

~~PLS~~ General
CA/

1/27/76

Depositions upon Oral Examinations of Alan Mollach volume 1
(Expert testimony)

274

CA 001029 \$

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, a non-profit
corporation of the State of
New Jersey, et al.,

Plaintiffs,

-vs-

THE MAYOR AND COUNCIL OF THE
BOROUGH OF CARTERET; TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF
CRANBURY; MAYOR AND COUNCIL
OF THE BOROUGH OF DUNELLEN;
TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF EAST BRUNSWICK;
TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF EDISON; MAYOR
AND COUNCIL OF THE BOROUGH
OF HELMETTA; MAYOR AND COUNCIL
OF THE BOROUGH OF HIGHLAND
PARK; MAYOR AND COUNCIL OF
THE BOROUGH OF JAMESBURG;
TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF MADISON; MAYOR
AND COUNCIL OF THE BOROUGH
OF METUCHEN; MAYOR AND
COUNCIL OF THE BOROUGH OF
MIDDLESEX; MAYOR AND COUNCIL
OF THE BOROUGH OF MILLTOWN;
TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF MONROE; TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF
BRUNSWICK; TOWNSHIP
COMMITTEE OF THE TOWNSHIP
OF PISCATAWAY; TOWNSHIP

DEPOSITIONS UPON

ORAL EXAMINATION

OF

ALAN MALLACH

VOLUME I

RICHARD C. GUINTA

CERTIFIED SHORTHAND REPORTER

53 PATERSON STREET

NEW BRUNSWICK, N.J. 08901

PHONE: 247-5551

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE OF THE TOWNSHIP
OF PLAINSBORO; MAYOR AND
COUNCIL OF THE BOROUGH OF
SAYREVILLE; MAYOR AND
COUNCIL OF THE CITY OF
SOUTH AMBOY; TOWNSHIP COMMITTEE
OF THE TOWNSHIP OF SOUTH
BRUNSWICK; MAYOR AND COUNCIL
OF THE BOROUGH OF SOUTH
PLAINFIELD; MAYOR AND COUNCIL
OF THE BOROUGH OF SOUTH
RIVER; MAYOR AND COUNCIL
OF THE BOROUGH OF SPOTSWOOD;
TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF WOODBRIDGE.

Defendants.

TRANSCRIPT OF DEPOSITIONS, taken by and before
RICHARD C. GUINTA, Notary Public and Certified Shorthand
Reporter of the State of New Jersey, at the Metuchen
Borough Hall, Metuchen, New Jersey, on Tuesday, January 27,
1976, commencing at 8:30 a.m.

1 A P P E A R A N C E S:

2 MESSRS. BAUMGERT & BEN-ASHER
3 By: Daniel A. Searing, Esquire (Of counsel)
4 and
5 Marilyn J. Morheuser, Esquire
6 Attorneys for the Plaintiffs

7 MESSRS. HUFF & MORAN
8 By: William C. Moran, Jr., Esquire
9 Attorneys for the Township of Cranbury

10 MESSRS. BUSCH & BUSCH
11 By: Bertram E. Busch, Esquire
12 Attorneys for the Township of East Brunswick

13 RICHARD F. PLECHNER, ESQUIRE
14 and
15 ALAN O. DAVIDSON, ESQUIRE
16 Attorneys for the Borough of Helmetta

17 MESSRS. RUBIN & LERNER
18 By: Lawrence Lerner, Esquire
19 Attorneys for the Borough of Highland Park

20 MARTIN A. SPRITZER, ESQUIRE
21 Attorney for the Borough of Metuchen

22 MESSRS. HAMILTON & OAKE
23 By: Daniel Bernstein, Esquire
24 Attorneys for the Township of Piscataway

25 MESSRS. KARCHER, REAVEY & KARCHER
By: Joseph Baker, Esquire
Attorneys for the Borough of Sayreville

ARTHUR W. BURGESS, ESQUIRE
By: Paul E. Strapp, Esquire
Attorneys for the Township of Woodbridge

DENNIS CUMMINS, ESQUIRE
Attorney for the Borough of Dunellen

MESSRS. JOHNSON & JOHNSON
By: Edward J. Johnson, Jr., Esquire
Attorneys for the Borough of Middlesex

24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MESSRS. RAFANO & WOOD
By: Frank Cofone, Esquire
Attorneys for the Borough of South River

JOHN VAIL, ESQUIRE
Attorney for the Borough of South Amboy

GUIDO BRIGIANI, ESQUIRE
Attorney for the Borough of Jamesberg

JOSEPH STONAKER, ESQUIRE
Attorney for the Township of Plainsboro

MESSRS. ALFONSO, GROSSMAN & ALFONSO
By: Louis Alfonso, Esquire
Attorneys for the Township of Madison

CHARLES V. BOOREAM, ESQUIRE
Attorney for the Borough of Milltown

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X T O W I T N E S S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
ALAN MALLACH		
By Mr. Stonaker	7	
	92	
	97	
By Mr. Moran	11	
	92	174
By Mr. Busch	18	
	85	212
By Mr. Bernstein	41	251
By Mr. Cummins	54	
By Mr. Johnson	64	237
By Mr. Vail	67	88
By Mr. Davidson	70	241
By Mr. Spritzer	75	199
By Mr. Brigiani	81	
By Mr. Strapp	93	

I N D E X T O E X H I B I T S

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>IDENT.</u>
DEB-1	Mallach Associates document	35
DEB-2	Notification of Intention	35

1 MR. SEARING: I would like it
2 reflected that all counsel had agreed
3 previously to start the depositions at
4 eight o'clock to facilitate their completion.

5 I assume that the reporter has the
6 appearances. It's now approximately 8:30.

7 Mr. Mallach will be available for
8 today and tomorrow, and can remain until
9 approximately five o'clock today, and I
10 haven't ascertained what will be necessary
11 for tomorrow.

12 Should we not finish, we can make
13 every effort to make him available for
14 longer periods before trial, say on the
15 weekend or during Friday, if we're not working,
16 et cetera.

17 In deference to counsel's concern
18 about travel to Washington, I have asked
19 Mr. Erber to be available all day on Thursday
20 of this week, under the same circumstances,
21 the place to be determined later on.

22 Doctor Powell, or Mr. Powell, the
23 executive director of the county planning
24 staff, was listed as an expert witness, but
25 apparently is ill and will be unavailable.

1 We are removing him from the list
2 of expert witnesses, and are planning to
3 replace him with Mr. Hyman Center, who will
4 be a fact witness only. Ms. Petrick, who
5 was also designated as an expert witness,
6 will no longer be qualified as an expert.

7 Now, obviously, defendants' counsel
8 still have the right to depose both of these
9 people, should they wish to.

10 Mr. James, who is listed as an expert,
11 will be available on Friday of this week
12 for the purpose of depositions, and Doctor
13 Mann has been asked to submit his written
14 report as soon as possible.

15 I have not, personally, been in
16 contact with him, but he is on the west
17 coast on other business. He will not be
18 returning to Cambridge, Massachusetts, to
19 clear up any doubt in that regard, until the
20 30th.

21 But, I anticipate having something
22 from him well before then.

23 MR. BUSCH: What's today's date?

24 MR. SEARING: 27th.

25 MR. BUSCH: You did say well before

1 the 30th.

2 MR. SEARING: Yes. Mr. Potter's
3 testimony and Mr. Franklin's testimony,
4 both of whom were listed as experts, is
5 scheduled at this point for later in the
6 trial, and I would suggest that if possible,
7 their depositions, if you still desire to
8 take them, can be scheduled for Friday,
9 February 6th, which is quite a bit before
10 their projected testimony and is the first
11 available time in which we will not be
12 attending the actual trial, as I understand it.

13 If the schedules should move along
14 faster than that, we can try to make them
15 available sooner.

16 MR. BUSCH: I would like to note for
17 the record that I don't think any defendant
18 should have to take a deposition during the
19 trial. All of us have other law practices,
20 and one day a week we'll try to run them.

21 Of course, we're preserving all our
22 rights to object to any testimony at the
23 time of trial.
24
25

1 A L A N M A L L A C H, sworn.

2 108 West State Street, Trenton, New Jersey 08608.

3 DIRECT EXAMINATION BY MR. STONAKER:

4 Q My name is Joseph Stonaker, I'm an attorney
5 representing Plainsboro Township.

6 Have you ever had a deposition taken before?

7 A Yes.

8 Q Then you're familiar with the procedure?

9 A Yes.

10 Q Mr. Mallach, could you please give us your
11 educational qualifications?

12 A My formal education is limited to a Bachelor of
13 Arts degree in Sociology from Yale College.

14 Q You have no other professional degrees?

15 A I have no other degrees.

16 Q What is your experience in the field of planning,
17 sir?

18 A I would say it's extensive.

19 During the -- I guess -- trying to think how best
20 to organize it.

21 I've been employed by the New Jersey Department of
22 Community Affairs for a number of years, including spending
23 two years as the individual responsible for directing all
24 planning activities of the department in the areas of
25 housing, community development and related urban matters.

1 Q Pardon me, sir. When was that?

2 A This was between 1967 and 1971.

3 And, in addition, I also spent part of that term
4 with the New Jersey Housing Finance Agency, and was
5 responsible for much of the work in establishing the
6 forms, procedures and standards for that agency.

7 Subsequently, I have been a member of the faculty,
8 administration at Rutgers, a member of the faculty at
9 Stockton, and have taught courses in planning, housing
10 and related matters.

11 In addition, I've been working since 19 -- early 1973
12 with the New Jersey County and Municipal Government Study
13 Commission, in which capacity I directed a study of
14 specifically on the planning and development of multi-family
15 housing, under contract with the U.S. Department of Housing
16 and Urban Development, and have directed another study --
17 rather, that study was published and released at the end
18 of 1974.

19 Also directed another study, which will be published
20 during this year, dealing specifically with local and
21 regional planning and land development in New Jersey.

22 I'm currently working on a third study, having to
23 do with urban rehabilitation and neighborhood preservation,
24 the planning aspect of that.

25 In my consultant practice, I am engaging in a number

1 of areas relevant to planning, including housing development
2 activities, housing research, market analysis, zoning
3 analysis, and similar areas, on behalf of land developments
4 and municipalities, survey research, socio-economic research
5 and the like.

6 In addition, I have worked and written extensively,
7 specifically on the issues of exclusionary zoning and
8 housing opportunity with reference to suburban development.

9 Q The writings that you refer to, sir, could you
10 give us the names of those?

11 A Okay. I'll cite a number.

12 The most substantial one is the publication I
13 referred to earlier, which was financed by HUD. The title
14 of that is called Housing and Suburbs: Fiscal and Social
15 Impact of Multi-Family Development. It is a substantial
16 book with an attractive green cover.

17 In addition, I published an article in last summer's
18 issue of the Rutgers Camden Law Journal, on the subject
19 of exclusionary zoning.

20 I have an article -- I have written another article
21 on this subject, which is scheduled for publication in
22 a collection of pieces on the aftermath of the Mount Laurel
23 decision, which is being published by the Rutgers Newark,
24 Student Bar Association.

25 Q When is that scheduled for publication?

1 A I gather within the next few months. I can provide
2 counsel with a copy of the typescript of that, certainly.

3 And then, of course, I would cite the publication
4 on land development and planning, which I mentioned,
5 which is also in draft form, but it's available to counsel.

6 Q When you were on the faculty, were you a full-time
7 professor at Rutgers?

8 A No. When I was at Rutgers, my full-time appointment
9 was as a member of the administration, and I had a part-
10 time faculty appointment, in conjunction with this.

11 Q In what field?

12 A The area was known as Community Development, the
13 Department of Community Development, which is the
14 undergraduate department, which is the counterpart of the
15 Graduate Planning Program.

16 Q Have you ever made an evaluation of Middlesex
17 County's housing needs?

18 A I have made a partial evaluation. I wouldn't call
19 it a comprehensive one. But, I've looked at some of the
20 issues and some of the statistics connected with that.

21 Q Have you visited any of the communities in Middlesex
22 County?

23 A Over the past nine years that I've been a resident
24 of central New Jersey, I think I've had opportunity to
25 visit, I won't say all, but nearly all of the municipalities

1 in Middlesex County.

2 I'd like the record to show there's no sugar.

3 MR. VAIL: We're not paying for that.

4 THE REPORTER: It's in the record.

5 MR. VAIL: It's ridiculous. I don't

6 want to take offense, but --

7 THE WITNESS: Sorry.

8

9 BY MR. MORAN ON QUALIFICATIONS:

10 Q Mr. Mallach, what year did you graduate from Yale?

11 A 1966.

12 Q And you began your employment with the New Jersey
13 Housing Finance Agency at what time?

14 A 1967.

15 Q I believe you testified also that you were employed
16 by the Department of Community Affairs in 1967.

17 Did you work for both agencies at the same time?

18 A The New Jersey Housing Finance Agency is, I think,
19 the technical term is in but not Of the Department of
20 Community Affairs.

21 And even though now they're physically very much
22 distinct, at that time, it was much more it was seemingly
23 the same thing.

24 It was much more a unit of the department rather
25 than a separate agency.

1 Q Were you working for the New Jersey Housing Finance
2 Agency at the same time that you were director of planning
3 for the Department of Community Affairs?

4 A No. It was in sequence. I'm sorry. First --
5 I worked for the Housing Finance Agency, or I was assigned
6 to the Housing Finance Agency for roughly the first year
7 that I worked with the Department of Community Affairs,
8 and subsequently, I moved laterally, as it were, to the
9 State Planning Division to undertake the planning work
10 that I described.

11 So it would have been '67 through mid-68, the Housing
12 Finance Agency, and then '68 through mid-70 with the Planning
13 Division.

14 Q You say you've been involved more recently in
15 housing development activity for developers and also for
16 municipalities.

17 Could you tell us what municipalities that you did
18 work for?

19 A Okay. At the moment, at the moment I have no
20 municipalities as clients.

21 The most recent work I've done for municipalities
22 was done for Washington Township in Gloucester County,
23 for which we did an analysis of two PUD proposals, and a
24 fiscal study, the impact of those developments specifically
25 and development generally on the municipal budget and

1 municipal finances.

2 Q When was that?

3 A This was last year.

4 Q This was as a consultant for the municipality.

5 A That's correct.

6 Q Have you done work for any other municipalities
7 besides Washington Township?

8 A In my formal consulting capacity, as a representative
9 of my firm, I have not.

10 On behalf of the County and Municipal Government
11 Study Commission, with which I work as an individual,
12 I have done a number of -- I have assisted a number of
13 municipalities and counties.

14 I've been working recently, for example, with the
15 Atlantic County County Executive's Office, in terms of
16 working on the problems of the transition of the form of
17 government, under the new County Charter there.

18 I think there are a number of others, if you'll
19 give me a moment.

20 I've been working -- in the context of the Neighborhood
21 Preservation Program that I mentioned, I've been working
22 with and assisting a number of municipalities to develop,
23 again, comprehensive neighborhood preservation efforts.

24 This would include the City of Trenton, City of
25 Burlington, City of Hoboken.

1 There are a number of other municipalities
2 involved in the program. But, those are some that I've
3 been involved with directly.

4 People on my staff have also been involved with
5 Phillipsburg, New Brunswick, a number of other municipalities.

6 Q Talking about your staff at Alan Mallach Associates
7 or your staff at --

8 A My staff at the Commission in this case.

9 Q Have you ever testified on behalf of any municipality
10 in any proceeding?

11 A No.

12 Q Have you ever been involved in the preparation of
13 a master plan on behalf of any municipality?

14 A No, I have not.

15 Q A zoning ordinance on behalf of any municipality?

16 A No, I have not.

17 Q You also testified that you have done work for
18 various developers, is that correct?

19 A That's correct.

20 Q Could you tell us when you did that work and what
21 the nature of the work was?

22 A Okay.

23 Let's see. One was on behalf of the Garden Cities
24 Development Company, which proposed a large scale -- I
25 guess it was a PUD, although technically it was not considered

1 such, in Mahwah, for which I did a market analysis and a
2 fiscal cost revenue analysis for the proposed project.

3 I've worked on behalf of Camden National Realty, Inc.,
4 which despite its name is a developer, which proposes to --
5 which involved expert testimony, involving a proposal in
6 Cinaminson Township in Burlington County.

7 I am presently retained by the Green Valley Land
8 Development Company as the packager of the housing being
9 built, or being planned, in the Oak Valley PUD in Vineland,
10 Cumberland County.

11 Q Is that the extent of it?

12 A Those are the significant ones.

13 Q You just used the term, "packager."

14 A It's a term of art, as it were.

15 Under the various government housing programs,
16 particularly the financing from the New Jersey Housing
17 Finance Agency, there is an individual, the technical
18 term is loan consultant, as a rule.

19 It's an individual who is responsible for coordinating
20 and tying together all the different aspects and features
21 and problems that take place in the development process.

22 In other words, handles all of the paper that has
23 to go into the state and the federal agency, supervises the
24 sheparding of the project through the municipal approvals,
25 supervise the work of the professional, such as the architect

1 and the attorney and the general contractor.

2 And, generally, sees to it that the project moves
3 from a gleam in the eye to a reality.

4 Q Have you ever done any work on behalf of a developer
5 who has constructed housing in Middlesex County?

6 A No.

7 Q In your work, either for the Department of Community
8 Affairs or in your private practice or your work on the
9 County and Municipal Government Study Commission, have you
10 ever done any studies involving Middlesex County or any
11 of the towns in Middlesex County?

12 A Yes.

13 First I should mention, at present the City of
14 New Brunswick is one of the cities that we are studying
15 as part of our overall neighborhood preservation study.

16 In addition, at one point -- when I was in the
17 Department of Community Affairs, and continuing also
18 while I was at Rutgers, I provided assistance, worked with
19 the Model Cities Program in the City of Perth Amboy and
20 their development of a housing program for the city,
21 including designing the laying out of hypothetical
22 administrative structure and budget, alternative redevelopment
23 sites and similar matters.

24 I'm trying to think if there are any other areas.
25 I believe that that has been the extent of my formal

1 involvement with Middlesex County municipalities.

2 Q When did you obtain your license as a municipal
3 planner?

4 A I do not have a license as a municipal planner
5 and I do not practice municipal planning in the meaning
6 of the licensing act.

7 Q Now, what is the difference between the planning
8 that you do practice and municipal planning, as you see it?

9 A The planning -- municipal planning and the planning
10 which is the subject of the licensing act, in my understanding,
11 and that of the attorneys with which I've discussed it,
12 has to do with conduct and the production of municipal
13 plans and related materials, as described in 40:55.

14 In fact, the licensing act specifically refers to
15 the materials, to those materials described in 40:55, the
16 planning act and the zoning act.

17 I do not perform -- I do not do work that fits --
18 that falls within land use planning, master planning,
19 preparation of municipal master plans, zoning ordinances.

20 As I said, I have not and do not prepare municipal
21 master plans or zoning ordinances.

22 However, the development of housing projects, the
23 conduct of market analyses, cost revenue analyses, and
24 the like, while they may be considered, and in fact I
25 think they are generally considered within the ~~our~~view of

1 planning in the broadest definition of the term, they are
2 not and have not been considered part of the practice of
3 planning within the narrow definition of the act.

4 Q Have you ever applied or made application to be
5 licensed as a municipal planner?

6 A No, I have not.

7 Q Are you a member of the American Institute of Planners?

8 A No.

9 MR. MORAN: I have no other questions
10 on qualifications.

11
12 BY MR. BUSCH ON QUALIFICATIONS:

13 Q Mr. Mallach, my name is Bertram Busch, I represent
14 the Township of East Brunswick.

15 After Yale, what did you do, in '66 and -- about '66, you
16 started with the New Jersey Department of Community Affairs
17 in '67?

18 A I was employed by an agency that I'd worked for on
19 a part-time basis for the previous two years, which is
20 called Community Progress, Incorporated, which was the
21 umbrella agency for the City of New Haven, in the provision
22 of social services and related areas.

23 I was, from the summer of '66 to -- through the
24 summer of '67, I was -- my title was Manpower Evaluation
25 Coordinator, and I was responsible for evaluation, statistics,

1 research, follow-up of applicants and related areas for
2 the city manpower, job training, job placements.

3 Q What subject did you major in in college?

4 A Sociology.

5 Q Did you ever apply to any graduate school?

6 A Yes.

7 Q Which ones and in what field?

8 A In 1968, for reasons that now seem rather vague,
9 I applied for and was admitted to the Kennedy School at
10 Harvard, in the program for Masters of Public Administration
11 Degree.

12 Q But, you did not go there.

13 A No. I decided it would be more interesting to
14 remain in Community Affairs.

15 Q Did you ever apply to the Rutgers Graduate School of
16 City and Regional Planning?

17 A No, I have not.

18 Q Do you recognize as authorities in the planning
19 field Jerome Rose? Do you know the name Jerome Rose?

20 A I've known Jerry Rose and dealt with Mr. Rose off
21 and on for many years now. I think he's an intelligent
22 and capable individual.

23 I don't consider him an authority, in what I construe
24 as the meaning of that term.

25 Q What about Melvin Levin? Do you know that name?

1 A I know Mel, Mr. Levin.

2 Q Do you accept him or acknowledge him to be an
3 expert in the field of planning?

4 A An expert, yes.

5 Q Harvey Moskowitz?

6 A I would consider Harvey an expert.

7 Q How about Professor Sternlieb?

8 A In the field of planning, no. In certain other
9 areas, yes.

10 Q What areas is he an authority?

11 A I consider him, certainly an authority in the
12 fields of business economics and housing economics.

13 Q How about Bud Chavooshian?

14 A I consider him an expert in the field of planning.

15 Q Professor Williams?

16 A I would consider him extremely knowledgeable and
17 expert on the minutia of planning law.

18 Q Just so I can summarize the questions I asked. You
19 do not consider Professor Rose an expert in the field
20 of planning?

21 A No. I do not consider him an authority. He is
22 certainly an expert.

23 Q Can you tell me the difference in your mind between
24 those two words?

25 A Oh, certainly.

1 An expert is an individual, who has expert knowledge.

2 An authority is an individual whose expert knowledge is
3 of such quality and caliber that it's authoritative.

4 Q In other words, you feel that Professor Rose has
5 not distinguished himself sufficiently for his expertise
6 to be relied upon by other experts?

7 A Well, I certainly -- certainly there may be some
8 experts who rely on his expertise, but I'm familiar with
9 more who don't.

10 Q Do you feel there's any value to the municipal
11 licensing act in the State of New Jersey, in terms of
12 screening out experts who might otherwise try to practice
13 municipal planning?

14 Do you understand the question?

15 A I understand the question.

16 Q Do you acknowledge any value whatsoever in the
17 New Jersey Licensing Act as to municipal planners?

18 A I acknowledge considerable value in the principle
19 of the licensing act. I think the substance of the licensing
20 act leaves a great deal to be desired in achieving the goal
21 that it purports to aim towards.

22 I realize that that issue has been litigated in
23 great detail and is resolved on the side that I, personally,
24 do not agree with, so I don't want to pursue it and I won't.
25 But, that's my personal feeling.

1 Q Are you aware of the method by which a person
2 can obtain a license as a municipal planner in New Jersey?

3 A Yes, I am.

4 Q What are the requirements?

5 A The requirements are based on a -- what might be
6 considered a sliding scale, or mix of education and
7 experience requirements, plus a test, or other, depending
8 on other professions.

9 In other words, if one has a graduate degree in
10 planning, from a recognized planning school, one can
11 obtain a planning license, with what is a very small amount
12 of professional experience.

13 If one has an undergraduate degree in planning,
14 or which includes a large dose of planning, one can not
15 obtain a license with a substantially greater measure of
16 professional experience.

17 If one lacks either credential, one requires still
18 a substantially greater measure of experience.

19 Q Would it be fair to say you would come in the latter
20 category now?

21 A It is conceivable that I could qualify, if, by
22 making some sort of case of sociology is tantamount to
23 planning.

24 Q And if that were not accepted?

25 A Then I would have to have twelve years of professional

1 experience to make up for the lack of a formal degree in
2 the area.

3 Q Would you have to take a written test?

4 A All the people in this category, as distinct from
5 people who are already licensed as architects, engineers,
6 land surveyors, have to take a test.

7 Q Are there any courses given to prepare people
8 for such a test? Cram courses, if you will?

9 A I don't know, but I'm not familiar with any. There
10 may be.

11 Q Do any of the things that you do overlap with the
12 field of municipal planning?

13 A The only activity that I engage in at present that
14 I believe overlaps with the field of municipal planning
15 is my membership on my local Zoning Board of Adjustment.

16 Q And what municipality is that?

17 A Pennington.

18 Q And that is a lay position.

19 A Yes.

20 Q You're not there as an expert?

21 A No.

22 Q You're not a paid expert, are you?

23 A No.

24 Q You mentioned you were on the faculties of Stockton
25 and Rutgers?

1 A First Rutgers, then Stockton.

2 Q What were the years you were on the faculty at
3 Rutgers?

4 A I was at Rutgers, as I believe I mentioned to
5 Mr. Stonaker, as a full-time member of the administration,
6 part-time member of the faculty, from '71 through '73.

7 Q Okay.

8 To the extent that you were on the faculty, how
9 many credits were you teaching and to what category of
10 students?

11 A I taught, as a general rule, one course a semester.

12 Q Were you considered in that an adjunct professor?
13 Did you have a title?

14 A I had a title. I don't think the term adjunct
15 would have been used.

16 Just assistant professor. It would have read,
17 Assistant Dean of Academic Affairs and Assistant Professor.

18 Q Are you sure you were called assistant professor,
19 as opposed to instructor, or adjunct?

20 A I may have been an instructor or adjunct professor.

21 Q Isn't assistant professor a term of art? Doesn't
22 that mean something special in academics?

23 A It is a term.

24 Q You don't know whether you had the title of
25 assistant professor.

1 A No, I don't.

2 Q And you taught, to your recollection, one course
3 a semester?

4 A As a general rule. I may not have taught a course
5 every semester I was there. And I did teach a course in
6 summer session. But, I would say it averaged out to one
7 course a semester.

8 Q So over a two year period, you would have taught
9 four courses?

10 A Three or four.

11 Q And to whom were the courses taught?

12 A To undergraduates.

13 Q At which campus?

14 A Livingston Campus.

15 Q And what were the titles of the courses?

16 A I don't remember the titles, but I will give you
17 the substance of the courses.

18 Q Okay.

19 A The first course was a course specifically
20 designed for older students who had had some, I guess,
21 real-life experience before receiving their degree, mainly
22 urban people, and dealt with urban -- it was a course in
23 analyzing urban politics and community development problems.

24 The second course was a course on research methods,
25 surveys, field work, interviewing, and related areas.

1 The third course was a course I taught jointly
2 with a member of the Political Science Department, and
3 had to do with the politics of urban and community
4 development problems.

5 Q What was his or her name?

6 A His name was Robert Liff.

7 Q Were there any other courses that you can recall?

8 A Those are the ones I can recall.

9 In addition, I supervised individual students on
10 individual projects and papers.

11 Q Between 1971 and 1973, while you were teaching
12 these courses, you also were in the administration at
13 Rutgers.

14 A Yes.

15 Q Did you have any other jobs or occupations during
16 that period, other than with Rutgers?

17 A I did a very limited amount of individual, I guess,
18 consulting work and volunteer work on behalf of different
19 groups.

20 Q Did you receive payment separate for faculty work
21 as opposed to administration or --

22 A No. I received -- I was a full-time administrator,
23 so the faculty work was considered part of that.

24 Q And when was it that you worked at Stockton?

25 A I was at Stockton as a full-time faculty member,

1 strictly faculty, for the 1973-74 academic year, and
2 then continued as an adjunct member to teach one course
3 in the fall of 1974.

4 Q Okay.

5 Can you tell me where Stockton College is?

6 A Stockton is in the place -- the place name is
7 Pomona, which is part of Galloway Township, Atlantic County.

8 Q How many courses each semester did you teach in
9 '73, '74?

10 A Two courses each semester. Stockton is on a
11 modified trimester, rather than a semester.

12 Q During that period while you were on the faculty
13 at Stockton, did you have any other employment or work?

14 A I worked on a very limited part-time basis with the
15 County and Municipal Government Study Commission.

16 Q When was Alan Mallach Associates formed?

17 A Alan Mallach Associates was formed in the middle
18 of 1974.

19 Q Is that a corporation, partnership or something else?

20 A It's a corporation.

21 Q And I assume you're one of the principals?

22 A Yes.

23 Q Who are the other principals, either officers or
24 shareholders?

25 A At this time I am the sole officer, shareholder,

1 principal.

2 Q Do you maintain an office?

3 A Yes, I do.

4 Q Is that at 108 West State Street, Trenton?

5 A That's correct.

6 Q And how many other employees, if any, does
7 Alan Mallach Associates have?

8 A At this point, we have two regular employees, one
9 who is starting next week, one who is on already, as
10 well as individuals who are hired specifically to work
11 on projects.

12 Q Okay. The employee who you presently have, what
13 is that person's name?

14 A His name is John Prior.

15 Q And what are his credentials and functions at Alan
16 Mallach Associates?

17 A He is presently a candidate for the Master of City
18 and Regional Planning Degree at Rutgers, works for me on
19 a twenty to thirty hours a week basis.

20 He has had experience working in Washington, D.C.,
21 with the National Committee Against Discrimination In
22 Housing, which I would like to read -- it had no connection
23 with my involvement in this case, since I hired him well
24 before I was approached in any manner by the group on
25 behalf of this case.

1 And has experience working with and advising
2 non-profit community organizations on housing development,
3 federal housing programs in the D.C. area.

4 Q How long has he been with you?

5 A He's been with me since the fall, since September
6 of this year.

7 Q 1975?

8 A Yes.

9 Q And prior to having Mr. Prior as an employee, did
10 you have any other employees?

11 A Prior to having Mr. Prior as an employee, I had
12 another principal who worked in the office on a comparable
13 basis.

14 Q Comparable to whom?

15 A Comparable to Mr. Prior, in terms of the number of
16 hours.

17 Q What was that person's name?

18 A Edward Hindin.

19 Q And he's no longer with you?

20 A That's correct.

21 Q You mentioned Mr. Prior's coming to you had nothing
22 to your being retained by the plaintiff?

23 A That's correct.

24 Q Can you tell me the circumstances you were retained
25 by the N. G. A. D. I. H. ?

1 A As of, I guess it was early December, late November --

2 Q Mr. Searing hasn't been sworn. You have to use your
3 own recollection.

4 A Okay. In early December -- well, I have done work
5 in an advisory basis with the office of the Public Advocate,
6 the Department of the Public Advocate, during the last
7 year, and have a personal relationship with a number of
8 the attorneys in that office, whom I see regularly.

9 Early in December, I had a conversation with
10 Mr. Buxbaum of the Public Advocate's Office, who mentioned
11 to me that he had a meeting scheduled with a Mr. Searing,
12 for the following day, whom I had not met at that time,
13 regarding the Middlesex County case.

14 I had heard of the Middlesex County case, but only
15 through the newspapers and scuttlebutt at that point.

16 Mr. Buxbaum asked me in the event that Mr. Searing
17 needed additional assistance in either preparation of
18 the case or expert testimony, was I available. My
19 answer was a flat no.

20 At the time, I felt that my schedule -- I mean --
21 my schedule is such that I did not feel I could devote the
22 proper amount of time or energy to an additional matter
23 at this time.

24 Q This was in early December 1975?

25 A Yes.

1 The following day, I received a call from them,
2 Mr. Searing and his colleagues were meeting with the
3 Public Advocate people, and was asked if I would reconsider.

4 Being of tender heart, and being susceptible to
5 flattery, I did.

6 Q Were you also susceptible to payment?

7 A Well, of course.

8 Q Did you make a deal on that day as to how much you
9 would be paid?

10 A No.

11 Q Have you, up to the present time, made an arrangement
12 as to the basis of payment?

13 A We have made a basis -- excuse me. An arrangement
14 as to the basis of payment.

15 Q Can you tell me what that arrangement is?

16 A The arrangement is that I will be paid for the
17 work I do on the basis of my regular hourly rate.

18 Q And what would that be?

19 A My hourly rate, as of 1975, projects entered into
20 in 1975 are thirty dollars an hour for my services.

21 Q Do you charge a lesser amount for any staff time put
22 in?

23 A Yes.

24 Q How much for Mr. Prior?

25 A Eighteen dollars an hour.

1 Q How about for the new employee you're getting next
2 week?

3 A The new employee will be a clerical and para-
4 professional and will be considered overhead.

5 MR. SEARING: I would like the
6 record to reflect that the fees Mr. Mallach
7 has just discussed will also be reflected
8 in the bill sent to the defendants for this
9 deposition.

10 MR. BUSCH: Off the record.

11 No, forget it. All right. Off
12 the record.

13 MR. VAIL: Go on the record with this.

14 MR. BUSCH: Let's get it on the record.

15 MR. SEARING: As I understand it, the
16 fees for an expert who is deposed are paid by
17 the party requesting the deposition.

18 I was merely indicating that rather
19 than doing it at the end of the session,
20 either today or tomorrow, that that is
21 Mr. Mallach's normal fee and will be presented
22 to whoever called the depositions for payment.

23 MR. BUSCH: Without going into it on
24 the record at this point, I don't think there's
25 any general acceptance of the statement you've

1 just made.

2 I think we can probably work that out
3 at a later time.

4 MR. SEARING: That would be fine.

5 Q When you reconsidered, Mr. Mallach, in December,
6 who did you speak to at the time you indicated you would
7 agree to take the position or the job?

8 A I agreed to join a meeting which was in progress
9 at that time, which included Mr. Searing, Mr. Sloane,
10 Miss Morhæuser, Mr. Buxbaum, Mr. Bisgaier.

11 Q Is that Carl Bisgaier.

12 A Yes.

13 I think he was present, but I'm not certain.

14 And at the end of -- participated in the meeting
15 for roughly one hour.

16 Q Where did the meeting take place?

17 A That meeting took place at Lorenzo's, it's a
18 restaurant in Trenton, near the office of the Public
19 Advocate. It's a great restaurant.

20 Q Did the people who were there impress upon you the
21 need for a witness such as yourself?

22 A Yes.

23 Q Did they indicate time was running out and that
24 time was short?

25 A Yes. Within reason. There was a couple of months,

1 so it was not a matter of utter urgency.

2 Q When you were retained, did they indicate to you
3 the trial was scheduled for February 2, 1976?

4 A Yes.

5 Q And it was likely that your deposition would have
6 to be taken before the trial?

7 A Yes.

8 Q Did they indicate to you that you might have to
9 prepare a written report prior to the trial?

10 A No.

11 Q Have you, in fact, prepared a written report?

12 A No, I have not.

13 Q With regard to a document marked -- strike that,
14 not marked, dated January 9, 1976, headed Notification
15 of Intention to Use Expert Witness, with your name and
16 your professional address, have you seen that prior to
17 today, the actual document that I'm showing you, or a
18 copy of that document, as opposed to another document
19 with the same words on it?

20 A Well, I have not seen this document.

21 Q Do you have a document with the same language,
22 but different typesetting and different typing?

23 A That's correct.

24 Q Who prepared the document that you have in front
25 of you to your left?

1 A I did.

2 Q When was that prepared?

3 A This was prepared roughly during the first week of
4 January.

5 Q Just for identification, let's mark the two exhibits.

6 MR. BUSCH: One, the exhibit that
7 Mr. Mallach has himself, which he indicates
8 is the same as an exhibit dated January 9.

9 A With the exception, I believe, of the closing
10 paragraph.

11 Q The closing paragraph refers to Mr. Leonard Sendelsky
12 on my copy.

13 A Yes.

14 Q And yours does not have that.

15 A That's correct.

16 (Whereupon, Mallach Associates
17 document marked DEB-1 for identification.)

18 (Whereupon, Notification of Intention,
19 marked DEB-2 for identification.)

20 Q Mr. Mallach, I don't know, maybe you've answered
21 this already.

22 Have you ever testified in any case at all as an
23 expert?

24 A Yes.

25 Q And any prior case that you've testified in, have

1 you ever prepared a written report prior to trial?

2 A Yes, I have.

3 Q Have you ever been cross-examined on the basis
4 of such a report during the course of the trial?

5 A No, because in that event, which had to do with
6 a Cinaminson trial, they decided not to admit the
7 written report.

8 Q Do you know whether the report that you prepared
9 in the Cinaminson trial had been furnished to counsel
10 for the side opposite to you?

11 A I believe it either had not been or had not been
12 long enough before to -- I think that was the problem,
13 which is why it was not admitted.

14 Q So the court refused to allow testimony based upon
15 that report?

16 A On the report as such.

17 Q You were permitted to testify on other things?

18 A I was permitted to testify on the substance of that.

19 Q Have you ever testified on behalf of a municipality
20 where the plaintiff was alleging exclusionary zoning
21 practices?

22 A As I believe I mentioned earlier, no.

23 Q Have you ever done anything whatsoever to assist
24 a governmental unit, either county, state, municipality,
25 on charges of exclusionary zoning?

1 A Do I -- let me see if I can be sure of what you
2 mean. You're referring in a specific case, where a specific
3 municipality was being attacked on exclusionary zoning,
4 did I assist that specific municipality?

5 Q We'll start with that question, which you seem to
6 understand.

7 A That, no, I have not advised a specific -- a
8 municipality against a specific exclusionary zoning case.

9 Q Have you ever generally been asked to give your
10 expertise or consultation to any governmental entity,
11 in order to assist them in maintaining, let's say, large
12 lots, or something of that nature, which today may be
13 called exclusionary zoning?

14 A Not as such.

15 Q In what manner, if at all, have you ever given
16 consultation or advice to a governmental entity, which was
17 trying to preserve large lot zoning and all the other
18 things that are called exclusionary zoning?

19 A I have never assisted a municipality in trying to
20 preserve what I would consider to be exclusionary land use
21 pattern or practice.

22 I have prepared -- in the study of planning that I
23 have conducted, in my work for the County and Municipal
24 Government Study Commission, as well as in public appearances,
25 I have advised on what I consider to be reasonable actions

1 for municipalities, on the basis of reconciling their
2 interests and what I read as the principles of the Mount
3 Laurel decision.

4 I do not consider this equivalent to, you know,
5 advising them on maintaining exclusionary practices,
6 though.

7 Q Which municipality or municipalities were involved
8 in that advice?

9 A I haven't advised specific municipalities on their
10 specific practices. I've dealt in a general, if you will,
11 theoretical context.

12 Q Would this be something that would be in a learned
13 journal, as opposed to a report submitted to a specific
14 municipality?

15 A Neither. It would be something that will be in a
16 report to be published by the County and Municipal Government
17 Study Commission, and very much addressed at local offices
18 as a principal audience of the report.

19 Q With regard to Middlesex County, have you made any
20 study of the amount of vacant land that's left in the
21 county today?

22 A I have not made a firsthand study. I have, however,
23 reviewed the information available, both from -- provided
24 by the municipalities in some cases and provided by the
25 Department of Community Affairs report in others, in order

1 to make an assessment of the situation in that regard.

2 Q As of ^{the} /date that you prepared your summary of
3 proposed testimony, which is testimony, dated January 9,
4 had you reviewed answers to interrogatories submitted
5 by the municipalities to Mr. Searing?

6 A Yes.

7 Q Had you reviewed all of the interrogatories, to
8 your knowledge?

9 A I won't say all -- all of the materials received
10 to that point, and provided us by Mr. Searing.

11 Q You won't say all?

12 A I won't say -- no, I can't say all.

13 Q Do you know approximately how many municipalities'
14 interrogatories you reviewed?

15 A No, because I reviewed some of them and Mr. Prior
16 reviewed some of the others. I couldn't provide an exact
17 number.

18 Q Do you remember how many you reviewed? Approximately.

19 A I reviewed about half a dozen.

20 Q Do you remember which towns they were?

21 A No.

22 Q Have you made any studies indicating, not only the
23 amount of vacant land available, but the environmental
24 or ecological factors that might inhibit development of
25 that land?

1 A We've made no studies whatsoever. In some cases,
2 these have been noted, either in responses to interrogatories
3 or other materials, but beyond that, we've made no studies
4 on our own.

5 Q Do you acknowledge one of the functions of planning
6 is to determine whether or not the land and the sub-soil
7 and any sub-soil conditions, whether or not those things
8 can support development would be a reasonable factor to
9 take into account?

10 A Whether they can support development and the types
11 of development they can support, under what conditions,
12 yes, certainly.

13 Q And in your experience as a member of the Zoning
14 Board in Pennington, have you ever had applications for
15 a use variance which would change the nature of development
16 on a piece of land?

17 A Yes, we have.

18 Q And in considering applications for use variances,
19 have you considered the nature of the land itself?

20 A Yes.

21 Q Have you considered the impact on things such as
22 traffic?

23 A Yes.

24 Q Have you considered the impact on drainage?

25 A Yes.

1 Q Surface run-off and the like?

2 A Yes.

3 Q And these have all been factors that you've taken
4 into account as a voting member of the Pennington Zoning
5 Board before passing judgment on the use variance, is
6 that right?

7 A That's correct.

8 Q As well as other factors which I may not have
9 mentioned.

10 MR. BUSCH: No further questions on
11 qualifications.

12

13 BY MR. BERNSTEIN:

14 Q Mr. Mallach, I have a few questions for you.

15 My name is Dan Bernstein, my firm represents
16 Piscataway.

17 First, I've come in late, so a few of these may be
18 repetitious. Have you taken any courses in planning?

19 A I took one course in planning.

20 Q Would you give us the name of that course?

21 A I don't remember the name of it. I guess it was
22 called something like Planning, or Basic Planning, or
23 something to that effect.

24 It was the one undergraduate course offered on the
25 subject at Yale at the time.

1 Q Was this a full year course or a half year course?

2 A I think it was a half year course.

3 Q Was this in your freshman year?

4 A No.

5 Q Do you remember which year you took the course?

6 A I think it was my junior year.

7 Q And that was the sole course in planning that you've
8 taken?

9 A That's correct.

10 Q Now, you don't hold yourself out to be a planner,
11 is that correct?

12 A Not in the meaning of the licensing act, no,
13 certainly not.

14 I can't.

15 Q Well, you're saying you're not violating the law.

16 Do you consider yourself to be an expert as far
17 as drafting zoning ordinances or master plans?

18 A As far as drafting zoning ordinances and master
19 plans, not necessarily.

20 Q As far as analyzing ordinances or master plans,
21 do you consider yourself to be an expert?

22 A Yes.

23 Q So we have a situation where you haven't drafted
24 any of these documents, but yet you feel you have expertise
25 in analyzing them, is that correct?

1 A Yes.

2 Q And that's not based on the courses you've taken,
3 correct?

4 A Certainly not.

5 Q That's based on?

6 A Extensive experience as described in some detail
7 to your colleague at the other end of the table.

8 Q Now, would you differentiate for me, and I heard
9 you responding to Mr. Busch's questions, the difference
10 between what a professional planner does and what you
11 do. I'm a little confused there.

12 A Well, certainly the great bulk of my work in no way
13 overlaps or coincides particularly with what is considered
14 a professional planner's work under the licensing act.

15 I do housing development activities, I do surveys,
16 I do socio-economic research projects, I do market studies,
17 I do fiscal studies. These are things a licensed planner
18 can do and is not precluded from doing, but are equally
19 not exclusively within the ~~purview~~ ^{purview} of a licensed planner.

20 Q You've acknowledged that Mr. Moskowitz is an expert
21 in the field of planning, correct?

22 A Correct.

23 Q Now, when Mr. Moskowitz is hired on behalf of a
24 developer, oftentimes he'll make a study to show why a
25 particular ordinance is reasonable or unreasonable, as it

1 | pertains to a specific piece of property, is that correct?

2 | A | If that's what he's hired to do, I have no doubt
3 | that he'll do it.

4 | Q | And this comes within the ambit of professional
5 | planning, correct?

6 | A | Not necessarily.

7 | Q | Well, you're stating that when a planner works
8 | for a developer in making a land use study, that doesn't
9 | come within the ambit of professional planning?

10 | A | I think you could make an argument that it does or
11 | it doesn't.

12 | I think one of the -- the ~~term~~ land use study
13 | is a very broad term and can refer to any number of things.

14 | I mean --

15 | Q | Well, is it your position that the licensing act
16 | only covers planners when they work for municipalities
17 | and government entities, and that others are free to work
18 | on behalf of developers?

19 | Is that the dichotomy that you would draw?

20 | A | Well, yeah, I think others are probably more
21 | competent to interpret the law in that regard than I am.

22 | Q | Well, I'd like to know what you do on behalf of
23 | a developer that is different from what a professional
24 | planner does for a developer, when the planner makes a
25 | land use study of a particular piece of property.

1 A Well, for example, let me describe what I'm doing
2 at present on behalf of the developer, or -- actually the
3 landowner, the land owning company, that I'm working with
4 in Vineland.

5 As I mentioned, the technical term for my services
6 there is that of a loan consultant, not as a planner.

7 Conducted the financial feasibility analysis for
8 the New Jersey Housing Finance Agency, Federal Section
9 Program --

10 Q If I can interrupt you, I'm not interested in the
11 financing --

12 A You asked me what I do on behalf of a developer.
13 I am telling you what I do on behalf of a developer.

14 Q What I'm interested in particularly is not the
15 fiscal operations that you do. What I'm interested in are
16 the land use studies that you make on behalf of developers,
17 and land use analysis that you make.

18 I'll restrict my questioning to that area. I'm
19 not interested in the financing or the turnkey operations,
20 or things of that sort. It's just the land use studies
21 that you do on behalf of developers, if you could explain
22 that for the record.

23 A Well, how do you define, for purposes of your question,
24 how are you defining land use studies?

25 Q What I'm trying to get at, Mr. Mallach, is what you

1 do for a developer in advising him as to the uses of a
2 piece of property, in what is feasible and what is not
3 feasible and whether or not the ordinance is valid as
4 applied to his property.

5 When I hire a planner, representing developers, this
6 is what the planner testifies to.

7 I'm interested in whether or not you performed
8 these same functions when you testify or work on behalf
9 of a developer.

10 A Actually, I do not.

11 Q You don't testify as to land usage, or the
12 reasonableness of a zoning ordinance, when you testify
13 on behalf of developers, is that correct?

14 A I have testified on the issue of the reasonableness
15 of the zoning ordinance, in the general context of what
16 might be called the Mount Laurel issues, if you will.

17 In other words, let me give you an example. In
18 the case of the -- in the Cinaminson case that I just
19 mentioned earlier, which -- apropos of which my client
20 lost, so there's no great coup, on my part, my testimony
21 dealt with an analysis of the ordinance in its broad,
22 exclusionary characteristics, and in the impact on housing
23 costs and exclusion of population groups generally.

24 I did not testify as to the specific appropriateness
25 or inappropriateness of the zoning of the particular tract

1 for which the developer was requesting the D variance.

2 Q You testified the ordinance was exclusionary, I
3 would assume.

4 A That's correct.

5 Q And you did not consider that planning testimony,
6 or did you consider that planning testimony?

7 A Well, I presented my qualifications to the court,
8 and the court accepted the expertise -- my expertise in
9 the area of planning, for purposes of that testimony.

10 Q And are you holding yourself out today as an expert
11 in the field of planning?

12 A I'm holding myself out today in e -- as an expert
13 certainly in the areas of exclusionary zoning and the
14 impact of exclusionary zoning as described in this outline,
15 and in the area of housing, housing remedies, described
16 in this outline.

17 Now, the term -- since there are relatively few terms
18 available to describe professions into which these things
19 fall, the term planner in the broad sense, again, is used
20 to describe these.

21 I do not necessarily represent myself by the term
22 planner. In fact, there are someone who would be given
23 the status of profession of planning, that it might be
24 better not to.

25 But, I represent myself as an expert in the subject

1 matter contained in this outline.

2 Q Which includes exclusionary zoning?

3 A Yes.

4 Q And it's your testimony, then, that one doesn't
5 have to be an expert in the field of planning in order
6 to be an expert in exclusionary zoning, correct?

7 A Certainly not in the definition that is used for
8 purposes of the licensing act.

9 Again, there are two parallel uses of the term
10 planner going on here. I think the distinction has to be
11 kept clear.

12 Q Now, would you agree that you have a certain bias
13 in favor of promoting low and moderate income housing,
14 and against the existing zoning ordinances of most
15 communities?

16 A I object strenuously to the use of the term bias,
17 which is invidious and perjorative.

18 Q Okay. You don't feel you have a certain bias, or
19 a certain viewpoint that sees most zoning ordinances as
20 discriminatory.

21 A A viewpoint, perhaps. Bias, no.

22 Q Okay. You have a viewpoint in favor of low and
23 moderate income housing and against most existing zoning
24 ordinances?

25 A It's not an either/or proposition. I have a

1 viewpoint in which I believe that the provision of housing
2 opportunities to all of those who need it, including,
3 but certainly not limited to low and moderate income
4 people, is an important thing and a significant priority,
5 or should be a significant priority for our society, our
6 country, our state, what have you.

7 As a corollary to that belief, I find factually,
8 not on the basis of bias, that most, many if not most, and
9 perhaps most, zoning ordinances tend to place obstacles,
10 in terms of achieving something that I consider a major
11 priority or goal for our society.

12 Q Now, you've worked for the National Committee
13 Against Discrimination?

14 A In Housing.

15 Q Yes.

16 A I am -- I have been retained by them for this matter.

17 Q And you've worked for people involved with the
18 Public Advocate's department?

19 A That's correct.

20 Q And you've never testified in favor of an existing
21 zoning ordinance, is that correct?

22 A That's correct.

23 Q These developers that you mentioned, at least one
24 of them was not what you call a traditional profit-making
25 developer, isn't that right?

1 A That's correct.

2 Q Can you tell us who was the parent of Garden City
3 Development?

4 A The parent?

5 Q Yes.

6 A Could you --

7 Q Who was the group that sponsored Garden City
8 Development?

9 A Ah, Suburban Action Institute.

10 Q And with regard to Camden National Realty, they
11 applied for a variance in order to get apartments in
12 Cinaminson, isn't that right?

13 A Town houses.

14 Q And they were denied by the Board of Adjustment,
15 correct?

16 A Yes.

17 Q And then they attacked the ordinance as being
18 exclusionary, correct?

19 A Correct.

20 Q And were unsuccessful there.

21 A That's correct.

22 Q So that neither Garden City Development nor Camden
23 National Realty attempted to develop in accordance with
24 the existing zoning ordinances, correct?

25 A That's correct.

1 Q Now, I'm not familiar with Garden Valley --

2 A Green Vally.

3 Q Green Valley.

4 Did they also apply for a variance?

5 A No.

6 Q Rezoning?

7 A No.

8 Q Could you tell us about that one?

9 A The Green Valley Land Company are the owners of
10 the tract in Vineland known as the Oak Valley Planned Unit
11 Development tract, which is a PUD under the City of Vineland
12 PUD Ordinance, and is being developed at present, in
13 accordance with that ordinance.

14 Q You testified you felt most ordinances, zoning
15 ordinances that you are familiar with, were exclusionary,
16 is that correct?

17 A That's correct.

18 Q Can you tell us some of the communities in New
19 Jersey that have -- preferably in the Middlesex-Monmouth-
20 Morris-Union -Somerset area, I'd be interested in some
21 ordinances which you consider to be non-exclusionary.

22 In the event that some of the defendants would like
23 to mold their ordinances to your ideal.

24 Could you give us some ordinances that you could
25 hold out in this area as being non-discriminatory or

1 non-exclusionary?

2 A I'm not familiar with any ordinances in this area,
3 that I will say unequivocally are non-discriminatory or
4 non-exclusionary.

5 Q So your answer is, with regard to Middlesex,
6 Monmouth, Somerset, Union County and Morris, you know of
7 no zoning ordinance in any of these counties that is
8 non-discriminatory or non-exclusionary.

9 A There may be some, there may be many. I'm not
10 pretending to exhaustive knowledge of all the ordinances.

11 Q But you're not familiar with any that you would
12 consider non-discriminatory or non-exclusionary, correct?

13 A That's correct.

14 Q My last question, you consider the Pennington
15 ordinance exclusionary or discriminatory?

16 A I think that the Pennington ordinance is exclusionary
17 and we're presently undergoing a study to revise the
18 ordinance, and develop specific plans and specific proposals
19 for the remaining tracts of vacant land in the township.

20 Q Would you recommend apartments in Pennington?

21 A Yes, certainly.

22 Q High density, I would assume?

23 A Or medium density.

24 Q What do you consider medium density?

25 A Well, certainly up to, as a rule of thumb, at least

1 up to 10 or 12 units an acre I would not consider
2 unreasonable.

3 Q Would you consider this would be a reasonable
4 density for the communities in Middlesex County as well?

5 A I think it would vary very much, depending on the
6 circumstances.

7 Certainly, when I talk about something 10 or 12
8 or whatever units an acre, referring to the density of
9 which one might develop a specific tract, it could be
10 higher in some cases.

11 I mean, as an aggregate, overall density for the
12 municipalities of Middlesex County, it's another matter
13 entirely.

14 Q Is that a fair average, though, for apartments,
15 10 to 12 to an acre, in your expert opinion?

16 MR. CUMMINS: I object.

17 Q In your opinion.

18 MR. CUMMINS: I object.

19 A I think 10 -- it depends on the type of apartments.
20 10 to 12 units an acre is a moderate, certainly not
21 excessive density for walk-up or garden apartments, and,
22 in fact, such apartments can be built to considerably
23 higher densities without serious harm, depending on
24 appropriate location.

25 Q You consider 10 to 12 as a fair density.

1 MR. CUMMINS: I object again.

2 Note my continuing objection to
3 this line of questioning.

4 MR. BUSCH: Sit down, Mr. Cummins.

5 Q Your answer was?

6 A That on the average, it's a reasonable level.

7 MR. STONAKER: Can I interrupt for
8 a minute?

9 My understanding was that we were
10 exploring his qualifications.

11 MR. BERNSTEIN: Yes, right. That was
12 all I had.

13

14 BY MR. CUMMINS ON QUALIFICATIONS:

15 Q My name is Dennis Cummins, I appear here in behalf
16 of the Borough of Dunellen.

17 Did you do a major paper for your undergraduate
18 studies at Yale?

19 A Yes.

20 Q In your chosen field of sociology?

21 A Yes.

22 Q What was that?

23 A I was in a program at Yale they dubbed Scholar of
24 the House Program, which they allowed roughly a dozen
25 students each year to spend the senior year working

1 exclusively on a major dissertation, and with no course
2 requirements.

3 My paper was essentially in political sociology,
4 and dealt with the political organization of left-wing
5 political parties in New York during the 20th century.

6 The old Socialist Party and the like.

7 Q Now, as part of your investigation for this major
8 thesis, did you have to go outside the City of New Haven
9 for investigation?

10 A Certainly.

11 Q Where did you have to go?

12 A New York.

13 Q Where else did you have to go outside of the City
14 of New York and City of New Haven for this investigative
15 work?

16 A Because the subject matter was limited to the City
17 of New York, I was able to find everything necessary in
18 either of those two locations.

19 Q Okay.

20 What left-wing organization, if you will, were
21 included in your study?

22 A Okay. I should -- since it's apparently a subject
23 of interest, let me describe it.

24 My concern in the study was on the effect of left-wing
25 organization, as political parties operating in the main

1 stream.

2 In other words, rather than a study of ideologies
3 or values or underground groups, it was strictly with
4 their performance in the political arena, as political
5 parties competing with the main stream political parties.

6 Q Such as voter registration, that type of thing?

7 A Yes. The -- basically, their ability to get
8 votes, and if so, how.

9 And the study was devoted to two principal
10 organizations and two key individuals.

11 The organization with the Socialist Party, which
12 was active during the 1910's, principally, and the
13 American Labor Party, active during the 1930's and '40's.

14 MR. SPRITZER: May I interpose a
15 question as to the relevancy of this?

16 MR. SEARING: I was about to ask the
17 same question. We're wasting some very valuable
18 time.

19 Q All right.

20 Now, have you done any graduate studies at all at
21 any college, institute or university, since graduating
22 from Yale?

23 A I've participated in some graduate studies on an
24 informal basis.

25 During the year I was in New Haven, after graduating

1 from Yale, I participated in a course at the Law School
2 on Social Welfare Law, which I was admitted as an auditing
3 student.

4 Subsequently, during the late '60's, in New
5 Jersey, I was a participant in a graduate seminar in Urban
6 Planning at the Architecture School of Princeton.

7 Q Now, how many times have you testified in any
8 court other than appearing personally in a case in which
9 you may have had a personal interest?

10 Do you understand?

11 A As distinct from being run over or suing --

12 Q That's right. Suing for falling down on the
13 sidewalk.

14 A Malpractice or whatever.

15 Q Right.

16 A Four times.

17 Q Can you give me -- have they all be in New Jersey?

18 A Yes, they have.

19 Q Can you give me the counties?

20 A One was in Federal Court. The first one was a
21 case which has since developed some notoriety, Burlington
22 County NAACP versus The Township of Mount Laurel.

23 Q You testified in that case?

24 A That's correct.

25 Q In behalf of the plaintiffs?

1 A That's correct.

2 Q And can you tell me the area of your testimony?

3 A The area of my testimony was that of housing needs,
4 housing demands, and the lack of housing.

5 Q Do you know if anyone else other than yourself
6 testified on these same grounds?

7 A On these same grounds specifically in that case, no.

8 Q That's one case.

9 A That's correct.

10 Another case was Welfare Rights Organization versus
11 Cahill, in Federal Court, which dealt with a challenge
12 to the restructuring of the welfare payments system,
13 implemented by the Cahill administration in 1970 and '71.

14 Q Next?

15 A Next was Alan-Deane versus Bedminster.

16 Q And was that in Somerset County?

17 A That's correct.

18 Q And what was the nature of your testimony in that
19 case?

20 A My testimony included an analysis of the zoning
21 ordinance, a discussion and analysis of housing needs
22 and housing problems, an analysis of the impact,
23 particularly the fiscal impact of the ordinance, and
24 relating that to housing needs and to incomes, people in
25 need, and a discussion of remedies available.

1 Q Did anyone else appear and testify in that case in
2 an analysis of the zoning ordinances?

3 A No.

4 Not on the plaintiffs' side.

5 Q Do you recall the name of the judge?

6 A Yes.

7 Q Who?

8 A Leahy.

9 Q Is that matter on appeal?

10 A To the best of my knowledge.

11 Q Was there a question concerning your qualifications
12 in that case?

13 A Not substantially, as I recall.

14 Q Do you have any firsthand knowledge whether or not,
15 as part of that appeal, there is an issue concerning your
16 qualifications?

17 A I do not know.

18 Q What was the fourth case?

19 A Fourth case dealt with the Camden National Realty
20 versus the Township of Cinaminson.

21 Q And what was the nature of your testimony in that
22 case?

23 A Very similar to what I described for Bedminster.

24 Q And that was in Camden County.

25 A No, Burlington County.

1 Q In the Mount Laurel case, did you testify as to
2 the analysis of the zoning ordinance?

3 A No, I did not.

4 Q But, did you in the Camden National.

5 A That's correct.

6 Q Were your qualifications attacked in that case?

7 A They were discussed. Attacked may be a little
8 strong.

9 Q They were discussed.

10 A Yes, certainly.

11 Q Were you qualified in that case?

12 A Yes.

13 Q By what: Judge?

14 A Cramer.

15 Q Is that case on appeal?

16 A No.

17 Q Have you ever discussed with counsel, not necessarily
18 Mr. Searing, an interpretation of 45:14A-2?

19 MR. SEARING: What is that, please?

20 Q Definitions of professional planner.

21 MR. SEARING: Tell us what you're
22 reading from, please.

23 Q From the New Jersey Statutes, NJSA45:14A-2.

24 A Not extensively, no.

25 Q You've never had any discussion. Have you ever asked

1 counsel for a written opinion as to whether or not you
2 come within or without the ambit of that statute?

3 A No, I haven't, but I certainly suspect I will,
4 when I get back to my office.

5 Q Does Mr. Prior have a planning license?

6 A No, he does not.

7 Q Did Mr. Hindin have a planning license?

8 A Yes.

9 Q Mr. Hindin had a planning license?

10 A Yes.

11 Q Was Mr. Hindin's license personal to himself or
12 was it in any way assigned to or made a part of Alan
13 Mallach Associates?

14 A It was personal to himself.

15 When he left the firm, the license was in no way
16 assigned to -- I don't believe you can assign a license
17 in that sense.

18 Q When did he leave?

19 A September of this year.

20 MR. SPRITZER: Let it reflect 1975.

21 THE WITNESS: I'm sorry, 1975.

22 Q Did you testify in any of these cases prior to 1975?

23 A Yes.

24 Q So, at the time that you appeared and testified in
25 these cases, your firm had a planning license.

1 A Yes, in the sense that Mr. Hindin had a license,
2 which would have been used, should it have been necessary,
3 to seal any of the products of the firm.

4 Q Who do you consider, sir, to be an authority in
5 the field of the analysis of zoning ordinances?

6 A Well, I'd say Richard Babcock.

7 Q Where is he from?

8 A Chicago.

9 Q Could you more particularly describe him?

10 A Mr. Babcock is a partner in the firm of Ross, Hardy,
11 Babcock, O'Keefe and somebody or other, and he's the author
12 of the Zoning Game, as well as innumerable other works.

13 Q Do you consider anybody else to be an authority?

14 A No --

15 Q The analysis of zoning ordinances.

16 A Well, again, in the sense of the term used earlier,
17 an authoritative judgment, there's so much that's
18 controversial about the analysis of zoning ordinances and
19 about the interpretation of their substance, that it's
20 hard for anybody to be authoritative.

21 And certainly there are a number of people who
22 have very special and significant expertise in that area,
23 and certainly people like, well, Fred Boselman, who is
24 a member of Mr. Babcock's firm, Norman Williams, to some
25 degree, Daniel Mandelcur, who I believe is at the University

1 of Saint Louis -- or is he at Berkeley? I forget. He's
2 written extensively on this subject.

3 Mr. Chavoosian I would consider also is having
4 outstanding expertise among the individuals recited earlier.

5 I'm sure there are others, but those are some
6 representative names.

7 There's Jan Krasnowicki, University of Pennsylvania.

8 Q Have you ever had occasion to work with any of
9 these people?

10 A I've had contact with and worked with some of
11 them.

12 Regarding Mr. Babcock, I've met him on limited
13 occasions, but have not worked with him.

14 I've worked with Mr. Chavoosian. I've had contact,
15 intermittent contact with Mr. Williams.

16 Q How many zoning ordinances have you personally read?

17 A A large number. Twenty, fifty. You know, I've
18 been reading zoning ordinances off and on for at least seven
19 or eight years now.

20 Q And these have all been in various parts and sections
21 of New Jersey?

22 A Almost all. With very occasional exceptions.

23 Q How many zoning ordinances in Middlesex County
24 have you made an analysis of?

25 A I have made an analysis, to some degree, of -- with

1 the assistance of Mr. Prior, of all of the ordinances
2 in Middlesex County, with the exceptions of those of
3 New Brunswick, Perth Amboy and Madison.

4 Q You have no engineering background, do you, sir?

5 A No.

6 Q Do you have any architectural background?

7 A No.

8 MR. CUMMINS: I'll pass, but I
9 reserve my right to question you. I have
10 one or two more questions on the field of
11 qualifications, but I'll pass at this moment.

12

13 BY MR. JOHNSON ON QUALIFICATIONS:

14 Q My name is Edward Johnson, Jr., I'm the attorney
15 for the Borough of Middlesex.

16 You indicated that you took one course in planning
17 at Yale in your junior year. Who was the instructor?

18 A Christopher Tunnard.

19 Q Did he carry any rank as associate professor or
20 was he an instructor?

21 A I believe he was full professor.

22 Q And, at the time you attended Yale, that was the
23 only undergraduate course in planning that was available?

24 A To the best of my recollection.

25 Q Mr. Edward Hindin, who was employed by your firm

1 in 1974 and '75, when did he get his professional planner's
2 license?

3 A I think in 1974.

4 Q You talked about working with the County and
5 Municipal Study Commission.

6 A Yes.

7 Q Can you give me some background about the organization,
8 when it was formed, what its job was?

9 A Yes. It's also known informally as the Musto
10 Commission. It's chaired by Senator William Musto.

11 It was created in 1966 by Resolution of Legislature
12 as a standing commission to, with a broad mandate to study
13 the problems and the needs of county and local government
14 and the state's relationship to them, and to publish
15 studies and submit legislative recommendations, generally
16 to improve the conditions of county and municipal governments.

17 The commission is made up of three members of the
18 Senate, three members of the Assembly, three individuals
19 appointed from a list submitted by the League of
20 Municipalities to represent local government, three
21 individuals from the Freeholder's Association to represent
22 county government, and three individuals appointed by
23 the governor to represent the general public.

24 The commission published its first report in 1968,
25 which is entitled Creative Localism, and has since published

1 roughly a dozen reports dealing with local and county or
2 regional problems.

3 The most well known was the Challenge and Change,
4 which is the second report, which led directly to the
5 adoption -- the drafting and adoption of the Optional
6 County Charter Law, which has since had some effect on
7 county governments.

8 The commission has also been responsible for
9 legislative actions in the areas of joint services
10 agreements, local cooperation between municipalities,
11 local health -- assisted on the passage of the bill
12 organizing local health services, which is still awaiting
13 signature by the governor, and the bill passed a few
14 weeks ago dealing with the reorganization of solid waste
15 planning and management, which is also awaiting the
16 governor's signature.

17 Q Were you a hired employee of this group?

18 A That's correct.

19 Q And when were you hired by the group, by the commission?

20 A I was retained initially in early 1973 for the
21 purpose of conducting the study entitled Housing and
22 Suburbs.

23 Q And did you indicate that you had prepared a report
24 for this group?

25 A Yes.

1 Q And has it been published?

2 A Yes.

3 Q Can you make that available to us?

4 A Certainly.

5 MR. SEARING: That was mentioned

6 before. I've got a note of that.

7 Q Have you ever testified before any Zoning Board
8 of Adjustment?

9 A No, I have not.

10 Q So, you only testified in the four court cases
11 you've indicated to us.

12 A That's correct.

13 Q How about any Planning Boards or County Planning
14 Boards?

15 A No.

16 MR. JOHNSON: No further questions.

17

18 BY MR. VAIL ON QUALIFICATIONS:

19 Q Did you analyze the South Amboy Zoning Ordinance?

20 A Yes.

21 Q Did you reduce your analysis to writing?

22 A I reduced my analysis, not to writing in the sense --
23 just a page of notes, rather than a formal report. I
24 have those notes.

25 Q Could I have a copy of those today?

1 A If there are Xerox facilities here.

2 Q I have one in my office, if you don't have one here.

3 MR. SPRITZER: We have it here.

4 Q Before noon, I would like to have it. When
5 we break for the noon recess.

6 A I have no objection, assuming it can be arranged.

7 MR. VAIL: I wonder why we haven't
8 been supplied with it.

9 Q What was the date it was prepared?

10 A These things -- we've been working on them up
11 through the last week.

12 Q I want to talk about South Amboy.

13 A I don't know specifically.

14 Q I want to know the date you completed your notes?

15 A I don't recall the specific date.

16 Q Was it last week?

17 A It may have been.

18 Q The week before that?

19 A I can't say specifically.

20 Q Is there a date on the notes?

21 A No.

22 Q It wouldn't help you to look at them?

23 A I can look at them, but I doubt it would help me.

24 Q Did you do that one first or last?

25 A Well, if we did them in alphabetical order --

1 Q Well, did you? Did you do them in alphabetical
2 order?

3 A More or less, because we received -- we did them
4 roughly in the order we received the piles of ordinances
5 from Mr. Searing.

6 Q And South Amboy would have been pretty well down
7 towards the bottom.

8 A Probably.

9 Q And that would have been done, maybe, last week?

10 A Within the last few weeks.

11 Q And did you intend or do you intend to prepare
12 a formal written report on South Amboy's ordinance?

13 A What I hope to prepare is not a formal written
14 report.

15 However, what I indicated to Mr. Searing that I would
16 try to prepare would be to take each of the page of notes
17 and type up at least one page in reasonably clean form,
18 on each municipal ordinance, in a form that would be more
19 readily usable by people who received them.

20 Q The notes that you have, will you be in a position
21 to testify from those notes on Monday morning, today being
22 Tuesday, I mean the Monday that follows?

23 A If need be, yes.

24 Q You could testify from those notes alone?

25 A That's correct.

1 Q Without doing any further research on South Amboy's
2 ordinance? Is that correct?

3 A That's correct.

4 MR. VAIL: That's all.

5

6 BY MR. DAVIDSON ON QUALIFICATIONS:

7 Q Alan Davidson, my firm represents the lovely
8 Borough of Helmetta.

9 I have just a couple of questions to ask you.
10 Have you read the zoning ordinance for the Borough of
11 Helmetta?

12 A Yes.

13 Q Do you remember how long it took you?

14 A Not very.

15 Q Did you analyze it?

16 A I think Mr. Prior -- Mr. Prior did the analysis,
17 prepared the notes on that one.

18 Q Do you recall what procedures were taken in his
19 analysis?

20 A The analysis we performed was very straightforward.
21 Basically, he -- we extracted, you see, what we felt to
22 be the salient provisions of each ordinance, and summarized
23 them on a page for each municipality, sometimes more pages
24 than one were necessary.

25 The second form of the analysis which we conducted

1 dealt with -- did not vary significantly from municipality
2 to municipality, but having extracted the salient provisions,
3 we developed a basis for analyzing the cost implications
4 of those provisions.

5 Q How did you arrive at the basis for these cost
6 implications?

7 A We used primary data for -- dealing with basic
8 construction costs, front footage, costs for different
9 services and for structures and improvements, provided
10 by the New Jersey Home Builder's Association.

11 MR. SPRITZER: May I interpose
12 an objection at this time, only because of
13 the procedure agreed upon.

14 If I'm not mistaken, the questions
15 that Alan is now asking pertain to the fact
16 situation, to which you're going to testify,
17 and it relates to your exact testimony and
18 not your qualifications.

19 We're breaking the questions up into
20 two, one, qualifications, and two, the --
21 what he's going to testify on.

22 MR. DAVIDSON: I thought that I could
23 elicit from him testimony concerning his
24 means of analysis, which would go towards
25 his qualifications in qualifying as an expert.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. BUSCH: I would agree with Mr. Spritzer we should first talk qualifications, then each town can get into facts.

MR. SPRITZER: Because then you'll be able to go into your own town.

MR. VAIL: Will we have copies of what he has done before we get into our individual towns.

It's ten after ten and we've been working since twenty of nine.

MR. BERNSTEIN: I think we're entitled to them.

Once we're done with qualifications, if we decide to proceed with the deposition at that point, --

MR. SPRITZER: How many pages, Mr. Mallach, do you have in respect to each municipality? Two or three pages into each, while you're being deposed now on qualifications, I can have these copied by the employees in Borough Hall, so we can save time.

MR. BERNSTEIN: Could you have them copied for all the towns, since I think we're

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

equally interested --

MR. SPRITZER: I wasn't just saying Metuchen.

(Discussion off the record.)

(After discussion.)

THE WITNESS: They are on oversized sheets, but I hope it's one of the top down, lay it flat, as distinct from slide through.

MR. SPRITZER: Worked out that way or pieced together.

MR. BUSCH: May I request we go off the record? Rich, you'll make enough money with that.

(Discussion off the record.)

(After discussion.)

Q Mr. Mallach, without paraphrasing from New Jersey Statutes, can you tell us what you view the function of zoning to be?

A Well, the purpose -- zoning -- you're gonna get me started on something that could go on for sometime here.

Q Try to be brief.

A The purpose of zoning, in essence, is to separate land uses.

The ostensible goal of separating land uses is

1 to protect health, welfare, safety, fear, panic, floods,
2 and so on.

3 Zoning, of course, provides for more than merely
4 separating land uses, but in my view the other provisions
5 of zoning ordinances are ancillary to that. In other
6 words, they have to do with the fine gradations,
7 distinguishing between -- first between basic categories
8 of use, such as industry, residential property, and
9 secondarily between different types, or degrees or cost
10 levels or sizes or what have you of types of property
11 through set-back requirements, lot size requirements,
12 and the like.

13 A Do you believe that all these things are valid
14 government purposes for passing legislation?

15 A Well, I mean, it's hardly, at this point, you know,
16 fifty years after the first zoning laws were passed, --
17 I mean, they have been generally accepted to be valid.

18 Q Do you accept them to be valid?

19 A Valid, yes.

20 Q Do you accept them in theory?

21 A I think -- well, conceptually, I think the concept
22 of zoning as a device through which land use gets planned
23 and is determined, I think leaves a great deal to be
24 desired.

25 I think a lot of commentators have argued quite

1 convincingly that planning and zoning are certainly not
2 the same thing, and that under many circumstances zoning,
3 especially in the conventional manner, can be actually
4 tied to planning.

5 Q Is the relief of congestion a valid public purpose?

6 A Relief of congestion can certainly be a valid purpose.

7 MR. BAKER: I have no questions as
8 to qualifications.

9 MR. SPRITZER: I do.

10

11 BY MR. SPRITZER ON QUALIFICATIONS:

12 Q Do you mind if I stand? I'm more comfortable when
13 I ask questions if I stand. Nothing personal.

14 A May I stand?

15 Q You can if you like. Nothing personal toward you.

16 I know I missed some of the questions, I won't
17 repeat myself.

18 I understand you've testified, you're not a member
19 of the A.I.P.

20 A Correct.

21 Q Are you a member of any professional organization?

22 A No.

23 Q Do you have Allan Mallach Associates as a firm?

24 A Yes.

25 Q Do you have a card?

1 A No, not at the moment.

2 Q Did you ever have a card?

3 A No.

4 Q Are you going to get a card?

5 A Yes.

6 Q What will the card say?

7 A The card will say -- I have designed the card. The
8 only reason why I don't have a card is I didn't like the
9 samples of the people who did the letterhead for me.

10 The card will say Allan Mallach and Associates,
11 it will provide the space for the address, the telephone
12 number and the name of the individual in each case, myself,
13 Mr. Prior and so on.

14 Q Will it identify your profession?

15 A No.

16 Q It will not identify your occupation.

17 A No.

18 Q Do you have a letterhead? I'm being prompted here,
19 which is all right.

20 A Yes. Nice letterhead.

21 Q Do you have a copy of that letterhead, or an
22 original of that letterhead with you today?

23 A I doubt it.

24 This is on -- this is on the second sheet of the
25 letterhead. The letterhead itself is kind of light grey

1 paper with a -- a textured paper.

2 The first sheets have -- this is printed, it's black
3 on light grey. The first sheets have the name and then
4 immediately below is the address and the -- the street
5 address, the city address in a kind of block, and then
6 with a slight spacing, telephone number immediately below
7 that.

8 Q Again, it -- there's no notation in respect to any
9 occupation or profession, is that correct?

10 A That's correct.

11 Q What do you regard as your profession?

12 A A profession of consulting services in areas of
13 competence.

14 Q All right. That's a rather broad term, correct?

15 A It is. It's deliberately broad.

16 Q And that's the best that you can do in answer to
17 that question?

18 A Well, I can supplement that by listing what I
19 consider, or giving representative examples of what I
20 consider to be areas of competence, which are unfortunately,
21 I believe, too varied to lend themselves to a single
22 description.

23 Q Would that be a long list?

24 A Well, it depends on how broad you define competence.
25 It could be.

- 1 Q It could be about ten or fifteen items on that list?
- 2 A I think certainly at least half a dozen.
- 3 Q But you could not shrink it into one or two terms,
4 is that correct?
- 5 A I don't believe so.
- 6 Q Are you listed in any manner in the telephone book
7 in respect to any occupation or profession?
- 8 A No. The previous firm, prior to -- when the
9 firm was known as Mallach, Hindin Associates, this is
10 when Mr. Hindin was a principal, the original listing
11 was, I think, under Town and Country Planners, some such
12 definition of the yellow pages that people use. It's
13 now not listed under any.
- 14 Q That's when Mr. Hindin was there.
- 15 A Yes. When we first put the listing in, 1974.
- 16 Q Were you a corporation when Mr. Hindin was a member
17 of your firm?
- 18 A That's correct.
- 19 Q What position did Mr. Hindin hold?
- 20 A He was vice-president.
- 21 Q Was he a stockholder?
- 22 A Yes, he was.
- 23 Q And you say occasionally you used his seal?
- 24 A As it turned out --
- 25 Q Let me finish the question. You occasionally used

1 his seal on work that was done by the firm of Alan
2 Mallach and Associates?

3 A No. I said we could have, had it ever been necessary.

4 Q But you did not.

5 A We never had occasion to do so.

6 Q Now, I believe you were asked questions as to whether
7 you ever prepared a land use plan.

8 A I was.

9 Q For any governmental entity.

10 A Yes, I was asked that question.

11 Q And your answer was no.

12 A That's correct.

13 Q And did you ever prepare a land use plan for any
14 developer?

15 A No, I have not.

16 Q Now, in respect to your testimony, still on
17 qualifications, I believe, and if not, please interrupt
18 me, anyone.

19 In respect to what you're going to testify to, is
20 it your position that you are going to give an opinion
21 as to whether certain provisions of zoning ordinances
22 are valid or not valid?

23 A Well, are exclusionary or not exclusionary.

24 Their validity may or may not touch on questions
25 of validity in other regards. But, the thrust is on

1 their exclusionary nature, or lack of exclusionary nature.

2 Q You say, "exclusionary nature." As to whether
3 they exclude low and moderate income families.

4 A Yes.

5 Q Is that correct?

6 A Yes.

7 Q And you haven't made a land use plan, or haven't
8 studied a land use plan of any of the 23 municipalities,
9 have you?

10 A No, I have not.

11 Q And you are not prepared to testify as to whether
12 any of the specific zoning provisions of any municipality
13 are valid in respect to a land use plan.

14 A No, I am not.

15 Except to the degree that certain basic exclusionary
16 criteria or exclusionary issues, which raise questions
17 about the validity, can be elicited from the analysis of
18 the ordinance.

19 Q But, you did no on-site inspection of any municipality.

20 A No.

21 Q And in respect to any of the purposes of zoning,
22 you did not compare the zoning provisions with any of the
23 purposes of zoning, as set forth in the statute, with any
24 of the particular uses on a particular piece of land, is
25 that correct?

1 A That's correct.

2 MR. SPRITZER: No further questions.

3

4 BY MR. BRIGIANI ON QUALIFICATIONS:

5 Q With reference to zoning ordinances, do you feel
6 that you are qualified, for example, if some municipality
7 were to ask you to prepare one for them?

8 A I would personally, on the basis of my personal
9 assessment of my experience, and expertise, I believe that
10 I would be competent to prepare a zoning ordinance for a
11 municipality. Leaving aside the questions of the legality
12 of doing so.

13 Q But, you have never been asked or have prepared one.

14 A I have not.

15 Q And with reference to formulating a zoning ordinance,
16 what would you consider as bases for the various provisions
17 that you would put in that particular ordinance?

18 A I would think the most important single basis
19 for framing the zoning ordinance is a master plan, and
20 not -- unfortunately, a master plan that is not limited
21 to the sorts of things that most master plans do, but one
22 that really gets into detail and of the goals of the
23 community and the process by which the community will
24 develop in the manner that both makes sense for the
25 municipality and in terms of the law and regional needs.

1 If you have a proper master plan, it has a level
2 of detail, and the level of specificity and thought and
3 work that a master plan should, the framing of the zoning
4 ordinance, as long as you're willing to adhere to your
5 plan, can logically follow from that.

6 All else should be secondary to that.

7 Q Assuming you have a municipality that does not
8 have a master plan, what would you then consider in
9 preparing the ordinance?

10 A It would depend. If it's a municipality that has
11 extensive land subject to development, and major
12 development decisions still in the future, then I would
13 think there is really no way to prepare a proper zoning
14 ordinance in the absence of a master plan.

15 If the municipality is smaller, has fewer major
16 decisions to be made and the key decisions about the
17 basic character and appearance of that municipality have
18 already been made, as in the case of municipalities that
19 are largely developed, then a master plan may not be
20 necessary, and what may be a good alternative would be a
21 fairly close investigation of the individual sites that
22 remain for development. And the framing of a specific,
23 sort of concept, for each site.

24 This is what we're presently trying to do in
25 Pennington, in fact.

1 Q In order for you to develop a zoning ordinance
2 where you do not have a master plan, you'd have to first
3 make an on-site inspection of the town, and secondly you
4 would consider as criteria in preparing this particular
5 ordinance vacant land that's available, and secondly
6 the established character of the town.

7 A Yes and no. Certainly those are criteria.

8 Q The established character of the town, I mentioned
9 that in saying that when the town had an established
10 character, and was largely developed, then the approach
11 you would take from a technical standpoint would vary
12 from when you're dealing about, sort of marching off into
13 the wilderness in a largely undeveloped area.

14 A At the same time, I believe that in both -- in
15 both situations, the ordinance still should be reflective,
16 not only of the town's interests and goals, but given --
17 particularly given the Mount Laurel decision, as well as
18 the principles involved, also the wider regional interests.

19 Q But still basically, I'm talking now of the smaller
20 town or the developed town, and on a general basis, you've
21 answered the first part. The first part, the land comes
22 into -- where you have a large municipality, and they
23 have a greater amount of vacant land, that that is very
24 difficult to decide what to do.

25 But, now you come down to the developed, or somewhat

1 developed communities, and the amount of vacant land you
2 have, plus the established character, are the two most
3 important criteria that you consider in preparing --
4 that you would consider in preparing a zoning ordinance.

5 MR. SEARING: Did you identify the
6 town you were from? Could you identify the
7 town you're representing?

8 MR. BRIGIANI: Yes. I'm from
9 Spotswood and Jamesburg.

10 A The two most important, that's carrying it somewhat
11 beyond my argument, certainly there are factors, but there
12 are other factors, and it would be difficult to weigh them.

13 I think, for example -- depending on the type of
14 site. You know, the character and the location of the
15 site, in and of itself, may be an important set of factors
16 to consider.

17 Also, I think the relationship of the town, even
18 in the very -- the small and relatively more developed
19 towns, the relationship of the town to its region, to
20 its environs, to housing needs and so on, has to be an
21 important factor.

22 You have to balance all of these factors.

23 I wouldn't want to say that such and such is the
24 most important.

25 MR. SPRITZER: I want to make an

1 objection to the questions and the answer
2 here.

3 I think we're being given expert
4 testimony from a person who has, yet from
5 his own testimony, has not prepared a master
6 plan or a zoning ordinance.

7 And from that I would just object to
8 questions on this line.

9 MR. CUMMINS: I join in that objection.

10 MR. STONAKER: And I join in that
11 objection.

12 MR. BRIGIANI: I have no further
13 questions.

14
15 BY MR. BUSCH ON QUALIFICATIONS:

16 Q I have a few additional questions, please.

17 How long have you been a member of the Zoning Board
18 of Adjustment in Pennington?

19 A One month.

20 Q Have you voted upon any applications for use variance
21 yet?

22 A Yes.

23 Q Did the application involve town houses?

24 A Yes.

25 Q Was the application denied?

A. Mallach - direct

1 A On advice of counsel, as being unsuitable subject
2 matter for a D variance, yes.

3 Q What was the price range of the town houses?

4 A According to the individual proposing the development,
5 an average of 70 to 80 thousand dollars.

6 Q Do you know approximately how many acres, or square
7 miles, the Township of Pennington has? Is it township
8 or borough?

9 A The borough. 1.2, I believe.

10 Q 1.2 square miles.

11 Do you know how much vacant land that municipality
12 has?

13 A I don't know the acreage. There are a number of
14 tracts, a number of vacant tracts in the borough.

15 Q Do you know the approximate population?

16 A Roughly 2,200.

17 Q Were you appointed by the governing body of the
18 municipality?

19 A That's correct.

20 Q Does the governing body know that you're testifying
21 as an expert witness, or as a witness, rather, in this
22 case?

23 A Well, the governing body collectively probably does
24 not know.

25 Q How about individually, as people?

1 A Well, I'm certain the mayor, and at least one of
2 the council members is very much aware of my activities
3 in this regard.

4 Q And are they aware generally of the viewpoint that
5 you have with regard to testifying in this case?

6 A Certainly.

7 Q Two more questions about Yale.

8 You indicated you audited a course at Yale Law
9 School?

10 A Yes.

11 Q Do you remember the name of the professor or the
12 subject?

13 A I think I mentioned the subject, Social Welfare Law.
14 The professor I think was named Sparer.

15 Q And what year, '66, '67?

16 A Yes.

17 Q The other question, you said you were a scholar of
18 the house in your senior year.

19 A Yes.

20 Q Which college was that at Yale?

21 A Well, I was a member of Stiles College.

22 MR. BUSCH: Nothing further.

23 BY MR. MORAN ON QUALIFICATIONS:

24 Q Two quick additional questions.

25 MR. VAIL: May I go first?

1 BY MR. VAIL ON QUALIFICATIONS:

2 Q You voted to deny an application as a member of
3 the Zoning Board of Adjustment of Pennington.

4 A Yes.

5 Q And what was that application?

6 A The application was for a town house condominium
7 development.

8 Q And the reason, you said you voted, to deny it,
9 was on the advice of counsel?

10 A Our attorney, the Zoning Board attorney, who is
11 a very forceful individual, made his opinion clear, in no
12 uncertain terms, that no special reasons had been provided
13 to justify a D variance.

14 After denying the D variance, we did pass a
15 resolution on my motion to -- that the sense of the Zoning
16 Board be that the Borough Council consider this issue
17 and this housing alternative and discuss the possibility
18 of a Zoning Amendment for this site, as being a more
19 legitimate approach.

20 Q Isn't it the function of a Board of Adjustment to
21 make these decisions, rather than be told by its attorney
22 what the decision should be?

23 A Well, it's my experience -- well, the function of
24 the attorney in a board, as I understand it, is to advise
25 the members of the board as to the legal aspects and

1 ramifications of the decisions.

2 Now, certainly some attorneys tend to be more
3 assertive than others in that regard.

4 In this case, I think, you know, I agree with
5 the attorney in this case. From my understanding of the
6 law governing the D variance, that it is not meant to be
7 a substitute for a zoning amendment and for proper planning
8 and for proper consideration by the governing body.

9 So in that assertion I think that in this case
10 the alternative -- the route of the zoning amendment,
11 if such is justified, is a much more legitimate way
12 of dealing with this housing -- this questions.

13 Q All right.

14 One more, if I may. What is your association,
15 if any, with Leonard Sendelsky?

16 A I have no association with Leonard Sendelsky.

17 Q What was the report in which you mentioned his
18 name?

19 A He was the individual who prepared materials for
20 the New Jersey Association of Home Builders, which we
21 used in our analysis.

22 Q Mr. Sendelsky was the president of that association
23 at one time, wasn't he?

24 A To the best of my knowledge.

25 Q And Mr. Sendelsky is what we call a heavy builder,

1 builds just about everything?

2 A I really don't know.

3 Q He builds town houses in Sayreville, and he builds,
4 to my knowledge, single family houses in Sayreville,
5 since I bought one I would know.

6 Is that a fact?

7 A Since you bought one, you would know.

8 Q Mr. Sendelsky is a builder and he's interested in
9 building, right? And the purpose of the materials
10 prepared by him was to advance the cause of his association,
11 isn't that correct?

12 A I really don't know. Certainly that's immaterial
13 to my use.

14 Q You didn't think he might be a little bit prejudiced,
15 you know, on behalf of his association?

16 A Oh, his prejudices, you know, I'm completely
17 unaware of, but I don't think they are at issue.

18 I was using a set of raw numbers, and not his --
19 and in no way any interpretation or analysis that he gave
20 those numbers.

21 Q Do you know the source of his raw numbers?

22 A The source? It purports to be the experience, his
23 and other home builders, actual experience, with those
24 costs.

25 Q Mr. Sendelsky has gone to Washington, to lobby for

1 more money for building purposes? Do you know about that
2 too?

3 A No.

4 MR. SEARING: I find these questions
5 irrelevant. The cost data were provided
6 to the defendants at the time the summary
7 of the expert witnesses were given.

8 It seems to me you're going to the
9 weight of the evidence, at which time
10 competent testimony can be given.

11 You're debating with an expert over
12 the data he used. I think it's pointless.
13 I would like the record to show we have taken
14 two hours exploring the qualifications of
15 the witness.

16 MR. VAIL: With half of the attorneys
17 in the county.

18 The other half are not present.
19 I don't think it's not relevant. I think
20 it goes to his qualifications, since he
21 admits that he's based his opinion, in part,
22 as far as the cost data is concerned, on
23 Mr. Sendelsky's figures, and ignored
24 Mr. Sendelsky's prejudice in favor of building
25 homes or apartments or whatever he's building

1 at the present time, or attempting to build,
2 or whatever he's pushing on behalf of his
3 association.

4 But, I'm through with my questioning
5 anyhow.

6
7 BY MR. STONAKER ON QUALIFICATIONS:

8 Q Mr. Mallach, are you familiar with the educational
9 and experience qualifications for professional planning
10 license in the State of New Jersey?

11 A In general, yes. I won't say specifically.

12 Q Can you qualify --

13 MR. SEARING: That's been asked for,
14 and answered.

15 Q Do you have any degree in economics, sir?

16 A No, I don't have a degree in economics.

17 Q Did you take any courses in economics?

18 A No.

19 MR. STONAKER: No further questions.

20
21 BY MR. MORAN ON QUALIFICATIONS:

22 Q You testified before, Mr. Mallach, that you're
23 not a member of the A.I.P. Have you ever applied for
24 membership?

25 A No. I've been offered.

1 Q Mr. Brigiani asked you several questions concerning
2 the preparation of a zoning ordinance and master plan
3 and you stated what criteria you would use.

4 You do admit, however, don't you, that you are
5 not legally qualified to act as a consultant in the
6 preparation of a master plan and zoning ordinance?

7 A I made that clear.

8 Q What kind of a college is Stockton College? Is
9 it a four year or two year college?

10 A Four year.

11 MR. MORAN: That's all.

12 MR. STRAPP: Paul Strapp, appearing
13 on behalf of Woodbridge Township.

14

15 BY MR. STRAPP ON QUALIFICATIONS:

16 Q Can you tell us what your cumulative point average
17 was in graduating from college?

18 A I don't recall the point average. At that point,
19 Yale graded on the basis of 0 to 100. They actually
20 gave 63's and 84's and 92's.

21 My record, was, I believe the final record was
22 somewhere in the high 80's, which qualified me to graduate
23 cum laude.

24 Q Class standing?

25 A I haven't the foggiest idea.

1 Q And it took you four years to get through.

2 A Yes. Well, you know, I worked part-time.

3 MR. STRAPP: No further questions.

4 (Discussion off the record.)

5 (Recess at 10:45 a.m.)

6

7 (After recess at 11:05 a.m.)

8 MR. SEARING: I would like the
9 record to reflect that the notes that
10 Mr. Mallach brought along have been duplicated,
11 courtesy of the Borough of Metuchen.

12 They would consist of a compilation
13 of publicly available data from the Zoning
14 Ordinance and from publicly available cost
15 data.

16 Most of the material, most if not
17 all of the material, reflected in the notes
18 have been indicated to the defendants' counsel
19 in the Complaint, in responses to
20 interrogatories served upon plaintiffs, and
21 in the admissions that the plaintiffs served
22 upon the defendants.

23 These have been prepared to assist
24 Mr. Mallach in his expert analysis. They were
25 not requested by plaintiffs' counsel as a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

formal written report.

We did request that they be prepared on eight and a half by eleven or similar size paper as exhibits, for the benefit of court and counsel.

MR. BUSCH: And they weren't.

THE WITNESS: Not yet.

MR. SEARING: It is my understanding that they will be by the time Mr. Mallach is available for testimony, or is scheduled for testimony.

MR. MORAN: While we're on the record, on that point, I think the record should reflect we've also been provided with additional information pertaining to construction costs of housing, which was not provided in any answers to plaintiffs' interrogatories.

MR. SEARING: The construction costs were noticed -- the source of the construction costs were noticed on the Notification of Mr. Mallach as an expert witness that was provided to defendants on January 10, as of January 10.

MR. STONAKER: For the record, I would

1 first like to object to Mr. Mallach's
2 testifying as an expert witness, as I
3 understand Mr. Mallach's testimony will be
4 in the area of analyzing zoning ordinances
5 in all the municipalities.

6 Mr. Mallach is not a licensed planner
7 in accordance with the terms of the licensing
8 act, nor could he qualify as a licensed
9 planner under the terms of that act.

10 He's not a member of the A.I.P.,
11 he has no special education in the area of
12 planning, nor does he have any professional
13 experience in the area of planning, except
14 for one period of time where there was a
15 licensed planner with his firm.

16 So, on behalf of Plainsboro, I would
17 like to object to any expert testimony on
18 Mr. Mallach's part.

19 MR. BUSCH: The assumption is that
20 the objection is unanimous for all defendants
21 present.

22 MR. VAIL: I offer the further
23 observation, on behalf of the City of South
24 Amboy, I feel this deposition should terminate
25 at this point, since we all feel he's not

1 qualified.

2 While we are entitled to discovery,
3 the man is entitled to a fee, if he's
4 qualified as an expert.

5 If he's not qualified as an expert,
6 when we get into court he's not entitled
7 to a fee.

8 And I can't see going to the expense
9 of keeping him here for another day and
10 a half or whatever it is and continuing
11 on with this.

12 MR. BUSCH: I would simply say when
13 the question of fee came up during the
14 qualifications questions, we reserved our
15 rights.

16 We specifically deny that the defendant
17 towns are obligated to pay a fee, since
18 there's a question of expertise, but
19 because of the lateness in terms of trial
20 time, I think we should continue now and
21 deny any obligation to pay at 30 dollars
22 an hour or any other rate.

23 MR. SPRITZER: Off the record.

24 (Discussion off the record.)

25 (After discussion.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. STONAKER: I would agree with that position on behalf of Plainsboro, that we should continue with the deposition.

CONTINUED DIRECT EXAMINATION BY MR. STONAKER:

Q Mr. Mallach, as I understand, you have analyzed the zoning ordinances of all the municipalities involved in this litigation, is that right?

A That's correct.

Q How did you analyze the zoning ordinances of the municipalities?

A The basic pattern which we followed for each of the ordinances, wherever possible, was to identify the different zones that existed under the ordinance in the municipality, which as a general rule are indicated on the left-hand side of the work sheets.

And then wherever feasible, to identify the principal features of those zones.

In particular, the minimum lot size required in residential zones, lot width, floor area, whether apartments were permitted by right or by special exception or special permit, as well as special features noting in the margins or at the bottom of the page, or on second pages, noting special features of the ordinances which didn't fit into the standard classification.

1 For example, in some cases, where there are PUD
2 ordinances or other unusual features.

3 Having basically listed in summary form these
4 features, we then made an effort to identify the vacant
5 land, some reasonable estimate of the vacant land, in
6 each zone.

7 In some cases, information was provided by the
8 municipalities in response to interrogatories.

9 In other cases, where it appeared that the
10 ordinance was generally speaking consistent with the
11 ordinance that had been in effect at the time of the
12 D.C.A. study of residential land supply, we have put those
13 numbers on to the chart, recognizing that there may be
14 some changes with those.

15 And finally, in the case where no data was available,
16 no data appears on those charts.

17 Q What was the D.C.A. study?

18 A In 19-- in the early 1970's, I think the study
19 was published in 1972, under the title of The Residential
20 Land Supply. This was a municipality by municipality
21 compilation, based on, I believe, analysis of zoning
22 ordinances, on-site inspections, work done by the State
23 Planning Division in conjunction with the County Planning
24 Agency, to prepare, it's an inventory of land that
25 met the standards the D.C.A. set for being vacant and,

1 quote, developable, unquote, and they then identified
2 all of this land and categorized it by the zoning
3 category in which it appeared.

4 Q And that was done sometime in 19 -- early 1970.

5 A Well, it was done during, I'd say, in pieces,
6 during the year and a half or two years leading up to 1972.

7 Q And that's part of the data that you used in order
8 to evaluate what land was available?

9 A Only when that question had not been answered on
10 the interrogatories, and the ordinances indicated that
11 they had not been significantly changed since that time.

12 Q You never made an inspection of the municipality
13 to see what the actual land uses were in each municipality.

14 A No, we did not.

15 Q Did you ever analyze the land characteristics of
16 each municipality?

17 A No. We have made notes in a number of cases, where
18 the municipalities signified that there were features that
19 might effect their developability. In some cases these
20 have been noted on the sheets.

21 Q Not all cases?

22 A I don't know whether in all cases. But, obviously,
23 there are circumstances which would effect developability
24 of land which were not noted by the municipalities in
25 their responses.

1 Q What circumstances would they be, sir?

2 A Well, for example, where the land is a swamp, or
3 is located within a floodway, certainly the land is not
4 developable for practical purposes.

5 In other cases, where there may be environmental
6 constraints, or ownership constraints, which could have
7 some effect on development feasibility.

8 Q Did you take those matters into consideration
9 when you analyzed the zoning ordinance?

10 A Where they were noted, where it was possible to
11 identify them. In the case of the Department of Community
12 Affairs data, they did screen for a series of environmental
13 characteristics.

14 Q That was in the year 1969 or '70?

15 A I'd say more '70, '71.

16 Q '70, '71.

17 A Such as slope and water loggedness. And they also
18 limited their parcel to five acres or more.

19 Q Their study was limited to parcels 5 acres or more?

20 A Yes.

21 Q Did you take any other factors regarding the land
22 characteristics of each municipality into consideration?

23 A No. Aside from the D.C.A. factors and the factors
24 cited by the municipalities, no other factors.

25 Q Did you take into consideration the availability

1 of public transportation to each municipality?

2 A In this analysis, no.

3 Q Did you take into consideration the availability
4 of public sewer when you analyzed the zoning regulations?

5 A In a number of cases, that is noted by the
6 municipality. In some ordinances, they provide for
7 different standards, depending on the availability ~~of~~ lack
8 of availability of public sewer.

9 But, we did not do any study in that area, over
10 and above what was provided by the municipalities.

11 Q Did you take into consideration any special drainage
12 factors in each municipality?

13 A Again, only what was reported to us from the sources
14 mentioned.

15 Q Did you take into consideration the existing land
16 uses and whether there was low and moderate income housing
17 presently provided in the municipality?

18 A In this analysis, as such, we -- this deals strictly
19 with the zoning ordinance.

20 Now, we have separately prepared the tabulation
21 of the housing under government subsidy programs by
22 municipality.

23 Q Separately prepared that. Do you have that with you?

24 A I have a listing somewheres, I believe I do.

25 Q May we have that available, please?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. SEARING: That information has

been supplied in answers to interrogatories,
from at least the defendant Piscataway and
possibly some others.

A This is not a new piece of data compiled by me for
this project.

Q Who compiled the data?

A Mr. Searing's office.

Q And you used that data in which to make an analysis
of the zoning ordinance?

A No. This is completely separate. The analysis
of the zoning ordinance is without reference to that data.

Q And your testimony is going to be limited to the
question of the analysis of the zoning ordinance?

A No.

Q Then what is your testimony going to be?

A I believe that's stated in the statement here,
that it will include an analysis of the zoning ordinance,
the impact of the ordinances, exclusionary practice
identified, the relationship of those practices to social
and economic categories, and secondly, an analysis and
an interpretation of what available remedies, alternatives
and the like would be available to provide for housing
more equitably.

Q Don't you think the question of what low and moderate

1 income housing is presently provided in the municipalities
2 is relevant to that?

3 A Yes.

4 Q And you're going to base your determination on
5 Mr. Searing's data.

6 A Mr. Searing's data was obtained from standard public
7 sources, which I have considered -- the federal and state
8 housing agencies, which I have some faith in.

9 MR. SEARING: I might add that
10 question was propounded to defendants'
11 counsel in interrogatories, and I think
12 without exception answered.

13 Q Now, you also intend to analyze the cost of
14 construction, is that correct?

15 A That's correct.

16 Q And what data do you plan to use for that, sir?

17 A I plan to rely primarily, as I believe was cited,
18 on the materials provided by the New Jersey Home Builder's
19 Association, supplemented by my own experience.

20 Q Supplemented by your own experience.

21 A Yes.

22 Q Do you have experience in the construction of housing?

23 A I've had experience in the construction of housing.

24 Q What experience?

25 A The construction of multi-family housing.

1 Q You personally have been involved in the construction
2 of multi-family housing?

3 A I am presently working, as I believe I mentioned,
4 in the development of a multi-family housing development
5 in Vineland, and I have two, working with non-profit
6 organizations, in Ocean and Salem Counties, on the
7 development of low cost subdivisions, under the Farmer's
8 Home Administration programs.

9 Q You have a personal interest in these applications?

10 A I am acting as the consultant to the sponsors, or
11 developers.

12 Q What kind of consultant?

13 A Well, this is the loan consultant as I mentioned
14 earlier, or packager.

15 Q How are you going to change the cost of construction
16 figures that were provided by the New Jersey Home Builders?

17 A Well, I don't plan to change them so much, because

18 Q Or vary them, sir.

19 A All right. The information, the hard information,
20 as distinct from the interpretation, provided by the
21 Home Builders, is principally that having to do with
22 site improvement costs and their relationship to frontage.
23 These I do not plan to change.

24 They provide a figure for house construction costs,
25 which I consider legitimate, but I believe in some cases

1 can be reduced, and I have made that based on my recent
2 conversations with the builders on these Farmer's Home
3 Projects.

4 In addition, the information from the Home Builders
5 does not include land cost, as such, and does not include
6 the total overall fees, carrying costs, overhead, profit
7 factors and so on, which I have added in order to arrive
8 at finished costs, where appropriate.

9 Q And these are the cost figures that you provided
10 us --

11 A I have provided you with the -- the eight and a
12 half by eleven sheets provide three types of cost figures.

13 The column marked number 2 is the improvement cost
14 per front foot -- no, I'm sorry. The improvement cost,
15 period.

16 Based on the frontage.

17 Q And how did you determine that improvement cost?

18 A This was based on the data in the Home Builders' --
19 provided by the Home Builders'.

20 Q You accepted that data.

21 A Yes, I did.

22 Q All right.

23 A The second figure, or, rather, in column 3, again,
24 the Home Builders' figure for construction of the unit
25 on the finished lot.

1 Q And did you vary that in any way?

2 A No, not in these cases. These are all straight,
3 taken directly from there.

4 The figure in column -- excuse me. Column 1 is a
5 figure for land cost per unit where we were able to get
6 current quotations from land that is available, either
7 in multiple listing or individual realtors.

8 Q From individual municipalities?

9 A From realtors.

10 Q From realtors.

11 What realtors?

12 A I don't have the names here with me. I can provide
13 that for you.

14 Q Did you personally contact --

15 A Mr. Prior contacted the realtors personally.

16 Q Is there any data available?

17 A I beg your pardon?

18 Q Did they file any reports?

19 A No, they did not.

20 Q And do you know what municipalities Mr. Prior
21 talked to? The realtors in what municipalities?

22 A I know one of them was in East Brunswick. I don't
23 know where the others were, but I can get that data for
24 you.

25 Q Can you make that available to us, sir?

1 A Certainly.

2 Q And if column 1 is blank, then there is no data
3 available for land acquisition.

4 A If column 1 is blank, there is no precise data,
5 in the sense that we were not able to get quotations on
6 land in those zones in those communities.

7 It's still possible to make estimates, but exact
8 figures --

9 Q Based on what, sir?

10 A Based on consistency.

11 For example, if one has two similar zones, two
12 zones of similar requirements, in two municipalities of
13 similar characteristics, housing --

14 Q What characteristics?

15 A The type of housing, the cost of housing, the
16 socio-economic character of the municipality, its general
17 location, vis-a-vis, major employment centers, and the
18 like.

19 Q You have not made an analysis of that.

20 A I have not. Which is why, among other reasons,
21 I have not filled figures into the vacant spots.

22 It would be possible to do an analysis that would
23 yield reasonably reliable estimates for the spots that
24 are not here. But, I have not done such an analysis.

25 Q Do you plan to do such an analysis before the trial?

1 A I have not been instructed to do so.

2 Q Now, you say that you're also going to testify as
3 to remedies that are available, is that correct?

4 A That's correct.

5 Q And what remedies are available, sir?

6 A I believe in the outline, I have cited three
7 general categories of remedy.

8 Q Yes. First category is zoning remedies.

9 A Yes.

10 Q What are the zoning remedies?

11 A Well, the most -- there are a number of zoning
12 remedies, ranging from the straightforward to the
13 more complicated.

14 This, of course -- I should point out there is a
15 certain overlap between the first category of zoning
16 remedies and the third category, local initiative programs.

17 There is an area where they overlap. The most
18 minimum level as one kind of zoning remedy, has to do
19 with what might be called down zoning of appropriate
20 sites or locations.

21 Q Will you please define that?

22 A For example, if in a hypothetical municipality,
23 the share of vacant land in a large lot zone, as a percentage
24 of total vacant land, is so great as to be -- as to have
25 an exclusionary impact by substantially reducing the amount

1 of land available for more modest types of housing, then
2 one remedy in such a municipality would be to rezone some
3 part of the large lot area for more modest uses.

4 Q What more modest uses?

5 A Well, for example, if -- you know, within the single
6 family category, generally, lot sizes can be reduced down
7 to, again depending on the location and the site, and
8 the need and what not, could be reduced down to six
9 thousand, eight thousand square feet, hypothetically.

10 There are some municipalities which have such
11 zones. It is feasible. I'm talking in hypothetical terms.

12 Obviously, the specific remedy for a specific site
13 would vary.

14 At the same time, the individual house sizes could
15 be reduced, certainly anything -- any requirement
16 substantially -- any requirement well over a thousand
17 square feet, for example, is likely to be more than is
18 necessary as a general rule for -- to meet what I interpreted
19 the purposes of zoning and the need to provide housing
20 opportunity.

21 Q Now, taking 6 to 8, take eight thousand square
22 foot lot, and one thousand square foot house.

23 What would be the cost, improvement cost, land
24 acquisition cost, and construction cost of that house that
25 was produced on that lot?

1 A Okay.

2 Now, it would clearly -- the size of the lot and
3 the frontage can vary.

4 You can hypothetically have an 8 thousand square
5 foot lot and require 200 foot frontage.

6 Q Let's say 75.

7 A Okay.

8 In such a situation, the site improvements would
9 be approximately five thousand dollars, the cost of taking
10 the raw land and preparing it for housing. This assumes
11 that sewer connections -- that, either, that sewer
12 connections exist on-site or close enough so that there
13 are no extreme costs in running lines off-site, or that
14 on-site sewerage disposal is feasible.

15 But, assuming one of the other or those conditions
16 obtains, then a figure -- figure in the area of five
17 thousand dollars for site improvement is appropriate.

18 Q Is that what you consider -- that's just site
19 improvement, not lot improvement.

20 A No, lot and site improvements.

21 The second category, in terms of construction
22 cost, the builder's estimate, the Home Builders' estimate
23 is 25 dollars a square foot for raw construction costs.
24 This is a reasonable assessment, through my experience, of
25 what construction costs for representative single family

1 houses are at present.

2 There is -- there are ways in which this can probably
3 be reduced to some degree.

4 Q Does this take into consideration a profit and
5 overhead figure?

6 A No, this does not take the profit and overhead
7 into consideration. I haven't gotten there yet.

8 But, the raw construction cost of the unit would be
9 typically 23 thousand dollars, and possibly down to 18 to
10 20 thousand dollars, assuming all available economies
11 could be obtained.

12 There are other economies in site and lot improvements
13 as well, but I won't get into that.

14 Fees and overhead could add approximately 15 --
15 fees, overhead and profit, rather, could add 15 to 20
16 percent of the construction cost to the total cost.

17 So, in their case, we're talking about, on the
18 average, 3,000 to 3,500 dollars in overhead, profit and
19 fees.

20 Depending on the construction schedule, the
21 builder's resources, the builder's equity, his indebtedness,
22 the cost of his money or so on, you could add anything
23 from two percent up to, perhaps as much as seven or eight
24 percent to the cost for carrying charges and interest.

25 This is -- again, within the realm of, sort of

1 normal building experience.

2 If the person finds his land tied up in litigation
3 for a number of years, then that adds additional costs.

4 Q So what figure should we add for that?

5 A Well, say five percent, a thousand dollars.

6 Now, those are the costs, independent of the
7 actual land cost.

8 Q All right. You said that you would be able to
9 give us an estimate on land cost, if there was a zone for
10 eight thousand square foot lots, in, let's say Plainsboro
11 Township. Are you familiar with Plainsboro Township?

12 A I'm familiar with Plainsboro in a general sense.

13 Q You don't have any land acquisition costs?

14 A I think in a case like Plainsboro Township, a
15 lot would depend on the amount of land that was zoned for
16 that.

17 One of the things, and this is apparent from
18 comparing the different municipalities and the different
19 zones. Because the amount of vacant land available for
20 small lots in the county is relatively limited, the cost
21 per lot of a small lot is often not substantially less --
22 let me rephrase it. The cost per lot of a lot zoned for
23 small lot development is often not substantially less than
24 the cost per lot of lands zoned for larger lot development,
25 leaving aside the extremes.

1 Because under certain circumstances, particularly
2 under scarcity circumstances, the act of rezoning tends
3 to, in a scarce market, tends to send up, increase the
4 value and the cost of the land.

5 This is a -- this is elementary economics, which
6 one knows even if one hasn't taken a course in the subject.

7 Q I was going to make that comment.

8 But, is there a minimum lot acquisition cost we
9 could adhere?

10 A Well, I would say you'd have to -- given costs
11 generally speaking in Middlesex County, something in the
12 area of three thousand would probably have to be --
13 assuming the land was zoned, rather than the result of
14 a special exception or a variance. It's unlikely you
15 could get away with less than three thousand dollars a lot.

16 Possibly more.

17 Q You have an approximately 35 thousand dollar house
18 produced on this 8 thousand square foot lot?

19 A Something like that.

20 We have three thousand for land, five thousand
21 for improvements, twenty thousand for construction, which
22 is 28, another three thousand for fees, overhead and profit,
23 which is 31, and another thousand for carrying costs,
24 which is 32 thousand.

25 Q I have 23 thousand to --

1 A Well, there's a margin there, depending.

2 Q So 31 to 35 thousand dollars.

3 A Yes.

4 Q And then the costs would be increased, if there
5 were any special factors in the municipality, such as the
6 sewer was not readily available, and had to be extended
7 to the site?

8 A Well, that could either be added to the cost of
9 the house or, --

10 Q So that the ultimate cost to the purchaser would
11 also, in most cases, include a brokerage fee, is that
12 right?

13 A To a limited degree. A lot of these -- if it
14 was part of a substantial subdivision, a lot of these
15 units are sold directly by the developer, and since this
16 does include the developer's -- a profit margin for the
17 developer, the additional cost would not necessarily be
18 substantial.

19 The developer would build in, in that case, some
20 sort of -- a cost -- couple of hundred dollars, a few
21 hundred dollars, to cover sales expense.

22 The question, of course, would be, given a house
23 of this basic nature, the question would be, given the
24 market as well, whether the developer would engage in
25 those things which are feasible, to keep costs down, or

1 whether, of course, he would not bother, given the fact
2 that it's -- that there is a substantial market for houses
3 in this price range.

4 Q All right. Perhaps right now we should get your
5 definition of a low income family, moderate income family,
6 using a family of four.

7 A Okay. I've used -- there are three -- there are
8 really three categories, I prefer to use, rather than the
9 two.

10 And this is because of --

11 Q Go ahead and use your three categories.

12 A Okay.

13 Q Tell us what they are.

14 A The categories have been dubbed for shorthand
15 purposes, low income, moderate income-subsidized, and
16 moderate income-conventional.

17 The first two are based on official U.S. Government
18 definitions, used for the Federal Housing Program.

19 Low income category is defined as up to 50 percent,
20 roughly, of the median income for the county or area
21 under discussion.

22 Q Do you know what that figure is in Middlesex County?

23 A Well, it can't be given in exact terms. Based on
24 a conservative estimate from the '70 Census to the present,
25 the median income in Middlesex County is probably in the

1 area of 16 to 17 thousand dollars.

2 MR. BERNSTEIN: What year?

3 THE WITNESS: That's an estimate
4 for 1975.

5 Q Are you familiar with the actual data?

6 A There is no actual data.

7 Q This is your estimate, then?

8 A It's my estimate. Based on the assumption that
9 we know from the household -- the national and regional
10 household surveys conducted by the Bureau of the Census,
11 it would provide data for the United States by region,
12 that actual incomes have been increasing at a level --
13 during the period between '70 and '75, the average
14 family income in this country has, believe it or not, more
15 or less kept pace with the consumer price index. The
16 reason for the suffering we all feel in that regard, or
17 those non-lawyers feel in that regard, is that during
18 the period from '70 to '72, the real income increased
19 much faster than the consumer price index, and from '73
20 to '75, real income has lagged behind the consumer price
21 index.

22 In any case, the net result of this is to update
23 from '70 to '75, you can use, by assuming that the income,
24 the increase in real income is in the area of 90 percent
25 of the consumer price index, you get a figure which is

1 accurate, known, hard data for the northern United States
2 and is most likely a reasonable figure to apply to
3 Middlesex County on that business.

4 Q What is that figure?

5 A That yields a figure which is approximately 17
6 thousand dollars.

7 Q Low income would be 50 percent of that figure?

8 A Yes.

9 Q 85 hundred dollars.

10 A Roughly, yes.

11 Q All right. What would moderate subsidized be?

12 A Under the same set of definitions, the figure for
13 moderate subsidized that's used is up to 80 percent of
14 median income. This is the population which, under the
15 federal programs, qualifies for subsidy but -- the people
16 between 50 and 80 percent of median income qualify, but
17 are low priority for available subsidy funds, and are
18 considered moderate income, or moderate subsidized income.

19 Q And what figure would be put to that?

20 A Again, here we're talking about a figure somewhere
21 around thirteen, five.

22 Q How about moderate income?

23 A Moderate conventional, to distinguish it from the
24 first group, is a figure -- is a group which is defined
25 as the population above the previous cut off point, but

1 which is still disadvantaged with regard to the search
2 for shelter, if you will.

3 And this can go up to, certainly goes up to the
4 median income and above it, depending on the particular
5 housing circumstances.

6 I would say that on the average, a figure of, say,
7 110 percent of the median, or roughly 19 thousand dollars.

8 Though before -- all families of 19 thousand
9 dollars are not equally -- earning 19 thousand dollars
10 are not equally disadvantaged, in terms of housing choice.

11 These are gross family incomes.

12 Q Now, taking the 85 hundred dollar figure for a
13 family of four, could they afford the housing that you
14 would determine for an 8 thousand square foot lot, 31,
15 32 thousand dollars?

16 A I think it's safe to say, to short cut this line of
17 questioning, that in the first category, defined as low
18 income, that with minor exceptions, some form of subsidy
19 is required to provide significant housing improvement
20 in this income group.

21 Q What form of subsidy is available now, sir?

22 A There are two subsidy approaches that are available.
23 One is the federal program, the other is what has been
24 referred to sometimes as self-subsidization, which I'll
25 get into later.

1 The principal subsidy vehicle at present, which
2 is directed principally at low income families, is known
3 as the Section 8 Program, which was enacted in the Housing
4 and Community Development Act of 1974.

5 Q Is there money available under the terms of that
6 program?

7 A Yes.

8 Q How much money is available under the terms of that
9 program?

10 A It's rather hard to figure out exactly how much,
11 because the way the program is set up, the amount of money
12 and the number of units can vary substantially, depending
13 on where and when and how and what.

14 As a rule of thumb, the federal government projects
15 that -- something in the area of a five to ten thousand
16 units per year will be made available in New Jersey.

17 Q Have any units been built in New Jersey under the
18 terms of that program?

19 A New units constructed?

20 Q Yes.

21 A No, not yet.

22 Q Have any applications been made for new units?

23 A Yes.

24 Q That you know about.

25 A Yes.

1 Q What application is that?

2 A I don't know specific numbers. I'm familiar --
3 I am aware that through the New Jersey Housing Finance
4 Agency, that the Housing Finance Agency has entered
5 into an agreement with the HUD area office whereby the
6 HUD people will set aside allocations of funds to be
7 piggy backed, as it were, onto HFA mortgage financing.

8 There have been a number of applications in different
9 parts of the state that have been processed through the
10 HFA, for this piggy back funding.

11 Q Any criteria as to where this housing should be
12 located in the state?

13 A No general criteria.

14 Under the community development -- well, under
15 the Community Development Block Grant Program, Community
16 Development Revenue Sharing Program, a certain, fairly
17 modest percentage of the units, are allocated for the
18 exclusive use of center cities.

19 Q Modest percentage?

20 A Yes. Less than a third.

21 Q And where are the rest of the units allocated for?

22 A Wherever, -- basically, wherever they may land,
23 in effect.

24 There are two basic procedures -- a number of
25 basic procedures for determining where they may end up.

1 One procedure is through what I referred to as the
2 piggy back, with the New Jersey Housing Finance Agency.

3 A developer or a housing sponsor, non-profit
4 housing sponsor, makes application to the New Jersey
5 Housing Finance Agency, submits its proposal, and is
6 processed for mortgage financing, and the Housing Finance
7 Agency makes the principal judgment as to whether it's
8 appropriate for Section 8 funding, and then based on
9 this piggy back arrangement.

10 Q Do they have any criteria for determining whether
11 it's appropriate or not?

12 A They have certain site criteria. There's nothing
13 in terms of broad rules about, you know, regions of the
14 state or geographic areas or types of community.

15 Q They require sewer, water facilities, public sewer,
16 public water?

17 A Well, for -- I should mention in the case of the
18 HFA, we're talking exclusively of multi-family developments,
19 and for all -- as a general rule, if not exclusively,
20 about, relatively large developments.

21 Q What do you mean by relatively large?

22 A Over a hundred dwelling units.

23 Between 1 and 2 hundred dwelling units. But not
24 exclusively. So the HFA, in order to consider a project
25 eligible for their financing and for the Section 8 funds,

1 they require a series of checks, check points, as it were.

2 The first is that the site be reasonably suitable
3 for development. They don't do an exhaustive study of
4 this, but they do send an individual out to take a first
5 hand look at the site for which a proposal is made.

6 Q What do they use for a criteria to determine whether
7 the site is suitable for development?

8 A As far as I've been able to tell from my dealings
9 with the New Jersey Housing Finance Agency is that unless
10 the thing -- unless the thing is over six feet deep in
11 water and there wasn't any rain in a month, it's considered
12 suitable.

13 Now, I exaggerate, of course. I mean, they do--
14 but they -- they look at the location, they look at the
15 surroundings, they look to see if there are any things
16 that are likely to have a major cost increase impact.

17 But they don't, in their own inspection, look for
18 the kind of -- some of the things that I think you're
19 leading to.

20 They ask the developer himself, subsequently, to
21 document something like sewer availability.

22 Q Sewer availability.

23 Is there a requirement that there has to be public
24 sewer and public water?

25 A No, but there has to be a requirement -- there is

1 a requirement that the developer show to the satisfaction
2 of the HFA that the sewerage generated from the project
3 will be dealt with in some reasonable fashion.

4 So, in most cases, what they look for is a letter,
5 the developer solicites a letter from the local MUA, or
6 whom ever, to the effect that there is capacity, or whatever.

7 If not -- if the developer can show that a package
8 plant can be constructed which will be acceptable to DEP,
9 and not send the project over the cost ceilings, that's
10 an acceptable alternative.

11 Q How about public water?

12 A Again, it's the same situation.

13 Preferably, a showing that there is public water that
14 can be hooked up.

15 If not, an alternative that's within the cost
16 ceilings.

17 Q How about the availability of public transportation?

18 A The availability of public transportation is, to
19 the best of my knowledge, not considered a major factor,
20 even though it is probably a more significant factor for
21 senior citizen housing than for the housing of younger
22 families, you know, working families.

23 Q How about the road system? Would they make an
24 evaluation of the road system?

25 A Again, it's not an evaluation in the strict sense

1 of the term.

2 They eyeball it, basically. I don't believe that
3 they go as far as to do research a traffic counter or what
4 have you.

5 Q There's no criteria set up, any check list form?

6 A They have a check list of reasonableness, but
7 it's based largely on eyeballing, in terms of some of the
8 criteria.

9 They have approved -- you know -- you see, their
10 purpose is to build housing, wherever reasonably feasible.
11 And to look on things, I think, in the positive rather
12 than the negative light, where it makes sense to do so.

13 Q Now, this housing is sponsored by a non-profit
14 corporation?

15 A Can either be sponsored by a non-profit corporation
16 or by a private developer or organization creating a limited
17 dividend housing company, for the development.

18 Q What is the density criteria? Do they have a
19 density criteria?

20 A No. It's based on -- they do an exhaustive and
21 detailed review of the actual site plans and designs of
22 the units, from an architectural, esthetic, livability and
23 so on standpoint.

24 In fact, the HFA's detailed review of the suitability
25 of the plan and the design to the site, the usability of

1 the site, the layout and so on, is far more exhaustive
2 and detailed and thorough than is the case for virtually
3 any conventional development application I've ever seen.
4 It drives architects crazy.

5 Q And you say no new housing has been built under
6 the terms of Section 8, is that right? In New Jersey.

7 A Not yet. The program -- the final guidelines
8 for the program were only finalized last summer.

9 Q Now, let's get back to the moderate income
10 subsidized.

11 Could they afford the 31 to 35 thousand dollar house
12 that was produced on the 8 thousand square foot lot?

13 A Probably not. They could, most probably -- some
14 of the people at the top end of this moderate income
15 subsidized group might be able to afford a town house,
16 built under somewhat similar circumstances.

17 Q We're talking about a single attached house?

18 A Because modest detached house would be out of the
19 reach of nearly everybody, if not everybody, in this group.

20 Q Even though we reduce the lot size to 8 thousand
21 square feet.

22 A That's correct.

23 Q How about the moderate income conventional?

24 A There is a large number of the people in that group
25 would be in a position to afford such a house.

1 Q And this is the 19 thousand and above category.

2 A No, this is 13 to 19, roughly.

3 We're assuming that at 19 and above, the market
4 by and large will meet the needs of these people.

5 Q So somebody at 14 thousand dollars could afford
6 one of these houses?

7 A It would depend. I would say, assuming you're at
8 the 31 thousand level, once you get into the area of 14,
9 15, certainly 15 thousand dollars, a person would be in the
10 ball park.

11 Q Now, other than the reducing the lot sizes as a
12 remedy, what other zoning remedies would you consider?

13 A Okay. Another one, which is a counterpart of sorts,
14 is reducing the -- excuse me.

15 Is providing for multi-family housing, on a scale
16 commensurate with the need, or on a scale, and in a manner
17 that will not result in the cost of that housing being
18 inflated.

19 For example, the zoning and the scarcity issue I
20 mentioned earlier.

21 Q What density would you propose, then?

22 A It would depend on the specific type of multi-family
23 housing.

24 Q Let's take a garden apartment.

25 A Well, I'll go through them.

1 The garden apartment.

2 Garden apartment, two or three story building,
3 can be developed at a density, certainly, without difficulty,
4 and with reasonable amenities, easily up to 15 units an
5 acre.

6 Q Did you make an analysis of the cost of this unit?

7 A I can do so.

8 Q Will you do so for me, please?

9 A Okay.

10 The first point is that a garden apartment development
11 will have lower raw construction costs than a single
12 family house, because of a variety of economies, having
13 to do with both the actual construction of walls, roofs
14 and the like, but also shorter lines, connecting lines
15 for utilities, mechanicals and the like.

16 So, in other words, the current reasonable estimates
17 for a garden apartment, construction cost, range 16 to 18
18 dollars per square foot for raw construction.

19 Now, the question is, let us take a hypothetical
20 DU mix.

21 Let's say we're talking about a garden apartment
22 project that had -- was -- let's say 30 percent one bedroom,
23 six hundred square feet per unit, say 40 two bedroom at eight
24 hundred square feet per unit, and 30 three bedroom at
25 eleven hundred square feet per unit.

1 Make it a thousand. Thousand square feet per unit.

2 Q Do you consider this a reasonable mix and a reasonable
3 floor area for these apartments?

4 A Yes.

5 The specific mix, the specific mix may vary. In
6 our study, in our study of housing in suburbs, where we
7 did an analysis, both of housing -- demands for different
8 types of housing by social and economic groups, as well
9 as the study of the impact of these housing developments
10 on the community, in terms of fiscal and otherwise, we
11 found that as far as -- the mix we recommended, which sort
12 of seemed to be the best balancing of interests, in that
13 study, was a mix of 40 percent ones, 50 percent twos and
14 ten percent threes.

15 I think that's reasonable. This is also. A lot
16 would depend in terms of the appropriate mix as to whether
17 the municipality, or the area, simultaneously makes
18 provision for town houses, as well as for modestly priced
19 detached houses.

20 The more, for example, three bedroom town houses
21 and detached houses there are, the fewer three bedroom
22 garden apartment units would be needed, and vice versa.

23 So, this is a plausible mix.

24 Q Do you feel you should not exceed three bedroom in
25 a garden apartment project?

1 A As a general rule, probably not.

2 I mean, certainly it's not a hard and fast thing,
3 but I would think as a general rule, four bedroom units
4 should be -- four bedroom multi-family units should be
5 wherever feasible town house type units, with direct
6 egress and access.

7 That can be sort of built, you know, in the design
8 of a project you can mix in very easily town house type
9 units and other units.

10 There's a very nice development that's just been
11 finished up in Jersey City that I was involved in to a
12 limited degree which provides a very nice mixture of three
13 and four bedroom town houses, and one -- and two bedroom
14 apartment units within the same buildings.

15 Very nice.

16 Q Using your 16 to 18 dollar per foot, does -- does
17 that include land acquisition?

18 A No, that's just construction.

19 Q Okay.

20 A Now, the -- anybody have a calculator here? No?
21 Okay.

22 The raw construction cost for a one bedroom unit
23 is approximately ten thousand dollars, for a two bedroom
24 unit, approximately 13 thousand dollars, and for the three
25 bedroom unit, approximately 17 thousand dollars.

1 Q Is this based on some data you have available to
2 you or is this based on your experience?

3 A This is based on the experience I have and my
4 conversations with the Housing Finance Agency people,
5 as well as the actual cost estimates on the developments
6 that I've been working on.

7 Q Now, is this a subsidized housing?

8 A No, this is a straight. We're talking about
9 straight costs.

10 The direct costs would be higher in subsidy projects,
11 because of the Davis Bacon Law, which requires that
12 construction crews be paid union scale. Conventionalistic
13 developments, garden apartments, town houses, single
14 family houses and so on, tend to be built below union
15 scale.

16 Q This is computed based on non-union.

17 A Yes. We're talking about what it would cost,
18 without -- independent of any subsidy considerations.

19 Q All right.

20 A All right. Now, translating this, using the 30,
21 40 and 40, we get a cost of -- for a hundred units,
22 300 thousand plus 520 thousand, plus 510 thousand, raw
23 construction cost for the hundred unit development is
24 one million three hundred thirty thousand dollars.

25 Not cheap, but not too bad.

1 Q That's just the construction cost.

2 A That's just for construction.

3 Now, you save a great deal over the detached houses
4 in site improvements and lot improvements, because you're
5 talking about many more connections, many more units, per
6 running foot, of all of your connection costs.

7 The cost per unit, even assuming fairly high
8 costs for landscaping and facilities and the like, the
9 cost per unit of lot and site improvements is not likely
10 to be more than 15 hundred dollars to 2 thousand dollars,
11 in a development of this sort.

12 So, for the hundred units, throw in, say, 200 thousand
13 dollars.

14 Now, if we throw in -- if we throw in the 15
15 percent for overhead and fees, 15 percent of construction,
16 that's another about 190 thousand dollars.

17 Now, the carrying costs are likely to be proportionately
18 larger on a multi-family development than a single family
19 development, because of time involved, usually greater.
20 So instead of the 5 percent figure, you can use about a 9
21 percent figure.

22 Nine percent of construction, which is about 115
23 thousand dollars. So we come out with a total figure,
24 exclusive of land acquisition, of -- bear with me for a
25 moment. 1 million 835 thousand dollars.

1 Q Exclusive of land acquisition.

2 A Yes.

3 Now, we're talking about a hundred units, and
4 if we build these hundred units at a density of, say,
5 twelve units an acre, which is not the highest reasonable
6 density, but is a fairly common garden apartment density,
7 we're talking about acquiring 8.3 acres.

8 Now, how much 8.3 acres of land costs depends very
9 much on its zoning.

10 Q Let's assume it's zoned for garden apartments at
11 that density.

12 A If it's zoned for garden apartments at that density,
13 it's likely that the land would cost anything from twenty
14 to fifty thousand dollars an acre..

15 At least in the more developed parts of the county.

16 Q Let's put a figure on this.

17 A That's at present. That's one of the issues here.
18 Let's take the middle, 35 thousand, times 8.3. That's
19 290 thousand dollars.

20 Q What is the total now?

21 A The total cost is 2 million 125 thousand dollars,
22 or 21,250 dollars per unit.

23 MR. CUMMINS: 21 what?

24 THE WITNESS: 21,250 dollars a unit,
25 total cost, in the ground, C.O.D.

1 Q And based on those densities, you would again say
2 that someone of low income could neither purchase that, if
3 it was in condominium form, or rent these units?

4 A In the low income category, no.

5 Unless you were able to, or you did provide for some
6 form of skewing of rents, so that some of the units would
7 be rented at lower cost than others.

8 However, even without that, some families in the
9 moderate income category would be able to afford this
10 housing.

11 Q The one bedroom units?

12 A Or two.

13 Again, it depends on how you scale the rents.

14 I mean, the builder, or developer, or rental agent
15 who markets a garden apartment development, uses his or her
16 own judgment to define -- determine where to set the rents
17 for the one, two and three, so on, bedroom units, not
18 necessarily on the basis of the actual costs associated,
19 but based on his or her judgment on what will be most
20 effective in the marketplace.

21 Q The municipality has no control over that.

22 A I don't know. I've discussed these kinds of questions
23 with a number of attorneys and get conflicting questions.

24 Q We're talking about a specific zoning remedy,
25 is that correct?

1 A Well, this is where we got into the grey -- the
2 overlapping area I mentioned earlier.

3 At some point, you accomplish such and such goals
4 through zoning, strictly defined, and then you start
5 getting into related, but not necessarily identical areas,
6 where the police power may still be present.

7 Q What densities do you think are reasonable for
8 town house development?

9 A A town house development should have a somewhat
10 lower density than garden apartment development, on
11 general principle, because, first, the larger number of
12 children, and second, the generally held principle in
13 town house development that individual units should have
14 individual private outdoor spaces, which tend to take
15 up more room than simple common spaces.

16 A typical -- I should mention that town house
17 developments, quite satisfactory town house developments,
18 historically, in urban areas, which include some of the
19 most sought after areas in the country, Georgetown,
20 Society Hill and the like, tend to have densities that
21 range from, say, twelve to twenty-four or thirty units
22 an acre.

23 Q Generally areas that provide other amenities, and
24 that's the reason these town houses are up.

25 A The principal amenity seems to be -- the two

1 principal amenities to be, a, visual, which suggests
2 that if any -- I assume if any developer tried, he could
3 make a modern development look nice, even though few of
4 them do.

5 And, of course, social, which is another matter.

6 Q Location is also another matter.

7 A To a degree.

8 Q To a degree?

9 A Well, the location, there's -- some evidence would
10 suggest that location is a dependent rather than
11 independent variable.

12 Meaning the area becomes a location by virtue
13 of some other factor. In the case of Philadelphia, Society
14 Hill, until the 1950's, this was considered a lousy location.

15 However, once the city started investing literally
16 millions of dollars, in refurbishing this area, it started
17 to improve its image substantially.

18 MR. SPRITZER: Off the record.

19 (Discussion off the record.)

20 (After discussion.)

21 (Whereupon, part of answer read back
22 by the reporter.)

23 A With reference to Society Hill in that case.

24 Q As it relates to town houses?

25 A The issue here is in terms of new town houses.

1 Q Go ahead.

2 A Leaving aside, sort of, special cases, however,
3 I think for what are generally considered modern suburban
4 standards, 24 is probably substantially too high, but
5 something in the range of between 6 and twelve, six and
6 ten units an acre, probably closer to the higher part
7 of that rather than the lower, depending to some degree on
8 the size of the units, numbers of bedrooms, and other
9 factors, the likely need for open space, --

10 Q Well, I assume that you agree that there is a need
11 for open space in both the garden apartment units and also
12 in the town house units.

13 A Oh, yes. The figures I'm suggesting would provide
14 reasonably for that.

15 Q So that when we computed the land acquisition
16 costs for the garden apartment project, we didn't compute
17 in any open space figure.

18 A No. We assumed -- we're talking in that case
19 about a density of twelve units an acre.

20 At that density, it is possible to provide within
21 the site for a reasonable amount of open space and
22 amenities for the people.

23 Q Within that eight acre site?

24 A Within the 8.3.

25 Q What amenities do you think are necessary for a

1 garden apartment project?

2 A Well, I think it varies. In the case of a typical
3 modest garden apartment project, aside from the individual
4 units, it's probably desirable to have some form of
5 community room or meeting or partying or what have you
6 facility, of a modest sort, with a bedroom and kitchen
7 contained.

8 There's some general feeling among developers that
9 if you're trying to market units competitively, you better
10 have a swimming pool.

11 Apparently it's the symbol of the swimming pool
12 rather than the substance of the swimming pool, which
13 seems to be --

14 Q Do you consider a swimming pool a valid amenity?

15 A I think it's reasonable. I don't think it's essential.
16 Certainly if it can be done within the means of the project.

17 Under the subsidy programs, generally you have to
18 meet cost criteria, and under the Section 8 program, at
19 least, as long as you can meet the cost criteria, unlike
20 the old public housing programs, which had specific do's
21 and don'ts, under the Section 8 program, if you can meet
22 their cost criteria, you can do anything you want.

23 Q So you can have a swimming pool in a Section 8 program?

24 A In theory. In practice --

25 Q Tennis court in a Section 8?

1 A In theory, you could. In practice it would
2 probably be difficult to do so.

3 And, also in practice, my preference would be, if I
4 did a cost work-up on a Section 8 project, without any of
5 those things, and discovered that I had some cost slack,
6 as it were, I would -- my first inclination would be to
7 plow the additional costs into increased unit sizes, or
8 increased amenities in the units, such as washer, dryer,
9 things of that sort, rather than tennis courts.

10 But, it could be either way. It would be a
11 judgment you'd make on the individual development.

12 Q Now, you do believe, though, that certain amenities
13 are necessary for reasonable living conditions within a
14 garden apartment project.

15 A Yes. Certain amount of space to sit around, outdoor
16 space, possibly some trees, picnic area, if the site is
17 amenable to it, a playground.

18 If the bedroom configuration is such that you can
19 anticipate a more than negligible number of children,
20 provide some playground facilities.

21 Q Obviously, off-street parking has to be provided.

22 A Certainly off-street parking, yes.

23 Q Now, those amenities would necessarily increase
24 the cost that we went through before, is that right?

25 A No. The off-street parking is built into the site

1 preparation fee.

2 Q How about the other amenities?

3 A The other amenities are not expensive.

4 Leaving aside swimming pools and tennis courts,
5 the landscaping, the provision of simple landscaping,
6 which is planting of grass and providing pathways
7 between the buildings, and from the buildings to the
8 parking lot and to the street, is provided for in the
9 cost figures. The additional costs would be things like,
10 you know, a playground, equipment, fencing, and perhaps
11 some benches and tables around the place.

12 But, certainly well under 50 thousand dollars worth
13 of costs, probably.

14 Q So if that were required in a municipal ordinance,
15 those amenities were required in a municipal ordinance,
16 would you consider that reasonable requirements?

17 A Yes. So long as it were -- for example, with the
18 playground, requiring a playground in every development is
19 silly.

20 The requirement of a playground should be keyed
21 to a reasonable finding that that development is going
22 to have a substantial number of children in it.

23 Q Let's go through the cost of town house units now,
24 talking about a density of what, did you say between
25 eight and twelve?

1 A I said between six and twelve, take eight and nine
2 as --

3 Q Eight or nine?

4 A Eight or nine as the middle figure.

5 The key difference, one major difference in the
6 case of the town house is, in these apartments, we were
7 talking about an average square footage per unit of 800,
8 because it was a mix of ones twos and threes, in even
9 proportion.

10 In the case of the town house, we would probably
11 be talking about an average square footage of about a
12 thousand square feet, because the typical units would be
13 twos and threes, with some fours.

14 Q What would be the mix of the units that you would
15 consider reasonable?

16 A I would say the major -- the most important town
17 house type is a three bedroom unit.

18 In other words, what the studies have shown, including
19 the ones we've done, is that four bedroom -- there is a
20 need for some four bedroom town houses, but whenever there's
21 a choice, most people who need a four bedroom unit, tend
22 to prefer, if possible, a detached house.

23 At the same time, the two bedroom town houses,
24 people tend to move in -- people who buy two bedroom
25 town houses tend to start looking for a three bedroom

1 unit almost as soon as they move in, because if you're
2 gonna buy a town house, why buy a two when you can get a
3 ~~two~~ three bedroom apartment, which is usually less expensive.

4 So, the key type is the three bedroom, and I would
5 guess in a reasonable development, as much as sixty or
6 seventy percent of town house units could be three bedroom
7 units, with the rest divided more or less evenly between
8 twos and fours.

9 Because there is need for some of those. So something
10 in the area of, say, twenty, seventy, ten.

11 Q And what minimum habitable floor area would you
12 suggest for two bedroom, three bedroom and four bedroom?

13 A Basically similar, similar but perhaps slightly
14 larger, than the garden apartments.

15 The actual habitable space requirements are the
16 same. In fact, you can even make the argument that because
17 of the greater access to outdoors in the town houses, you
18 might need somewhat less.

19 Conversely, because of the two story aspect, you
20 have slightly more waste space in the town houses.

21 Q Do you think it's reasonable for a municipal zoning
22 ordinance to have a requirement that there be minimum
23 habitable floor area, in both town houses and single family
24 houses and garden apartments?

25 A I think it is not entirely unreasonable, so long as

1 the figures chosen are not excessive.

2 However, there are probably better ways of providing
3 for habitability of the units.

4 Q What ways are those?

5 A For example, under the government programs, the
6 federal minimum property standards, and the Housing
7 Finance Agency standards, they provide for minimum space
8 requirements for the individual rooms that are required,
9 so that, for example, there would be a number of square
10 feet required, or dimensions required for master bedroom,
11 dimensions required for a second bedroom, and so on.

12 Dimensions required for a living room, dining room
13 combination, which would vary, depending on the size of
14 the unit.

15 In other words, the living room-dining room
16 combination in a one bedroom unit need not be as large as
17 that in a three bedroom unit, for obvious reasons. So,
18 in effect, the developer can take these minimums and design
19 a unit which contains these minimums, and may end up
20 having varying amounts of total square footage, depending
21 on how the thing is laid out.

22 Q But a requirement that there be a minimum habitable
23 floor area is a valid requirement that could be included
24 in zoning ordinances.

25 A I think so. Or, of course, the ordinance could

1 just adopt the federal standards by reference.

2 Q Now, going back to our town house development.

3 Could we work on the cost figures, using 15 percent
4 twos, and 15 percent fours, and 70 percent threes?

5 A Now, the average square footage here would be in
6 the area of a thousand to eleven hundred square feet.

7 Let's say a thousand fifty square feet per unit. This
8 would be the typical three bedroom. The fours would be
9 twelve hundred to twelve five, the twos would be eight
10 hundred or thereabouts.

11 Q You consider those reasonable figures?

12 A Yes.

13 Now, the construction cost on town houses is
14 generally comparable to that of garden apartments, except
15 there are slight increases. One feature, for example,
16 is that the three bedroom town house has to have, should
17 have, a half bath, in addition to the main bathroom.

18 The provision of things like washers and dryers,
19 washer and dryer connections, and so on, in a town house,
20 became more of a necessity than a luxury, because in this
21 case you're planning for fairly large numbers of children,
22 so on.

23 So, we can use a figure of nineteen dollars per square
24 foot instead of the seventeen. It's still lower than the
25 typical single family house, but somewhat higher than the

1 garden apartment. This gives us, for a hundred town
2 houses, nineteen dollars a square foot, 1,050, 1 million
3 995 thousand dollars, construction.

4 Site improvement costs are largely similar in the
5 garden apartment and town house. There are variations.

6 For example, some town houses try to have separate
7 driveways for individual units. There are luxury, anyway,
8 but that would increase the costs. When you have a town
9 house development which has common parking lot facilities
10 and common amenities, as they generally do, the site
11 improvement costs are not substantially different.

12 So it's 200 thousand dollars, again. Talking
13 about a hundred units.

14 The percentage, in terms of overhead, fees, carrying
15 charges and so on, are largely the same for the two types
16 of development. We're talking about fifteen percent for
17 one, that's 300 thousand dollars, and nine percent for the
18 other, that's 175 thousand.

19 So our cost for the hundred units without land is
20 2 million 670 thousand dollars, for a hundred units.

21 MR. BUSCH: Did that include profit?

22 THE WITNESS: It does include profit

23 Everything except land acquisition.

24 Q Could we estimate a cost for land acquisition?

25 A Okay. Here again, we come back to the same question.

1 If we're talking about finding a parcel that is
2 ~~already~~ zoned for this kind of density, and we use, I
3 guess, similar acquisition cost per acre, as in the cost
4 of the garden apartments, which would mean we're talking
5 here about ten acres, and we're talking about 35 thousand
6 dollars an acre, we're talking about 350 thousand dollars.

7 Which brings it out to almost exactly 3 million
8 dollars, on the button.

9 Q Approximately 30 thousand dollars per unit.

10 A Thirty thousand dollars a house.

11 Q And I assume the people in the low income can not
12 afford this housing.

13 A Right.

14 Q How about the people in the moderate subsidized area?

15 A At thirty thousand dollars, depending on how you
16 stretch, it fits, either just within, or just outside
17 the reach of the top people, the crust, if you will, of
18 the moderate subsidized category.

19 Q Getting back to the garden apartment --

20 A The term crust is a term of art.

21 Q Yes.

22 Getting back to the garden apartment project, if
23 we could. Could you estimate the reasonable rentals, based
24 on the overall cost, for a one bedroom, two bedroom and
25 three bedroom unit?

1 A This will take a minute.

2 The carrying charges on the mortgage, on a reasonable
3 rule of thumb, will be about nine -- this is assuming that
4 there's no significant amount of equity, and the project
5 is financed, for all practical purposes, in its entirety,
6 figure 9 percent annual mortgage factor, carrying charges
7 of 190 thousand dollars for the project per year.

8 Let's say that would come to, carrying charges on
9 a one bedroom unit, would thereby be about 15 hundred
10 a year, on a two bedroom unit about 19 hundred a year, and
11 on the three bedroom unit about 22 hundred a year.

12 This is just prorating the cost evenly.

13 The actual rents can juggle this.

14 Q Isn't there a profit factor in there, and isn't
15 there a maintenance factor in there?

16 A I'm getting there. This is the carrying cost.

17 Q All right.

18 A The maintenance and replacement, maintenance,
19 replacement, operation and so on, can cost in the area
20 of 30 or 40 dollars per room per month.

21 No, wait a second.

22 Q Yes.

23 A No, that's wrong. 30 or 40 dollars per room per year.
24 Sorry. Which means for the one bedroom, a hundred dollars,
25 for the two bedroom it's a hundred twenty-five dollars, for

1 the three bedroom one hundred sixty dollars.

2 Utilities will cost, nowadays, at least a hundred
3 dollars per room per year. For the ones, 350 dollars,
4 for the twos 450, for the threes, 600.

5 19 50 for the one, 24 75 for the two, 29 60 for
6 the three.

7 Now, property taxes would be another fifteen to
8 twenty percent. So, say 250 on the one, 320 on the twos,
9 440 on the threes.

10 That's figuring about 15, 16 percent. It varies,
11 of course.

12 This gives us total annual costs for these units
13 of 22 hundred for the one, 2 7 9 5 for the two, 34 hundred
14 for the three.

15 Q With no profit figure.

16 A Well, there's the builder profit. This is assuming
17 the whole thing is financed. We can throw in -- the
18 builder has virtually no equity in this, the assumption
19 is.

20 The profit factor, as a percentage of the total
21 rent roll is insignificant.

22 Under the limited dividend programs, the profit
23 factor is eight percent of ten percent equity, at
24 maximum. It's usually less than that. You can throw in
25 a couple of percent, but it's not gonna be -- I'll throw

1 another twenty dollars per unit per year profit. But,
2 that's all it's going to be, over and above what's built
3 in.

4 2 2 20, 2 8 1 5 -- this is a conventional. This
5 is a conventional project.

6 Now, in practice -- pardon?

7 MR. LERNER: You're talking about
8 renting town houses?

9 THE WITNESS: These are garden
10 apartments.

11 MR. LERNER: I thought you were discussin
12 town houses.

13 Q No, I want back to apartments.

14 MR. LERNER: All right.

15 A Rounding off, 22 hundred, 28 hundred, and 34 hundred.
16 Now, what these translate out to in monthly terms
17 can be computed by dividing them by twelve.

18 The ones come out around 180, the twos come out
19 about 230, the threes come out around 280, 285.

20 Q Now, --

21 MR. BUSCH: Before you go into that,
22 Mr. Stonaker, one quick question.

23 Is that your bottom line rental there?

24 THE WITNESS: That is the bottom line
25 rental, based on, sort of normal, but basic

1 costs.

2 I mean, no exceptional or unusual economies.

3 MR. BUSCH: Based on all of the
4 hypotheses you used.

5 THE WITNESS: All of the steps we
6 went through. But, this is important.
7 This is based on prorating the costs on a
8 real basis, between the ones, twos, and
9 threes.

10 MR. BUSCH: Okay, thank you.

11 THE WITNESS: Rather than adjusting
12 them, as is within the discretion of the
13 owner.

14 MR. BUSCH: Before we leave that
15 subject, if I may.

16 MR. STONAKER: Sure.

17 MR. BUSCH: That would be the final
18 adjusted figure that the tenant would have
19 to pay.

20 THE WITNESS: That's correct.

21 MR. BUSCH: All right.

22 THE WITNESS: Including heat and hot
23 water. Including utilities.

24 MR. BERNSTEIN: Electric?

25 THE WITNESS: Yes.

1 Q Now, would you say that the moderate subsidized group--
2 about two minutes and I'll give up.

3 The moderate subsidized group could afford a rental?
4 Now we're assuming the moderate subsidized group is a
5 family of four. So we would assume they would be in at
6 least a three and possibly the four bedroom apartment.

7 A That's not necessarily the case.

8 Q Three bedroom apartment.

9 A Two bedroom apartment -- if the children are small,
10 there's no intrinsic reason against having four people
11 in a two bedroom apartment.

12 Q Of eight hundred square feet.

13 A Yes.

14 Q All right. Let's assume they're in the two
15 bedroom unit, then. Could they afford the rental cost?

16 A Yes. Substantial percentage of them could.

17 Q The moderate subsidized.

18 A Yes. A total annual shelter cost of 28 hundred
19 dollars is about a quarter of the gross income of a family
20 earning 11 thousand dollars, which is very much within
21 our ball park.

22 Q How about the three bedroom unit?

23 A There we're talking about a family earning about
24 fourteen, between thirteen and fourteen thousand dollars,
25 which is again the crust, I referred to earlier.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. STONAKER: Anyone want to take a break here?

MR. SEARING: We agreed to take an hour at 12:30.

(Whereupon, deposition adjourned for lunch at 12:30 p.m.)

(After lunch recess at 1:40 p.m.)

MR. SEARING: Daniel Searing and Marilyn Morheuser and Alan Mallach for the plaintiffs.

MR. BERNSTEIN: Dan Bernstein, and I came at ten of nine.

MR. CUMMINS: Dennis Cummins for Dunellen. I was here this morning.

MR. STRAPP: Paul Strapp for Woodbridge Township. I was here this morning.

MR. PLECHNER: Richard F. Plechner for the Borough of Helmetta.

Alan Davidson from my office was here this morning.

MR. STONAKER: Joseph Stonaker from Plainsboro Township.

MR. MORAN: William C. Moran.

MR. BUSCH: Bertram Busch. The last

1 three lawyers were all here this morning.

2 MR. COFONE: Frank Cofone, South River.

3 I was here this morning.

4
5 CONTINUED DIRECT BY MR. STONAKER:

6 Q Mr. Mallach, we were exploring what you considered
7 zoning remedies, is that right?

8 A That's correct.

9 Q And we were talking about reducing lot size to
10 approximately eight thousand square feet, with a frontage
11 of 75 feet, talking about garden apartment projects that
12 had certain density and town houses that had a certain
13 density, is that right?

14 A That's correct.

15 Q Are there any other zoning remedies that you feel
16 that municipalities should have?

17 A Well, there is an issue here that is a function
18 of zoning. As you may recall, when we talked about the
19 land cost to attribute to the multi-family developments,
20 I cited what were reasonable estimates of land costs
21 under roughly current circumstances. In other words, if
22 you went out under the conditions that presently obtain,
23 roughly speaking, to buy a tract that was already zoned
24 for multi-family housing, what would those costs be,
25 generally speaking.

1 Now, I also mentioned that because of the phenomenon
2 in which zoning for higher density tends to increase
3 costs, particularly when the amount of land so zoned is
4 limited, there is a serious problem created, or potentially
5 created, with the amount of land costs that are added to
6 the cost of the units.

7 For example, in the case of the town house I cited,
8 roughly twelve percent of the final cost to the consumer,
9 or about 35 hundred dollars per unit, is raw land costs.

10 Now, one zoning remedy that has been discussed,
11 one that works within the narrow definition of zoning as
12 distinct from, you know, stuff that overlaps with it, is
13 the role of the special exception, or, as it will be I
14 gather, after July, the conditional use in zoning.

15 I think there is evidence, since some of this was
16 gathered and presented in my book, Housing in Suburbs,
17 that the special exception use can be used as an exclusionary
18 device.

19 However, if, for example, a municipality were to
20 provide that within a very large part of the municipality,
21 that a developer of moderately priced housing, multi-family
22 housing, suitably defined, could apply for a special
23 exception, or a variance, under the basis of criteria clearly
24 defined and made explicit in the ordinance, then that
25 individual could purchase land which had not been subject

1 to the inflation resulting from the rezoning necessarily,
2 submit the project for approval, go through the prescribed
3 procedure, and build a development in which costs would be
4 lower.

5 In, quote, desirable, unquote, parts of Middlesex
6 County at present we find that land zoned for relatively
7 large lot development tended to run in the area of closer
8 to 10 thousand dollars an acre, less in more outlying
9 areas.

10 So that with land costs in this area, the cost per
11 unit of the raw land in the town house development could
12 be as little as one thousand dollars, say, at a density of
13 ten to the acre, and that would reduce the cost of the
14 units by 25 hundred dollars from the estimate that
15 was provided previously.

16 Q Do you have any actual data to support that
17 contention?

18 A Yes, I do.

19 I think -- I have not analyzed it in any detail,
20 but I think the general thrust of the data on the cost --
21 the data that we were able to obtain on land costs supports
22 that.

23 For example, in East Brunswick, land costs were cited
24 at 11 thousand an acre for land in the R-1 zone, but up
25 to 30 thousand an acre in land up to the R-2 zone.

1 Q But if you allowed this floating concept, wouldn't
2 the land value necessarily increase if there was a
3 possibility of conditional use in that zone?

4 A It would depend on how large the zone was.

5 For example, if you carve off a very small part of
6 the zone, and create a conditional use only for that
7 small area, then obviously you're sort of -- you're
8 recreating the same situation.

9 If the zone in which the conditional use is
10 permitted is substantially larger than a reasonable
11 assessment of the number of conditional use applications
12 that are going to be provided, or if the conditional use
13 is applicable only to, or preference is given to low and
14 moderate income housing developments, which have very
15 clear cost ceilings, then I think under either of those
16 circumstances the cost inflation would not be great.

17 Q How would you propose that this would be geared to
18 only low and moderate income housing?

19 A The ordinance could provide that the conditional
20 use be granted only for developments that were being
21 constructed with the support of a recognized governmental
22 housing subsidy, or support program, state or federal,
23 or developments that -- in which the developer would in
24 someway commit himself to provide units that would be
25 accessible to people below certain defined incomes.

1 The former, just specifying that it would be
2 available to people building under government housing
3 program is a little straightforward. The latter is
4 more complicated.

5 Q And this would be the only conditional use that
6 you would permit in the zone?

7 A Well, you know, certainly there might be other
8 conditional uses, depending on other planning reasons. But
9 the point is that -- this would be a specific conditional
10 use.

11 Q Now, do you have any data that could substantiate,
12 if you did provide this conditional use, that the cost
13 of land would be lower?

14 A Well, yes and no.

15 Since this is relatively untried, there is no data
16 specifically on this point. There is data, however, on
17 the effect -- the cost effects, land cost effects, of the --
18 excuse me. The use of the D variance for multi-family
19 housing developments.

20 Q You think that this is a worthwhile planning tool,
21 to have a D variance?

22 A No. I specifically am suggesting -- not suggesting
23 that the D variance be used in this situation, but I
24 think the cost, the land cost experience that's taking
25 place with the use of the D variance is analogous.

1 Q Do you have any data to support that?

2 A Yes.

3 Q Could you make that data available?

4 A Yes.

5 MR. BUSCH: Do you have that data here
6 today?

7 THE WITNESS: No.

8 MR. BUSCH: Mr. Searing, since trial
9 will take place in about six days, could
10 you get that to us as soon as possible?

11 MR. SEARING: Yes.

12 Can you bring it tomorrow?

13 THE WITNESS: No.

14 MR. SEARING: I'll get it to you as
15 soon as possible.

16 MR. BUSCH: We reserve our right to
17 object to any data furnished prior to trial.

18 MR. BERNSTEIN: Could this go to the
19 four of us?

20 MR. BUSCH: Assuming it's not volumes,
21 books and magazines, I would prefer it be
22 served on all individual attorneys, so
23 specific defendant attorneys don't have an
24 additional burden.

25 Q Are there any other zoning remedies which you propose?

1 A Well, another zoning remedy, which is appropriate
2 in certain circumstances, would be making provision
3 for mobile homes and/or trailer parks.

4 Q What circumstances?

5 A I think there's some -- there's a great deal of
6 hostility to trailer parks and mobile homes among some
7 sectors of the body public. And it seems in view of that,
8 whether or not objectively justified that some limitations
9 on mobile homes might be appropriate where you're talking
10 about development in individual lots or small areas within
11 largely built up areas.

12 In addition, I think it's appropriate to require
13 screening, you know, reasonable screening, landscaping
14 and the like, and trailer parks can provide by ordinance
15 for such provisions.

16 But, where you have fairly large open areas that are
17 physically suitable for this, it seems to be an appropriate
18 provision. Again, this could conceivably be a conditional
19 use as well.

20 Q Now, the trailer park or mobile home, do you feel
21 that that should be in every community, every municipality,
22 that you would permit it in every municipality?

23 A Well, I mean, I cited one situation under which I
24 thought it was not unreasonable to exclude them, and where
25 a municipality is in such a situation, then that municipality

1 might exclude that use.

2 So that it would not be every municipality.

3 And by extension, if, at some point in the
4 hypothetical future, there were more than adequate housing
5 provision in terms of the kinds of needs that mobile homes
6 might fit, as well as other needs in the region as a whole,
7 and one municipality did not have any mobile homes, then
8 I would think that could be winked at. But, as a general
9 principle, I don't see any reason why a municipality should
10 not make provision for mobile homes.

11 Q Are there valid planning reasons why a municipality
12 shouldn't make provisions for a mobile home?

13 A I think if and when a municipality does make the
14 provision for mobile homes, there are valid planning reasons
15 for the municipality to establish standards for the trailer
16 parks and to, you know, maintain and enforce those
17 standards.

18 Q Are there valid planning reasons why a municipality
19 could exclude multi-family use?

20 A Assuming that -- assuming that the municipality
21 had vacant land -- well, strike that.

22 I can think of no reasons, as a general case, why
23 a municipality should exclude multi-family housing. I think
24 there may be special circumstances or special conditions
25 under which a case could be made, but I would think the

1 municipality should be the one to make the case for
2 excluding it, rather than have any general basis for doing
3 so.

4 Q Do you think that there are valid environmental
5 considerations that would mean that a municipality could
6 exclude multiple family use?

7 A I think there are very few intrinsic environmental
8 differences between multi-family and single family use.
9 There may be -- depending on the site conditions and the
10 location conditions, a municipality may want to set specific
11 standards or conditions for that use, the densities may
12 have to vary, depending on different factors.

13 But, I can think of very few environmental
14 characteristics which are intrinsically hostile to multi-
15 family homes which are not equally so for single family homes.

16 Q Do you feel that every multiple family zone should
17 be provided with sewer and water?

18 A I think it's desirable to do so, but I can imagine
19 circumstances where multi-family zone could be served by
20 package plants.

21 Q Do you feel that mobile homes zone should be served
22 by sewer and water?

23 A Again, where reasonably feasible, yes, with the
24 same qualification that package plants can be an alternative.

25 The density of a reasonable -- of a typical mobile

1 home or trailer park is such that on-site sewage disposal
2 through septic tanks is usually not feasible.

3 Q Are there any other zoning remedies available to
4 a municipality?

5 A There are a number of more specialized things, which
6 may have applicability, which I'd like to cite.

7 One, of course, which I'm somewhat ambivalent
8 about, but which I'd like to provide as a possibility is
9 the notion of maximum in zoning ordinances.

10 Maximum lot sizes, floor area sizes, frontages,
11 what have you.

12 The advantage of such maximums would be that in a
13 competitive -- if you have a competitive market, where
14 there's a demand for more expensive housing as well as
15 less expensive housing, or more elaborate housing as well
16 as less elaborate housing, providing maximums in the
17 zoning ordinance could, at least in theory, create a
18 situation where the developer would have no alternative,
19 but to provide for modest housing, if he or she wanted to
20 build under the ordinance.

21 By contrast, at least, again, in theory, under an
22 ordinance which provided, say, for eight thousand square
23 foot lots, if a developer felt that his profit could be
24 greater by building on larger lots, larger houses than
25 specified in the ordinance, he would be free to do so.

1 And thereby meet, provide housing that would
2 ~~not meet~~ the needs of that group that originally was
3 aimed at, as it were.

4 If you had maximums in the ordinance, then you would
5 preclude that eventually. I anticipate the question, I
6 don't know if it's ever been done anywhere, so I have
7 no idea exactly what practical effect it would have.

8 But, I think, it's worthy of some consideration.
9 Another approach, which is the zoning area, and this is
10 where it starts to filter over into the non-zoning, is
11 the use through either -- within the ordinance generally,
12 or through machinery such as the PUD ordinance or PRD
13 ordinance, would be to provide for, say, density bonuses
14 for provision of more moderately priced housing, or for
15 subsidization of lower -- of some percentage of the units
16 by the other units, or by the density bonuses.

17 There's a very elaborate kind of mathematics and
18 so on that goes into this.

19 But, in theory, it could be possible to provide
20 a unit that might be five to ten thousand dollars less in
21 cost to the consumer than the other units in the basic
22 market cost to the other units in the development, through
23 such mechanisms.

24 Q Now, in analyzing a zoning ordinance for a
25 municipality, and to determine whether that zoning ordinance

1 in your opinion is exclusionary, would the zoning ordinance
2 first have to have a multiple family zone?

3 A In terms of the initial look at the ordinance, and in the
4 absence of a specific argument to the contrary, and specific
5 rationale as to why it shouldn't, yes, I would say favorably,
6 an ordinance should have a multi-family zone.

7 Q And should an ordinance provide for lots of eight
8 thousand square feet?

9 A Well, whether that's the specific square footage,
10 again, it should provide for lots in that general --

11 Q It should?

12 A In the general ball park. Yes.

13 Q Should an ordinance provide for town houses?

14 A I think so. I think most likely, if there's a
15 multi-family zone, it can and probably should in most
16 cases be designed in such a way that it can be interpreted
17 both for town houses or apartments.

18 Q Should an ordinance provide for conditional uses
19 described?

20 A Under certain circumstances.

21 If the conditional uses are responsive to the needs,
22 especially the housing needs that I mentioned, and if the
23 conditions of the conditional use are framed and spelled
24 out in such a manner that the possibility of abuse is
25 minimized.

1 Q Possibility of abuse? What kind of abuses?

2 A The study of multi-family housing that we did,
3 that I referred to earlier, in the process of having --
4 reading through the minutes of Planning Board^s and
5 Municipal bodies, to study the basis on which apartments
6 were approved, where they were approved, showed a pattern
7 in which the conditional -- well, the special exception
8 served as a means, in effect, for municipalities bringing
9 the developer in, to find out what his intentions were,
10 as it were, in areas not explicitly part of the ordinance.

11 In other words, what his rental policy, his tenant
12 selection policy might be, what his estimates in terms
13 of fiscal impact would be, what sort of person he or she
14 was.

15 And a series of characteristics, or issues which are
16 really largely irrelevant to the ordinance.

17 Those are what I consider to be abuses.

18 Q Do you feel that a municipality should have a mobile
19 home or trailer park zone, every municipality?

20 A I suspect if many municipalities did, the need
21 would be met, you could draw lots.

22 Q Would you consider an ordinance exclusionary if it
23 didn't have a mobile home or trailer park zone?

24 A If the municipality, and this comes back to the
25 specific caveat I made with regard to mobile homes. If it's

1 a municipality that has the kinds of areas that are
2 appropriate for trailer parks, and the -- then I would
3 consider it ~~facially~~ exclusionary, if it did not have such
4 provision.

5 Q Well, in order to make that determination, then,
6 you would have to know the land characteristics of the
7 community before you could determine that it was exclusionary.

8 A Well, you could make your first cut estimate, at
9 least, on the basis of information about the size of the
10 municipality and the amount of vacant land, and then
11 subsequently, certainly before the specific remedy
12 appropriate to that municipality would be framed, you'd have
13 to look at the nature of the land in more detail.

14 Q So that you couldn't say that a zoning ordinance was
15 exclusionary if it didn't have a mobile home area, unless
16 you knew about the characteristics of the community.

17 A No. I'm arguing that it works the other way around.
18 I would say that the zoning ordinance is exclusionary.
19 However, the municipality would certainly -- ought to
20 certainly be afforded a chance to demonstrate that there
21 is no appropriate area for that before they were ordered
22 to zone land for trailer parks.

23 It's somewhat a difference in the burden.

24 Q And you assume that it's exclusionary if it doesn't
25 have mobile homes?

1 A Right.

2 Q Would you assume that it's exclusionary if it didn't
3 have a density bonus provision?

4 A Not necessarily.

5 Q Would you assume it's exclusionary if it didn't
6 have a conditional use provision?

7 A Not necessarily.

8 Q And would you exclude -- assume it's exclusionary
9 if it didn't have small lot sizes of six to eight thousand
10 square feet?

11 A I believe you asked that already. The answer is
12 as a general rule, yes.

13 Q As a general rule, yes.

14 And what would be the exceptions to the general
15 rule, in your mind?

16 A Well, for example, there may be some areas, because
17 of environmental features, or environmental characteristics,
18 or what have you, that it might be more appropriate to
19 zone for multi-family housing in a manner that would
20 clearly lead to the clustering of the units on certain
21 parts of the site, and less appropriate or desirable to
22 provide for single family housing on small lots, which
23 can have -- because of the nature of the way it tends to
24 blanket the land, it could be less appropriate for some
25 areas than, say, multi-family housing.

1 Even though the net density may be the same or
2 **larger** in the latter case. Some cases, clustering
3 **provisions** may be more appropriate.

4 Q Would those same en -- they would affect multi-
5 family use and small lot single family use as well, right?

6 A They could. The distinction I'm drawing is that
7 in this case, or in many cases, the issue might not be the
8 net density of development, so much as the manner in which
9 the land is covered and the buildings distributed in the
10 overall area.

11 Q Are there any other exceptions to the general rule?

12 A I can't really think of any.

13 Q What other factors would you look at to determine
14 whether a zoning ordinance is exclusionary, other than
15 the absence of these specific zoning requirements?

16 A I think there are certain other factors.

17 One, one important factor is, to the degree that it
18 can be ascertained, the distribution of the vacant acreage,
19 **particularly**, the vacant and developable acreage by
20 zoning category.

21 In other words, if a municipality has a large
22 number of zones specified in the ordinance, but the amount
23 of developable land in some of the zones is insignificant,
24 that could have a bearing.

25 Q What else?

1 A Other -- the features of the ordinance in some
2 situations, going beyond, you know, the specific requirements
3 for the zones.

4 For example, there may be subdivision requirements,
5 which may be excessive, there may be special features.

6 For example, I recall noticing in an ordinance, not
7 a Middlesex County one, recently, a provision whereby
8 every house had to have a two car garage.

9 That would be a feature independent of the lot --
10 the general provisions of the ordinance.

11 Another provision, in multi-family zones, you
12 similarly find, in the Washington Township, Bergen County
13 ordinance, presently being litigated at the Supreme Court
14 level, one of the provisions in the township's ordinance
15 was that there had to be not only two parking spaces per
16 unit in the multi-family zone, but twenty-five percent
17 of those parking spaces had to be in an enclosed garage.

18 Q Did you look at any of those factors in evaluating
19 the ordinances in this case?

20 A Yes, we did. I won't argue that we found all of
21 them that might be sought for, but we did look for some
22 such factors, yes.

23 Q Now, do you believe that each zoning ordinance should
24 be based on a comprehensive plan with a mixture of land uses?

25 A It should certainly be based on a comprehensive plan,

1 and as a general rule, that results in a mixture of land
2 uses.

3 Q And do you feel that having land zoned for agricultural
4 use is a valid use of land?

5 A Well, that's an interesting question.

6 I believe that land -- I would argue that within
7 reason, preserving land for agricultural use is a valid
8 purpose.

9 But, I'm not sure about the validity or the
10 appropriateness of using the zoning power as such for that
11 end.

12 Q How else would you preserve the agricultural land?

13 A Well, I think the whole transfer of development
14 rights notion is an attractive proposition. I'm sure
15 you're familiar with that.

16 Q Do you believe that zoning land for industrial
17 use is a valid zoning technique?

18 A Based on a reasonable assessment, which should be
19 part of a comprehensive plan, as the volume and nature of
20 the industry that can reasonably be expected to come into
21 the community, during the foreseeable future, yes.

22 Q You believe that zoning land for business and
23 commercial use is a valid zoning purpose?

24 A Yes. Again, based on a reasonable assessment of
25 what the need or demand or likelihood is.

1 Q Did you make any reasonable assessment of the need
2 or demand for business and commercial use in Middlesex
3 County?

4 A No, I have not.

5 Q Would you make any assessment of the need or
6 demand for industrial use in Middlesex County?

7 A No.

8 Q Did you make any assessment of the need or demand
9 for agricultural use in Middlesex County?

10 A No.

11 Q Then you didn't take that into consideration when
12 you evaluated the ordinances.

13 A Yes and no.

14 Well, the only -- with one exception. You're
15 referring to three types of use. I'd like to distinguish
16 between the types.

17 With regard to the business and commercial use, we
18 did not make any assessment.

19 We neither made any analysis of demand nor any
20 assessment of the ordinances.

21 With regard to the agricultural use, we did not
22 make any analysis of the demand. However, I should note
23 that to the best of my recollection, even though there are
24 zones in some municipalities of the county that are called
25 agricultural or rural zones, they are not in any real sense

1 agricultural zones.

2 They are large or moderate, or in some cases only
3 moderately large lot residential zones.

4 They have no special provisions for agriculture,
5 as such.

6 So, the question of agricultural land appears to
7 be irrelevant to an analysis of the zoning ordinances.

8 Finally, the industrial land question is a special
9 case, because even though I have not made an analysis
10 of the demand for industrial land in the county, I am
11 familiar with the amount of land used in -- for industrial
12 purposes in representative municipalities, and reasonable
13 ball park figures in that area, so that certain extreme
14 cases, in the case of industrial zoning, can be identified
15 as such, without doing a detailed analysis of demand.

16 Q Do you have any data to support that?

17 A Well, I have data to support an assessment of what
18 reasonable or representative proportions of land devoted
19 to industrial use in municipalities is.

20 Q Is that specifically relating to Middlesex County?

21 A No, it's a cross section around the State of New
22 Jersey.

23 Q May we have that data made available to us?

24 A Certainly.

25 Q Now, do you think the availability of community

1 facilities is something that should be looked at when you
2 evaluate whether a zoning ordinance should have certain
3 uses?

4 A Yes and no. I'll answer that question in two
5 parts.

6 There are two aspects of community facilities
7 that have to be evaluated. One is the present availability
8 and the other is the municipal plans for the extension,
9 construction and expansion or whatever of utilities and
10 facilities. So that the two taken as a whole should be
11 a basis for the planning and the zoning.

12 The present availability is not a good basis in and
13 of itself, in the absence of some kind of plan for what
14 the town plans to do or not do as the case may be in the
15 future.

16 Q Did you make any evaluation of the community
17 facilities available in each of the communities in Middlesex
18 County?

19 A No.

20 Q So that you didn't take this into consideration
21 when you evaluated their ordinances.

22 A That's correct.

23 MR. STONAKER: I am getting tired. I
24 will yield.

25

1 MR. SEARING: I'd like the record
2 to show that Mr. Spritzer was here at 2:00 p.m.,
3 and he was also here this morning.

4
5 CROSS-EXAMINATION BY MR. MORAN:

6 Q Mr. Mallach, going back for a second to this question
7 of preservation of agricultural land, I assume that you
8 feel that that is a valid land use planning goal.

9 A Yes.

10 Q And you mentioned TDR as one device which is available
11 to do that.

12 I assume that you know that that is at the moment
13 a pilot plan and only affects a very small number
14 of municipalities in the state, none of which are in
15 Middlesex County, is that correct?

16 A No. That's not correct.

17 TDR is a concept, it's a technique.

18 If a municipality, any municipality in the State
19 of New Jersey, can, if it sees fit, assumedly running the
20 risk of litigation by its opponents, but any municipality
21 can adopt a TDR ordinance, and see what happens, in
22 effect.

23 I believe the pilot plan you're referring to is in
24 the municipalities in Burlington County.

25 Q That's what I was referring to.

1 A That's not a TDR application so much as that's going
2 to be an outright purchase of development rights by the
3 state in order to preserve the farm.

4 Q Well, you define for me what you mean by TDR.

5 A Transfer of Development Rights, as distinguished
6 from the direct acquisition.

7 In other words, under the TDR concept, stated in
8 an oversimplified version, the expert on TDR, Bud Chavoosian,
9 is just down the road.

10 But on an oversimplified description, what a
11 municipality would do under TDR would be to designate
12 zones in the municipality that they hope to preserve as
13 agricultural land, and zones in the municipality that are
14 appropriate for high density development.

15 And that the developer who wants to build in any
16 of the areas appropriate for high density development,
17 would be able to increase his permitted density over and
18 above what's provided by right in the ordinance, by
19 purchasing development rights, from the owners of land
20 in the area designated for preservation.

21 In other words, it becomes a trade-off, and the idea
22 is to find a way of balancing the cost of buying the
23 development rights and the possible advantages of increasing
24 the density in such a way that the thing becomes marketable
25 and economically sound.

1 A I believe that South Brunswick Township, in
2 conjunction with Cook College faculty, is doing a pilot
3 or experimental project of some sort in this area.

4 Q Do you know of any enabling legislation to permit
5 municipalities to do that?

6 A There was a bill to do so, which would have
7 been both enabling and specifying legislation, in the
8 sense that it would have established the standards and
9 the conditions and the procedures that a municipality
10 would have to go through in order to adopt such an
11 ordinance, which was passed by the Assembly but died in the
12 Senate, this past term, and has already been reintroduced.

13 The question, of course, which is obviously an
14 open question, is whether a concept such as TDR requires
15 enabling legislation, or whether it would be permissible
16 under existing laws.

17 Q And that's an unresolved question.

18 A Yes. That's why I prefaced the comment by saying
19 there would be the question of litigation and challenge.
20 That's something municipal attorneys shouldn't shy away
21 from.

22 Q You questioned the use of zoning as a tool to preserve
23 agricultural land. What are your reasons for that?

24 A Well, my reasons, I think, go back to the question
25 of taking, and the question of the restraint on people's

1 use of the land.

2 I mean, agriculture is -- agriculture is an
3 economically -- there are a lot of questions that have
4 been raised about the economic viability of agriculture,
5 you know, in New Jersey.

6 There is clearly a steady diminishment of farms,
7 not only because of development, but because of abandonment
8 of farm land.

9 A recent study I saw, conducted by the Mercer,
10 Somerset, Middlesex Study Council in Princeton showed
11 that in at least some parts of the region, such as
12 Hopewell Valley, parts of Somerset County, there's
13 almost as much vacant land in those areas, that is, what
14 they call old farm, farm that's been abandoned, gone back to
15 brush, than there presently is working farm.

16 So I think there's a very real question about -- sorry.
17 A second point, of course, is the fact that mechanization
18 and agricultural economics have meant that the size of a
19 farm to be economically productive and competitive is getting
20 larger and larger, in most types of agriculture.

21 So that there's very real problems with restricting
22 land to bonafide agricultural use, which is I think why
23 many municipalities pass ordinances which are perfectly
24 conventional residential zones, but then call them agricultural
25 zones for symbolic purposes. But they're not as such.

1 An agricultural zone, to be seriously, for
2 agricultural use, would have to have enormous acreage
3 per unit density.

4 Q Are you familiar with the Middlesex County Master
5 Plan that was adopted by the County Planning Board in 1970?

6 A Not in detail. I have a vague familiarity with it.
7 But not specifically.

8 Q Are you familiar with the Middlesex County Master
9 Plan Comprehensive Plan alternative, which was prepared
10 by the Planning Board staff, but has not been formally
11 adopted by the county?

12 A No.

13 Q You are not then familiar with any projections as
14 to agricultural land in the county that would be contained
15 in any of those documents.

16 A No, I'm not.

17 Q Isn't it true, and I gather from your testimony
18 that you would probably agree, that virtually any type
19 of zoning restriction has to some degree an exclusionary
20 effect?

21 A Yes.

22 Q So that what we're dealing with here is, from
23 municipality to municipality, is a question of degree
24 rather than absolutes, is that correct?

25 A Largely. I'm not sure it's an either/or, but there

1 is a very substantial element of degree in it.

2 Q In determining whether or not an ordinance is
3 indeed exclusionary, do you think that it's relevant to
4 analyze any other factors besides those which are
5 contained within the four walls of the ordinance itself?

6 A Well, I cited two specifically, you know, the
7 possibility of other ordinances, such as the subdivision
8 ordinance that may have some effect, and the issue of the
9 land availability by zoning category.

10 These two are certainly, you know, very central to
11 the first cut analysis, if you will.

12 Those factors should be adequate to justify what I
13 would call borrowing a legal term, a facial finding that
14 the zoning ordinance is exclusionary.

15 Q There are factors, however, which could justify an
16 ordinance which on its face was exclusionary, are there not?

17 A Yes, there are, under some circumstances.

18 Q Would the amount of demand for low and moderate
19 income housing in a given area be one of the factors
20 which would be taken into account?

21 A Yes, it is.

22 Q Did you do a study for the towns in Middlesex County
23 to determine what the demand was for low and moderate income
24 housing?

25 A I have not done a study as such, but I've familiarized

1 myself with some of the statistics and the data available
2 from the state and other sources.

3 Q What specific data is that that you're referring
4 to?

5 A I'm referring to -- well, for one, in the Department
6 of Community Affairs report entitled An Analysis of Low
7 and Moderate Income Housing Needs, in which an immediate
8 and present housing need is identified.

9 Q Is that identified for the state as a whole or for
10 any particular region?

11 A It's identified for the state, for each county,
12 it's even identified for individual municipalities, though
13 I would suggest that the methodology is such that the
14 precision of the data for individual municipalities is
15 not as good as the county-wide figures.

16 Q When was that information prepared?

17 A This information was prepared -- the report was
18 published during 1975.

19 Q Do you have that report with you?

20 A I have the page -- I have made a Xerox copy for my
21 file of the page that includes Middlesex County on it.

22 I don't have the rest of the report. Your colleague
23 has it.

24 MR. SEARING: That page has been

25 provided to the defendants. We're willing to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

stipulate Mr. Mallach is not the expert in relation to development of statistics on housing need, if you want to avoid a series of questions in that area.

MR. PLECHNER: Could we ask who is, Dan?

MR. SEARING: Mr. Erber is going into that.

And I think, although our -- because of Mr. Powell's illness, as I talked about this morning, certainly the material as contained in the adopted County plan is going to be introduced, but the fact of his illness, you know, it prevents us at this point from asking detailed questions on that material.

MR. PLECHNER: So your only expert, then, we can assume, will be Mr. Erber, in that area.

MR. SEARING: Yes. Possibly a representative of the State Planning Department, but he isn't an expert in that area, per se.

MR. BERNSTEIN: Could you tell us who that person would be?

MR. SEARING: The state person?
Mr. Ginman, Richard.

MR. BUSCH: Which department is he?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. SEARING: The Division of State
and Regional Planning.

I believe he's the Executive Director.

THE WITNESS: Director.

MR. BUSCH: Where is his office?

MR. SEARING: Trenton, as far as
I know.

THE WITNESS: 329 West State Street.

MR. BERNSTEIN: Has he submitted a
report that we had gotten a copy of?

MR. SEARING: No, he hasn't submitted
a report. We have not requested a report.

His department was in charge of preparing
the study which was provided to the defendants
in response to questions regarding housing need
within the county.

And Mr. Erber also discussed it in
his deposition.

MR. BERNSTEIN: I would object on the
record, on behalf of Piscataway, to any expert
being called as a witness where we haven't
received a copy of a report, which he
submitted.

MR. BUSCH: Consider that a general
defendant objection.

1 Q Mr. Mallach, in response to a question, or several
2 questions by Mr. Stonaker, I believe you indicated that as
3 a general rule, you felt that every municipality should
4 have provision in its zoning ordinance for apartments,
5 for town houses, for what I would refer to as small lot
6 single family dwellings, six to eight thousand square
7 foot lot sizes, and I believe you also stated, provision
8 for mobile homes, or trailer parks.

9 A I qualified the last one, however, somewhat more than
10 the previous ones.

11 Q I believe, though, that you did state that as
12 a general rule, you felt that, with some qualifications --

13 A The qualifications regarding the trailer park was
14 that we're referring in this case to those larger
15 municipalities that have large amounts of vacant land, in
16 which such things can be reasonably accommodated.

17 Q And as to the other items, the apartments and stuff,
18 your statement holds as a general rule that all municipalities
19 should have that.

20 A Yes.

21 Q Do you have any formula, or is there any general
22 formula that a municipality can apply in determining how
23 much of this type of housing it should provide for in
24 its zoning ordinance?

25 A Well, there are -- there's no one formula. There are

1 many thousands of formulas.

2 There are a number of principles. I think the issue
3 here comes to the question of the manner in which the
4 municipality, through its plan and reflected in the
5 ordinance, balances and reflects the housing needs, or its,
6 quote, fair share, unquote, of housing needs, in the region,
7 against its other objectives, such as the preservation of
8 farm land.

9 Now, in terms of the distribution of housing types
10 and sizes, for example, multi-family housing, town houses,
11 cost levels and the like, there are techniques available,
12 in terms of housing market analysis, to look at a given
13 population in a given county or state or region or what
14 have you, and make an assessment of the demand within that
15 population for housing by the different types of housing.

16 Certainly a municipality can use that kind of an
17 analysis which would break down by single family, multi-
18 family, numbers of bedrooms, generalized cost levels and
19 the like, to frame its zoning ordinance. Or as one of the
20 inputs to frame its zoning ordinance.

21 To go -- one question, of course, another aspect
22 of this, is what's going on in the regional level. Now,
23 if a fair share plan, such as it is, is developed for a
24 county into which a municipality is trying to reconcile
25 its ordinance, then that plan hopefully can serve as a

1 basis for that, especially if the plan provides not just
2 for low and moderate income housing, but provides an
3 overview for the total housing demand, and distinguishes
4 between the need for new housing, newly constructed housing
5 units, and the need for improvement, upgrading,
6 rehabilitation, and so on, in the existing housing stock.

7 So the point I'm trying to make, I think, is that
8 even though there are a number of techniques available,
9 the process of determining the balance of the different
10 uses can be done as basically a technical problem rather
11 than a broad conceptual one.

12 Q And I take it from your testimony that one of the
13 major factors to be considered by a municipality in
14 tackling the problem is the amount of this type of
15 housing which is provided for in neighboring communities,
16 is that correct?

17 A Well, ideally, if you have -- it's difficult for
18 an individual municipality planning in and of itself to
19 take full advantage, to take full cognizance of what's
20 happening in neighboring municipalities, unless they
21 simultaneously are going through a planning process as
22 well.

23 So that, this is why the notion of the fair share
24 has become popular, because it provides a regional framework,
25 where an individual municipality can plan, knowing that the

1 same kind of planning is at least hopefully taking place
2 in the other municipalities in the region.

3 Because it is important to have a regional context,
4 but it's hard for a municipality to create that regional
5 context on its own.

6 Q Well, would the area which would be included in the
7 municipality's determination of fair share include at least
8 its neighboring municipalities?

9 MR. SEARING: Excuse me.

10 According to the summary that was
11 provided, these -- the questions you are
12 now exploring will not be asked of
13 Mr. Mallach on direct.

14 You have every right to pursue them
15 if you wish, but I point out there are many
16 areas of the summary to which you have not
17 yet pursued.

18 We can go off the record and discuss
19 this or you can continue this line of
20 questioning. I just want to point out to
21 you that Mr. Mallach is not our witness in
22 this area.

23 MR. MORAN: I would prefer if
24 Mr. Mallach would answer the question.

25 MR. SEARING: Fine.

1 A The general principle that underlies fair share
2 notion is a kind of compromise of the old Marxian concept,
3 of, from each according to his means, to each according
4 to his needs.

5 In other words, it would depend upon the municipality.

6 One municipality that was largely developed and
7 already contained a substantial low and moderate income
8 population, might indeed find, a, that its responsibilities
9 were largely -- would be largely devoted to that of
10 rehabilitating existing units, as well as finding subsidies
11 to ease the financial burden on low income families, and,
12 b, that some of its overall responsibility in the long
13 run would be transferred to other municipalities.

14 Conversely, a large affluent municipality, with
15 ample vacant land area, and relatively little existing
16 low and moderate income housing, would typically find that
17 its allocation, under any fair share formula, would
18 reflect some of the needs of its less advantaged neighbors.

19 Whether it would have to deal specifically with
20 adjacent neighboring municipalities, or whether it would
21 be spread around the county, I think, is hard to tell.

22 Q Well, the point that I was specifically trying to
23 ask you is, does the area which a municipality is to
24 look at in determining what its fair share is necessarily
25 stop at a county boundary?

1 A It doesn't necessarily.

2 In some cases, it would, in others it wouldn't.

3 It would have to be determined for each region.

4 Q I take it you haven't made such an analysis.

5 A I have not made such an analysis for this county,
6 no.

7 Q In the summary of your testimony, besides the zoning
8 remedies which Mr. Stonaker covered, you mentioned
9 governmental remedies.

10 A Yes, that's correct.

11 Q I wonder if you could summarize what they would be,
12 and also to make the question even more broad, what each
13 municipality is supposed to do to equate those remedies.

14 A Very well. The governmental remedies that reference
15 is made to are the state and federal housing subsidy
16 programs that exist, have existed, will exist.

17 As you know, they vary considerably over time.
18 So what is today's remedy may not be tomorrow's or the
19 next decade's.

20 The key programs in this area, at this moment,
21 have to do with first the programs of the New Jersey
22 Housing Finance Agency, and enabling proposed developments
23 within the municipality to qualify and become eligible for
24 HFA financing, and secondly, the federal program I referred
25 to known as Section 8, direct subsidy program, used either

1 in conjunction with the HFA financing or separately.

2 There are other federal programs on a more modest
3 scale. In the Department of Housing and Urban Development
4 they have a program known today as Modified 235, in which
5 they provide modest subsidies for purchasers of modest
6 single family houses, for ownership.

7 This is something addressed largely, say, 12 to 14
8 thousand dollar, or 11 to 14 thousand dollar income group.

9 It takes the form of an interest rate subsidy.

10 Q I'm sorry, I got interrupted. I didn't hear the
11 last part of your answer.

12 A The Modified 235 takes the form of an interest
13 rate subsidy where the federal government's subsidy picks
14 up part of the interest on the mortgage and the cost to
15 the consumer is reduced by that amount.

16 That's a limited program.

17 Another program, which is a substantial program,
18 even though its applicability in Middlesex County is
19 limited, is the program package as it were of the
20 Farmer's Home Administration.

21 The Farmer's Home Administration provides mortgage
22 financing and subsidy money, both for home ownership,
23 modest housing units, and for multi-family rental developments

24 So these are -- so that's the answer to the first
25 part of the question.

1 Assuming that a municipality wanted to make
2 possible provision of housing under one or the other of
3 these programs, there are a number of steps that have
4 to be taken.

5 There are two explicit steps that are relevant to
6 any activity to be conducted under either the Housing --
7 well, under the Housing Finance Agency and under Section 8
8 program. Under the Housing Finance Agency, before any
9 housing unit can be built in a municipality, that
10 municipality must pass a resolution of need, which is
11 a general statement to the effect that there is need for
12 moderate income housing in the community.

13 The second provision is that the municipality must --
14 and this applies to both Housing Finance Agency and Section
15 8. Municipality must be willing to provide tax abatement.

16 In other words, must be willing to accept a payment
17 as a percentage of rent in lieu of taxes, in lieu of the
18 property taxes that would ordinarily be paid.

19 The Section 8 program at this point is looking
20 for agreements from the municipalities to accept, and
21 I don't know exactly how this number was arrived at, 6.28
22 percent of the gross rent roll, annually, in lieu of property
23 taxes.

24 At this point, from personal experience, I know
25 that the --because of problems that have happened in the

1 past, the Housing Finance Agency will not enter into what
2 you might call advanced processing and review of the
3 applications before receiving at least an earnest letter
4 from a responsible local official that a tax abatement
5 will be granted, or at least seriously entertained.

6 Q Isn't it so that the provisions of the Housing
7 Finance Agency law are designed to be optional with the
8 municipalities, though, to get into, or not to get into,
9 as the municipality sees fit?

10 A That's the meaning of the Housing Finance Agency
11 law, I suspect, yes. That's why the resolution of need
12 presumably was written into the law.

13 Q And there's no provision making the adoption of such
14 a resolution mandatory with any municipality.

15 A Not in the HFA law, no.

16 Q With regard to the provision for rent abatement --

17 A Tax abatement.

18 Q Tax abatement rather, do you know whether there's
19 any provisions to permit a municipality to abate taxes
20 under these circumstances?

21 A It's my understanding that there are a number of
22 specific provisions. There is a provision in the HFA law
23 providing for tax abatement of a project, and there are
24 provisions in other laws having to do with urban renewal
25 companies and the like, providing for making tax abatement

1 legal.

2 Q How about tax abatement under Section 8?

3 A If the sponsor, or developer of Section 8 housing,
4 qualified under any of the statutory provisions for
5 sponsorship of assisted housing, I assume there's been no
6 problem.

7 Q You mean under the state provisions for assisted
8 housing.

9 A Yes. The limited dividend company act or some such
10 thing. Non-profit housing sponsor.

11 Q The other area that you mention, or is mentioned
12 in the summary of your testimony, is local initiative
13 programs.

14 What do you mean by that?

15 A There are ways which go beyond zoning, strictly
16 defined, through which municipalities can facilitate
17 housing development for low and moderate income families.

18 As I mentioned just now, the -- there are some
19 ways that have to do with making possible or bringing in
20 government housing programs.

21 In addition to that, there are ways, somewhat more
22 difficult, that could provide for some low and moderate
23 income housing in the absence of governmental subsidy.

24 One example, I think I mentioned, was the whole
25 idea of the density bonus for low and moderate income housing.

1 This is a concept that's been applied to some
2 degree in a couple of areas, not any in New Jersey that
3 I'm familiar with.

4 It's a variation of a concept that now exists in
5 a number of New Jersey ordinances, including, I believe,
6 South Brunswick's, where the provision of the PRD ordinance
7 say that the developer must, to qualify under this ordinance,
8 must provide X percent, say, of low income housing, and
9 Y percent of moderate income housing.

10 The advantage of doing this on a density bonus
11 basis, rather than just mandating it by law, is that in the
12 event there are no bonuses or no quid pro quo's provided,
13 the developer, if he's unsuccessful in obtaining some
14 form of outside subsidy, may be able to argue, in some cases
15 quite logically, that to subsidy X percent or Y percent
16 of units, without some form of quid pro quo, in terms of
17 increased density or something, may either make the
18 development unfeasible or may raise the price of the other
19 units to the point where they may not be competitive from
20 a market standpoint.

21 So the idea of the density bonus would be, for
22 example, if a developer has already calculated a development
23 feasibility, on the basis of assigning all of his land
24 costs to a given number of units, and he is then permitted
25 to provide additional units, he can then sell those

1 additional units without building in the land cost that
2 he built into the other units, which would reduce the
3 costs somewhat.

4 In addition, the developer could provide for, you
5 know, the ordinance could provide for lower standards,
6 smaller floor areas, higher densities and what have you,
7 which would enable the costs to be reduced somewhat.

8 For example, we -- I described earlier a hypothetical
9 town house development in which, under current conditions,
10 a town house could be sold for 30 thousand dollars, a
11 three bedroom town house could be sold for 30 thousand
12 dollars.

13 If you say hypothetically, the market value of
14 that town house would be 35 thousand dollars, that there
15 is a market for those houses, if sold at 35 thousand dollars.

16 A developer could, if allowed to build an additional
17 twenty town houses on the site, first reduce the cost of
18 the additional town houses by 35 hundred dollars each,
19 which is the cost of the land involved, and then, which is
20 the benefit of the density bonus, and then through skewing
21 or self-subsidization, or whatever you call it, plow back
22 some of the difference between the actual cost of the unit
23 and the market value of the unit into further reducing
24 the cost of some percentage of the units.

25 So, hypothetically, you might end up with a situation

1 where there are 130 town houses, of which, say, eighty
2 were sold for 35 thousand, twenty were sold for 28 thousand,
3 and twenty were sold for 20 thousand.

4 This is all very hypothetical, because each case
5 you'd have to work the mathematics out differently. But
6 this is the general kind of principle involved.

7 There's a very good article published about a
8 year ago in the U.C.L.A. Law Journal on the subject, which
9 knew much more detail in this area.

10 Q I'd just like to go back a little bit to two
11 things that you said at the outset of your testimony this
12 morning.

13 One had to do with coming up with a median income
14 figure for the county, which I believe you said was about
15 17 thousand dollars.

16 A That's correct.

17 Q Currently. And you say that you arrived at that
18 figure by taking the 1970 median income figure, and
19 applying to it approximately 90 percent of the consumer
20 price index.

21 A That's correct.

22 Q What was the 1970 figure for Middlesex County that
23 you started with?

24 A I may have it here. I don't remember specifically.
25 I will look and see if I have it in any of my notes.

1 I don't have that information. I believe it was
2 between 11 and 12 thousand dollars, though.

3 Q Between 11 and 12.

4 A That's correct.

5 Q You also stated, in computing the rental payments
6 that would have to be made monthly for the apartments that
7 we discussed, and you went into some detail in describing
8 a calculation of those rents, that one of the items that
9 had to be figured in was property taxes.

10 A That's correct.

11 Q And as I recall, you assigned -- you felt that the
12 cost per unit to construct the apartments would be, and
13 I wrote the figure down of 21,250 dollars, on an average
14 cost per apartment, is that correct?

15 A That's correct. I think so.

16 Q Would it be reasonable to assume that the tax assessor
17 would therefore assess the cost per apartment at approximately
18 the same rate?

19 A No.

20 Q Why not?

21 A Because rental housing, particularly garden apartment
22 developments, in New Jersey, as a general rule, are taxed
23 on the basis of percent of income, rather than on the basis
24 of actual construction or replacement cost.

25 Q So what figure did you use as an assessed value for

1 the apartment complex, if you did not use construction
2 cost?

3 A The general practice that we identified, and during
4 the conduct of the multi-family housing study, went into
5 considerable detail, included calling up tax assessors in
6 a large number of New Jersey suburban municipalities,
7 to determine the actual practices by which garden apartment
8 complexes were assessed, and we determined that the general
9 practice was to tax at a level that was between 15 and
10 20 percent of the gross rent roll, and to work backwards
11 from that, in effect, to arrive at a hypothetical assessed
12 valuation.

13 So, for example, let me give an example, if I can
14 find my --. Now, in the case that we described, for
15 example, on the one bedroom, the average tax for the
16 property per unit in this example was about 350 dollars
17 per year per unit.

18 Now, if you let us say the equalized tax rate in
19 that municipality is three percent, equalizes market value,
20 which is reasonable, 3.2 percent, which is about the state
21 average at the moment, on paper.

22 Now, if you work backwards, take 3 50, divided into
23 3.21, you arrive at a market value for assessment purposes
24 that reads on the books of 11 thousand dollars per unit.

25 Q How did you work that backwards?

1 A In other words, if the tax rate is 3.2 percent, and
2 the taxes are 350 dollars a year, what, therefore, is
3 the value that the taxes are struck on?

4 So you take -- in other words, 350 dollars is 3.2
5 percent of what?

6 Q But, you're working backwards from the figure that
7 I want to get to. I want to know how you got the 350 dollars.

8 A Based on a figure of, in this case, 16 or 17 percent
9 of the gross rent roll, without taxes, which is the average,
10 or was the average at the time we did our study of assessments
11 for garden apartments in New Jersey.

12 Q You're saying taxes represented approximately 16
13 or 17 percent of the gross rent.

14 A That's correct.

15 Q Your calculation of the taxes, then, was not based
16 on any computation of assessed evaluation times tax rate.

17 A No. It was based on the gross rent roll.

18 Q How does that compare with the taxes or the payment
19 which would be made in lieu of taxes, under a tax abatement
20 program?

21 A It depends. Under the traditional -- under the HFA
22 program, and under the old 236 Subsidy Program, which was
23 the federal subsidy program that was generally available
24 and used between '69 and '72, the tax abatement was generally
25 set at about 15 percent of gross rent roll, which meant that

1 in most suburban -- most typical medium communities, taxing
2 ordinarily between 16 and 20 percent of gross rent roll,
3 tax abatement did not mean a substantial drop in the taxes.

4 Some municipalities were reluctant to get into it
5 because it essentially eliminated or reduced their future
6 flexibility, but nevertheless, at least initially, 15
7 percent in lieu of taxes represented between a ten and
8 twenty-five percent abatement.

9 The current practice, however, under the Section 8
10 program, the current requirement, rather, not a practice,
11 is that the municipality grant abatement at a level of
12 6.28 percent in lieu of taxes, and this represents something
13 in the area of a 60 percent abatement.

14 MR. MORAN: I don't have any further
15 questions.

16 (Recess at 2:55 p.m.)

17

18 (After recess at 3:10 p.m.)

19 CROSS-EXAMINATION BY MR. SPRITZER:

20 Q Mr. Mallach, Martin Spritzer, Metuchen. I'm going
21 to ask you a few questions.

22 MR. BUSCH: Wait a minute, before you
23 get started.

24 (Discussion off the record.)

25 (After discussion.)

1 Q Mr. Mallach, in the portion of the testimony that
2 I heard and perhaps other portions which I have not, I
3 think you did mention that almost any provision or combination
4 of provisions in a zoning ordinance could be exclusionary.

5 A Yes.

6 Q And you felt that as an expert in your field, you
7 could look at three things and determine whether an
8 ordinance is exclusionary -- strike that.

9 I mean permissibly exclusionary.

10 A I deliberately used the term, sort of facial
11 exclusionary.

12 Q Facial. Exclusionary in the light of what the
13 Supreme Court has forbidden, is that correct?

14 A Yes.

15 Q Those three items, as I recall, are the zoning
16 provisions of the Zoning Ordinance, is that correct?

17 A Correct.

18 Q The Subdivision Ordinance.

19 A As well as similar ordinances.

20 Q As well as other similar ordinances affecting land
21 use that one municipality might have or not have.

22 A Correct.

23 Q But at least most municipalities have a subdivision
24 ordinance.

25 A Yes.

1 Q That would be second.

2 And thirdly, the amount of vacant land in the
3 municipality.

4 A As it's distributed by zoning category.

5 Q So knowing those three items, or categories, and
6 all the possibilities therein, you could make a facial
7 determination as to whether a particular community is
8 practicing forbidden exclusionary practices.

9 A The term, "forbidden," in that context seems a
10 little strong, because the notion of saying facial
11 determination is that I would be saying this is on the
12 face of it exclusionary.

13 The determination as to whether the municipality
14 should be, by court order, forbidden to continue to engage
15 in these practices is a decision which should await the
16 opportunity of the municipality to rebut that facial showing.

17 Q In other words, in your opinion, you're talking now
18 in respect to the burden of proof, as you see it.

19 A I think that's one aspect of it, yes.

20 Q And you're talking now that once you show some of
21 the exclusionary provisions of the ordinance, and subdivision
22 ordinance, and the amount of vacant land in the various zones,
23 or categories, then you are telling us the municipality
24 then has the burden of proving peculiar circumstances why
25 its actions or its ordinance is not exclusionary. Is that so?

1 A Yes.

2 Q You're talking now as to what the burden of proof
3 is in a court?

4 A Yes.

5 Q At a trial, is that correct?

6 A Yes.

7 Q All right. It is your opinion that using these
8 three categories, without reference to actual land use in
9 a municipality, that such a determination can be made.

10 A I think the relationship of the land use, by which
11 I assume you mean the use of the land that is being used
12 for other than vacant --

13 Q That's correct. I mean the particular uses that are
14 on particular pieces of land, in particular zones. That's
15 what I mean by land use.

16 A I think the uses of the developed land in the
17 municipality is secondary, clearly secondary to the points
18 that I cited, yes.

19 Q All right. And whether -- all right. Strike that.

20 Are you familiar with the report by the National
21 Committee Against Discrimination In Housing, Inc.,
22 entitled Jobs and Housing, March 1972?

23 A Not to the degree that I can discuss it. I leafed
24 through it roughly when I first saw it. But, I haven't
25 since.

1 Q Well, may I read you a provision from it?

2 A Certainly.

3 MR. SEARING: Page, please?

4 Q Well, I'll just read the provision. I don't know
5 the exact page. I don't know whether that's important
6 at this point.

7 A You don't have numbers?

8 Q I don't have the report in my hand. I'm reading
9 from an extract. I don't have the exact page.

10 Apparently this is a recommendation as follows,
11 quote: -- this is one of the recommendations.

12 "A declaration of emergency by the governors of
13 Connecticut, New Jersey and New York, suspending zoning
14 ordinances in all municipalities, with less than ten
15 percent of vacant land, for multi-family use, and with less
16 than 25 percent of all existing dwelling units in multi-
17 family structures. Such a declaration would be justified
18 under emergency powers to protect the public welfare from
19 the effect of the housing crisis."

20 Now, does that provide any standard for exclusionary
21 zoning?

22 A At the risk of incomprehensibility to some of the
23 people in this group, my only reaction as you read it was
24 the old phrase, Gans Meshuge.

25 MR. STONAKER: Translation?

1 Q I'd like a more responsive answer.

2 A I recognize that, counselor.

3 I think that that -- the approach embodied in that
4 statement, I think, is more arbitrary -- certainly more
5 arbitrary, I believe, than is appropriate.

6 Q Well, would it be fair to say that based on the
7 standard that any community with less than ten percent --
8 I'm sorry. With either more than ten percent of its vacant
9 land zoned for multi-family use, or with more than 25
10 percent of all of its existing dwelling units in multi-
11 family structures, would not be exclusionary?

12 A I don't think that would necessarily be the case as
13 a general rule. Some municipalities could meet -- could
14 be not exclusionary, within the meaning -- within that
15 definition, others would be.

16 I think there are too many other factors involved
17 in what being exclusionary means to allow it to be defined
18 in that kind of a cut and dried fashion.

19 Q You would not -- you would then not use that criteria.

20 A I would not use those criteria.

21 Q Have you ever heard of the expression a balanced
22 community?

23 A Yes, I have.

24 Q And balanced housing?

25 A Yes, I have.

1 Q What does that mean to you?

2 A I think there are a number of definitions. I'm
3 not sure if one will suffice. I think a balanced community,
4 and I should add as a qualification before answering that,
5 that given the fortuitous nature of municipal boundaries
6 and the like, it's unlikely that all communities could
7 meet the balanced community standard, even if it were a
8 goal.

9 But, given that, a balanced community would be a
10 community that has provided and is continuing to provide
11 for a balance of residential uses for all of the different
12 people or types of people in the population, as well as
13 a reasonable measure of non-residential uses, in a manner
14 that's environmentally and socially sound.

15 I realize that a lot of terms I'm using are subject
16 to different definitions, but that's what I consider a
17 thumb nail term.

18 Q In your opinion, would a municipality have to
19 provide every single type of housing to be a balanced community
20 By every single type, I mean single family, garden apartments,
21 town houses, trailer parks, or any other you can think of.

22 A In the ideal state, yes. Since not every municipality
23 can provide every conceivable kind of housing, or should
24 be expected to by virtue of a variety of circumstances,
25 not every community can be a balanced community in the ideal

1 sense, and many may be none the worse for it.

2 But, in the ideal state, yes.

3 Q Well, we're not living in an ideal state, are we?

4 A No.

5 Q Is it your opinion that the goals of Mount Laurel,
6 when it mentioned balanced housing, was to bring the
7 communities into an ideal state?

8 A Well, the goal of Mount Laurel, as I understand it,
9 was to provide the basis for the meeting of housing
10 opportunity, and one of the things that that decision
11 did state, and somewhat regretfully recognizing the absence
12 of any overall regional planning in this state, was that
13 in the absence of such overall regional planning, that,
14 yes, one of the means by which housing opportunity would
15 have to be met would be by trying to have each municipality
16 approach this goal of a balanced community.

17 Now, many municipalities may never quite reach it,
18 but as a reasonable goal to strive for, it's not unreasonable.

19 Q Did it require the municipalities to provide every
20 type of housing in order to reach that goal?

21 A Well, it certainly suggests that the absence of
22 small lot single family homes and a variety of multi-family
23 homes is reprehensible or illegal or illegitimate, as you
24 will, under the meaning of the decision.

25 Q Would you respond to my question now?

1 A In effect, yes.

2 Q In other words, in your opinion, the Mount Laurel
3 case requires every municipality, in attaining the goal
4 of a balanced community, to have mobile parks, to have
5 small homes on small lots, to have town houses, to have
6 garden apartments.

7 A To the degree reasonably feasible.

8 Q To the degree reasonably feasible. What do you
9 mean by that?

10 A What I mean is that in essence, what the Mount
11 Laurel decision means, I believe, is that the municipalities
12 should start with the principle that they should strive
13 towards this balance and towards incorporation of all
14 types of housing, and if need be, based on the various
15 circumstances I have described, that can be reduced
16 subsequently, rather than start with the premise they
17 shouldn't have any and be dragged kicking and screaming
18 each step of the way.

19 In other words, it's a difference in premise.

20 Q When you reviewed the zoning techniques, or zoning
21 remedies, for one of the prior attorneys who questioned
22 you, which would be available or could be used by
23 municipalities so that they would not be exclusionary,
24 did you exhaust the zoning techniques?

25 A I exhausted those that come to my mind at this time.

1 I won't preclude the existence of others elsewhere.
2 I have nothing to add on that subject.

3 Q Do you know of any definition or formula accepted
4 in your field, whatever your field is, respecting the
5 developed community as distinguished from a developing
6 community?

7 A I certainly don't know of any formula. I know that
8 a number of people, attorneys, planners, judges, what not,
9 have been, I guess, playing around with alternative ways
10 of drawing this distinction, but I don't believe there's
11 an accepted formula as such.

12 Q And there's none that you can give at this time.

13 A I -- well, I can not give a formula, because it's
14 my experience -- it's my observation, based on development
15 experience in the State of New Jersey, that it is virtually
16 impossible to determine at what point a municipality is
17 developed rather than developing, because of the continual
18 process of development, of filling in, of redevelopment
19 and the like.

20 So that I am -- I find the notion of drawing a hard
21 and fast line between the two to be conceptually unsound.

22 Q And it would have nothing to do with the amount of
23 vacant land in a community?

24 A No, because, you know, you can find a municipality,
25 say, with X amount of vacant land, where no development

1 has taken place for the last decade --

2 Q Why don't you give X a number. Go ahead.

3 A Let's say you could find a municipality, for example,
4 with less than fifty acres in developable parcels, in the
5 definition that I mentioned the DCA used earlier.
6 And in which no development of any significance had taken
7 place in recent years, and then you can find another
8 municipality, sharing the same characteristics, yet for
9 reasons other than the vacant land availability is engaging
10 in massive, extensive development.

11 Q Do you know of any community like that?

12 A Well, I can think of three of the four -- well,
13 to provide background, one of the things which we studied,
14 based on building permit records, like, was which
15 municipalities approved multi-family housing in large
16 amounts during the study period, which in this case was
17 1965 through 1972.

18 And we discovered that three of the four municipalities,
19 being the most multi-family housing in New Jersey during
20 that period, were municipalities which contained small
21 amounts of vacant land prior to the development of the
22 housing approved.

23 Referring specifically to Fort Lee, Hackensack, and
24 Lindenwold.

25 MR. BUSCH: Off the record.

1 (Discussion off the record.)

2 (After discussion.)

3 A So they say in Fort Lee that the corruption was
4 proposed corruption rather than delivered corruption.
5 Minor distinction, I suspect.

6 Q You've rejected the standards set forth in the
7 quotation I gave you, I think on the record, with a phrase
8 that meant it was crazy.

9 A Precisely. Because it was too arbitrary.

10 Also, the notion of Brendan Byrne issuing an
11 emergency proclamation of this nature seems a little far-
12 fetched to me.

13 Q Let's forget the emergency proclamation of it.

14 Is that what you were referring to when you said
15 it was crazy?

16 A No. The standard itself is too arbitrary and
17 unreasonable. The overall context of the quote is even
18 more so. But even taken by itself, the standard that was
19 cited in the quotation is too arbitrary.

20 Q Do you have any standard which you can promulgate
21 as an expert in the field in respect to the percentage
22 of multi-family use a community should have?

23 A No. I don't believe that there can be a single
24 standard.

25 Q In other words, it would depend upon the community?

1 A It would depend on the community, it would depend
2 on the type of multi-family use, it would depend on the
3 need for housing in the area, the municipalities'
4 obligations under a fair share program, and so forth.

5 Q And it would depend upon what land was available.

6 A And, of course, upon the available land in the
7 community and so on.

8 Q Do you know how many units have been built in New
9 Jersey under Section 8?

10 A I believe I answered that question.

11 MR. SEARING: It's been asked and
12 answered.

13 Q I'm sorry, I missed it.

14 MR. BUSCH: Could you answer it for
15 the record?

16 A No units have yet been built.

17 Q Do you know the time period involved from the date
18 of, let's say, an application to the HFA, an application
19 for Section 8, and construction of any such units?

20 A To the beginning of construction?

21 Q Right. Let's say from the time the municipality
22 passes a resolution of need and says we're going to abate
23 taxes under a 6.2 percentage, to construction.

24 Do you have any idea what time that would be?

25 A I think it varies very widely, depending on all sorts

1 of factors.

2 The nature of the government housing programs,
3 and also the changes that tend to take place during the
4 course of one's processing of one's applications, are such
5 that it's very unpredictable.

6 There have been cases where it's been perhaps a
7 year, a little more, there have been other cases where
8 it's been between three, four years.

9 MR. SPRITZER: No further questions.

10

11 CROSS-EXAMINATION BY MR. BUSCH:

12 Q Mr. Mallach, I have several questions with regard
13 to cost figures that you've given previously.

14 MR. CUMMINS: Excuse me.

15 (Discussion off the record.)

16 (After discussion.)

17 Q I believe you mentioned before, Mr. Mallach, that
18 you had spoken to at least one realtor in East Brunswick,
19 is that right?

20 A That's correct.

21 Q And do you remember the name of the realtor?

22 A I stated that I do not, but that I will provide it
23 for you.

24 Q Did you speak to more than one realtor in East
25 Brunswick?

1 A As I believe I mentioned, it was Mr. Prior who
2 spoke to the realtors, and I can not testify specifically
3 exactly with whom and to how many people he spoke, but
4 that I will provide that information.

5 MR. BUSCH: I would ask,
6 Mr. Searing, whether you intend to call
7 Mr. Prior as a witness.

8 MR. SEARING: No.

9 Q Do you know whether your firm, Alan Mallach
10 Associates, ever received any writings from brokers in
11 East Brunswick, or realtors?

12 A I believe the information was provided over the
13 telephone.

14 There have been some limited written material, but
15 the bulk of it was through telephone communications.

16 Q To the best of your knowledge, do you know how the
17 question was phrased, and I realize that Mr. Prior was the
18 one who had the conversations.

19 A Mr. Prior was instructed to obtain as much information
20 as possible about the prices of vacant land through Multiple
21 Listing or through any other information the realtors had,
22 to identify the cost per acre or per lot, as it was --
23 whatever it was listed under.

24 Q Did you give the instructions to Mr. Prior?

25 A Yes, I did.

1 Q Did you suggest to him that he contact the tax
2 assessors in each of the municipalities?

3 A No.

4 Q Do you know whether you or he or anyone else on
5 your behalf contacted the tax assessors to determine value
6 of vacant land?

7 A We did not.

8 Q So that the number that you have used to construct
9 your formula on cost is based in East Brunswick at least,
10 upon your understanding of information that Mr. Prior
11 obtained over the phone from at least one broker in East
12 Brunswick, is that correct?

13 A That's correct.

14 Q Were there any other methods used by Alan Mallach
15 Associates to determine value of vacant land in East
16 Brunswick?

17 A Those were the only methods used.

18 Q Now, with regard to the work sheet which I've been
19 furnished by your attorney, the smaller one which shows
20 East Brunswick, it has land acquisition, 11 thousand dollars,
21 I assume that means per acre, in the R-1 zone, is that right?

22 A That's correct.

23 Q And then for the R-2 zone, which, by referring to
24 the companion information, would indicate to be single
25 family, 20 thousand square feet, you have a number 30 thousand

1 per acre, is that correct?

2 A That's correct.

3 Q Was any attempt made by you to determine why there
4 was a cost differential between R-1 and R-2 in East
5 Brunswick?

6 A No, there was not.

7 Q And back to R-3, you have a figure of 12,500, is
8 that correct?

9 A That's correct.

10 Q And R-3 is roughly one-third acre or 15 thousand
11 square feet.

12 A That's per lot.

13 Q That's per lot as opposed to per acre?

14 A The figures provided here are all per lot, per unit.
15 In the case of the R-1, the conventional R-1, the per unit
16 and per acre costs are essentially the same.

17 In the other case, of course, they're not.

18 Q Are you saying that a half acre lot in an R-2 zone
19 would cost 30 thousand dollars?

20 A I'm saying we got that information. In practice --

21 Q I want to know what that information means.

22 A Okay. I would suggest that in this case, because
23 that 30 thousand dollars is substantially in excess of the
24 general pattern that the other values illustrate, I would
25 be likely to make an assessment that that land was -- either

1 had some special feature about it, tending to increase
2 the cost, or else was just plain overpriced.

3 Because it's not consistent with the trend in the
4 other values given.

5 Q Well, aside from getting down to net lots per acre,
6 if we assume that R-2 in East Brunswick is half acre, couldn't
7 I assume from these numbers, with no oral testimony to
8 clarify them, that that land goes for 60 thousand an acre
9 in R-2? If there were no further clarification?

10 A A work sheet of this nature is not determinative.

11 Q Mr. Mallach, I'm just asking for an explanation.
12 If I were to read these figures, without having you explain
13 them to me, would it not be reasonable to assume, based
14 on what you've said thus far, that in an R-1 zone, which
15 is one acre, a lot costs 11 thousand, and an R-2, which
16 is half acre, a lot costs 30 thousand, and therefore I can
17 assume that the acre costs 60 thousand?

18 A No, because it is not reasonable to interpret a
19 work sheet without the opportunity for explanation.

20 This is not a formal report. Certainly looking at
21 this in and of itself, that is a conclusion that someone
22 could draw. It's a rather debatable conclusion.

23 Q I'm trying to say, am I reading it right as it's
24 written?

25 A All that can be read into this is that we were

1 informed that there were -- that R-2 lots were being
2 ~~offered in~~ East Brunswick Township for 30 thousand dollars.

3 The inference that there R-2 land generally
4 sells for 60 thousand plus or minus dollars in East
5 Brunswick Township is an inference which can not necessarily
6 be drawn.

7 Q Then I won't make that. But, I can draw the
8 inference a half acre in R-2, for the purpose of the
9 work sheet that you have furnished, would go at 30 thousand
10 dollars.

11 A That there is such a half acre lot or lots in East
12 Brunswick.

13 Q Is that an indication there might be only one, but
14 most of them have a different value?

15 A It's an indication that there might be one, period.
16 It is not an indication as to what others may have.

17 Q You've used the indication there might be one as a
18 general basis to determine costs of a home on a R-2 lot,
19 is that right?

20 A No, certainly not. I've done nothing of the sort.

21 Q Haven't you used that 30 thousand dollar figure for
22 anything?

23 A No.

24 Q You haven't.

25 A I have not.

1 Q Now, with regard to an R-3, which we've talked
2 about as a 15 thousand square foot, or in general terms,
3 one-third acre, you have 12,500 per lot, is that correct?

4 A Yes.

5 Q So I can make sure I'm reading it right, R-4, a
6 quarter acre, ten thousand square feet, you have 12 thousand
7 to 16 thousand five hundred per lot?

8 A That's correct.

9 Q Going down what the figures mean in the second
10 column, were you able to determine it right down to the
11 penny, so things like 25 cents --

12 A This is a result of an excess of zeal.

13 Q On whose part?

14 A Myself and Mr. Prior's.

15 Because the figures that go into the formula tend
16 to start out at, say, X cents per square foot, or whatever,
17 you get some very bizarre results when you multiply them
18 out for the number of square feet, or whatever.

19 In practice, obviously, these things should
20 be rounded off.

21 Q Weren't you talking earlier today in terms of rounded
22 off figures per square foot, you used 17 dollars, 19, 23?
23 You didn't have any odd cents, did you?

24 A No. This refers to -- no. The odd cents come in
25 not in the construction costs, but in the costs of specific

1 components of the site improvement.

2 I can give you some examples of what I mean by this.

3 Q Even in your percentages, you only had flat
4 percentages. You didn't have percentages plus decimal, did
5 you? For the cost and overhead or the lot improvement?

6 A Yes. When I was -- when I was giving examples
7 this morning, I was rounding, the amount of time that would
8 have been involved in multiplying 13 and a half percent
9 times two-thirds of a year times whatever, in this kind of
10 a situation, is excessive.

11 The figures for which we have it detailed, broken
12 down numbers, are those figures that have to do with a
13 specific sub-category, if you will, of site improvements,
14 categories.

15 I had a piece of paper with them all broken out,
16 if you'll excuse me for one moment. I'll explain what I
17 mean.

18 For example, the cost of water distribution to
19 the site -- not to the site, into its building, running
20 the water pipes and so on along the subdivision and into
21 the buildings, was estimated by the Home Builders, and
22 this is their raw data in this case, five dollars and forty
23 cents per linear curb foot.

24 Q Is that Mr. Sendelsky?

25 A This is the data that was provided by the New Jersey

1 Home Builders,, based on Mr. Sendelsky's analysis,
2 that's correct.

3 Now, the point of these exact numbers, and I do
4 recognize that they look a little silly, is that they
5 result from the exact multiplication of such detailed
6 factors times the number of feet involved.

7 So that these do yield exact numbers of that sort.
8 Especially one problem, for example, the cost of clearance
9 of a treed, or preparation for construction for improvement
10 of utilities is given at 25 hundred dollars an acre.

11 Now, one of the problems is that when you have,
12 say, a fifteen thousand square foot lot, and you divide
13 that by a figure based on an acre, you come out with a
14 rather odd fraction.

15 It's those kind of fractions that are reflected.

16 Q If we take an analysis, the land acquisition column,
17 which on everyone's list would be column number 1, in
18 effect you've gotten some telephone information, or at
19 least as to East Brunswick you have, is that correct?

20 A That's correct.

21 Q For lot improvements, you've taken that information
22 from the New Jersey Home Builders generally?

23 A Yes.

24 Q And for construction costs, where have you generally
25 gotten that from?

1 A Again, using the figure from the New Jersey Home
2 Builders, current construction figure in central New
3 Jersey, for raw construction of single family houses.

4 Q And did you multiply that by the minimum square footage
5 permitted in each zone?

6 A That's correct.

7 Q So that for East Brunswick, the various options of
8 cluster, R-1, R-2, together with standard R-1, R-2 and
9 R-3, all come up with a house costing, construction costs
10 only, of 34 thousand.

11 A That's based on the minimum floor area requirement
12 of 15 hundred square feet.

13 Q If I wanted to figure out the least expensive house
14 I could build in each one of those zones, I would simply
15 add up across columns 1, 2 and 3, and that would give the
16 minimum cost.

17 A Plus the other costs I cited, having to do with
18 carrying charges, fees, profit and overhead.

19 Q So that it would even be higher than the addition
20 of 1, 2 and 3.

21 A Definitely.

22 Q Okay. Now, if we assume, when you were talking this
23 morning on land costs, and you gave ranges of 20 thousand
24 to 50 thousand dollars for lands zoned as garden apartments,
25 if we assume that a municipality's costs are higher than the

1 average that you used, and correspondingly the costs of
2 all of these units would go up also, is that correct?

3 A Well, whatever the land cost actually is, that
4 cost you factor in, certainly.

5 MR. BERNSTEIN: I hate to break in,
6 but the help leaves at four, and I would
7 like a copy of any reports that this
8 witness hasn't supplied to us, so I wonder
9 if we could have a Xerox made on the notes
10 that he's commented on.

11 I don't want to see the notes on the
12 other communities, but there are notes
13 that he's referred to.

14 MR. SEARING: They were noticed about
15 that.

16 MR. BERNSTEIN: The notes that
17 he's prepared. I'm not interested in
18 Sendelsky's report. But, whatever he's
19 done. Because he has referred to notes.

20 THE WITNESS: Okay. I prepared a
21 table, which provides information in
22 Sendelsky's report, in somewhat more
23 concentrated form.

24 In other words, instead of having --
25 as you know -- this report provides the

1 information, there will be a page or a
2 couple of paragraphs devoted to each subject
3 and then it will go on to the next one.

4 I have a summary table which puts that
5 all on one page, which certainly -- which
6 is what I've been referring to.

7 MR. STONAKER: Is that something you
8 applied factors to?

9 THE WITNESS: No, this is not applied
10 factors. It merely takes -- what it is,
11 it takes the figures from Sendelsky's report
12 and says, based -- since they are based on
13 acreage, or linear feet, it then translates
14 them into feet -- into costs, based on lot
15 size and frontage, just a direct kind of
16 mathematical thing.

17 If the frontage is X feet, then we take--
18 it's the basic cost times X.

19 MR. BERNSTEIN: I didn't want to
20 interrupt Mr. Busch's cross-examination. If
21 you would just supply them to our brother
22 from Metuchen, whatever you've prepared and
23 planned to testify from. If it's only this
24 one sheet, fine.

25 THE WITNESS: This is another summary

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

sheet having to do with the costs.

MR. SPRITZER: It's got --

THE WITNESS: It's selective.

MR. BERNSTEIN: Is there anything else?

It doesn't have to be mathematics.

Field notes --

THE WITNESS: We don't keep field notes.

MR. SPRITZER: Your love notes, too.

MR. SEARING: The Notice of Depositions did not specify this.

This is being supplied, not as formal reports, but as working papers of the expert.

THE WITNESS: To the best of my knowledge, everything else is merely secondary material.

I mean, for example, I believe you mentioned earlier, when the question of housing need came up, you have the Xerox copy of --

MR. SEARING: They have all that.

MR. BUSCH: Off the record.

(Discussion off the record.)

(After discussion.)

1 Q Now, what I was getting to, Mr. Mallach, was
2 that this morning, when we talked about land cost as one
3 of the components of total cost of multi-family housing,
4 you gave us a range of between 20 thousand and 50 thousand
5 an acre, is that right?

6 A That's correct.

7 Q Where did you get those figures?

8 A That was a very rough estimate based on impressions
9 used for the purpose of providing an example.

10 Q Is it fair to say you more or less plucked them
11 from mid-air?

12 A No.

13 Q Where did you get them from?

14 A From experience, observation based on experience.

15 Q Do you have any knowledge as to what any parcel of
16 land has sold for in the Township of East Brunswick within
17 the past five years for multi-family?

18 A I do not have specific knowledge of the sale of any
19 parcel of land sold for multi-family housing in the Township
20 of East Brunswick during the past five years.

21 Q Do you have any knowledge of the specific sales price
22 of any parcel of land in the County of Middlesex in the
23 past five years, with regard to multi-family housing?

24 A No, I do not.

25 Q You have given us an entire formula today based upon

1 impressions --

2 A No, I have not. I have made it very clear exactly
3 where, within the workings of the figures I cited, you
4 would factor in whatever land cost you chose to factor in.

5 The formula and the principles that I provided are
6 applicable to -- are easily variable on the basis of any
7 land cost that you chose to cite.

8 I indicated myself how they varied significantly,
9 based on alternative land cost estimates.

10 Q Do you have any documents in your file ~~whatsoever~~
11 which will prove the value of land or vacant land in
12 Middlesex County?

13 A Which will prove --

14 Q The value of vacant land in Middlesex County.

15 A I think I have enough documents in my file to
16 provide reasonable estimates of the value of vacant land.

17 Q What documents do you have?

18 A I'm referring to the information -- well, I don't
19 know -- they may or may not meet the definition of documents.

20 ~~the~~ information which was provided by the realtors,
21 which I have looked at, I consider adequate to provide and
22 make an assessment.

23 Q And you don't have them here today.

24 A No, I do not.

25 Q Do you know how many realtors were consulted by your

1 firm in order to arrive at value of land cost?

2 A I have already said that I do not have that
3 information but will provide it.

4 Q I asked if you know how many realtors were contacted,
5 not if you have it.

6 A No, I do not know the answer to that question is
7 what I'd said previously.

8 Q If, in fact, your cost figures are low as to land,
9 or if, in fact, a particular town is above the median
10 figure you used, that would drive up the cost of housing,
11 is that correct?

12 A The cost -- an increase in the cost of land would
13 drive up the cost of housing, yes.

14 Q If it were determined that vacant land in a given
15 municipality was not developable, because of environmental
16 factors, flood plain, and the like, but that a certain
17 density had to be met, would you consider recommending
18 mid-rise or high-rise apartments?

19 A I think the premise of that statement is rather
20 debatable. I am not -- I do not believe that I have
21 argued that a certain density of a municipality should have
22 to be met.

23 Certainly in any given site, the density of that
24 site should be what is appropriate, rather than an abstract
25 objective of having a municipality developed at a certain

1 average density.

2 Q This morning you gave examples of multi-family
3 housing, including garden apartments and town houses.
4 You recommended densities of 12 to 15 for garden apartments
5 as not being excessive and you mentioned 6 to 10 in
6 suburban communities for town houses as not being excessive.

7 A That's right.

8 Q If a municipality could not support the number of
9 units which a court determined it should have by garden
10 apartments or town houses, would you under any given set
11 of circumstances recommend mid or high-rise apartments?

12 A I suspect there are circumstances when that would
13 be appropriate. For example, certainly in one category,
14 that of senior citizen's housing, the HFA has, for example,
15 adopted a policy which, I think, is an eminently reasonable
16 one, that -- that senior citizen's housing should be either
17 one story housing or elevator housing, but that it makes
18 little sense to provide walk up apartments for senior
19 citizens, as a general practice.

20 So that, if a site was not suitable for one story
21 housing, or if the land availability was such that only an
22 insignificant amount of housing could be provided that way,
23 it would be certainly appropriate in many areas to meet
24 senior citizen's housing needs through the construction of
25 mid or high-rise apartments.

1 Q Would you limit mid or high-rise apartments only to
2 senior citizen housing in the suburban towns in this
3 county?

4 A If at all possible, yes.

5 Q If the cost of land were so high that the only
6 way low and moderate income housing could be built
7 would be by an increase in density above 12 to 15 units
8 per acre, would you then consider recommending a verticle
9 rise, mid or high-rise?

10 A Under duress. I think the policy enunciated by
11 Congress was quite reasonable. Under the Housing Act of
12 '74, Congress stated that federal housing money, subsidy
13 money, should not be used to build housing for families
14 with children in buildings of more than three stories,
15 unless excessive land costs and the lack of feasibility
16 of doing -- of doing that made it necessary to go higher.

17 I think if there was a finding that the housing could
18 not be provided otherwise, it might be necessary. I find
19 it unlikely, however.

20 Q Now, with regard to the square footage that you
21 mentioned this morning for multi-family, and I'm testing
22 my memory, did you say that for a one bedroom garden apartment,
23 six hundred square feet would be adequate?

24 A Yes.

25 Q For a two bedroom, eight hundred square feet?

1 A Yes.

2 Q And in a two bedroom, you visualized a family of
3 four living comfortably?

4 A As a general rule, no, but under some circumstances,
5 if the children are small, hopefully not as a permanent
6 housing choice, but, yes. As a reasonable one.

7 Q Have you considered any of the consequences of
8 having a family of four reside over a long term in a
9 garden apartment having eight hundred square feet?

10 A You mean crime, family breakdown, promiscuity, incest
11 and that sort of thing?

12 Q You name it.

13 Any of those factors. Have you considered those in
14 arriving at an acceptable minimum square footage?

15 A I believe there is no connection that's been
16 established by social research, and I believe I'm familiar
17 with the area, that shows any basis for drawing conclusions
18 from the number of square footage, square feet in a given
19 apartment, and any form of social breakdown or disorganization.

20 There is no experimental evidence whatsoever to
21 substantiate such a point of view.

22 Q Have you considered the need for active recreational
23 use in a multi-family dwelling project when you have
24 reduced the square footage to 600 and 800 and a thousand?

25 In other words, a means of release or the means of

1 the people living there to have an environment outside
2 their four walls?

3 A Certainly.

4 Q So you recognize that certain active recreational
5 uses are necessary for a garden apartment complex?

6 A No. I recognize that certain active recreational
7 uses are necessary, or at least highly desirable, for
8 many people. I don't know that these necessarily have
9 to be provided in each garden apartment complex or in each
10 unit or whatever.

11 Q But, you accept as a legitimate zoning use the
12 provision of, you mentioned tennis court or a swimming
13 pool, perhaps.

14 A I would argue that by and large, the provision of
15 such facilities, particularly in areas where people of
16 moderate income and low income live, should be an appropriate
17 responsibility of the municipality.

18 Q And if a municipality required a certain percent
19 of the raw acreage for recreational space, you wouldn't
20 find that inherently discriminatory, would you?

21 A If it could be shown that that provision did not
22 make the provision of the low and moderate housing more
23 difficult.

24 Q I would like you to define or explain two terms you've
25 used in your report, and prior testimony. Can you tell me

1 what rent skewing means?

2 A Rent skewing refers to the procedure by which some
3 percentage of the units in a development are subsidized,
4 or their rent level or cost, what have you, is reduced,
5 by virtue of spreading the difference between the reduced
6 cost and the actual cost over the remaining units in the
7 development.

8 Q So that some of the people in the development,
9 in effect, subsidize some of the other people.

10 A That's correct.

11 Q Do you conceive that even by getting rid of all
12 the exclusionary factors that you've mentioned, that much
13 of this housing could not be built for low income people
14 unless there was some form of subsidy?

15 A That's correct.

16 Q And if there were no subsidy money available, no
17 matter what the towns did, the housing would not rise.

18 A Some housing.

19 I believe I distinguished in each case between the
20 different groups. To reiterate, in the absence of
21 subsidies, a municipality could make very limited in-roads,
22 if at all, in the low income need, modest, though still
23 limited in-roads in what I referred to as the moderate
24 subsidized need, but substantial in the moderate conventional
25 need. Distinguish between the three.

1 Q On a term referred to in your outline of testimony
2 are some initials which are MPMPDU.

3 A Yes. That is a term which, in fact, your mentor,
4 Mr. Rose has been very fond of using.

5 MR. SPRITZER: I object to that.

6 MR. BUSCH: I object to that as being
7 my mentor, because he's not.

8 Q Anyhow, what does that mean?

9 A It is shorthand for minimum percent of moderately
10 priced dwelling units.

11 Q What does that mean?

12 A Again, it refers back to the kind of ordinance
13 that I described in the case of South Brunswick.

14 Q Is it a bonus incentive kind of thing?

15 A It can include -- in the most primitive form it
16 can be a straight requirement. In the more sophisticated
17 form, it can provide density bonuses, incentives, quid pro
18 quos and so forth.

19 Q Are you generally familiar with recent studies made
20 by the Census Bureau, which received prominence in the New
21 York Times, concerning an out migration from the northeast
22 toward the sun belt?

23 A Yes, I am familiar with those studies.

24 Q Are you generally familiar with any revised studies
25 by the Middlesex County Master Plan as to densities, growth

1 and jobs in the county, within the next twenty-five years?

2 A No, I am not.

3 Q While I realize you're not being produced as a
4 witness preparing a model or a formula for fair share,
5 you did indicate before that there certainly is more than
6 one type of formula, is that correct?

7 A That's correct.

8 Q Have you ever attempted to construct a formula,
9 plugging in factors to come up with fair share allocations?

10 A I have, I would guess, played around with some of
11 the factors.

12 I've never systematically attempted to construct
13 a formula.

14 Q Have you ever attempted to project which factors
15 would go into a formula, without coming up with bottom
16 line numbers?

17 A I've looked at a number of the factors, yes.

18 Q Would you think that availability of jobs would be
19 a factor to be included?

20 A Yes.

21 Q Would you feel that transportation of a public
22 nature would be a valid factor?

23 A That I'm somewhat ambivalent about. I should point
24 out that one of the problems of the fair share formula
25 approach, or with any kind of formula, is that the more

1 factors you put into a formula, the more meaningless
2 your output gets, because everything tends to sort of
3 smush together.

4 So even though transportation certainly has some
5 bearing, my impression is that the bearing is less significant
6 than a number of other factors. So I would give it
7 relatively little weight.

8 Q If you were constructing a fair share formula, would
9 you be concerned about the soil and the sub-soil conditions?

10 A To the degree that it was reflective of another
11 factor, which is a crucial element in a fair share
12 formula, which is a reasonable assessment of the amount of
13 land that is both vacant and reasonably developable for
14 the different types of housing needed.

15 Q And in determining what was reasonably developable
16 for the different type of housing needs, would you then
17 look at the condition of the soil and the sub-soil area?

18 A Yes, I would, even though I suspect that questions
19 of soil and sub-soil conditions are usually an issue, not
20 so much for the basic developability, but for the specific
21 techniques and approaches used in the development.

22 Q Do you have any knowledge of geology or substrata
23 conditions generally?

24 A I have a limited amount of knowledge in that area.

25 Q Are you familiar with water recharge and intake areas?

1 A I'm familiar with the basic definitions of those
2 terms.

3 Q Are you familiar with the term aquifer?

4 A Yes.

5 Q Would these be factors to determine if land was
6 developable? Would you consider these factors?

7 A Yes.

8 Q Do you have any specific knowledge of any of these
9 factors in any of the towns in Middlesex County?

10 A No.

11 Q Is it fair to say that by increasing the construction
12 of multi-family housing, we would also wind up increasing
13 the construction of roads and highways?

14 A Not necessarily.

15 Q If we increased the density in the suburbs, will
16 we have to also upgrade the roads to carry the additional
17 traffic?

18 A It would depend on where and when and how. If you
19 take the suburbs as a general class, the condition of the
20 roads and the congestion of the roads varies from location
21 to location.

22 Certainly some construction of multi-family development
23 in the future will undoubtedly result in the upgrading of
24 roads and highways, just as will construction of industry
25 and offices and single family homes.

1 Q Do you see any connection between the increase of
2 highway traffic and the occurrence of cases of Cancer
3 in the State of New Jersey?

4 MR. BUSCH: Off the record.

5 (Discussion off the record.)

6 (After discussion.)

7 Q Do you understand the question?

8 A I understand the question.

9 Q Let me give you some foundation for that question.

10 A Please do.

11 Q Have you read any recent studies which indicate
12 that New Jersey is the state with the highest incidence of
13 cancer in the United States?

14 A I think I noticed something to that effect.

15 Q Well, did you notice anything which may have pointed
16 out that Middlesex County is the second highest Cancer county
17 in the state?

18 A No, I didn't notice that specific, but I'm willing
19 to stipulate it, if you will.

20 MR. BUSCH: No further questions.

21
22 CROSS-EXAMINATION BY MR. JOHNSON:

23 Q I just have two questions in reference to Danny, who
24 can't be here tomorrow.

25 For the Borough of Middlesex.

1 Have you personally examined the Middlesex Borough
2 ~~Zoning~~ Ordinance or did your associate examine that?

3 A Let me refer to the chart. I believe my associate
4 looked at this ordinance.

5 Q And did either you or your associate ever make
6 an inspection of existing land uses in Middlesex Borough?

7 A No, we did not.

8 Q On your chart for Middlesex Borough, you have the
9 land acquisition cost shown in the R-75 zone at 16 thousand
10 dollars.

11 Is that a per lot cost?

12 A I assume it is, yes.

13 Q And was that figure obtained from conversations
14 that somebody in your firm had with a broker in Middlesex
15 County or Middlesex Borough?

16 A That's correct.

17 Q Do you know the name of that particular broker?

18 A No. I will provide counsel with a list of all
19 of the brokers that were spoken to.

20 Q If I may refer to the other chart that you had for
21 the Borough of Middlesex which sets forth the different
22 zones within the Borough of Middlesex, you have two columns
23 designated as 7 and 8 on that particular chart, one entitled
24 vacant land and one entitled vacant land DCA. Indicate what
25 the difference is, please.

1 A The first column, 7, was put in there in the
2 anticipation that there was information from the
3 interrogatories to be entered in that column.

4 The column 8 in the absence of that information,
5 column 8 provided the apparently -- well, not apparently.
6 It provided the information in the DCA study that reference
7 was made to earlier.

8 Since in this case it was not clear from the data
9 in the DCA study, which of the various of the three single
10 family zones cited here the land in the brackets pertained
11 to, it was just put in these general brackets to reflect
12 that it was in -- it could be in any of the three zones.

13 Q Number 8 indicates information that was taken from
14 the DCA report.

15 A That's correct.

16 Q And number 7, which doesn't have any information
17 contained herein, would indicate land perhaps that is not
18 developable, that is vacant?

19 A No. If we -- no.

20 MR. SEARING: Let me interject.

21 The fact that there's no information
22 in column 7 indicates that there was no
23 response to that particular inquiry on
24 plaintiffs' interrogatories submitted to the
25 borough.

1 I would have to check the
2 interrogatories as to why that was so.

3 MR. JOHNSON: I'm just trying to
4 ascertain --

5 MR. SEARING: Just wasn't any
6 information provided, for a variety of
7 reasons. It's just not there.

8 Q Again, back to the chart that shows the different
9 costs, Mr. Mallach, in the Borough of Middlesex, you have
10 indicated the per lot cost of 16 thousand dollars in the
11 R-75 zone, but you have nothing indicated in the other
12 zones that you have listed there.

13 Does that indicate that you haven't received any
14 information with respect to land sales in those zones?

15 A That's correct.

16 Q And with respect to projected costs for developing
17 land in those different zones, I believe your testimony
18 was that if you added columns 1, 2 and 3, you would not
19 come up with your total, because they do not include the
20 carrying charges and the profits that you've indicated on
21 the other testimony today?

22 A That's correct.

23 Q And those figures would have to be plugged in here
24 to come up with a total cost for developing.

25 A That's correct.

1 The chart, which I believe is being Xeroxed or
2 distributed or something, does have some -- is that it?

3 Yes. I prepared a chart, which is being Xeroxed,
4 which provides illustrative examples, not for all
5 municipalities, but just representative examples of how
6 some of the additional costs could be factored in. And
7 this is being duplicated now.

8 MR. JOHNSON: No further questions
9 at this time and would reserve my right to
10 continue tomorrow.

11 (Discussion off the record.)

12 (After discussion.)

13

14 CROSS-EXAMINATION BY MR. DAVIDSON:

15 Q Mr. Mallach, I have a few isolated questions I'd
16 like to ask you concerning your testimony, concerning
17 Helmetta.

18 First, on a general basis, you testified before
19 concerning the impact of land costs on construction.

20 Would it be a fair statement to say that it costs
21 more to build vertically than horizontally?

22 A The direct construction cost -- well --

23 Q And my question. Does it cost more generally to
24 build a high-rise than a low-rise, for the same number of
25 units?

1 A As a general rule, yes.

2 Q All right. So then wouldn't it be possible to
3 draw an inference that land costs are more or less a
4 lesser significant factor than most of the other factors
5 that you discussed before in construction?

6 A Not necessarily.

7 For example, you say it may cost more to build
8 vertically and horizontally, which in terms of construction
9 cost is certainly true. But if the land costs are such,
10 they reach a certain level, it can be -- it can cancel
11 out all of some of the construction costs by virtue of
12 having a substantially greater number of units to distribute
13 the land cost over.

14 So, again, it's hard to generalize.

15 Q Are you familiar with public housing that's been
16 put up in New Brunswick and Perth Amboy?

17 A Not all of it, but I know a couple of the developments,
18 at least just visually, not in any detail.

19 Q Have you seen the projects in New Brunswick and
20 Perth Amboy?

21 A Well, I've driven by, you know, Memorial Parkway,
22 fairly often, so I've seen those projects.

23 Q Is that the type of public housing that you have
24 in mind for the municipalities who are the defendants in
25 this suit?

1 A I would like the record to show, and I am quite
2 positive of this, that at no time I have ever suggested,
3 or used the term public housing.

4 I am referring to subsidized housing, built by local
5 community sponsors, or by developers, under different
6 rules, regulations, procedures, et cetera, et cetera, than
7 the federal low rent public housing constructed by housing
8 authorities under the Housing Act of 1937, and I think the
9 basis for comparability is very limited. I would be glad
10 to cite a large number of representative non-public
11 subsidized housing developments that I believe represent
12 very sound social environmental and visual assets to a
13 community.

14 Q For the sake of brevity, at this time of the day,
15 would you compile such a list for all attorneys of record
16 and furnish it to us?

17 MR. SEARING: Well, that's fairly
18 far down the list of priorities. He's not
19 being asked to -- by the plaintiffs to provide
20 examples in that area.

21 If you want to, we will provide it,
22 but I would strenuously object to any motion
23 that because you didn't have that information,
24 you weren't prepared. That's just an extra
25 added burden on Mr. Mallach. It's up to you,

1 Alan.

2 Q I would appreciate it.

3 A For you and Mr. Davidson --

4 Q Would you be able to give us an opinion at this
5 point as to what can be done, what has been done, in order
6 to prevent a repetition of the urban blight that has
7 occurred in such communities, Perth Amboy, New Brunswick,
8 and other areas where such projects exist?

9 A That question can not be answered succinctly.

10 However, I think the most significant aspect of
11 the urban blight that has occurred in communities like
12 New Brunswick or Perth Amboy, has to do with a combination
13 of social and economic factors that have accumulated over
14 many decades, not least of which is the consistent flight
15 of the more affluent flight of the people to the suburbs,
16 the ratables to the suburbs, and the abandonment of the
17 cities by the suburbs, in terms of both their fiscal plight,
18 as well as the social problems they contain.

19 I can go on at some length along this vein.

20 Q Do you believe that if low income housing was
21 built in what we refer to as the suburbs in Middlesex
22 County, that a similar phenomenon would not occur?

23 A I believe that if modest amounts of low income
24 housing, properly planned, designed and managed, were
25 distributed in the suburbs of Middlesex County, that there

1 would be no appreciable social environmental or other
2 blighting influence resulting from that.

3 Q Would you define modest for us, please?

4 A Modest, I would define on the basis of a fair share
5 formula.

6 Numbers of low income people, as a share of the
7 total population, are not so great that if a reasonable
8 fair share formula was arrived at, the burden, quote unquote,
9 on any individual municipality would not be unreasonable.

10 Q You refer to fair share. If we take a particular
11 town, and I'm not saying any exist, because you're the
12 one that's doing the analyzing of all the ordinances, but
13 in any municipality, if, using the factors that you've
14 used, you have determined the ordinance to be exclusionary
15 and the municipality to have exclusionary features, but
16 in fact when other factors are looked at, the municipality
17 does provide its fair share, then is it your testimony
18 that it is still necessary for that municipality to change
19 its zoning ordinance?

20 A Possibly. I think the problem lies with the question,
21 in the definition of the word fair share.

22 Q We're assuming that that's been defined and it's been
23 established.

24 A No, because the way in which you put the question
25 leaves a substantial problem there.

1 Specifically, fair share, as you're using the
2 term, is a static concept.

3 That there is a certain -- there is a fair share and
4 that is done, and then the world goes on, but that piece,
5 that municipality, that area is taken care of.

6 Fair share is a dynamic concept. Housing units age,
7 they are replaced, they are torn down, they burn down.

8 Families move into the area, jobs for lower income
9 people are created, et cetera, et cetera.

10 Fair share -- there may be a municipality that today
11 contains a substantial percentage of low and moderate
12 income families. However, that does not relieve the
13 municipality of the responsibility of, at the very least,
14 engaging in activities to maintain the quality of its
15 moderately priced housing stock, and possibly replacing
16 that stock as it deteriorates or becomes obsolete, or
17 extending it, depending upon the amount of vacant land or
18 the fiscal capacity or the size of the need.

19 So I don't think one can think of fair share as
20 something which is and is not. It's a dynamic process.

21 Q Assuming that it's a dynamic process, then is it
22 possible for a court, in your opinion, to fix a fair share
23 for any given municipality at a point in time?

24 A No. What the court could do is to fix what one
25 might call a fair share program, as an objective, over time,

1 based on the need over time.

2 For example, during the next ten years or twenty
3 years or fifty years or five years.

4 These are our goals. In terms of both maintenance
5 of the existing housing stock and construction of new
6 housing units.

7 Q And if the parameters were to change within that
8 time period, should that fair share be reviewed daily?

9 A Not daily, but certainly there should be some
10 time period at which fair share must be reviewed, because
11 by essence, the whole concept is based on some measure of
12 projection. And, for example, the number -- the job
13 growth in the county, or the region, however defined, is
14 a factor that may be relevant to fair share.

15 Today we can make certain estimates of what it's
16 going to be like for the next few years, but that could
17 change. So it does have to be reviewed maybe every five
18 years, maybe every ten.

19 Q This leads to my next question.

20 If fair share is a dynamic concept, and it's subject
21 to constant review, and you say that you've made no study
22 of demand for housing within the county, then do we have
23 to take, from what you've said already, that building should
24 be done on speculation and hope that people are around to
25 fill the spots?

1 A Oh, certainly not.

2 I mean, the fact that I have not done a study of
3 housing demand in the county does not mean that such a
4 study can not be done with a reasonably high level of
5 precision and accuracy.

6 I think certainly before any final and conclusive
7 fair share program that's going to be obligatory in any
8 sense is determined, there has to be such a study.

9 Q Do you know if one has been done?

10 A I do not know. I believe that -- I'm familiar
11 with a lot of the materials that have been provided through
12 the state, some stuff from the county, and I believe
13 that the data, the information is there and would not be
14 a tremendous job to do such a study.

15 But, I do not know whether one has been done. I
16 suspect the County Planning Board may have. They have
17 done studies of just about everything.

18 Q Finally, with respect to Helmetta, I see in front
19 of me one of your work sheets which has a few representative,
20 or arbitrary towns listed here, with various numbers,
21 under ten different column heads.

22 Correct me if I'm wrong. I assume that this is your
23 projected cost for a one family structure, within that
24 town, for a particular zone? Residential zone?

25 A Rather than projection, I would say estimate, but yes.

1 Q So is it then your estimate that in the Borough
2 of Helmetta, it would cost approximately 53,210 for a one
3 family house to be built?

4 A If built under normal -- if built in the zone,
5 in the residential zone, under normal provisions, and
6 circumstances governing, conventional or speculative
7 home building.

8 Q For what size home is this?

9 A One thousand square foot home.

10 Q Regardless of how the rooms are allocated within
11 the one thousand square feet?

12 A Certainly if there was really unusual features, it
13 might have an effect.

14 But, using regular, conventional layouts.

15 Q Are you aware of what the current assessed values
16 for one family homes are in the Borough of Helmetta?

17 A I looked that up at one point.

18 Q What did your investigation reveal?

19 A As I recall -- I don't recall the assessed value
20 as such, but the equalized market value, the assessed
21 value times the assessment ratio, was somewhere in the
22 area of thirty thousand dollars.

23 Q A home of 53 thousand plus dollars would have to go
24 on the market for approximately how much, in your opinion?

25 A This is what it would go in the market for. This

1 includes a profit.

2 Column 9 is estimated eight percent profit.

3 Q Is there any reason why this figure is approximately
4 seventy percent higher than the figure which you said for
5 the existing housing in Helmetta?

6 A Well, basically what it suggests is that given
7 today's costs and given Helmetta Zoning Ordinance, it
8 would not be feasible to replicate, the existing housing
9 stock of Helmetta, under the ordinance, current cost
10 levels.

11 Q May I assume that for Helmetta, this is based upon
12 a lot size of 150 foot square?

13 A Well, again, in this case, an estimate was made of
14 the lot size, based on -- the information we obtained
15 from the realtors was that lots, building lots of roughly
16 similar size in South River, Jamesburg, I think there's
17 a notation to that effect, run around twelve, five.

18 So knowing that the house values in Helmetta are
19 somewhat lower, I argued that the lot value would be
20 somewhat lower as well and chose a figure of ten thousand
21 dollars for land.

22 Q Were any real estate brokers in Helmetta contacted?

23 A Again, I don't know specifically, but I would
24 doubt that. I mean, again, you can apply any value that
25 you're familiar with for the raw land cost.

1 Q Would you please furnish for me the name of each
2 ~~and every~~ broker that was used in arriving at your figures,
3 from which you based your estimate for Helmetta?

4 A I have already, I believe, stated three or four times
5 that that would be provided.

6 MR. DAVIDSON: I'd like to note for
7 the record, I'm leaving at this time, but I
8 reserve the right to ask further questions.

9 (Discussion off the record.)

10 (After discussion.)

11

12 CROSS-EXAMINATION BY MR. BERNSTEIN:

13 Q My name is Dan Bernstein, I'm here representing
14 Piscataway.

15 Can you tell us, Mr. Mallach, if you're familiar
16 with the term field work?

17 A As a general term, yes.

18 Q Can you tell us if you have done any field work with
19 regard to this case, other than working in your office,
20 correlating statistics that have been done by others?

21 A We have done no direct on-site examination associated
22 with these forms or charts, whatever you call them.

23 Q Would it be fair to say, with regard to this case,
24 that you've done no direct, on-site examination of the
25 properties in Middlesex County?

1 A That's correct.

2 Q Now, would it be fair to say that the term exclusionary
3 zoning refers to a practice whereby suburban municipalities
4 exclude low and moderate income families?

5 By means of zoning.

6 A That is the general practice. One could argue that
7 other groups are sometimes excluded, small families,
8 single people, senior citizens. But excludes some
9 population groups while providing for others.

10 Q What I'm interested in is whether or not you've
11 developed, or based your analysis on any income figures
12 showing that Middlesex County in general, and the
13 municipalities specifically, have a different economic
14 and/or socio-economic make up than the other counties in
15 its region.

16 A Well, I've cited the figure about the estimated
17 income. I have received, along with, I think, all the
18 attorneys in this case, a sheet which provides a tabulation
19 from the '70 Census of low and moderate income housing --
20 sorry. Low and moderate income families in Middlesex County.

21 I have the information from the housing need, which
22 is also by low and moderate income.

23 So that there is certainly a substantial low and
24 moderate income population in Middlesex County, and we
25 have a reasonable assessment of what the incomes in this

1 case represent, and so knowing this, I suspect it's largely
2 material as to whether it varies from the make up of our
3 counties.

4 Q My question is, have you compared, or do you know
5 of studies which have compared the low and moderate income
6 make up of Middlesex County compared with its neighboring
7 counties, Somerset, Monmouth, Morris and Union?

8 A I don't know of any specific studies. I believe it
9 would be a simple matter to make such a judgment.

10 Q Do you have any opinion as to whether or not Middlesex
11 County has more low and moderate income families than the
12 surrounding counties?

13 A Based on general impressions or observations, I
14 would say that it probably has more than Somerset, Morris,
15 maybe Monmouth, I'm not sure about Monmouth, and possibly
16 fewer than Union.

17 Q Now, if it could be proven that Middlesex County
18 had more low income families than the surrounding counties,
19 would it be a fair statement that Middlesex County in the
20 future would not have to provide as great a share of low
21 income families as, say, Somerset or Morris, who presently
22 lack this type of population?

23 A Not necessarily.

24 Certainly the first -- sorry, scratch that.

25 The issue would be on the nature of population growth

1 and job growth in those counties, and also the nature of
2 the region that was defined for purposes of fair share
3 calculation.

4 Now, let me give you a hypothetical. It's not
5 a hypothetical, it's another situation.

6 If you look at Essex County, for example, in the
7 case of Essex County, the number of low income families,
8 the number of families in need, families in substandard
9 housing, et cetera, is so great, and the amount of vacant
10 and developable land, even treating the county as a whole,
11 so limited relative to that need, that it's a fair argument
12 in the case of Essex County there would be effectively no
13 way to meet low and moderate income housing need effectively,
14 except by coming up with some means by which some of Essex
15 County's need would be accommodated by some of the other
16 counties.

17 That's an extreme case. In the case of Middlesex,
18 even if there was a disparity in the percentage of low
19 and moderate income families, if Middlesex was a region
20 in and of itself, particularly in terms of the relationship
21 between housing and jobs, for example, there would be
22 some question as to whether it made sense to house people
23 in relatively outlying parts of Morris and Somerset County,
24 if they're going to be part of the Middlesex County labor
25 force. So that would be a factor that would have to be taken

1 into consideration.

2 If, on the other hand, there was an extensive
3 cross commute between, say, Middlesex and Somerset Counties,
4 then the notion of treating the two of them as a region,
5 in which some redistribution might take place, would be
6 more logical.

7 So you'd have to look at some of these other
8 factors.

9 Q Well, is your premise similar to that of former
10 Governor Cahill, that each community, or each region,
11 should house those people who work within its borders?

12 A Not community, in the sense of municipality,
13 because certainly the municipal boundaries, there are
14 so many and so close that that wouldn't be terribly
15 effective, but within overall commuting areas.

16 I mean, certainly people should, wherever possible,
17 have the opportunity to live within some kind of reasonable
18 commuting distance of their work. So what that distance
19 is would tend to define it.

20 Q Would it be a fair statement that the principal
21 attribute of the housing needs for a region would be the
22 jobs that were created in that region?

23 A Not the principal. One. Certainly one major
24 attribute, but not the principal one. Again, I'm not
25 sure how you would determine which of the many is the

1 principal one.

2 Q Could you give me other factors?

3 A Okay.

4 MR. SEARING: Before you do that,
5 this line of questioning, in my judgment
6 is not pertinent to the testimony Mr. Mallach
7 has been noticed as giving.

8 MR. BERNSTEIN: I appreciate that.

9 Thank you.

10 A Well, certainly a major factor is the level of
11 household formation --

12 Q Do you have -- strike that. Go ahead.

13 A Independent, or separate from job growth. Another
14 factor is what one might call the need backlog, particularly
15 the existence of substandard housing and the existence of
16 families in financial stringency.

17 Another would be the question of providing for a
18 reasonable vacancy rate, and providing for a working
19 housing market.

20 Another would be the need over and above, or
21 independent of the actual substandard housing, the need,
22 either to replace or modernize, improve, existing but older
23 housing.

24 The question of the distribution, the location of
25 vacant land, developable land is another issue.

1 Q Any more?

2 A I think these are the major ones.

3 Q I know this question has been asked of you before.

4 A If it's on how many realtors --

5 Q No, no.

6 My interest is, we represents boards in a number
7 of communities, and they ask, "How are we to determine
8 whether or not we're shouldering our fair share?"

9 Is there any quick, or easy formula that you can
10 cite to these communities, so that they can have a guide?
11 Because as many planners as there are, I know that there
12 are that many different theories. I'm interested in your
13 feeling as to an easy formulation for the general public,
14 so that they can have a rough idea.

15 A I think there isn't, really. I think one of the
16 real major considerations, there's no way a municipality
17 can do a fair share analysis for itself, except by
18 defining a reasonable region in which it's located, then
19 doing a fair share analysis for the region, and working
20 back down to the municipality.

21 Now, obviously the advantage of having somebody at
22 the regional level do that analysis, is at least it's
23 consistent.

24 If planner A does that analysis for PiScataway and
25 planner B does it for Monroe, with all the good will and

1 integrity in the world, it may come out vaguely similar,
2 similar, but it will not come out identical.

3 Q Well, one problem I have with your analysis is
4 that with regard to fair share, it seems to perpetuate
5 existing conditions.

6 Isn't that true?

7 In other words, if we find that Middlesex County
8 has, in fact, more poor people than does Somerset or
9 Morris, under the fair share formulation, this will be
10 perpetuated, and Morris and Somerset would be allowed to
11 continue keeping a small percentage of low and moderate
12 income people, and Middlesex County attract --

13 A Well, it depends. Fair share, the whole fair share
14 concept has to take into consideration the base of the
15 realities. It comes back to the job issue, for one.

16 Again, if -- redistribution of population, sort of
17 for the sake of redistribution of population, is egregious.

18 What we're trying to do is strike a reasonable
19 balance between redistribution and -- in terms of the
20 distribution of jobs, land and so on.

21 For example, in Middlesex County, you have towns of
22 New Brunswick and Perth Amboy, which contain a disproportionate
23 share of the low and moderate income families. You know,
24 that's statistically demonstrated, I assume.

25 Now, there will be no fair share plan likely to take

1 place, even though it could be conceived of, in
2 the abstract, but a realistic workable fair share plan
3 is not going to create complete, perfect equality of
4 income distribution or whatever across Middlesex County.

5 But, it can arrive at some balance, in terms of
6 what's feasible in the distribution.

7 But, certainly in the New Brunswick and Perth
8 Amboy, they have existing housing stocks, much of the
9 existing housing stock is either sound or at least
10 potentially sound, and there's, you know, no sense in
11 disregarding that, as well as -- their continued employment
12 and commercial centers.

13 Q Would it be a fair statement, one way of checking,
14 in order to see if a town was exclusionary or discriminatory,
15 would be to look at the mean income for that town in
16 relation to others, and if you found that a town had a
17 lower level of mean income, this would be one indication,
18 although not an all encompassing one, that it wasn't
19 practicing exclusionary zoning?

20 A Well, it depends. It depends.

21 I think that may be a relative factor, in terms of
22 looking at the remedy in the fair share. It may or may not
23 be relevant in terms of making the original determination,
24 because one of the rather bizarre findings that I have
25 noticed in a number of New Jersey municipalities is where

1 you have municipalities that are not particularly affluent,
2 or have not been up to a particular point, who at some
3 point in their growth decide, from now on, we don't want
4 anybody else like us.

5 We want a better class of people. And engage in
6 exclusionary zoning, to presumably upgrade the population.

7 Q Well, following this line of argument, aren't
8 the towns that you've described with the low income
9 levels entitled to have balanced housing, and, therefore,
10 to try to attract the professional and white collar workers
11 and the higher income people.

12 Doesn't fair share and balanced housing mean that
13 each town is entitled to the gravy, the high income people,
14 the acre zoning and better, as well as those families
15 which would provide tax deficits?

16 A In moderation, in proportion, in a manner that
17 meets the regional needs.

18 The problem where the town unilaterally deciding,
19 okay, we've had it with low and moderate income people,
20 from now on it's rich or nothing, is that that is not
21 responsive to the overall regional need, which continues.

22 So that while a town, of whatever income level,
23 can certainly make some efforts to attract the well-to-do,
24 I have very serious reservations whether it should be
25 justified in attracting the well-to-do while simultaneously

1 excluding the less well-to-do.

2 You know, if Piscataway or whomever wants to
3 create a one acre zone, and bring -- get the professionals,
4 if it can, I don't have any problems with that.

5 If it excludes -- excludes a continual proportion
6 of the low and moderate income people at the same time,
7 that's why I draw the line as a general case.

8 Q Well, the question comes up, in your formulation
9 as to what each town should adopt, is any credit given
10 for the existing housing stock.

11 As an example, there are many towns in Somerset
12 and Morris which have exclusively high income persons,
13 and there are many towns in Middlesex County which are
14 predominantly middle and moderate income persons.

15 Now, are the low and moderate income towns subject
16 to less severe restrictions? Can they zone less of their
17 areas for the moderate income, saying that we have an
18 ample stock, and do the wealthy towns have a bigger obligation
19 or are you lumping them all together?

20 A Not necessarily. I think the question of wealth,
21 which could be taken either as per capita income, or as
22 ratables per capita, or other measures, could be considered
23 as a possible fair share factor, along with the others.

24 I have no objections to that in principle.

25 Q Now, you've illustrated for us a number of criteria

1 as to what a zoning ordinance should include, such as
2 multi-family house, small lot zoning, and things of this
3 nature.

4 (Discussion off the record.)

5 (After discussion.)

6 Q Is there any way that each town can know how much
7 of its vacant land it has to zone for each of these
8 measures for attracting low and moderate income people?

9 A Well, --

10 Q How much is enough?

11 A That's a question. This comes back, in a way,
12 sort of round about, to some of what we were talking
13 about, the conditional use, for example.

14 Now, I think I mentioned that given a decent housing
15 analysis, a municipality can take a sort of housing goal.
16 Let's say that --

17 Q Excuse me a minute. Is this based on fair share?

18 A It's a fair share approach.

19 Q Well, just on your own analysis, you can only
20 point out those areas of the zoning ordinance which are
21 exclusionary, correct?

22 A Well, let me explain, and then see if this is
23 responsive.

24 Q Okay.

25 A Let's say that a total -- the total housing demand,

1 with the fair share factors built in for a given
2 municipality over the next whatever years is ten thousand
3 units.

4 A sensitive, thorough and well done housing demand
5 analysis can take that demand and break it down by housing
6 type, size, cost level and whatever.

7 Can say that within a reasonable margin of error,
8 such and such percent of those units should be relatively
9 expensive single family homes, such and such should be
10 moderately priced single family homes, such and such should
11 be apartments of X, Y, Z bedrooms, and the like.

12 Based on an analysis of available data, in terms of
13 households by size, by income, by age, and what we know
14 about housing preferences and housing needs for those
15 households.

16 Once this is done, then the municipality can have
17 a reasonable ball park set of figures, in terms of numbers
18 of apartments of this type, numbers of houses of that type.

19 Now, this can be translated into numbers of acres.
20 I mean, if the figure comes out, let's say, oh, two thousand
21 garden apartment units, and you're working on the average
22 density of ten units per acre, you can say, okay, you've
23 got to zone two hundred acres for garden apartments.

24 Now, that, unfortunately, is simplistic and
25 unworkable, because of the scarcity factors.

1 And because of the problems of land -- actual
2 land availability as distinguished from theoretical
3 land availability.

4 Suppose the owner of one hundred of the two hundred
5 acres doesn't want to sell?

6 Now, in the large townships, with large amounts
7 of vacant acres, a margin of error could be built in.

8 Odds are that the numbers of units likely to be
9 generated by any conceivable fair share program will fit
10 into a relatively small percentage of the vacant land
11 of the municipality.

12 So, if the vacant land in the municipality is
13 zoned in proportion to the distribution of units in the plan,
14 that will provide for a substantial margin of error for
15 problems of land availability and the like.

16 Conversely, if you use something like the
17 conditional use approach, you can approach it that way.

18 Q If we could back up a moment.

19 Your function would be, as I see it, twofold. One
20 to talk about exclusionary zoning practices, is that correct?

21 A That's correct.

22 Q And secondly, to give figures predominantly on
23 what low and moderate persons can afford, correct?

24 A That's a part of the correlary to the first one,
25 which is analyzing the impact of the exclusionary zoning

1 practices.

2 Q I assume the total need is gotten by plugging
3 your figures into the fair share, which will be worked out
4 by another witness, correct?

5 A No, I'm not going to do a need analysis in the sense
6 of saying that there are -- there will be X thousand units
7 at such and such a price level needed, the next five years.

8 Q Well, don't you tell us if a family makes X, they
9 can only afford a house of Y cost, and then your figures
10 are correlated with the zoning ordinance and someone else
11 says the total needed.

12 It's a correlation.

13 A Yes, in that sense.

14 Q From what I gather from your testimony, the private
15 sector is not going to be able to construct a home for any
16 family of an income less than a certain level, is that
17 correct?

18 A Without subsidy, yes.

19 Q What was that figure?

20 A Well, the housing cost or the income level?

21 Q The income level of a family.

22 A That can afford the least expensive --

23 Q That can't.

24 A Can not. Well, certainly we cited the low income
25 group, which is people earning, say, below 85 hundred or

1 thereabouts, and these are people who can not -- are not
2 likely to be able to afford a house without some form
3 of subsidy, either government or internal.

4 Q Who can't afford it without a subsidy? If I understood
5 right, if a house cost between 32 and 35 thousand dollars
6 under your figures, I've been told by realtors that a
7 family shouldn't buy a house more than two and a half times
8 its income, is that the standard?

9 A Two and a half is even pushing it a little. If you
10 say two and a half, then, for example, well, let's see.

11 A house at 35 thousand dollars is two and a half times
12 the income of somebody earning 14 thousand dollars. A house
13 at 32 thousand is two and a half times the income of somebody
14 earning 12 thousand 5.

15 Q So would it be fair to say that under your analysis,
16 you don't see the private sector building much for the family
17 earning 14 thousand, and probably nothing for the family
18 under 12 thousand 5, unless it's subsidized.

19 A No, no. First --

20 Q I'm not talking about apartments, I'm talking about
21 one family homes.

22 A One family detached homes.

23 Q Yes, sir. Because of time, we can't go into
24 everything else, but limiting it to one family homes.

25 A Okay. I suspect there are some marginal improvements

1 that could be made, which would reduce the costs somewhat.

2 But as a general rule, if you take that figure
3 of 12 thousand 5, plus or minus a thousand dollars,
4 that would certainly be the ball park, the bottom that
5 could be reached, the bottom income group that could
6 be reached.

7 Q And do you have a formula of how many times income
8 a family can afford to pay for rent?

9 A Well, the basic formula that we use, and in fact
10 in theory, the 2.5 times income is supposed to translate
11 out to that, is that families should not spend more than
12 25 percent of their gross income for shelter.

13 Q Twenty-five percent of income.

14 A Yes, that's correct.

15 Q So would it be -- so would it be fair to say that
16 based on your study, for the most part, in fact totally,
17 you're not looking for the private sector, unless something
18 is subsidized, to build anything for it -- below the families
19 earning 12 thousand 5, for the one family homes.

20 A That's correct.

21 Q And possibly slightly lower, if we figure the town
22 houses going to come in at 30 thousand, two and a half times,
23 divided by 30 thousand.

24 A Town houses you can get down to 27 or 28 thousand.

25 Q That would be with a one bedroom unit.

1 A No. Two and three bedroom town houses, based on
2 the possibility of substantially reduced land costs,
3 resulting from the application of the conditional use idea.

4 Q Now, one thing that bothers me that you've spoken
5 of, and that is, when you increase the density, in other
6 words, if you allow a person to build ten units rather
7 than five, multi-family units, on a parcel, the value
8 of that parcel will go up in price, correct?

9 A As a general practice in the marketplace.

10 Q So that it's all together possible that if a town
11 were to down zone, or to increase its density, chances
12 are the land which was subject to this would go up in
13 price and become more valuable.

14 A Possibly. Certainly -- excuse me..

15 As a general rule, the land that is down zoned would
16 increase in price, and that increase in price would be
17 very much dependent on the amount of land down zoned.

18 The smaller the amount of land down zoned, the
19 greater the increase in price likely.

20 Q Doesn't a developer make more profits if he builds
21 a more expensive house, than a cheaper house, as your
22 statistics indicate, a constant eight percent profit.

23 Isn't a developer better off putting up a big
24 house than a little house?

25 A It depends on the market.

1 The developer's profit has to be factored against
2 the length of time involved in selling the house, and the
3 feasibility of getting it sold, period.

4 Q Yes, but --

5 A If there was an equal demand for all types of housing,
6 on balance, the more expensive ones would be more profitable.

7 Q Do you have any statistics that would show us that
8 the cheaper priced homes sell faster than the more
9 expensive priced homes?

10 A I have no specific statistics to that effect.

11 I do have, you know, the assertion and testimony
12 of builders and realtors to that effect.

13 Q But you have nothing specific yourself.

14 A I have no hard statistics, you know, saying 30
15 thousand dollar homes, X number of weeks and so on.

16 Q Now, isn't it all together possible that if you
17 increase the density, or lower the lot size, that a
18 developer would put up a moderately expensive home, rather
19 than a lower priced home, and, therefore, maybe sell it
20 a thousand dollars less than the market and make a bigger
21 profit for himself and the land owner, rather than
22 carrying the savings on to the potential purchaser?

23 A That is certainly conceivable. That is one of the
24 arguments why some of the notions such as the maximum
25 standards in the zoning ordinance, or framing specific kinds

1 of standard commitments as a condition of receiving the
2 conditional use approval, should be entertained.

3 Because there certainly is a danger. If you just
4 provide the developer with a kind of carte blanche, go ye
5 and build things, then depending on how the market is
6 working and all sorts of other factors, you could end up
7 without the kind of housing that you set out to achieve.

8 So you have to protect and deal with that potential
9 problem.

10 Q Now, you would admit that there are a lot of demands
11 on a local government for money in 1976, such as schools,
12 police, fire, welfare, many pressing demands that
13 communities don't seem able to satisfy.

14 A Well, I'm not sure how much, by and large, they aren't
15 being satisfied, as far as most of the suburban municipalities
16 are concerned.

17 Certainly there's a certain pattern of rising
18 expectation, and gimme, which exists around, but I don't
19 think that typical New Jersey suburban municipality is
20 doing that bad a job, satisfying the basic demands and
21 needs of its people.

22 Q Well, the taxpayers are paying more in property
23 taxes, probably than anywhere else in the country.

24 A They say Massachusetts is higher.

25 Q Are we second highest, then?

1 A I think so. But we're paying less in income
2 tax than most people.

3 Q Now, would you recommend that with regard to
4 subsidized housing, that the municipalities themselves,
5 out of their own funds, subsidize the housing, or is it
6 that they provide an environment where the state and
7 federal subsidies can in fact operate?

8 A Certainly the latter.

9 Now, that sort of environment may include a
10 limited subsidy, not in the sense of a direct outlay,
11 but in the willingness to do without certain funds, as
12 in the case of tax abatement.

13 As far as whether municipalities should get in the
14 business of directly subsidizing the cost of housing, I
15 have not suggested it, but I don't object to somebody
16 exploring the feasibility of it.

17 New York City has done a lot of that.

18 Q And we know what's happened to New York City.

19 A Yes, because the cause and effect is complicated.

20 Q Unfortunately, we're one minute past the bewitching
21 hour. It's 5:01. And all the defendants' attorneys but
22 me have left.

23 I thank you for staying this late. I'm sorry we
24 don't have more time.

25 A Well, there's tomorrow, I guess.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

(Whereupon, depositions adjourned

at 5:01.)

Richard C. Gault
I, *Richard C. Gault* the officer before whom the foregoing
depositions were taken, do hereby certify that the witness (es) whose
testimony appears in the foregoing depositions was (were) duly sworn
by me and that said depositions are a true record of the testimony
given by said witness (es); that I am neither attorney nor counsel for
nor related to, nor employed by any of the parties to the action in
which the depositions were taken; and further, that I am not
financially interested in the action.

Richard C. Gault