redevelopment Board and they in turn submit their application, is that correct? A. Yes.

Q. With reference to the Brooklyn area, did you participate in this Urban Redevelopment project? A. Yes.

Q. How did the Brooklyn area compare with other areas in Charlotte? A. Well, the Brooklyn area was one of the most seriously blighted sections of the city when we studied it back several years ago. So it compared in that sense, it compared very unfavorably with most of the residential sections of the community. There were, however, other similarly blighted sections in the city at that time.

Q. Could you tell us some of the other blighted areas? [651] A. The First Ward area.

Q. Has that subsequently been cleared also? A. No. The First Ward area has not been cleared through Redevelopment. A part of the First Ward area has been cleared and rebuilt with public housing, but that clearance did not take place through the Redevelopment processes or statutes. The Greenville area is a seriously blighted area; sections off of West Morehead Street on the west side of

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the central business district are seriously blighted sections also.

Q. Are all of these areas scheduled for demolition of the buildings or have already been demolished? A. Not all of these areas are yet scheduled for Redevelopment. The First Ward area is scheduled for Redevelopment. The Planning Commission has made a finding that area is eligible. A bond issue was passed by the voters, I think two or three years ago, which set up the funds to defray the cost of doing that work. The Greenville area, we have since officially certified as a Redevelopment area and the Redevelopment Commission at the present time is at work on plans for the redevelopment of that section.

Q. Are or were the districts you have just described as blighted principally populated by Negroes? A. Yes.

Q. Would it be fair to say they have moved into better housing from these blighted areas?

> [652] Mr. Chambers: I object to that.
> Court: Overruled.

A. Well, I personally don't know where the people have moved when they have left the areas. This is a responsibility of the Redevelopment Commission and I am not directly involved in that process. I think all I can say about it is the Redevelopment Commission operates under a mandate from the Federal Government which says that they are required to assist in the relocation—

> Mr. Chambers: Your Honor, I object to that. We can submit the mandates of the Federal Government and we don't think this witness is qualified to state what the rules and regulations of HEW are. In ad-

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dition, he already stated he didn't know where the people moved and he certainly wouldn't be able to state if the Redevelopment Commission has carried out the requirements of HEW.

Court: Let me ask a question and see whether this matters. Your contention as it relates to this case is that they were moved to particular locations and followed there by the School Board. Isn't it a plain fact that the quality of the housing into which people have been removed by this process is generally superior to the housing they formerly occupied?

Mr. Chambers: That's what we contend is not the case, [653] Your Honor. We have not attempted to make an offer of evidence on the condition of the houses. The position that we took—

Court: Do you remember what the houses in Brooklyn looked like?

Mr. Chambers: Yes, sir. I also remember what those looked like in Greenville.

Court: Greenville hasn't been redeveloped, has it?

Mr. Chambers: They have removed some of those houses in Greenville, not all of them, and they removed some of the houses in First Ward, not all of them. I also know something about some of the conditions of the housing into which these people have moved. We have not attempted to make any showing with respect to that because we didn't think it was particularly relevant in this proceeding. The thing we're objecting to now is the witness clouding the record with what HEW requires without being able to state whether the Redevelopment Commission has complied with that regulation.

Court: Well, I understand he says he hasn't in-

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spected the houses. I'll let him go ahead and tell what he understands the requirements to be.

A. I understand the requirements to be that the Redevelopment Commission must attempt to relocate the people into decent, safe and sanitary housing that's within their economic means.

[654] Q. Does the Urban Redevelopment Board actually place people in specific homes or do they simply offer assistance? A. My understanding is that they offer assistance. They cannot direct people to live in any particular location.

Q. Now, it's been stated in this case that railroads are not essential to industrial development or industrial zoning. Is this—

Mr. Chambers: Your Honor, I object to that. That's not a true restatement of what the witness stated.

Court: Well, ask the witness to testify as to his knowledge or understanding about the role of railroads in industry, whatever he knows about that. Do it briefly, please.

Q. Will you tell the Court the role the railroad plays in industrial zoning? A. The railroad played a very significant part in industrial zoning in this community. We found a great deal of our established industry when we started to work here was located adjacent or in the vicinity of railroads. So that has a very substantial effect upon industrial zoning.

Q. I next hand you Plaintiff's Exhibit #13, which I understand to be the major thoroughfares proposal or plan,

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and I ask you if you had any participation in the preparation of that plan. A. Yes.

[655] Q. What participation did you have? A. We participated in this as a part of the comprehensive planning of this whole area, together with transportation planner consultants, State Highway Department, City Traffic Engineering Department and City Engineering Department. It was a collaborative effort on the part of those agencies.

Q. With reference to the north-south expressway, what criteria were used in locating that particular thoroughfare? A. One of the essential facts in the location of this is that this was a part of an interstate route.

Court: You're talking about the north-south expressway or the northwest expressway?

A. North-south expressway.

Court: That's the one down here?

A. Yes, sir.

Court: Is that the one that destroys a part of the golf course?

A. I don't recollect the golf course being destroyed by it.

Court: Go ahead.

A. A part of this route was influenced by the fact that it was to become part of Interstate 77, a route that goes up into Cleveland, Ohio, or coming down from Cleveland into this area. The route was otherwise influenced by the need for a north-south expressway route through the commu-

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nity to expedite traffic in that direction. The specific location of the route [656] in the northern half, you might say, from the central business district up to the rest of the area, was influenced by the fact that there was vacant land along Erwin Creek Valley and this provided a comparatively inexpensive location and a location that would disrupt existing development to a more moderate degree than might otherwise have been the case. The location of the route from the central part of the city southward was influenced to some extent by the open space available that comprised Revolution Park and also I think it was influenced by the fact that it was desired to get it as close to existing development as possible without running through extensively developed areas. The area immediately to the east of this expressway is substantially developed. That's the area to the east of Pineville Road, so there is a comparatively open corridor through this area where the north-south expressway was located. Finally the southerly end. The location was influenced to some degree by the fact that Arrowwood Industrial Park had been established in that section and again it was felt that the expressway coming up, actually running along the side margin or in the side margin of Arrowood Industrial Park would provide a heavy-duty, high level traffic carrying facility to serve the great deal of traffic that is expected to be generated by industrial development in that industrial park.

Q. Are you aware of any racial considerations in the location of [657] of the north-south expressway? A. No, sir.

Q. With reference to the other expressways in the city and proposed thoroughfares, were any racial considerations made in proposing this plan? A. No, sir.

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Mr. Waggoner: You may examine him.

Cross Examination by Mr. Chambers:

Q. Mr. McIntyre, would you state for the record what city planning is? A. City planning is the comprehensive planning of a community with the effort to develop a good community for people to live in, a valuable community economically.

Q. It's mapping out land useage, whether it should be used for industry, business, office or residence? A. That's a part of city planning.

Q. What other considerations do you have? A. Well, I think basically when we start off our planning we are concerned with determining how many people we are going to have to provide for in a community. We're concerned about the economy of the community and what planning can do to assist and foster the economic development of the area. We're concerned about provision of utilities and facilities that are necessary for good urban living. We're concerned about open [658] space and recreation. We're concerned about the elimination of developments that aren't good for the community such as blighted areas. We are interested in things like the revitalization of the central core of the community. Planning is a fairly diverse matter and it's expressed in different ways, I think, in different communities.

Q. Taking residential areas, what factors would dictate that a particular area be zoned as residential? A. The principal factor to start with is whether an area is residential today or whether it isn't. If an area is residential today, then I think in all probability it would be zoned residential unless with the anticipated growth and development of the community there would be some reason for

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planning a change of that residential area to some other kind of activity or use. It's possible, for instance, that—let's say in a central city area, that an expansion of the downtown with the growth of the community might take over and replace a residential section. Does that answer the question?

Q. The basic thing that you mentioned is the existing land use. If it's presently residential, it probably would be zoned residential. Is there anything else that you consider in determining whether to zone a particular area residential? A. Yes. We consider the quality of the environment in the area; we consider the suitability of the land for residential development; we also consider the desireability of establishing [659] residential areas in comprehensive enough fashion so they are more or less self-protecting. I don't know whether that makes much sense or not but we like to establish fairly sizeable residential areas to the extent possible. We like to establish residential areas of a size that can be easily served with schools, for instance, and parks and playgrounds and recreational facilities. These are some of the other factors that are taken into consideration.

Q. In an instance where you have an existing residential area that you propose to zone to industrial or commercial, is there a corresponding residential area created somewhere else in the city? A. No. No, I wouldn't say that.

Q. How do you plan for accommodating those persons who are zoned out of the residential area? A. Well, taking our own plan as an illustration, we knew that we had many thousands of acres of land that we were going to allocate to residential use. As a matter of fact, in the planning process we distributed the anticipated population over this planning area to know where people would be located,

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or rather to know that we had space for residential use and development.

Q. We'll come back to that. In the zoning of residential areas—

> Court: As I understand your answer you said that you don't automatically create another residential zone if [660] you cut into a residential area for business or industrial purposes, but you also said that when this redevelopment took place you did establish some other residential areas in other parts of the city.

A. No, sir, I didn't say that.

> Court: Well, I heard you two ways and I'm just asking you to tell me again what you just got through saying. I misunderstood you, obviously, so just what did you just get through saying?

A. I said when we found a residential area we felt was going to be eliminated we did not make a specific provision for the relocation of this residential neighborhood to another place. What we did and what we do in our planning is allocate residential land on the basis of anticipated need for housing developments, whether they be by relocation of people from established residential areas or new influxes of population. In other words, our planning is not to say specifically we'll eliminate residential neighborhood located on spot X and we'll plan to put residential neighborhood located on spot X out here at the intersection of Y and Z. We do not do this type of specific planning.

> Court: What you're saying is you have enough residential space in your overall plan but you don't

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try to put people in a particular place if they are kicked out of one neighborhood.

[661] A. That's right.

Q. Mr. McIntyre, you say that you zone areas residentially R-6, R-9 and R-12. What dictates besides existing land use whether a particular area should be zoned R-6 or R-9 or R-12? A. In addition to the existing zoning we are influenced, I think, to a very large extent by the established character of the area.

Q. What do you mean by the established character of the area? A. Whether it's a high income area or a low income area. We're influenced to a very large extent by this. We are also influenced by the need for various kinds of residential type of developments. For instance, we know that we have to have low and moderate cost housing for some people. We know that higher cost housing is available to other people and this influences the amount of ground space that people can afford and the kind of development they can afford to have and the amount of ground space, of course, is reflected in the zoning plan, R-6, R-9, R-12, and so forth.

Q. The multi-family zoning, I gather, would follow somewhat your same criteria. In other words, you think that you have to have a certain number of units for low income, middle income families and R-6 MF would be dictated by that, and if you were planning expensive apartment units or multi-family units you would zone it R-12 or R-20, is that right? A. Right.

[662] Q. Now, what effect, Mr. McIntyre, would planning for the zoning of a residential area as industrial have on the land value of those homes, or the value of the homes in those areas? A. Planning a residential area for industrial, what effect would it have on the value of the homes?

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Q. That's correct. A. I am really not sure. I think it would vary a lot with different cases. I'm not in the real estate business and I don't really deal in property values as such.

Q. Let's take an instance. The 1947 zoning ordinance zoned all black residences industrial. A. Uh huh.

Mr. Waggoner: Objection.

Court: What was the answer? The objection is overruled.

Q. What effect would that type of zoning have, Mr. McIntyre, on the home values in those areas? A. Again, I really don't know what effect it had on the values because I've never made any studies of values of homes in such a situation as contrasted with the opposite situation where those homes might have been in a residential area.

Q. I think you indicated that residences could be built in industrial zoning under the 1947 ordinance. A. Right.

Q. Would not the industrial zoning also allow for other land [663] uses or variations, for instance, multi-family dwellings? A. Yes. In the industrial zones as they were established at that time you could have single family, multi-family dwellings, business. In other words, the industrial zone was really a mixed use zone. It allowed practically all uses that you might find in a city to locate there.

Q. Isn't it also true that the 1947 ordinance zoned basiccally all of the white residential areas residential? A. Basically, yes.

Q. Mr. McIntyre, isn't it true that this kind of zoning would effect the land value of the black residences, they being zoned industrial and the white being zoned residential? A. I really can't answer that. I don't know how it

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affects the land value because when you say land value I assume you mean land value and not building value.

Q. I'm talking about the value of the homes themselves, rather than the land. A. I really don't know for a fact.

Q. Would one anticipate in your area, Mr. McIntyre, the same value being assessed to a home in an area zoned industrial or zoned for multi-family use as a home in an area zoned for residential use with perhaps an R-12? A. The same assessed value. . . .

> Mr. Waggoner: If the Court please, we'll object to this there is no . . .

[664] A. I really don't know. Again, I don't deal in assessed valuation.

> Mr. Waggoner: You have to deal with specific properties. Some industrial zoning change would enhance value and some would decrease it.
>
> Court: The question relates to the value of the home, independent of any industrial value that might be attached to the land on which it stands. Do you want to stipulate an answer to this or do you want me to come in with some other witness by deposition to cover the point?
>
> Mr. Waggoner: If the Court please, I really don't know the relevance of the depreciation or appreciation of value of homes in a school case of this type.
>
> Court: I don't know that it is but it is a point under consideration. Do you want to stipulate that the answer to the question is that if you put an industrial zoning on a neighborhood where people live the value of the property for dwelling purposes is less than if it was zoned for residential?

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Mr. Waggoner: No, sir, I don't think that is a true statement. People are appearing before the Zoning Board all the time trying to get changes of zoning from residential to business to industrial. Industry likes to locate where people live so they have a supply of [665] people coming in, so I don't think you can make a general statement of that kind.

Court: Why don't you just get an affidavit from somebody who will answer the question of some knowledge and submit it to the defendant and see if they will agree to introduction of the affidavit or any other affidavit they want to put in on that subject. I don't want to have another hearing because I think this is a routine point. Your point, Mr. Waggoner, is that land may be worth much more because of industrial zoning and, of course, that's true. Mr. Chambers' point, as I understand it, which he is trying to show, is that the use of that land, when that land is used for people to live in the value of the homes on that land is less because of industrial zoning. I would think that both of those propositions would be true without argument. If you can't stipulate it, both of you get affidavits to cover it and save a little time. Maybe the question is off base. Maybe desirability and attractiveness are more important than money value, but I think you're both right. I don't blame either one of you for stopping where it is and try to cover it by affidavit so we don't spin our wheels on it.

Mr. Waggoner: We would be willing to stipulate that, depending on the land, it may be worth more or it may [666] be worth less, which is pretty much of a nothing statement as far as I can see.

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Mr. Chambers: Your Honor, I think we've already got this particular point in by Mr. Rabin.

Court: I don't remember what was said on that subject. Mr. Rabin was the man with the Van Dyke beard?

Mr. Chambers: That's right.

Court: Go ahead to something else.

Q. Mr. McIntyre, as Planning Director do you have occasions to go out into the community to view the residential areas and the industrial areas? A. Yes, sir.

Q. You indicated that in the planning for the 1962 zoning ordinance that you did extensive investigation of existing land use. A. Yes.

Q. Didn't you on this occasion, Mr. McIntyre, have occasion to determine whether the residential areas were white or black? A. We made no particular note of this.

Q. You know, though, Mr. McIntyre, that blacks stay out Beatties Ford Road? A. Certainly.

Q. And that whites stay over in Myers Park? A. Certainly.

Q. You know, too, that most of the blacks in the city stay west [667] of Tryon Street, north and south? A. Right.

Q. And that most of the whites in the city stay east of Tryon Street. A. Right.

Q. Now, is there on the west side of Tryon Street any residential zoning R-12? A. Yes, I think there is.

Q. Would you be able to pick out that section?

Mr. Waggoner: If the Court please, we have a zoning map here he might like to refer to.

A. I happen to recall the section west of Little Rock Road I'm fairly sure is zoned R-12 and up off N. C. 27 there is

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a section that I believe is zoned R-12. They are the only ones that I can recall.

Q. This is the index to the zoning ordinance. A. That wouldn't tell me. That's an index. It doesn't show the specific zoning.

Q. Would you be able to get from this the area you are referring to? A. Yes. As I recall, and this is from memory, I think we have places in map 41 and map 38 that are zoned R-12 and I believe on map 42 there are also places, areas that are zoned R-12.

Q. Looking at 38, the area you are talking about being zoned R-12, would you state whether there are any residences in that area [668] presently? A. Yes, there are.

Q. Are they black or white? A. To the best of my knowledge they are white.

Q. You're looking at map 38? A. Right.

Q. Would you look at Map 41. In the area zoned R-12 would you state whether there are presently any residences in that area? A. Yes, there are some residences in that area.

Q. Would you state whether they are black or white. A. To the best of my knowledge they are white. I don't know. I haven't made a survey of them.

Q. Mr. McIntyre, do you know of any black residential areas zoned R-12 in the City of Charlotte? A. In the City of Charlotte, no, I don't.

Q. Now, I believe that areas like Northwood Estates, Dalebrook, University Park were developed subsequent to the 1962 ordinance. A. I think they were.

Q. I believe that your comprehensive plan, the Next Twenty Years, which is Plaintiff's Exhibit 12, was published prior to 1962 or published in 1962. A. Prior to.

Q. Why didn't you in the planning at that stage, Mr.

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McIntyre, plan for some R-12 zoning in some black residential areas? [669] A. What?

Q. Strike that. Does your office also in its planning, Mr. McIntyre, plan for recreation? A. No, we do not have any official responsibility of planning for recreation. We do upon request and rather infrequently, as a matter of fact, collaborate with the Park and Recreation Commission on a specific question, but the responsibility for planning for recreation is theirs.

Q. In your twenty year comprehensive plan did you set aside some areas for parks? A. No. The Twenty Year Plan does not indicate a park plan. It recognized some of the major existing parks as features of land use and the closest it came to expressing anything on parks aside from that was our recommendation that the low lands along streams that are subject to flooding be kept open and hopefully some of these might have been used for community open space or recreation. But it was not a specific recreation recommendation, it was rather a recommendation of what we felt the appropriate use of the land would be, not to be intensively developed.

Q. You indicated earlier that city planning involved comprehensive proposals dealing basically with everything in terms of land use. A. Right.

Q. And your testimony now is that you don't set aside areas in [670] comprehensive planning for parks and recreation? A. We do not have that responsibility here although this is normally considered a part of comprehensive planning in city planning.

Q. In your Twenty Year Plan you just didn't do that. A. That's right.

Q. Now, would you look again at the map Plaintiff's Exhibit 12. Now, comparing this map with the map for 1947

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and the residential areas then existing, the proposed industrial zoning will carve out a substantial part of the residences, would it not? A. What do you mean carve out?

Q. Would eliminate. A. The industrial proposals here would eliminate a substantial part of the existing residences?

Q. Yes. A. No, I don't think it would eliminate a substantial part of the existing residences. As a matter of fact, I think to a greater extent existing residential areas were put into residential zoning districts than the opposite.

Q. You're talking about the change from the 1947 ordinance A. Right.

Q. I'm talking about the existing land use at the time that you proposed this plan.

> Court: I thought your first question was asking for a [671] comparison between the Twenty Year Plan and the '47 zones.
>
> Mr. Chambers: No, sir. I was trying to establish, if I could, that the proposed Twenty Year Plan would cut out a lot of the existing residential areas.

A. It would cut out the Brooklyn residential area because it was anticipated that would be redeveloped at the time. It would cut out a residential area over off of West Morehead Street, which is here indicated to become an industrial area. The reason for that is that we thought this was not a suitable place for housing and that that area should be cleared of the slums that were there and redeveloped for industrial and commercial purposes. It would be more appropriate to the character of that area. The other displacements of residential development by our industrial area plan I think are comparatively minor and fragmen-

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tary here and there. I can't identify any major areas of residence that was to be replaced by industrial use.

Q. Now, the industrial band that runs along Tryon Street and then along the Southern Railroad, I think you said you would not describe that as a buffer zone because of the proposed interstate routes or expressways running through the city? A. I wouldn't describe it as a buffer zone because I think it's a use that stands on its own two feet. I don't think it serves the purpose as a buffer at all. It serves the purpose of a [672] legitimate function and not a transition, which is my understanding of the term buffer.

Q. Does it not, in fact, form a dividing line between the black residences and white residences of the City of Charlotte? A. The blue area along Tryon Street, that's the question?

Q. That's correct. A. Would you state that question again, please?

Q. Does it not, in fact, form a dividing line between the black residents and the white residents in the City of Charlotte? A. Well, I don't know what it does today. At the time that this plan was done, if I am not mistaken, the residential areas between North Graham Street and Tryon Street that are indicated on this map were white residential, so that the blue industrial strip in that context is not separating white from black but rather white from white. Now, this may be separating there today. I don't know whether that area is changed from white to black or not.

Q. Even in 1962 the substantial majority of the whites in the City of Charlotte resided on the east side of that line, did they not? A. Oh, yes.

Q. And the majority of the blacks in the city resided on the west side of the line. A. Right.

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Q. If you were to give the Court some division between the black [673] and white residents of the City of Charlotte would you not use that line? A. Yes, I think that would be a fair description to say that the black residences lie to the west of Graham Street and the white residences lie to the east of Tryon Street.

Q. Going further, Mr. McIntyre, in designing or planning for zoning don't you try to get some residences and then you perhaps might have some land office use or some business zoning before you get to the industrial zoning to provide some kind of buffer between the residences and the industrial area? A. To the maximum degree possible we do try to do this. We try to either have a transition kind of zoning district from industrial into residential or we try to capitalize on some existing natural feature in the ground—a stream course or something like that—that would help to make an easier transition from industrial activity to residential activity. To a large extent we use a light industrial district classification adjacent to residential areas.

Q. It makes for a more palatable home situation to have residential areas that are sort of protected from industrial areas either by office use or some light industry or business. A. Yes, sir.

Q. Looking at Plaintiff's Exhibit 12, the map, you have an industrial zone bordering on the east or northeastern part of the Billingsville or Griertown area. [674] A. Yes.

Q. I think Griertown is basically all black. A. (Shakes head affirmatively.)

Q. I think the adjacent areas are basically all white. A. Right.

Q. Does not the industrial zone form a buffer between the black residents in Griertown and the white residents