

~~Vol. II of Depositions~~ CA - General 1/29/1976

Vol. II of Depositions upon oral exam
of Ernie Erber

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SUPERIOR COURT OF NEW JERSEY
 CHANCERY DIVISION : MIDDLESEX COUNTY
 DOCKET NO. C-4122-73

URBAN LEAGUE OF GREATER NEW :
 BRUNSWICK, A NON-PROFIT CORPORATION :
 OF THE STATE OF NEW JERSEY, et al., :

Plaintiffs,

-vs-

VOLUME II

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 NORTH BRUNSWICK; :
 TOWNSHIP COMMITTEE OF THE TOWNSHIP :
 OF PISCATAWAY; TOWNSHIP 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. :

of
 DEPOSITIONS UPON
 ORAL EXAMINATION
 OF
 ERNIE ERBER

Defendants. :

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TRANSCRIPT OF DEPOSITIONS, taken by and before
M. Virginia and Richard C. Guinta, Notaries Public
and Certified Shorthand Reporters of the State of
New Jersey, at the Middlesex County Court House,
New Brunswick, New Jersey, on Thursday, January 29,
1976, commencing at 9:35 a.m.

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

MESSRS. BAUMGERT & BEN-ASHER
By: Daniel A. Searing, Esquire (of Counsel)
Attorneys for the Plaintiffs.

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

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

MESSRS. SIEGEL & FARINO
By: Thomas R. Farino, Jr., Esquire
Attorneys for the Township of Monroe.

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

SANFORD E. CHERNIN, ESQUIRE
Attorney for the Borough of South Plainfield.

ARTHUR W. BURGESS, ESQUIRE
By: Barry H. Shapiro, Esquire
Attorneys for the Township of Woodbridge.

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

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I N D E X

WITNESS: CROSS

ERNIE ERBER

By Mr. Lerner 4

By Mr. Busch 25

By Mr. Farino 60

By Mr. Bernstein 62

1 MR. SEARING: Plaintiffs would like to
2 show that Mr. Erber has courteously agreed
3 to make himself available from approxi-
4 mately 9 A.M. to approximately 3 P.M. on
5 January 29th for the purpose of a second
6 day of depositions, although we understand
7 that the Counsel for Helmetta whose notice
8 we are operating under has finished with
9 Mr. Erber and there is no other outstanding
10 Notice of Deposition or subpoenas.

11 MR. BUSCH: I would just like the
12 record to reflect on behalf of all the
13 defendants that a notice by any one
14 defendant is a notice to be deemed by all
15 and it would be futile in this case for
16 25 identical notices to go out.

17 I would agree with everything else
18 Mr. Searing said.

19
20 E R N I E E R B E R, Resumes.

21 ~~CROSS-EXAMINATION~~ BY MR. LERNER:

22 Q Mr. Erber, again let me introduce myself.
23 My name is Lawrence Lerner. I'm the attorney for the
24 Borough of Highland Park.

25 MR. LERNER: Off the record.

1 (Discussion off the record.)

2 Q Mr. Erber, could in fact through rent
3 subsidies all or the majority of the housing needs of
4 Middlesex County be met for people of low and moderate
5 income?

6 A No, it could not.

7 Q Why not?

8 A Because there is not a sufficient supply of
9 housing distributed throughout the county for people of
10 low and moderate income and that would be available
11 because rent subsidies do not add to the housing supply.
12 They only make it possible for people to pay rentals
13 beyond their income and occupy housing where it is
14 available.

15 Q Are you then concerning yourself with
16 people who are not presently living in Middlesex
17 County?

18 A Yes, with those who are presently employed in
19 Middlesex County. And in terms of the projection,
20 with those who would normally in terms of the history
21 of the immigration into Middlesex County come to seek
22 homes here.

23 Q The City of Newark has a goodly amount
24 of publicly assisted or funded housing, is that
25 correct?

1 A I would say in proportion to other cities,
2 a goodly amount, yes.

3 Q Do you know how the City of Newark looked
4 thirty years ago?

5 A Thirty years ago I was acquainted with only
6 Downtown Newark. I had been there. I wasn't
7 acquainted with all the neighborhoods of Newark.

8 Q Was it a viable downtown area thirty
9 years ago? Was it a thriving, aggressive business
10 community?

11 A I would say yes.

12 Q Would you say that the inclusion in the
13 City of Newark of high rise multi-family subsidized
14 housing in any way contributed to the status of the
15 City of Newark as it is today?

16 A That question can only be relatively answered
17 in terms of what the city might have been without that
18 and I think without the inclusion of public housing,
19 it would be in a much worse position though when you
20 define it as high rise, that raises a question which
21 is debatable as to whether the form that public housing
22 took in Newark was always the best or advisable.

23 Q The public housing that was built was
24 built pursuant to federal guidelines, was it not?

25 A Yes, it was.

1 Q So that are you saying that the federal
2 guidelines, even though they were assumedly valid
3 at the time these units were built, did not turn out
4 to be so great?

5 A The one guideline that in my estimation was
6 most a disadvantage for rebuilding of cities was the
7 one that established a maximum amount of money that
8 could be spent on land acquisition per dwelling unit.
9 So that it forced the local housing authorities to
10 increase densities in order to lower the cost per
11 unit of land. And in many cases, the densities were
12 higher than was warranted which might be considered
13 good quality living environment.

14 Q But the local housing authorities were
15 completely controlled, were they not, by forces or
16 factors beyond their control?

17 You are saying that they had to acquire the
18 land at certain prices and this is all subject to
19 HUD guideline, isn't that correct?

20 A Yes. Of course, this is pre-HUD, actually,
21 but it was in accordance with federal guidelines.

22 Here I am not able to speak with assurance because
23 I believe that there was flexibility. There were
24 hardship cases. There were differences between Manhattan
25 and Newark and some smaller community in less dense areas

1 in terms of the federal guidelines and I believe that
2 since these were not statutory, had there been enough
3 pressure from local housing authorities, they were
4 subject to change.

5 Q Well, isn't it true that Manhattan is
6 almost in the same predicament as Newark?

7 A Well, that's a broad question. I couldn't
8 respond to that.

9 Q Well, the City of New York particularly
10 having inability to maintain its service level because
11 of a reduction in tax base.

12 A Well, that's hard to say. The City of Baltimore
13 has a lot of public housing and ended up in the year
14 with millions of dollars in the treasury as a surplus.
15 So one would have to go into more complex factors to
16 make a ~~connection~~ between the two.

17 Q But the City of Baltimore has, in fact,
18 changed its whole structure, hasn't it, where it has
19 put its new housing outside in the outer ring of the
20 city's geographical structure?

21 A I would very much like to believe that was so
22 but it is not. Actually, Baltimore County has one of
23 the most exclusionary counties in the country in its
24 zoning. Baltimore County is completely independent of

25

1 Baltimore City.

2 Q I'm sorry. Were you talking about the
3 county and I was talking about the city, I guess.

4 A You mean the outskirts of the city, within the
5 city limits, you mean?

6 Q Within the city structure, downtown
7 Baltimore as I understand it has gone through a major
8 renovation, a rebuilding?

9 A Yes, it has. So has Newark.

10 Q So has Newark, that's true. But the
11 character of Newark is such that in the New York Times
12 this week, the Mayor of Newark has had to curtail
13 municipal services and is laying off policemen and
14 firemen, not because they are not needed, but because
15 there isn't sufficient funds to pay them.

16 And if he were to raise the taxes to pay these
17 additional salaries, it would be fostered upon the
18 homeowners, the homeowners not being the federally
19 funded projects within the confines of Newark.

20 So he has chosen the alternative of reducing
21 the work force.

22 Isn't this usually what happens?

23 A Yes. I think this is the result of the
24 exclusionary zoning policy in Northern New Jersey County
25 which force the poor to live in Newark.

1 Q The towns that have the poor are the
2 towns that are having the difficulty?

3 A That's true.

4 Q Isn't it presence of the poor that
5 constitutes the difficulty?

6 A The presence of the poor adds to the financial
7 problems of the city.

8 Q If this burden were not met by the city
9 individually, would it not be met by the Federal
10 Government?

11 A If the city declared bankruptcy, I suppose either
12 the state or the Federal Government would have to bail
13 it out and the state and federal taxpayers would have
14 to pay.

15 Incidentally, that was the recommendation of the
16 Governor's Commission on the Civil Disturbances in
17 Newark that was headed by Robert Liley which recommended
18 that the State of New Jersey pay for fire and police
19 protection in the City of Newark.

20 Q In effect then by mandating relocation of
21 poor, aren't you then not shifting the burden for the
22 care and maintenance of poor to municipalities?

23 A Yes, I would prefer to use the verb sharing
24 the burden.

25 Q But by forcing a distribution that would

1 not appear to be voluntary on behalf of the local
2 municipalities, you would then be asking the Court
3 to order that they accept a burden of the cost of
4 maintaining the poor?

5 A The Courts order all kinds of people to obey
6 the law.

7 Q Do you state that the law is that
8 municipalities have a burden and obligation to accept
9 poor and assist poor?

10 A That would be up to the Court to state.

11 Q That is not your premise.

12 A Well, as a layman, I have my own views of what
13 the law is but, of course, this would have to be litigated
14 and determined by a Court of Law.

15 Q But the net effect is the result you
16 are seeking in this lawsuit, is that correct?

17 A Well, I'm an expert witness here --

18 Q You are also an employee of the National
19 Committee Against Discrimination of Housing, are you not?

20 A I am.

21 Q I would assume, is it presumptuous to say
22 you occupy a position of some authority within the
23 confines of that structure?

24 A Authority within, you know, my delegated
25 assignment, yes.

1 Q What is your position again?

2 A Director of Research and Program Planning.

3 Q Do they have an Executive Board?

4 A Yes, there is a Board.

5 Q Do you sit on that Board?

6 A No, I do not.

7 Q Do you report to somebody who does sit
8 on that Board?

9 A Well, I report to the Board and to the
10 Executive Director of the organization, yes.

11 Q I thought I asked you if you reported to
12 the Board?

13 A Yes, I report to the Board.

14 MR. SEARING: You did not.

15 MR. LERNER: I'm sorry if I didn't.

16 Q Do you have a regular opportunity to
17 speak to the Board of Directors of the National
18 Committee or Executive Committee, let me ask you that.

19 A Yes. The Executive Committee not very frequently
20 because they deal with administrative matters which
21 I'm not involved in. To the Board, the Board meets
22 roughly four times a year and I do report at Board
23 meetings at least twice a year.

24 Q Is there a grouping within the structure
25 of the National Committee that in fact has the

1 responsibility of the every-day running of the
2 organization?

3 A Basically this is the president of the National
4 Committee.

5 Q Who is that, please?

6 A That is Robert C. Weaver.

7 Q His name is familiar to me. Can you
8 tell me how long he has been a member of this committee?

9 A I would believe from its founding in 1950.

10 Q Is he presently an employee of the
11 committee or has he always been an employee of this
12 committee?

13 A To my knowledge, he's never been an employee.

14 Q By whom is he employed, if you know?

15 A He was employed by I believe Columbia University
16 until he went into federal employment as the head of
17 the Housing Home Finance Agency and then the first
18 secretary of HUD. And when he left HUD, he at the
19 end of the Johnson administration was appointed to a
20 professorship in the city university system of New York.

21 I believe he's called now, I don't remember,
22 he occupies the chair and title as Distinguished
23 Professor of Urban Affairs, I believe, at Hunter College.

24 Q So that this would be the same Mr. Weaver
25 who was, in fact, the founding father of HUD as it is

Erber-cross

1 now constituted, isn't that correct?

2 A Well, the term founding father, I believe the
3 founding father was probably President Johnson, if I
4 can recall, but he was the first appointed secretary
5 of HUD.

6 Q He is the president of the National
7 Committee?

8 A Yes, he is.

9 Q Who is in charge of the every-day running
10 of the National Committee?

11 A Edward L. Holmgren who is the executive director.

12 Q Mr. Holmgren has been employed by the
13 committee for how long, to your knowledge?

14 A Since 19, I believe the beginning of 1972.

15 Q Do you know by whom he was employed prior
16 to that?

17 A Yes. He was employed by the Leadership Conference
18 for Community --

19 MR. SEARING: Can I interject? He
20 was employed by the Leadership Council for
21 metropolitan open communities in Chicago,
22 Illinois and additionally, I fail to see
23 the relevance of these questions.

24 MR. LERNER: Well, I would like to
25 see whether or not --

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MR. SEARING: I'm not asking you to establish that.

MR. LERNER: If you can answer the question, I would like to find out if he, in fact, was ever an employee of the federal government with HUD also.

A To the best of my knowledge, no.

Q His experience has been though in some sort of public housing sector?

A Yes. He did work for the Chicago Housing Authority at one time and also for the Urban League.

Q If your fair share plan were followed as you would suggest that it should be, then the towns would be required to offer the opportunity to increase their public housing?

A Yes.

Q By increasing their public housing, you concede there will be increased demands on municipal services produced by the inclusion of the economically deprived, the poor?

A Well, public housing pays what it considers its fair share of local services.

Q Is that a requirement or is that a gratuitous payment?

A No, I believe it is a requirement.

1 Q Do they pay taxes?

2 A No. It is in lieu of taxes.

3 I'm speaking now of public housing which is
4 publicly owned.

5 Q Do you know whether or not the payment in
6 lieu of taxes is the same as taxes?

7 A That would have to be determined on the
8 assessed value; someone make an appraisal and determine
9 what the assessed value of the property would be and
10 whether that equals the tax rate.

11 Q The answer to my question is you really
12 don't know?

13 A I don't know. In terms of each specific
14 instance it would have to be determined separately.

15 Q Do you concede that the facility itself
16 as a general rule will demand more services than a
17 high rise occupied in the economy, so to speak, public
18 sector meaning really don't the poor require more
19 services, more municipal services as a matter of
20 practice?

21 A I would say as a general rule, that's true.

22 Q If in fact municipalities change and are
23 required to change such as through the implementation
24 of environmental protection controls, some of the
25 industries are forced to close and the industries located

1 within a certain community are forced to leave, what
2 then happens to the poor?

3 A That's a somewhat speculative question. I
4 think what has happened in the past where industries
5 have closed is, for instance, in New England where
6 textile and shoe industries and others drifted out
7 of that part of the country and went south and west,
8 there were periods of readjustment. Other industries
9 developed.

10 Boston which lost greatly the textile and
11 shoe industry and its surroundings emerged after,
12 during the 1960's and to some extent prior to that,
13 as one of the leading electronic manufacturing centers
14 in the country because there was a skilled and stable
15 labor force that electronics took advantage of to
16 locate plants there.

17 Q Wasn't the responsible factors to that
18 development of Boston solely attributed to the
19 location of its institutions of higher learning
20 which spawned those same industries, for example,
21 Harvard and Massachusetts Institute of Technology?

22 A I would certainly not say solely. I think it
23 is a contributing factor.

24 Q Wouldn't it be the dominating contributing
25 factor?

1 A No. A lot of people have contributed to the
2 residence of the Kennedy family in Boston so one can
3 speculate as to why it happened.

4 Q I'm unaware of their contribution to
5 the electronics industry, though.

6 A I was alluding to the allegations of Republicans
7 that Kennedy Administration gave all the war contracts
8 to industries in Massachusetts. But that's never been
9 proven.

10 Q Isn't the electronics industry built in
11 towns, I'm sorry, built in areas not solely in Boston
12 but in surrounding suburban communities?

13 A Yes, largely.

14 Q Why then if in fact, if old businesses
15 move and new businesses take their place in general
16 areas are not the old buildings used?

17 A Sometimes they are adaptable. Sometimes they
18 are not. Commercial and industrial structures are
19 their own types of obsolescence just as residences
20 do and part of the urban scene in the United States
21 is that we are constantly renewing and rebuilding
22 although some old loft buildings have been adapted
23 to office uses, research uses by virtue of the fact
24 they are more centrally located and others have not
25 had any uses and they have been replaced with other

1 structures.

2 Q Haven't in fact they have taken on lesser
3 economic uses and it was just cheaper to build a new
4 plant outside of town, theoretically?

5 A That's true.

6 Q Didn't this concept of it was less costly
7 to build new than to renovate enhance the urban
8 sprawl the suburban development?

9 A That's true.

10 Q Why then would you seek to increase
11 density in older areas that are in economic difficulty?

12 A I would seek to increase it only marginally
13 and far less so than in areas that have vacant land
14 where the bulk of the increase should go.

15 Q You feel then that it is the consideration
16 of the vacant land that should be considered for the
17 determination of future housing development?

18 A It should be one of the very important
19 considerations, vacant land plus local services, local
20 ability to serve a population.

21 Q When you say local services, you mean the
22 establishment of local services or the existence of
23 local services?

24 A The existence and the ability to expand them.

25 Q Wouldn't then a town that has minimal

1 local services and not choosing to increase its
2 local services stay the same?

3 A If they chose not to increase their services,
4 they would be faced with taxpayers suits and would be
5 forced to be close -- if they admitted population
6 refused to build schools, they would be violating the
7 state law.

8 Q What if the taxpayers choose not to
9 bring such suits?

10 A I suppose their children would be cited for
11 truancy.

12 Q There are towns in Middlesex County whom
13 you have made party defendants in this suit that
14 do not have school systems in total. Are you aware
15 of that?

16 A I don't know what you mean by don't have
17 school systems.

18 Q They don't have high schools. They send
19 children from Milltown to the high school in New
20 Brunswick. Helmetta doesn't have a fully developed
21 school system. I think they send their children to
22 other schools.

23 A I daresay there was probably a history in the
24 state of Middlesex when there was probably one or two
25 high schools in the whole state. We have grown

1 progressively. Some towns move from being a sending
2 district to having their own school and I don't see
3 any reason why eventually that wouldn't continue to
4 progress so all would have high schools, if that
5 was the logical thing to do.

6 If it wasn't logical, then there would be
7 regional high schools which work very well in some
8 areas.

9 Q But if there is no citizen complaint and
10 no logical need, then the available supply of
11 municipal services would not be contested, isn't
12 that true then?

13 A Well, I believe in certain areas there are
14 state standards that have to be met.

15 Q The state standards are being met. Again
16 there would be no need to change, if the state standards
17 are also being met, there would be no need to change.

18 A Well, if you have growth of population and
19 failure of municipalities to provide services, I believe
20 that even if parents didn't object, the state
21 Superintendent of Education would have to take action
22 under his requirement of office because it is the
23 obligation of the state to shore public education for
24 every child that wishes it.

25 Q I'm not suggesting for one minute that

1 the obligation is not being met by the municipality.
2 I'm just saying they don't provide it within the
3 confines of the municipality.

4 A Well, I think that's only a technical arrangement
5 which they pay for. If they don't provide it, they
6 have to pay for their share of whoever is providing it.

7 Q That is correct. They would pay a
8 tuition charge. But again, it does not require the
9 extension of the municipal facility.

10 A Well, I think at some point, I'm not an authority
11 in this area, but I believe that at some point the
12 state can order a school district to build its own
13 high school, if that's what's in the question.

14 Q If in fact the Borough of Milltown pays a
15 tuition charge to the City of New Brunswick for every
16 child in the high school in New Brunswick and your plan
17 would order Milltown to accept or to provide for the
18 inclusion of a certain additional number of poor with
19 children --

20 A The plan that you refer to is a fair share plan
21 for housing and it does not make any provision, the
22 specific provision for the schooling of children.

23 We just would assume that this would be done
24 as it was done in Middlesex County over all the years
25 when builders built thousands of homes here and caused

1 the whole school system to go through tremendous
2 changes.

3 Q When that happened, Mr. Erber, the
4 people who bought those homes paid the freight; the
5 people who bought those homes paid the taxes, isn't
6 that true?

7 A Yes, they did.

8 Q Yesterday we continued with depositions
9 of a man by the name of Mr. Malloch. Are you aware
10 of Mr. Malloch?

11 A I'm aware of him.

12 Q Mr. Malloch in his allocation of the fair
13 share discussed an apportionment of housing units to
14 be provided which were to a great extent inclusive of
15 three and four-bedroom units, two-bedroom units, larger
16 units in terms of apartments than is customary or
17 in common usage now.

18 Are you aware of that?

19 A I'm not aware of what he recommended.

20 All I would say is I think I had occasion to
21 say when I was being deposed last week that my fair
22 share proposals are not refined in reference to family
23 size or age of occupants and that a refinement of a
24 fair share plan would have to make provision also
25 for the mixture of dwelling units sizes that each

Erber-cross

1 community should provide so that it takes its share
2 of larger families, of smaller families and so on.

3 Q So that any addenda that would enhance
4 the location of poor in a new community would more than
5 likely encompass a cross-section of family size?

6 A That's true.

7 Q And it is thoroughly conceivable and
8 in fact a probability that there will be school age
9 children?

10 A Yes.

11 Q And it is these children then that must
12 be educated?

13 A Yes.

14 Q And their tuition charges must be paid
15 by the municipality for these children. You are
16 saying that's a proper burden for that municipality?

17 A Yes, under New Jersey State Law it is.

18 Q Yet you are mandating under case law through
19 this lawsuit that they be required to take these
20 people?

21 A To take their fair share.

22 Q Aren't you then shifting the burden of
23 social reform and welfare from the Federal Government to
24 local municipalities?

25 A I would say the proposal does not shift it. It

1 extends it to the local government, the Federal
2 Government, the State Government. I think you even
3 measure the County Government, provide their fair share
4 and I think some municipal governments do but all of
5 them should.

6 Q And to the extent that some of them don't,
7 you are now going to ask them, too?

8 A Yes, I think the fair share would ask them to
9 do that.

10 Q Is it true then that you only brought
11 suit against the ones that you feel you should, as far
12 as Middlesex County is concerned?

13 A I didn't design the suit. I can only say that
14 in being asked to devise a fair share plan, I included
15 all the communities of Middlesex County in the plan.

16 Q Just by way of repetition, I'm sorry to
17 say, that plan did include New Brunswick and Perth
18 Amboy?

19 A Yes, it did.

20 MR. LERNER: That is all for awhile.

21 CROSS-EXAMINATION BY MR. BUSCH:

22 Q Let me introduce myself again. My name
23 is Bertram Busch. I represent the Township of East
24 Brunswick,

25 I would like to get into some specific questions

1 as to the report which you submitted and the documents
2 upon which that report was based, in other words,
3 the fair share plan and all the papers attached to it.

4 Q Do you know what I'm talking about?

5 A The fair share plan and the papers attached to
6 it I think are the things that are in parts one and
7 two, three and four.

8 Q Do you have that in front of you?

9 A Yes, I have it.

10 Q Now, I believe as the attachments
11 indicate, you based your final computations on work
12 that was performed by other agencies and parties,
13 at least in part, is that correct?

14 A In part, that's true.

15 Q Can we itemize them clearly as to which
16 reports by which agencies prepared when?

17 A The analysis of low and moderate income housing
18 need for New Jersey, New Jersey Department of
19 Community Affairs was published in April 1975.

20 Q Do you have that with you right now?

21 A No, I do not.

22 The reference to the number of commuters into
23 Middlesex County from homes outside the county who
24 earn less than \$10,000 was taken from the work of
25 Abeles, Schwartz & Associates, a consulting firm engaged

1 by Madison Township and used in the Madison Township
2 case and that was prepared in 1974.

3 The determination of what percent of those
4 in commuters who are heads of households was taken
5 from a study on low and moderate income housing in
6 Middlesex County and analysis forecast and allocation
7 for 1975 which was prepared by T.S. Changho, first name;
8 last name Kim, K-i-m. The title is Principal Planner
9 with the Middlesex County Planning Board.

10 That was prepared in 1973.

11 I believe those are the essentials for the
12 establishment of the plan itself. And then there
13 were projects which relate to the table that's shown
14 as Part 3 updating a projection of fair share plan.

15 And that project data was taken from the
16 projections contained in the Middlesex County Interim
17 Master Plan which was adopted in 1970.

18 Q Did you also refer to the Tri-State
19 Regional Plan at all or Transportation Commission?

20 Let me rephrase that. Did the Middlesex County
21 Interim Master Plan refer to the Tri-State Transportation
22 Commission?

23 A Yes, it did. A great deal of its work is based
24 on the Tri-State data.

25 Q Now, I started to get into this the last

1 time you were deposed. I asked you if you were
2 familiar with Middlesex County Planning Board's
3 latest report of January 1976 and I'll repeat the
4 question now.

5 A If you would identify the report, please.

6 Q A report which was written up in the
7 Daily Home News on January 14, 1976 and which is
8 entitled, "Estimates and Preliminary Projections of
9 Population and Employment, Middlesex County, New Jersey."
10 And it is dated January 1976.

11 A I'm not familiar with the Home News coverage.
12 I did read the report.

13 Q I would like to get into that report to
14 some extent and ask you, first of all, were you aware
15 prior to reading the report that population projections
16 for Middlesex County had been revised downward or were
17 being revised downward by the County Planning Board?

18 A No, I was not aware for Middlesex County, no.

19 Q If I were to suggest to you that the 1967
20 figures which were the basis of the 1970 interim plan
21 upon which you apparently relied projected a population
22 for the county of 1,382,000, would that sound
23 approximately correct?

24 A For what year?

25 Q In 1967 when the figures were accumulated

1 for the 1970 plan, the population projection/ the
2 county was 1,382,000.

3 A By what year.

4 Q I'm sorry, by what year. By the year
5 2,000. I'm sorry.

6 A Yes, that sounds right.

7 Q If I were to suggest to you that the
8 1976 revision downgrades that figure to 973,000, would
9 that sound correct?

10 A Yes.

11 Q Are you aware of other agencies between
12 the years of 1967 and roughly 1972 making projections
13 of population for Middlesex County by the year 2,000?

14 A I believe that Tri-State made projections.

15 Q Do you know what projections they had for
16 Middlesex County by the year 2,000?

17 A Not off the top of my head but I would say they
18 were comparable to those. At least there was no
19 blatant contradiction between those and those
20 contained in the Middlesex County Interim Plan, as
21 I recall.

22 Q Are you aware of any other groups who
23 may have made projections in the period of 1967 to
24 1972 for county population in the year 2,000?

25 A I'm sure that the regional plan association did.

1 Q Were those projections also somewhat
2 comparable to Middlesex County Planning Board?

3 A I believe so, yes.

4 Q Have you ever had a chance to compare
5 the different projections which were made in the 1967
6 to 1972 period to see how they related to each other?

7 A I compared them but in a case like this, I would
8 normally accept those of the county planners who have
9 the advantage of the others and make their own
10 adjustment based on a greater familiarity with local
11 conditions.

12 Q Isn't it also possible that the county
13 planners if their figures are consistently higher might
14 have a certain bias or optimism that an outside group
15 might not?

16 A Well, I believe this could work both ways.

17 Q Do you know if, in fact, the County
18 Planning Board projections from 1967 to 1972 were higher
19 than any other projections made for the county?

20 A I couldn't say that from memory. I would say
21 that I didn't remember a glaring contradiction between
22 them.

23 Q Are you familiar with any more recent
24 projections made by those same groups, the Regional Plan
25 and the Tri-State at the present time for the population

1 in the year 2,000?

2 A I'm only aware of the fact that Regional Plan is
3 revising its estimates downward for the New York
4 metropolitan region.

5 Q When you prepared your report, were
6 you aware of the fact that the population growth
7 rate had dropped or was projected to have dropped
8 for the next thirty years compared to the thirty years
9 between 1940 and 1970?

10 A No, I was not aware.

11 Q Would you agree with the statement that
12 the rate of growth between 1940 and 1970 was and is
13 higher than the projected rate of population growth
14 for the county between the years 1970 and 2,000?

15 A Yes.

16 Q Do you also agree that population tends
17 to increase because of immigration and because of a
18 natural increase?

19 A Yes.

20 Q Are you aware of trends regionally and
21 nationally with regard to the number of southern blacks
22 migrating northward?

23 A The common knowledge among demographers and
24 planners now is that the rate of migration from the
25 southern states has been slowing and that the likelihood

1 is that it will not resume at the rate of its
2 peak years in the 1950's and 1960's.

3 Q Would you say that it is a fair assumption
4 that the poor generally and the minority poor
5 specifically would tend also to have lesser skills
6 and lesser education than the middle income and on up?

7 A Yes.

8 Q Would you say that the poor generally would
9 tend toward the manufacturing rather than the non-
10 manufacturing sector?

11 A No.

12 Q Would you acknowledge that --

13 A When you say tend, perhaps I should ask that
14 question be amplified, when you say tend.

15 Q What job areas do you consider the poor
16 most likely to enter?

17 A In terms of desire and attractiveness of
18 employment, in manufacturing. In terms of available
19 jobs, in service.

20 Q Can you explain what you mean by your
21 comment on manufacturing that you just made or could
22 you amplify on that?

23 A Manufacturing includes an extremely wide range
24 of skills from those where a person can be trained for
25 his job in thirty minutes to those where he needs training

1 for a number of years.

2 Furthermore, it includes a wide range of
3 industries with regard to compensation with some
4 industries shown consistently as having wage rates
5 that are about half of the wage rates in other industries.
6 And the relationship of wage rates in those industries,
7 let's say leather goods as compared to automobile
8 manufacturer, does not necessarily reflect a difference
9 in the skill structure.

10 Actually, it would be my guess that there are
11 more skilled people who take longer to learn their
12 skills in leather who are being paid half the amount
13 of money of those in automobile where a person can go
14 on a production line and be shown his job in a few
15 hours or a few minutes and be earning over 4 to \$5 an
16 hour.

17 Q Let me redirect my questioning.

18 Are you aware of the fact that Middlesex County
19 has suffered a net loss in manufacturing jobs in
20 the last three years?

21 A I would not be surprised because, of course,
22 there has been a great loss in manufacturing nationally,
23 manufacturing employment.

24 Q I asked this last time. I'll ask a similar
25 question today. Are you aware or do you agree with

1 the state that there is a migration generally away
2 from the metropolitan New York and Northern areas to
3 the sun belt and south and west?

4 A There is heavy migration to those areas which
5 has been underway for at least fifteen years, if not
6 more, and there is heavy in-migration into Texas,
7 Arizona, California particularly.

8 I'm not as now, I'm not aware whether there
9 is a net out-migration from the New York metropolitan
10 area. By net out-migration, more people are going out
11 than coming in.

12 Q Are you aware of a figure in the January
13 1976 Middlesex County Master Plan Report which shows
14 that the net migration into Middlesex County is lower
15 than the national average?

16 A Lower than the national average of --

17 Q Migration. In-migration.

18 A That's sort of a difficult relationship for me
19 to grasp. When you say the national average of
20 migration, migration from where to where?

21 Q Well, I'll read a statement to you and ask
22 if you would agree with it or whether you were aware
23 of it.

24 Population changes in general are attributed to
25 two components, natural increase and net migration.

1 Natural increase is defined as births minus
2 deaths. In recent years, Middlesex County's birth
3 rate has dropped along with that of the nation.

4 In 1971 -- I'm sorry, I asked the question
5 incorrectly before.

6 In 1971, Middlesex fertility rate like that
7 of the whole region was even lower than the national
8 rate shown below.

9 I will rephrase the question to ask are you
10 aware of the fact Middlesex County birth rate not in-
11 migration rate, is lower than the national average?

12 A I'm not aware of that, but I think the national
13 average includes agricultural areas, includes the
14 whole south and includes areas of large urban central
15 cities so that it could very well be that the birth
16 rate of Middlesex County reflects its increasingly
17 middle-class composition when I think the middle-class
18 has been most affected by birth control measures.

19 Q Assuming hypothetically that Middlesex
20 County's birth rate is slowing down and that migration
21 is slowing down into the county, would that not result
22 in a long-range projection in a different age structure
23 or grouping of the population of the county?

24 A Yes, it could, yes.

25 Q Are you aware of the Middlesex County

1 Planning Board projections that there will be a
2 striking increase in the number of citizens over the
3 age of 65 by the year 2,000?

4 A For Middlesex County?

5 Q Yes. A Yes, Middlesex will
6 catch up with the rest of the region.

7 Q Is it also fair to say there will be
8 certain specialized demands and costs with regard to
9 that sector of the population?

10 A For local government, no. I think for local
11 government the older sectors, the growth of the older
12 sector is a relief.

13 Q Do you think it is a fair statement to
14 say the poor produce more children per family or housing
15 unit than the middle-class?

16 A I assumed that for many years as a popular
17 assumption. I saw some figures recently which seemed
18 to indicate the opposite. I would have to look into
19 that.

20 Q If, in fact, the poor produced a larger
21 number and the multi-family units which are suggested
22 by the plaintiffs in this case only go up to four
23 bedrooms, what type of provisions would you be making
24 to house families of say six, seven or eight children
25 or on up?

1 A I think that families in that range are a
2 statistical oddity, you might say, that get written
3 up frequently in the local press and that as sort of
4 you might say high risk liabilities; if a community
5 has families of that size, perhaps there ought to
6 be federal insurance which takes care of that community.
7 Somewhat like major disaster insurance for poor health.

8 I'm not being facetious here because there is
9 provision in the Housing Community Development Act in
10 Section 8 for exceptionally large families for rent
11 subsidies.

12 Q I'm not speaking of seventeen or twenty
13 children. I'm speaking of six, seven, eight children.

14 Would you say that would be an oddity among
15 the poorer sections of our population?

16 A Yes.

17 Q If, in fact, one of the plaintiffs in
18 this case were to have six or seven children, what
19 type of housing provisions would you make for that
20 person?

21 A I think that there ought to be a place where a
22 family of that size can live and public housing has
23 always provided that kind of place. Even in places
24 where public housing did not, I know of cases where
25 public housing did not have apartments of adequate size;

1 they simply broke the wall down between two apartments
2 and made one large apartment for families of extra-
3 ordinary size.

4 Q You are suggesting that the limit not be
5 four bedrooms?

6 A In public housing, I would say that's a practical
7 question.

8 If you receive applications before you put
9 up the building, as often happens, you have some
10 sense of what family sizes will run. That ought to
11 be taken into account.

12 Q I want to go back now to some of the
13 employment questions I was asking a moment ago.

14 Is it your testimony that the poor tend not
15 to work in manufacturing, or was it your testimony
16 that it depends?

17 A It depends on the kind of industry that's
18 involved and its location with reference to where the
19 poor live.

20 Q If the Middlesex County Planning Board
21 projections of 1976 indicate that manufacturing will
22 decline or stay stable and that white collar job and
23 service-oriented jobs will increase, would you suggest
24 that the poor would have a harder time finding
25 employment in Middlesex County than perhaps they did

1 in 1940 and 1970?

2 A I read that as a projection by the Middlesex
3 County Planning Board and I would say that that is
4 the projection with reference to employment opportunities;
5 a parallel projection would be that the adequate
6 education of the children of the poor make them white
7 collar workers. This has been the trend shown
8 statistically.

9 Q Wouldn't there be a gap until the poor
10 got educated?

11 A There would also be a gap I think before that
12 shift takes place.

13 These are all things that happen over time.

14 Q Do you have any documentation for the
15 statement you just made, as far as the poor getting
16 educated and getting the white collar jobs?

17 A Yes. I believe I could find documentation that
18 was developed by Dr. Bienstock of Labor Statistics on
19 the increasing proportion of -- well, I would have
20 to modify this. His statistics relate to the
21 increasing proportions of black and Puerto Ricans
22 who are entering the white collar labor force of
23 New York City.

24 Q Are you aware of the employment breakdown
25 in Middlesex County as to the people of low and

1 moderate income?

2 A Are you speaking of the resident labor force
3 or those who live in Middlesex County or those who
4 are employed in Middlesex?

5 Q Let's take one at a time.

6 Are you aware of the low and moderate income
7 residents of Middlesex County as to the areas of
8 employment between manufacturing, service, whatever
9 category you want to put in?

10 A There aren't clear statistics on that because
11 statistics come under from two sources. The Bureau of
12 the Census does a census of population which is the
13 statutory census every ten years and that gives
14 information on residents of an area where they, that
15 is, what industries they work in and what their
16 income is. It doesn't tell you how much per hour
17 they get on the job. It says what the personal and
18 family incomes are.

19 Then you have another set of statistics which
20 come from what are known as the economic censuses of
21 the Bureau of Census which are made every five years.
22 Now, they are made in every year that ends with the
23 numeral two and seven. So the last was in 1972 and
24 the next will be in 1977.

25 Those are taken at the place of employment and

1 they give information on the wage structure occupation
2 and other data coming from the place where people
3 are employed. There are often some problems in relating
4 one to the other.

5 Q Don't you think it would be important
6 before you start providing housing for these people
7 to know the type of jobs or work they are going to
8 be involved in?

9 A I believe that it is possible to determine
10 within some fairly general limits what type of work
11 they will be involved in by a study of the distribution
12 of job opportunities throughout the county.

13 Q Wouldn't you concede the nature of the
14 job opportunities should be taken into account when
15 you are making housing projections or projections
16 of need for people of low and moderate income?

17 A Well, I go back here to an area of my deposition
18 of last week where I stated that we are speaking here
19 of a fair share allocation and the fair share is based
20 on reasonable assumptions but it is not based on an
21 effort to allocate housing without regard -- I'm sorry,
22 is not a plan to allocate housing units with relation-
23 ship to what might be a carefully designed availability
24 of factors that might relate to the distribution of
25 population.

1 This is what was referred to in the Mt. Laurel
2 decision as saying they were falling back on fair share
3 as against an allocation on a plan basis.

4 Q Isn't your projection based at least in
5 part on heads of household earning less than ten
6 thousand living out of the county who commute into
7 the county?

8 A That's true.

9 Q Wouldn't you therefore consider the
10 nature of jobs available as a factor which should be
11 taken into account in coming up with the fair share
12 plan?

13 A Well, to the extent that there are jobs that
14 these people already have and that if they are commuting
15 to those jobs from outside the county, any housing
16 which could be built that they could afford to occupy
17 that's closer to their job would be a greater convenience
18 to them.

19 Q Mr. Erber, let's take an extreme example.

20 Suppose the Middlesex County Planning Board
21 instead of saying over the next thirty years there will
22 be fewer manufacturing and more white collar jobs, suppose
23 they said by the year 1978 the only employment in
24 Middlesex County will be upper management and doctors,
25 lawyers and accountants. Would that then be a factor

1 in determining whether or not to put persons of low
2 and moderate income and housing in Middlesex County?

3 A I would say that would be an extreme situation
4 and my remedy for it would still be extreme.

5 I would say that if people who are not doctors,
6 lawyers and dentists have to eat and live under some
7 standard shelter, that they should have the advantages
8 of living in all parts of the county, have the
9 advantages of better, less crowded schools, the advantages
10 of parks and other facilities that the persons of better
11 means have chosen and have been able to buy in the
12 marketplace.

13 Q Even though they would be nowhere near
14 their employment under my example?

15 A Well, if there is no employment for them, I
16 would assume that they would all go on welfare if they
17 are not doctors, lawyers and dentists. I don't know
18 what else would happen to them.

19 Q Isn't one of the underlying premises of
20 your fair share plan that people should be living close
21 to employment?

22 A Yes, it is an objective of a planner to try to
23 distribute housing and jobs to reduce the journey to
24 work.

25 Q If you would take a look, please, at Part 2,

1 Page 8 of your fair share plan, I would like to go
2 through that specifically with regard to East
3 Brunswick.

4 Now, you have shown Column 1 that the equal
5 share of East Brunswick is 2,902. Can you tell me
6 specifically where that number comes from?

7 A Yes. That came from the total of housing
8 units in New Brunswick.

9 Q East Brunswick we are speaking of.

10 A I'm sorry, East Brunswick minus substandard
11 units divided by the proportionate share to create a
12 proportionate share to divide into the number of unmet
13 housing units, unmet housing needs for households as
14 it was determined in a previous part of the report.
15 This being a part one, the unmet housing need for
16 Middlesex County of 52,765 divided by the proportionate
17 share of standard housing units in East Brunswick.

18 Q Let me see if I can rephrase that in
19 language that I understand.

20 Did you compute the number of standard units in
21 the municipality and take the number of standard units
22 in the county and develop a ratio or a percentage?

23 A A ratio, East Brunswick ratio of the standard
24 units in the county.

25 Q With round numbers, if the county number

1 of standard units were 100,000 and if East Brunswick
2 had 10,000, would East Brunswick then somewhere along
3 the way be assigned a ten percent ratio?

4 A That's true.

5 Q Where specifically when it says equal
6 share, 2,902 do those numbers come from?

7 In other words, what plans or what things could
8 I look at and add up to determine where 2902 comes
9 from?

10 A Well, if you took 52, 765 --

11 Q Is that the total number of unmet housing
12 needs?

13 A That's the total number of unmet housing needs.

14 Q That's the total of the 29,000 figure and
15 the 23,000 figure?

16 A That is right. If you then divided that by the
17 ratio that East Brunswick represents of the county's
18 total of standard units, it would, it should if the
19 arithmetic is right, give 2,902.

20 Q Isn't that a number that's derived initially
21 in order to determine the percentage assigned to East
22 Brunswick? Isn't that a number you went somewhere and
23 added up the number of standard units or subtracted the
24 standard number from the total units?

25 A We subtracted the substandard from the total units

1 to establish how many standard units there are in
2 the county.

3 Q Can you take me through that process right
4 now with whatever supporting documents you want to
5 show me how you got that number?

6 A We first determined the total housing need as
7 52,765. We then took the -- we then subtracted from
8 each community, each community's total housing units
9 the number of substandard units.

10 Q Before you go any further, where can I find
11 the total number of units before I find the number of
12 substandard units?

13 A Well, the total number of units are given in
14 the census of housing for 1970 and also included in
15 Middlesex County Interim Plan.

16 Q If I look at that census for East
17 Brunswick, I'll find the number 9,905 for the total
18 number of units, is that right?

19 A I don't have it in front of me but if that's
20 what it is, yes.

21 Q I want to understand this because this
22 gets to be a question of the case.

23 I show you a copy of a sheet submitted by your
24 attorney attached to the 1970 census, Tri-State
25 Transportation Commission, 9,095 total housing units,

1 East Brunswick. Would that be right?

2 A Yes.

3 Q Starting with that number, what did you
4 then do?

5 A We subtracted from that number a number of
6 substandard units in East Brunswick.

7 Q Where did you get that information?

8 A I believe that came from the county's application
9 for community development funds, but this is my
10 recollection.

11 Q Did you prepare these figures, Mr. Erber?

12 A Yes, I did.

13 Q Do you have the county application for
14 community development funds with you?

15 A No, I do not.

16 Q In any event, you are saying from that
17 document you were able to determine the number of
18 substandard units?

19 A Yes.

20 Wait a minute. I'm sorry. I think the sub-
21 standard units that I used was taken from the State
22 report.

23 Q Would that be an analysis of low and
24 moderate income housing in New Jersey?

25 A Right.

1 Q Let's work these figures across for
2 East Brunswick. Tell me if you could tell me the
3 number of substandard housing units in East Brunswick
4 under the total categories of physical and housing
5 need and financial need.

6 A The physical housing need for East Brunswick
7 is given here as 630.

8 Q Financial housing need?

9 A 185.

10 Q So the total housing gross need before
11 you worry about the 38 percent overlap is what?

12 A 815.

13 Q Then apparently a factor of 38 percent
14 is applied across the board, is that right, as to
15 people who fit in both categories?

16 A Right, yes.

17 Q So you subtract that 38 percent which
18 is the number 70, you come up with the housing need
19 of 745, is that right?

20 A Right.

21 Q You now have 745 substandard housing --

22 A No, I'm sorry. The ones on financial need are
23 not substandard housing. Only the ones -- substandard
24 is a description of a physical condition of the
25 dwelling unit. So substandard is only the 630.

1 Q Did you subtract the 630 from the total
2 housing units which we just said was 9,095?

3 A Right. That's true.

4 Q Would you do that mathematically right
5 now, please? 9,095 minus 630.

6 A I get 8,465.

7 Q What did you do with that number next,
8 if anything?

9 A That number plus other numbers arrived at in
10 the same way for the municipalities in Middlesex County
11 gave us a total which determined the ratio or the share
12 that this 8,465 represents of the total standard units
13 in Middlesex County.

14 Q You are going a little too fast, Mr.
15 Erber.

16 What you did then, you applied this same
17 reasoning to all 25 communities and you came up with
18 a total number of standard housing units?

19 A Right.

20 Q Do you know what that numbers for the
21 county?

22 A No, I don't have the total. It probably would
23 have been well had they been added here but I didn't
24 want to confuse people with something --

25 Q Get back to my hypothetical which, of course

1 is a hypothetical. If there were 100,000 standard
2 units and East Brunswick had 10,000, East Brunswick
3 would be given some sort of a ratio?

4 A Ten percent.

5 Q Did you then apply that ten percent
6 against the 52,000 figure or whatever the percentage
7 would be of the unmet housing need?

8 A That's true, unmet housing need.

9 Q Can we assume for Column 1, 2,902 for
10 East Brunswick was derived at by multiplying the
11 percentage assigned to East Brunswick times the unmet
12 housing need of the county?

13 A That is right.

14 Q How did you determine Column 2 which shows
15 adequately housed 247 for East Brunswick?

16 A It was determined by the number of households
17 with incomes under 8500 that were living in standard
18 units and paying no more than 25 percent of their
19 income for shelter and the number that is shown for
20 East Brunswick is that there are 247 such households.

21 Q Where does that number come from?

22 A Well, we begin with finding how many people
23 that are in East Brunswick with incomes under 8500.

24 Q Where does that number come from then?

25 A That comes from census data.

1 Q Is that attached to any documents you
2 have given to Mr. Searing?

3 A I don't know that it is. I think here is a
4 census report that's listed, in terms of the Tri-State
5 Regional Planning Commission printout 1970, the census
6 report that's cited on page three.

7 Q Can you show me that report?

8 A As P-4M-75, Tri-State Regional Planning Commission
9 1970, Page 6.

10 Q If I look at the document you have just
11 mentioned, will that tell me somewhere along the way
12 that 247, is that families, I assume, in East Brunswick
13 are adequately housed and are earning under 8500 or
14 will that tell me the total families in East Brunswick?

15 A That will tell you the total families in East
16 Brunswick that are under that income limitation and
17 by subtracting the ones that are cited as being either
18 living in dilapidated housing, physically substandard
19 housing or paying more than 25 percent of their income
20 as shown in the State report that this then gives the
21 number that the remainder would be adequately housed.

22 Q Let's start with one thing. There is
23 nothing on that sheet that indicates 8500, is that
24 correct?

25 A No. There is a statistical problem there which

1 is explained in the footnote and that explanation is
2 that because family income is not broken down in
3 brackets permitting identification of the number
4 under 8500, one-fourth of the families in the 8,000 to
5 9999, 9,999 category were added to those in the brackets
6 below 8,000 to get the number estimated to be accurate
7 within a tolerable margin of error.

8 These are one of the common problems that
9 everyone dealing with statistics encounters in which
10 there isn't an exactitude of comparability from one
11 set of reports to another.

12 We use the 8,500 from the State report and we
13 try to come as close to it.

14 Q Let me cut you off, if I may. With
15 reference to page six of the Tri-State Regional Planning
16 Commission Report, are you saying if I add up everything
17 in the far left-hand column, there is a figure of
18 264 which is between 1,000 and 3,099, is that right,
19 999 rather?

20 A Do you have a copy of that?

21 MR. SEARING: Can you show him that?

22 Q Let me repeat the question. If we work
23 across for East Brunswick between 1,000 and 3,999,
24 we have a total of 264, is that right?

25 A Working across --

1 Q You have a total here of 264.

2 Let's do it this way. Apparently you are not
3 familiar with these numbers. I don't know who
4 prepared them.

5 Between 1,000 and 299 you have a total of 208.
6 Between 3,000 and 399 you have a total of 56.

7 A Right.

8 Q So you have a subtotal of 264, would
9 that be correct?

10 A Yes.

11 Q Between 4,000 and 5,999 for East
12 Brunswick you appear to have a total of 168, would
13 that be correct?

14 A Right.

15 Q So if we started to add 264 and 168,
16 that would tell us the total number of families in
17 East Brunswick earning under 5,999?

18 A Right.

19 Q From 6,000 to 7,999 you have a total of
20 382, is that correct?

21 A Right.

22 Q Then you said between 8,000 and 999 you
23 don't take the entire number but you take 25 percent
24 of that number?

25 A Correct.

1 Q So would you take 25 percent of 710
2 to get that figure that you have used?

3 A That is right, yes.

4 Q I'm going to ask you if you would on
5 your own paper if you wish, add up the total number
6 of families in East Brunswick earning less than 8500
7 using the factors we have just indicated.

8 A That's 991.

9 Q I can assume there is 991 families in
10 East Brunswick earning less than 8500 based on the
11 formula and the figures you have given?

12 A Yes.

13 Q From that figure do we subtract the
14 substandard number of 630?

15 A That is right.

16 Q I'll ask you to do that, please. Subtract
17 630 from 991.

18 A I get a figure here of 369 as compared to 247
19 in the column adequately housed.

20 Q Before you go any further, I think if you
21 subtract 630 from 991 you get 361.

22 A I'm sorry, yes, 361.

23 Q You indicated that that would appear to
24 be the number that should be under Column 2 for East
25 Brunswick on part two of your fair share plan but in

1 fact instead of getting credit for 361, East Brunswick
2 seems to get credit for 247, is that right?

3 A That's the way it appears to me, yes.

4 Q Can you account for that discrepancy?

5 A No, I can't. I would have to go back and find
6 out just what that error was and if it is an error, if
7 it is not related to methodology, I have slipped up
8 on here, I would say that error should be corrected.

9 Q You would agree if Column 2 was incorrect,
10 Column 3 would also be incorrect?

11 A That's true. It would have to be adjusted
12 accordingly.

13 Q If any one town were incorrect, wouldn't
14 that result in a difference in every town because you
15 would have to redistribute the balance based upon a
16 credit?

17 A Of the adequately housed, yes, the redistribution
18 of the balance would have to be based on the reassignment
19 of ratios.

20 Q If a credit were wrong by as much as
21 only one unit or one family, that would really affect
22 Column 4 because your totals wouldn't equal because
23 four and two should equal each other?

24 A I would say mathematically, theoretically that
25 would be true, yes.

1 Q Let's take a look at Column 4. I think
2 you indicated the last time you were deposed that
3 towns which has vacant land or sizable tracts of
4 vacant land were assigned the overage which in effect
5 would be the total of Column 2, would that be correct?

6 A That's correct.

7 Q I noticed that many towns have zero after
8 them, correct?

9 A Yes.

10 Q And who made the determination to give
11 those towns zero of the excess?

12 A I made that determination but I'm trying to
13 recall the criteria, but I believe it was based on data
14 in the 1970, the 1970 report of the State on the zoning
15 of vacant land and the feeling was, I don't recall,
16 there was a cut-off point at which I felt it was
17 not, that there wasn't an adequate amount of land
18 that would justify using the land factor for the
19 purposes of distribution.

20 Q So can we assume that for towns such as
21 South River and Spotswood and Carteret, you determined
22 that there was not adequate land to put such housing?

23 A That is right, that it was not adequate land
24 for -- there wasn't an adequate amount of vacant land
25 to justify adding to their equal share.

1 Q You don't remember what the specific
2 factor was?

3 A No. I have that in my work paper. We determined
4 a cut-off point.

5 Q I notice for Column 4 those towns which
6 have received the redistribution of the balance have
7 curiously enough repeated numbers. You may notice that
8 Monroe and South Brunswick have 1197, Piscataway and
9 Plainsboro have 315, North Brunswick and Woodbridge
10 have 189. Do you know the basis upon which Column 4
11 was computed?

12 A It was done by adding the total amount of vacant
13 and buildable land and determining what ratio of that
14 land is within each of those communities.

15 Q Did you just apply flat percentages across
16 the board?

17 A That is right.

18 Q You determined that Monroe and South
19 Brunswick had the same amount of vacant land or vacant
20 developable land?

21 A Monroe and South --

22 Q They both have the same number, don't
23 they, 1197?

24 A Yes.

25 Q I can also assume that you concluded North

1 Brunswick and Woodbridge had the same amount of
2 buildable land, each having 189?

3 A It must be.

4 Q And the same goes for Piscataway and
5 Plainsboro?

6 A Yes.

7 Q After you did that, then you came up for
8 1970 fair share figure making all those adjustments,
9 is that right, in Column 4?

10 A That is right.

11 Q If you go across Column 5 and you pick
12 Cranbury, for example, which has 536 as its share and
13 you take East Brunswick which has 3,096, those figures
14 are a combination of densities which you use to get
15 to Column 1 and the vacant land which you picked up
16 in Column 4. Would that be partially correct?

17 A That is right.

18 Q Isn't the net result of your formula,
19 Mr. Erber, that you are perpetuating densities where
20 they presently exist in towns such as East Brunswick;
21 you are then assessing overage of the redistribution
22 to those towns which have land and towns such as
23 Cranbury and Plainsboro which do not have densities
24 now do not get hit for the Column 1 figure, is that
25 fair to say?

1 A Yes. The rationale is that there is an equal
2 share of initially on the assumption that we are adding
3 proportionately to where there is already community
4 settlement and then we are adding you may say
5 disproportionately to where there is vacant land.

6 Q But the net result is that you are
7 perpetuating densities more or less as they presently
8 exist?

9 A Yes, that's true.

10 Q If a town were successful in keeping that
11 development or the construction of homes in the past,
12 that town can preserve its open space?

13 A Well, the alternative would be to impose upon a
14 community that is totally unprepared for a very high
15 percentage of increased settlement. A situation which
16 would not be done to the benefit of people living there
17 moving there or the public generally. It would just
18 be almost a disaster area.

19 Q If Cranbury and Plainsboro may not have
20 had the people in the dwelling units that would get
21 you into Column 1 but did in fact have the factories,
22 that wasn't taken into account, was it?

23 A No, it was not.

24 Q If such a town had zoned heavily for
25 industry and was able to attract the industry without

1 the attendant costs of raising families and schooling
2 their children, that town would get a benefit from
3 your plan, would it not?

4 A It would not -- it would be required to take a
5 proportionate share of the low and moderate income
6 families which if what you say is true, it had
7 succeeded in avoiding in the past.

8 Q But it would be getting a share based
9 upon your formula, the underpinning of which is a
10 perpetuation of densities, is that not correct?

11 A Yes, it is a proportionate increase of density
12 related to an ability to absorb.

13 Q That's why a town such as Cranbury which
14 has 536 in Column 5 has a significantly lower number
15 than a town such as East Brunswick because it doesn't
16 have the people to start with?

17 A Right.

18 MR. BUSCH: No further questions.

19 Thank you.

20 (Recess.)

21 (After recess.)

22 E R N I E E R B E R, Resumes.

23 CROSS-EXAMINATION BY MR. FARINO:

24 Q Mr. Erber, my name is Tom Farino. I'm
25 representing the Township of Monroe.

1 I just have one question for you.

2 Directing your attention to part two of the
3 plaintiff's proposal on page eight, fair share
4 allocations, in connection with Column 4, the definition
5 of redistribution of balance where you state that
6 this is the balance of unmet need, redistributed on
7 the basis of each municipality's percentage of
8 developable land in Middlesex County, I would like to
9 know your definition of developable land.

10 A We took as our definition the findings of the
11 state zoning studies of 1970 which contains data on
12 the amount of land in each Middlesex County municipality
13 that is buildable, that ~~is~~ buildable because it is vacant
14 and available for building.

15 Q Was that study made available to us?

16 A Well, --

17 MR. SEARING: Yes, it was.

18 Q Do you know in that study, Mr. Erber,
19 some of the factors that were taken into consideration
20 in the definition of developable land?

21 A Well, I think that it was, the total amount
22 of developable land was arrived at on the basis of
23 all parcels of five acres or more and not having
24 excessive slope or not being swampy. I think those
25 are the definitions.

1 Q Not excessive in slope?

2 A Not excessive slope or not being subject to
3 swamp conditions, marsh conditions.

4 Q What about factors such as availability
5 of sewer facilities?

6 A That did not come into account.

7 Q Were there any other ecological factors
8 taken into account, to your knowledge?

9 A Not to my knowledge.

10 Q So far as you know, just the two factors,
11 excessiveness in slope and the swampiness of the
12 area?

13 A That is right.

14 MR. FARINO: I have no further
15 questions.

16 CROSS-EXAMINATION BY MR. BERNSTEIN:

17 Q For the record, my name is Dan Bernstein.
18 My firm represents the Township of Piscataway.

19 First, can we have your definition, Mr. Erber,
20 of exclusionary zoning?

21 MR. SEARING: Can we go off the
22 record a minute?

23 (Discussion off the record.)

24 A Exclusionary zoning is the use by a local
25 jurisdiction to zone in such a manner that by intent or

1 effect it excludes certain classes of the population
2 from residing within that jurisdiction.

3 Q And those classes, I would assume, would be
4 low income individuals?

5 A The practice of exclusionary zoning is such that
6 low and moderate income individuals are affected.

7 Q Now, it is your contention that the
8 communities in Middlesex County have in fact practiced
9 exclusionary zoning, is that right?

10 A That is right.

11 Q Now, I would assume then that if, in fact,
12 these communities had practiced exclusionary zoning, that
13 one could show that the income levels of the populace in
14 Middlesex County were different than the income levels
15 of other areas where exclusionary zoning was not
16 practiced?

17 A I made no comparison as to where it was practiced
18 and where it was not.

19 Q Is my assumption correct that one could
20 prove whether or not a community had in fact zoned
21 exclusionary by studying the income levels of its
22 local residents? Is that a correct statement?

23 A Not necessarily.

24 Q How would we check, if one had the
25 assumption that a town had practiced exclusionary zoning,

1 how could we test that hypothesis empirically to find
2 out whether in fact low income people and moderate
3 income people were excluded from that town?

4 A One could empirically determine the distribution
5 on the basis of distribution of population by income,
6 by race, by occupation, by other indices and if in
7 fact there were concentrations by special crafts
8 within certain geographical areas that were unrelated
9 to the movement of population generally and the
10 distribution of employment and other opportunities
11 generally, then one must conclude that there is some
12 constraint about the ability of low and moderate
13 income people to distribute themselves the way others
14 have.

15 Q Would it be fair to say that conversely
16 if we found in certain communities in Middlesex County
17 that they had large numbers of low and moderate income
18 peoples, that that would tend to show that the zoning
19 was not exclusionary?

20 A Not necessarily because everything is relative
21 and large numbers would have to relate to the total
22 universe of numbers within the county and the distribution
23 within its subdivisions.

24 Q I believe you testified to previously that
25 one would not have a perfect universe; that because there

1 Q Could you give that to me?

2 A Well, that would be our fair share plan which
3 would indicate what the percent of housing that would
4 be available to low and moderate income people would
5 be in Piscataway.

6 Q Rather than getting into your plan, what
7 I would like to know is for right now, for 1975,
8 I would like to know how many low and moderate income
9 people these towns should have, assuming the town felt
10 it was not exclusionary, the town fathers felt their
11 town has not been exclusionary, the question would come
12 up how many low and moderate income families would
13 each of these towns in fact have, these suburban towns,
14 if they had not practiced exclusionary measures.
15 Would they have ten percent low income, would they have
16 20 percent low income? What would be the guide?

17 A It is hard to give a guide of that sort. I
18 would say that the more valid question would be the
19 percentage of dwelling units that are available in
20 different, at different price levels and that are of
21 different types in terms of size of the units.

22 So that if it were determined that a community
23 had an adequate number of dwelling units that served low
24 and moderate income households and a mixture of types
25 of units, then I think that that community would have

1 met its fair share.

2 Q So that your testimony of the housing
3 stock would be a fair test of whether a town were
4 exclusionary rather than its income distribution
5 level, is that true?

6 A Yes, that's true.

7 Q But income distribution would be a factor
8 to consider?

9 A Well, it would be indicative, yes.

10 Q In our suburban Middlesex County communities,
11 could you give us a percentage figure of what you
12 feel each community should have at the present time?
13 Obviously, this is a rough guide but I would like to
14 know what you feel would be a fair percentage of units
15 that each town should have in multi-family units.

16 A Well, as I had occasion to say before, the
17 fair share allocation plan that I came up with
18 allocates units without differentiating as to whether
19 they are single-family or multi-family.

20 Q I want to get away --

21 A But I think that a refined allocation plan
22 should make a distribution of single family units and
23 multi-family because single-family generally are home-
24 owner, are occupant-owned and multi-family are generally
25 rental except for condominiums or cooperatives.

1 And consequently, there ought to be a mixture
2 of both types in order to provide the greatest
3 flexibility for people looking for housing.

4 Q I want to get away from your fair
5 share allocation for the moment. I'll be happy to
6 return to it because it interests me and it is part
7 of the case.

8 But my question now is if we were to look at
9 the housing stock of a community in Middlesex County
10 right now, its existing housing stock, I would like to
11 know what percentage of the existing housing stock,
12 if it were in multi-families, would indicate to you
13 that as of 1976, as of January 29, 1976, the past
14 zoning practices of that community had not been
15 exclusionary as to multi-family dwellings.

16 Do you understand the question?

17 A I understand the question but you have to divide
18 that into two aspects because the presence of multi-
19 family housing does not necessarily indicate an absence
20 of exclusionary factors, because the rentals in those
21 units and the size of the units permitted under zoning
22 could in themselves be exclusionary.

23 So that the presence of a large number of
24 multi-family units would simply be evidence that that
25 community had satisfied the need to have a balance

1 between single-family and multi-family without
2 necessarily satisfying the need for unmet units for
3 low and moderate income people.

4 Q The town itself and its zoning does not
5 determine the rents, does it? That's determined by the
6 marketplace?

7 A But the town in the way in which it writes its
8 zoning ordinance, its building code and subdivision
9 approval ordinance and its policy on assistance can
10 have an effect on rentals.

11 MR. BERNSTEIN: Off the record.

12 (Discussion off the record.)

13 Q Getting back to the housing stock, can you
14 give us some numbers as to non-discriminatory housing
15 zoning for a suburban Middlesex County community, your
16 devising reasonable garden apartments.

17 Give us the range. What can the town look for
18 as being reasonable as far as apartments are concerned?

19 A Reasonable in number?

20 Q Reasonable first as to density. Everybody
21 is always interested in density.

22 Now, with gardens, what is the reasonable density
23 that a town can employ? Give us a range here.

24 A Well, in my practice locally in Passaic and
25 Bergen Counties in the 1950's, we began with densities

1 of roughly 30 units to the acre and garden apartments.
2 Generally, planners felt this was an excessive density
3 because of the requirement for more than one parking
4 space per unit and consequently, I think that today
5 we have generally the garden apartment density is
6 considered feasible again depending upon where the
7 town is located, other things, runs somewhere between,
8 let's say, 12 and 18 units to the acre. Fifteen would
9 be a good middle figure.

10 Q How about as to the square feet per unit?
11 What do you think is fair as to a one-bedroom, a range,
12 and a two-bedroom?

13 A Well, that's somewhat out of my area of competence.
14 That's really an architectural matter as to the design
15 of the apartment.

16 All I know is that there are livable apartments
17 that are 500 square feet, depending on how many
18 occupants are going to occupy it and there should be
19 under house codes a relationship between the square
20 foot of floor area and the number of occupants. That
21 ought to be stated in the occupancy permit.

22 Q But you can't give us that figure right
23 now?

24 A As to what?

25 Q As to what would be a reasonable minimum

1 square foot requirement for a one-bedroom apartment
2 or for a two-bedroom apartment?

3 A No. I think that's, reasonable, you have to
4 speak here not really of reasonable but of minimums.

5 Q That's what I want to know, if you can
6 give us those numbers.

7 A I think that's a health standard. I think
8 that's written into, if I'm not mistaken, the New
9 Jersey State Tenement Act as some minimums, if I'm
10 not mistaken, as to the number of square feet per
11 person.

12 I have as a consultant participated in the writing
13 of housing codes in the cities of Passaic and Clifton.

14 Q I'm not interested in the cities. I want
15 to know if you can give us a minimum today for the
16 one-bedroom and two-bedroom and the three bedroom for
17 your suburban Middlesex County communities. If you
18 can't, that's all right.

19 A No, I couldn't, no.

20 Q When looking at this typical garden
21 apartment ordinance, what else would indicate to you
22 that even if a town provided for apartments, that
23 it was exclusionary in the manner it provided for
24 apartments?

25 We have one is density. Is there anything else

1 that would make a garden apartment ordinance
2 exclusionary?

3 A Well, such things for instance as saying the
4 children can't live on the second floor.

5 Q No children on second floor.
6 Anything else?

7 I want to know the exclusionary practices as
8 to apartments as a result of zoning.

9 A Well, the limitation of the number of bedrooms
10 per apartment in terms of ratio of apartments having
11 one or two or three bedrooms within a development.

12 Q But you would admit that one and two
13 bedrooms are the more popularly used garden apartments,
14 isn't that true?

15 A In terms of market demand, I think that the
16 market would probably determine what the builders
17 would build.

18 If builders had people who wanted three-bedroom
19 apartments, they would build it if they would permit
20 it. But the question of how many of each they would
21 build would be a matter as with single-family houses.

22 Q What is the market demand now and what
23 was the market demand for apartments? Wasn't it
24 greater in fact for one and two-bedroom apartments
25 and that's the reason that most apartments were built

1 with one and two bedroom units?

2 A I don't think so. If that were the case, I
3 don't see that where so many communities limited the
4 number of bedrooms by zoning, they would not have
5 to limit it by law.

6 Q You don't have any information as to
7 what the market demand either has been or is with
8 regard to one, two and three-bedroom apartment units,
9 isn't that a fair statement?

10 A The conventional knowledge which planners,
11 architects, builders, mortgage lenders share is that
12 there is a greater demand for one and two-bedroom
13 apartments than there is for three-bedroom apartments.

14 Q Let's assume we had our hypothetical town
15 that had a garden apartment zone which was non-
16 exclusionary. They provide the things you would be
17 looking for and didn't have the bad things.

18 How many apartments should this town have as
19 a percentage of its total housing stock as of 1967?

20 A Well, apartments, see, we get into a complication
21 here because apartments are not always the equivalent
22 of density classifications in housing.

23 By and large one assumes that low density is
24 going to be a single-family house. But depending on
25 how one defines low density, one can build attached

1 single-family houses which can be sold, so-called
2 townhouses or row houses at what might be considered
3 in some definition as low density. Certainly they
4 can be built amply with ample area within what is
5 considered, let's say, the garden apartment density
6 or the medium density I referred to of 15 dwelling
7 units to the acre.

8 Q What I'm looking for, Mr. Erber, is what
9 percentage of each type of dwelling unit should a town
10 have in 1976 if it didn't practice exclusionary
11 measures?

12 Isn't it your contention that the towns in
13 Middlesex County in fact zoned on an exclusionary
14 basis, isn't that your contention?

15 A It is my contention that the way the land
16 use pattern of Middlesex has developed with relation-
17 ship to employment and income patterns, that there
18 must have been exclusionary zoning because the natural
19 forces of the market would not have developed land
20 in that way.

21 Q What percentage of towns' dwelling units
22 should have been in apartments and townhouses and
23 large lot zoning and small lot zoning if there were
24 no exclusionary zoning? I want to find out what
25 you believe.

1 A I would say it should have been reflective
2 of the pattern of housing by type throughout the
3 metropolitan area.

4 Q Can you give us any numbers now? I would
5 like to know what the percentages should be for each
6 type of dwelling unit for your opinion, for your
7 typical suburban Middlesex County community, if you
8 can. If you can't give us that number --

9 A I can't give you an arbitrate figure.

10 Q Can you give a non-arbitrative figure?
11 Can you give us a range of figures? Can you give
12 us a general idea of where the town should be?

13 A In terms of numbers of multi-family and single-
14 family?

15 Q Right.

16 A Well, I composed a memorandum at the request
17 of the attorney for Dunellen in which I set forth some,
18 considerable caveats.

19 I impose a kind of a broad guideline for a
20 community of one square mile and I consider a community
21 of one square mile to be less than a full-blown city,
22 a small city or even a town. At one square mile I
23 would assume there is a higher percentage of residential
24 uses to non-residential than where that town has to
25 provide certain kind of non-residential functions for

1 neighboring communities.

2 So that I assume if about half of the land area
3 of the town were devoted to residential uses, that
4 would be reasonable and I then subdivided again as a
5 general guideline the amount of units that ought to be
6 low density, medium density and high density.

7 Q This is for your community of one square
8 mile, is that correct?

9 A That is right. That's what I was requested to
10 respond to.

11 Q Could you make a similar study for a town
12 of 30 square miles or 20 square miles?

13 A That becomes not only more difficult but I would
14 say impossible because one thing that planners do not
15 do is to prescribe for communities generally any more
16 than physicians can prescribe for patients generally.

17 There are certain common health rules that a
18 physician can lay down and a planner can lay down
19 certain common rules of things one should try to do
20 and one should try to avoid.

21 But to say what a community of 30 square miles
22 ought to do by way of allocating its land for different
23 types of housing would not be advisable on the part
24 of a professional planner.

25 Q To get to specifics, can you tell us how

1 many apartment units Piscataway should have as of
2 1976 or how many townhouses or how much large lot
3 zoning or small lot zoning?

4 Can you give us any of these guides as to
5 Piscataway or any other town in Middlesex County,
6 what it should be as of right now?

7 MR. SEARING: I think he has already
8 answered that question. You have
9 repeated it a number of times.
10 I think pursuit of this questioning
11 constitutes harassment.

12 I believe a review of the record
13 will show that you have the only answer
14 the witness can provide at this time.

15 Q I would like to know, Mr. Erber, whether
16 or not you can give us a statistic as to what the
17 number of dwelling units should be in Piscataway as
18 of today's date or any other community?

19 A That would require that I do a study of
20 Piscataway which I have not been asked to do and
21 I'm not in a position to do.

22 Q You can't do that for any of the towns
23 then, is that right?

24 A That is right, I can't.

25 Q Have you in fact done a study of the zoning

1 practices in any of the communities?

2 A No, I have not.

3 Q Have you in fact done a study of the
4 income levels of Middlesex County and the communities
5 in Middlesex County?

6 MR. SEARING: These questions were
7 explored in detail at Mr. Erber's prior
8 deposition.

9 MR. BERNSTEIN: It wasn't explored
10 last Wednesday, I believe it was, the
11 day it snowed. I would like to know
12 whether or not he did an income study of
13 the people living in Middlesex County and
14 the communities therein.

15 THE WITNESS: I had to take income
16 into account in composing a fair share
17 plan.

18 Q But you didn't do any separate income
19 studies other than what's on the fair share plan that
20 you have given to us?

21 A That is right.

22 Q Now, your study shows that low income
23 families in 1970 would be those under \$6,000 and moderate
24 income would be those under \$8500, correct?

25 A Yes. We took the guidelines that were laid down

Erber-cross

1 by the State Study of unmet housing needs.

2 Q What is the low income figure for 1976?

3 A I'm not aware of what that is because there are
4 rather conflicting forces at work; inflation on the
5 one hand, unemployment on the other.

6 Q What figure would you give right now
7 for today, January 29th, 1976, what's a low income
8 family today, in your definition?

9 MR. SEARING: The record will show
10 that question has been asked and answered
11 at Mr. Erber's previous deposition.

12 MR. BERNSTEIN: I don't remember it.

13 Q If he can give me the figures.

14 A I did not establish that figure.

15 Q Can you give us an answer? If you can't
16 give us an answer, I'll take that.

17 A I can't give you an answer.

18 Q Can you give us a figure as to what a
19 moderate income family would be making in 1976?

20 A Moderate income in 1976 I would define as in
21 terms of the Housing Community Development Act, Section
22 8 which sets it up as 40 percent of medium income in
23 the metropolitan area which that community is a part.

24 Q Can you give us that figure for today?
25 I don't want a formula.

1 A No. As I think I responded before, I think
2 that it is probably somewhere in the vicinity of
3 12 or \$13,000 in the northern New Jersey area.

4 Q That's what you're estimating it would be
5 in Middlesex County today, moderate income family
6 would be earning less than \$13,000?

7 A I would say yes because I use 8,500 for 1970.

8 Q Can you tell us what kind of dwelling units
9 this moderate income family can afford, moderate
10 income family of four, in your opinion?

11 A They could afford whatever 25 percent of their
12 income would buy.

13 Q That would be for an apartment, is that
14 right?

15 A Apartment or house.

16 Q Well, for a house, you couldn't buy a
17 house for 25 percent of one's income, isn't that right,
18 because if you made \$12,000 a year, that would mean
19 you could only buy a house that cost \$3,000?

20 A No. It could be that you could only afford
21 \$3,000 in carrying charges on that house for taxes,
22 interest, upkeep and other charges.

23 Q What would the value of the home be that
24 this moderate income family could afford?

25 A Plus, of course, in that connection, loss of

1 interest on money that was paid for the down payment.

2 Q Could you give us a figure for the house,
3 what would it cost?

4 A Well, there is a rule of thumb which says that
5 it is not advisable for anyone to buy a house that's
6 over two and a half times his annual income.

7 Q You subscribe to that?

8 A I think by and large it is a good rule.

9 I think the increasing number of young couples
10 are violating that I fear to their detriment.

11 Q Can you tell us how many jobs there are
12 in Middlesex County as of 1976?

13 A Well, I think as of 1970 there was somewhat in
14 the neighborhood of 220,000, but I don't know what
15 the 1976 figure is.

16 Q Is that the latest figures you have, sir?

17 A 1970?

18 Q Yes.

19 A I have seen some updates. The statistics get
20 very complicated because the basis, the number of
21 jobs are always estimated because we don't still have
22 a quick, reliable way of determining that from year
23 to year since what is usually used is, the most
24 reliable is called covered employment.

25 Covered employment are those who are covered

1 by the State Employment Insurance system. But this
2 does not include a great many people in public employment
3 who are covered under different systems.

4 It does not include people who are self-employed
5 and there are all types of other activities of people
6 who are marginally employed that do not come under the
7 state coverage system.

8 What they do, they take the amount of covered
9 employment and they make an estimate as to how many
10 other additional employment are employed. So I have
11 seen figures but I'm not sure just what they are.

12 Q Can you tell us as of 1970 how many
13 people there were in Middlesex County that had jobs
14 either in the county or elsewhere?

15 A I believe as I said, I think 1970 it was
16 somewhat over 200,000.

17 Q Do you know where you got that statistic
18 from?

19 A Yes. That's from the United States Census of
20 1970 which is based on information gathered at the
21 homes of residents and they were asked how many employed
22 members there are in the household.

23 Q Would these figures indicate to you that
24 there were more jobs in Middlesex County than there
25 were employees or workers living in Middlesex County?

1 A It is my recollection that there is such an
2 imbalance, yes.

3 Q Does that indicate to you that in fact
4 exclusionary zoning has been practiced because there
5 are more jobs in the county than there are workers
6 and therefore, the communities of the county are getting
7 the tax ratables without providing the housing?

8 A That is one indication of that situation, yes.

9 Q Let's assume we had --

10 A That's an indication in a larger more complex
11 picture because we have to get into the whole question
12 of the numbers who live in the county and work out as
13 compared to numbers who live in the county and work in
14 the county and the numbers who work in the county and
15 live out of the county.

16 Q Let's assume we had a county where there
17 were 200,000 jobs and 220,000 workers. Wouldn't
18 that be one indication that the communities had
19 provided sufficient housing?

20 A No, not necessarily. Because it could very
21 well be that a large number of the people who were
22 living in that community were working in a nearby
23 central city as middle-class white collar workers and
24 only desired to live in a community for suburban
25 environment, and the ratio of jobs to housing

1 opportunities for low and moderate income people would
2 not be divulged by that.

3 Q So from what you are saying, the ratio
4 of employees of workers in the county to the total jobs
5 in the county insofar as you are concerned is a
6 meaningless figure?

7 A Yes, it is because one of the largest ratios of
8 housing to jobs in any county that I know of is in
9 Brooklyn, so-called Kings County, New York. The
10 other is in the Bronx County, New York where the
11 number of jobs are relatively small compared to the
12 number of housing units.

13 But there is a severe housing problem.

14 Q One thing I don't understand, in response
15 to Mr. Busch's question, you said that people should
16 live near employment. Well, if you had more workers
17 living in a county than you had employment, wouldn't
18 that indicate that the county was satisfying the amount
19 of housing that was needed?

20 Are you saying you would have to refine it?

21 A You have to refine it because what you get in
22 every morning is this, thousands going out, thousands
23 coming in. And in the evening coming back again.

24 And it is a question here of who are those
25 thousands. For instance, our figures show some forty

1 percent of those who come in to jobs in Middlesex
2 County are non-white and come from other areas. Those
3 who go out are predominantly white.

4 I think just in terms of the racial split between
5 in and out commuters, that's very significant.

6 Q Assuming that we found added to my
7 previous hypothetical, not only were there 220,000
8 workers in the county but these were also of a lower
9 income level than the surrounding counties, and added
10 to this the fact that there were only 200,000 jobs.
11 Would this indicate to you that overall the zoning
12 practices of that county were not discriminatory?

13 You have three things. You have more workers
14 than jobs. You have a greater percentage of low income
15 workers in this county than in the region and you have
16 fewer jobs than you have workers.

17 Isn't this a good indication that the county
18 collectively is not discriminatory in zoning?

19 A I have a little difficulty in getting your
20 factors straight. What is the first --

21 Q 220,000 overall workers in all categories.

22 A That live in the county?

23 Q That live in the county.

24 A 220,000 workers live in the county.

25 Q 200,000 jobs.

1 A 200,000 jobs.

2 Q And an income level in that county that
3 is lower than the surrounding counties.

4 A So that the number of workers is by 20,000 more
5 than the number of jobs, is that right?

6 Q Also we have a lower income level in this
7 county than the surrounding counties.

8 The question is given this set of facts, could
9 we say that this indicates the county has not practiced
10 discriminatory zoning on a rough scale overall?

11 A I would say there would be less reason to
12 suspect discriminatory zoning practices.

13 Q In your opinion as a planner, would you
14 say that overall there has been more discriminatory
15 and exclusionary zoning in Somerset County and in
16 Morris County than there has been in Middlesex County,
17 if you know?

18 A I would say that they are probably roughly
19 equivalent.

20 Q You are aware, of course, of the fact
21 that the income levels for Somerset and Morris Counties
22 are much higher than they are for Middlesex County,
23 are you not?

24 A Yes. That's by virtue of the fact they don't
25 have equivalents of New Brunswick and Perth Amboy

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1 because Somerville is not an equivalent of New Brunswick
2 in terms of its socio-economic --

3 Q I'm sure you are aware of the fact that
4 even factoring out Perth Amboy and New Brunswick, that
5 the income levels for your typical communities in
6 Somerset County and Morris County are still much, much
7 higher than your incomes for the suburban communities
8 and Middlesex County. Are you not aware of that fact?

9 A I think that generally speaking that's probably
10 true.

11 Q And you are also aware of the fact that
12 there is far less multi-family housing in Morris and
13 Somerset Counties and far more acre zoning and a larger
14 than acre zoning in Morris and Somerset Counties
15 than there is in Middlesex County; you are familiar
16 with that fact?

17 A I believe they are at least as bad, if not worse.

18 Q You are not aware, in other words, of the
19 fact there is more large lot zoning in Morris County
20 and Somerset County than there is in Middlesex?

21 A When I look in comparison of counties, I was
22 surprised that Middlesex was as bad as it was considering
23 the fact that it has such a large industrial base
24 compared to Somerset and Morris.

25 Q I'm not asking about the industrial base

1 because we knew from previous questions we can't get
2 into that. But what I want to know is which county
3 has more large lot zoning, acre or more as a percentage
4 of residential zoning, Middlesex, Somerset or Morris
5 and which has the least?

6 A That's a statistical fact. I could cite that
7 to you if I had the data at hand. And I would say it
8 is not a matter of my opinion. I think that's a fact.

9 Q Which is --

10 A It is a fact which could be determined. I would
11 think that it is likely that they do but I couldn't
12 say that for a fact. I would have to look at the
13 actual acreage figures of vacant land and how it is
14 zoned.

15 Q Now, if we can refer to your study --

16 A Of course.

17 Q If you wanted to clarify something.

18 A I wanted to clarify the fact that the comparison
19 of Monmouth, Middlesex, Somerset, Morris is a comparison
20 of the four counties which are notorious for exclusionary,
21 having communities with exclusionary practices.

22 So we are really comparing degrees of exclusion.

23 Q These are the worst in your opinion?

24 A Those four, yes.

25 Q But you can't tell us which is the worst

1 among them?

2 A No. I would have to make it out.

3 There are also factors which go one way and
4 another, depending on which example of exclusionary
5 practice you would be referring to.

6 We think, for instance, excessive zoning for
7 industrial land beyond any possible need is also a
8 form of exclusion.

9 Q I would like you to turn to page seven
10 of your report. Before you do that, though, can you
11 refer me to some suburban communities that we could
12 study that have non-exclusionary zoning?

13 I would be interested in communities in New
14 Jersey, all over the state, suburban communities,
15 if you can give me a list of those towns so that I can
16 study their zoning ordinances and recommend them to
17 be followed by the towns that we represent.

18 Can you give us a list of these communities?

19 A I think I could recommend some in Middlesex
20 County if we went back into history.

21 Q I mean right now, 1976.

22 A I think if you looked at the zoning ordinances
23 that were adopted in Middlesex County in the 1920's,
24 you would find some examples of communities that were
25 non-exclusionary, but they have all since upgraded

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1 themselves as they called it to an exclusionary status.

2 Q Anywhere in the state as of 1976 can you
3 give me suburban communities, I'm not interested in
4 the big cities, population over 50,000, but can you
5 give me a single suburban community which in your
6 opinion has a non-discriminatory, non-exclusionary
7 ordinance?

8 A I couldn't from the top of my head. It could
9 very well be I couldn't find one if I looked hard for
10 one.

11 Q You have worked in New Jersey for many
12 years, is that right?

13 A That is correct.

14 Q As of right now you are not aware of any
15 ordinance that you characterize as non-exclusionary?

16 A No. But there are degrees of exclusion and I
17 would not, from the top of my head, be able to say I
18 can identify one which is non-exclusionary.

19 Q I would like you to turn to page seven
20 of your report where it says, part one --

21 A One of the communities I'm very familiar with
22 in the 1950's, suburban community and a developing
23 one was Clifton.

24 Q I'm interested in 1976. Historically you
25 might have worked in a community --

1 A I couldn't as of 1976.

2 Q To get back to page seven, part one, it
3 says identification of unmet housing needs for low
4 and moderate income families for 1970, correct?

5 A Right.

6 Q Number one says unmet needs of households
7 occupying substandard housing either paying more than
8 25 percent of their income for shelter, 29,507 people.

9 A Households.

10 Q Can you tell me where you got that figure
11 from?

12 A Yes. That is from the State Report on unmet
13 housing needs which we have cited previously and which
14 I can cite again.

15 Q That's on low and moderate income housing?

16 A That's called, yes, an analysis of low and
17 moderate income housing need for New Jersey, New Jersey
18 Department of Community Affairs, April 1975.

19 MR. SEARING: The methodology of
20 this report has been covered in detail.

21 MR. BERNSTEIN: I'm not going to go
22 into that.

23 Off the record.

24 (Discussion off the record.)

25 Q If, in fact, someone from the state admitted

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1 that this figure wasn't scientifically obtained,
2 you have nothing further to substantiate that figure,
3 isn't that right?

4 A It is a question of what's scientific and
5 what isn't scientific subject to --

6 Q Assuming the state said, "We made a
7 mistake, this report is invalid", then you would
8 agree that your 29,507 household figure would also
9 be invalid?

10 A No. I think by following the methodology
11 in the report I could establish independently of
12 the state.

13 Q But that's assuming all the other statistics
14 are correct?

15 A I would say their statistics are correct.
16 There may be some arguing about assumptions they make
17 as to what the meaning of the statistics are and this
18 is not the only state report.

19 There are other state reports.

20 Q But it is the only one that you got
21 this figure from?

22 A That is right.

23 Q These I assume are all low income people
24 in the category number one?

25 A Low and moderate. Under \$8500 a year it says

1 low and moderate.

2 Q Isn't it a fact the private market
3 can't build houses for any of these people, number one?

4 A The private market can't.

5 Q Isn't it a fact that it would even be
6 difficult for the private market to build apartments
7 for families of four for number one?

8 A By number one, what do you mean?

9 Q I'm referring to unmet needs of households
10 occupying substandard housing --

11 A You mean column one.

12 Q Yes, column one. Isn't it a fact it would
13 be almost impossible for most of these people to move
14 into apartments that were privately built and non-
15 subsidized?

16 A New apartments.

17 Q New apartments, right.

18 A This would be improbable.

19 Q Improbable that they could move in?

20 A Yes, that builders would build and put them on
21 the market at rentals they could afford.

22 Q Really under number one we are talking
23 about essentially subsidized housing, isn't that true?

24 A No, we are talking about the availability of
25 housing that they can afford and this does not necessarily

1 have to be subsidized because the availability of
2 housing depends upon the total amount of housing
3 that's on the market in relation to those who seek
4 shelter, and if there is a large amount of housing
5 that's being built --

6 Q Talking about the trickle down theory?

7 A Yes. There are people being built over 8500
8 and may be vacated by people who are earning 8500
9 can occupy.

10 Q Essentially, aren't we saying the private
11 sector can build practically nothing or at least
12 practically nothing for those people who are identified
13 in column 1?

14 A Except with subsidy.

15 Q Except with subsidy.

16 A Yes.

17 Q Even if there were no zoning in Middlesex
18 County, without subsidies, housing or apartments
19 wouldn't be built for column one people?

20 A That's a question that I would have to -- actually,
21 a builder who found inexpensive land and found that
22 he was not faced with excessive demands beyond what
23 are reasonable standards for public health and safety
24 in terms of building codes and street improvements, I
25 don't know whether that's valid or not. I know that

1 there have been townhouses built --

2 Q People under 8500 incomes?

3 A Townhouses built recently in the Washington
4 area which sell for just slightly under \$30,000,
5 so that we are talking here I guess of townhouses
6 that would then require two and a half times purchase
7 price, something more than 8500.

8 Q So, isn't it improbable, isn't the
9 correct answer it is improbable private industry can
10 build anything?

11 A It is improbable, yes.

12 Q With regard to number two, you mention unmet
13 needs of heads of households working in Middlesex
14 County but living elsewhere. That's 23,258, correct?

15 A Right.

16 Q Now, you got that figure from the report
17 by Mr. Kim?

18 A Well, only to separate out what number of workers
19 are heads of households. The figure of 23,258 was
20 determined by taking the total number of persons who
21 commute into Middlesex County.

22 Q How many is that?

23 A Somewhere around 55,000, I believe.

24 Q That's who commute into is 55,000. Where
25 did you get that figure?

1 A That's available I think from the journey to
2 work data on the census for 1970.

3 Q We have 55,000 commuting into Middlesex.
4 You subtracted out I assume those people who were
5 making more than --

6 A Yes, the figure of 10,000, the number of those
7 who are earning less than 10,000, as I said, quoted
8 earlier is from the report prepared for Madison Township
9 in its zoning suit by the firm of Ables, Schwartz &
10 Associates who are planning consultants in New York.

11 Q So that the 23,000 figure is from Ables
12 and Schwartz's report?

13 A Yes. They determine the number of commuters
14 who earn less than 10,000. I took that figure and
15 subtracted it, determined that from the figure of
16 55,000, yes.

17 Q You assume that the figures in Ables and
18 Schwartz's report and the figures in the state study
19 were both correct?

20 A Yes, I do.

21 Q Here is what I have been worrying about.
22 If there are 23,000 persons working in Middlesex but
23 living elsewhere, that means that Middlesex is not
24 providing the housing for them, right?

25 A That is the assumption.

1 Q What I want to know is, how many people
2 are there who are heads of households living in
3 Middlesex but working elsewhere?

4 A I don't know the exact number but I would guess
5 it is considerably larger than the number who commute
6 in.

7 Q You would assume that there are more
8 leaving Middlesex to work elsewhere than 23,000 persons,
9 correct?

10 A That is right.

11 Q And you would base that on --

12 A Journey to work data.

13 Q From the census?

14 A Yes. I think the number is somewhere in the
15 round numbers of 80,000.

16 Q You are estimating that it is 80,000?

17 A Right.

18 Q Doesn't that mean that Middlesex County is
19 providing housing for 80,000 people who are the low
20 income level who aren't even working in the county?

21 A That's true.

22 Q Do they get any credit?

23 A I didn't say a low income level. I said out
24 commuters.

25 Q That's the total out commuters?

- 1 A The total out commuters.
- 2 Q How many of those are the low income?
- 3 A I haven't determined that.
- 4 Q Let's assume we found it was 23,000.
- 5 You have no knowledge that it is more, less or the
- 6 same?
- 7 A No, I don't.
- 8 Q If I could prove to you that it was 23,000,
- 9 then wouldn't you admit to me that Middlesex County
- 10 does not have the burden of providing the additional
- 11 23,000 housing units for the people living outside of
- 12 the county and working here if, in fact, we could show
- 13 that there is an identical number living in Middlesex
- 14 County and working elsewhere? Wouldn't the two wash out?
- 15 A Well, if there are a considerable number of low
- 16 income families living in Cranbury and working in
- 17 Trenton, and if the present fair share allocation plan
- 18 established by the Delaware Valley Regional Planning
- 19 Commission which has allocated a certain number to
- 20 Mercer County which is now being subdivided for Mercer
- 21 County communities, if that were in effect, it might
- 22 prove, if there is a construction of low and additional
- 23 moderate low and moderate income units that are standard
- 24 in Mercer County, that in fact some people who are
- 25 commuting from Cranbury might in fact go to housing in

1 Mercer County, if they are of low income and if they
2 are living in Cranbury because that's the only place
3 they could find housing. I would be surprised if
4 that was the case.

5 Q That wasn't my question. My question
6 was, let's assume that I could prove to you that
7 there are 23,000 heads of low income households that
8 live in Middlesex County and work elsewhere. Then the
9 question is, would you still add the figures in column
10 two, the in-commuters? Would you still say to
11 Middlesex County you have to provide 23,000 more low
12 income housing units even though you are providing
13 23,000 housing units for people who live within your
14 borders and work elsewhere?

15 In other words, would it be a wash-out if I could
16 prove my supposition to you?

17 A Yes. We assume that if that were true, that
18 the wash-out would take place by people finding
19 housing close to their employment and the population
20 would redistribute itself that way as it always has.

21 Q You still haven't answered the question.
22 What I want to know is, you have set up a
23 factor of 52,000 people which you say Middlesex County
24 must provide houses for, correct?

25 A That is right.

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1 Q What I want to know, would this figure
2 change if I could prove to you that there are 23,000
3 heads of households of low income families who live
4 in Middlesex County and work elsewhere? Would you
5 adjust your figures at all, yes or no?

6 A I haven't looked at that possibility because as
7 of now, I would have to be concerned with the right
8 of persons who work in Middlesex County to live near
9 their job.

10 Q Didn't you tell me before when I asked you
11 that complicated hypothetical about if there were
12 200,000 jobs and 220,000 workers in the county and
13 they were low income workers and you didn't think it
14 made too much difference?

15 A You were speaking of people living and working
16 in the county.

17 Q Sir, isn't it a fair statement you are
18 giving Middlesex County no credit for low income persons
19 who are living in Middlesex County and working elsewhere?

20 A That is right.

21 Q You feel as a planner that that's a fair
22 technique?

23 A I believe it is, yes. I believe that if we had
24 fair share plan eventually over all of the area, that
25 there may be a reshifting of people but basically I

1 believe that what's involved here now is that people
2 who can afford to live in Middlesex County and can
3 afford the housing, live there, and that people who
4 work there to the extent that we have shown in this
5 figure of 23,258 heads of households with incomes of
6 less than 10,000 would be likely candidates of housing
7 in Middlesex County if there were available means.

8 Q You don't have any statistics as to
9 where all of these low income families are living
10 where the heads are working in Middlesex County. Do
11 you think many of them are living in Morris County?
12 Do you know?

13 A I don't know that for a fact.

14 Q Do you know where any of them are living?

15 A No, I don't.

16 Q Do you have any statistics on that?

17 A I think there might be statistics available
18 from Tri-State.

19 Q But you don't have them?

20 A I don't have them.

21 Q Your theory is that Middlesex County has
22 to provide --

23 A For the record, we tried to get them. Tri-State
24 said they are required to be taken off of the basic
25 tapes of the census and that they have placed an order

1 for such work with the Bureau of the Census but
2 that these reports are not yet available.

3 Q You disagree with the State Housing
4 Study's conclusion as to the number of low income units
5 that must be built in each municipality, isn't that
6 true?

7 A Well, I don't believe the State takes into
8 account the question of those who work in the community
9 and don't live there. They are only trying to determine
10 the number that live there now that are in need of
11 housing.

12 Q You disagree though with the findings
13 of the State Study on how much additional low income
14 housing should be built for each community?

15 A In the sense which I have answered, yes.

16 MR. BERNSTEIN: That is all.

17 (Luncheon Recess 12:30 P.M.)

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(After Lunch recess, 1:35 p.m.)

1
2 E R N I E E R B E R, resumes.

3 CROSS EXAMINATION BY MR. SHAPIRO:

4 Q Mr. Erber, my name is Barry Shapiro. I'm
5 appearing here in behalf of the Township of Woodbridge,
6 one of the defendants in this suit.

7 The sheet indicating the subject matter of your
8 testimony indicates that it's your contention that the
9 land use of the defendants in this suit is ~~a~~ variance
10 with the metropolitan regional growth patterns.

11 A Yes, that's right.

12 Q How is that so?

13 A The metropolitan growth patterns would
14 develop a land use pattern considerably different than
15 that which emerges without local planning and zoning
16 constraints.

17 So that I must assume that the pattern that emerges
18 is the product of local governmental intervention in land
19 use and land development, and it's at variance because
20 the Middlesex -- the Middlesex County area has been subjected
21 to intensive pressures of suburbanization, from 1945 until
22 this very day by investment on the part of persons seeking
23 suburban homes.

24 It has further been under heavy development
25 pressure by industries seeking sites for research,

1 manufacturing service and other facilities, and the land
2 use pattern that has evolved, as I see it on a land use
3 map and see it statistically for the county indicates that
4 the land use available for development is overbalanced for
5 industrial as compared to residential development, and that
6 the type of residential development that has emerged and
7 which can emerge at present, in terms which land is made
8 available to county by local zoning, results in an imbalance
9 between the housing supply for those of low and moderate
10 income, and those who are in middle and higher ranges of
11 income.

12 So that I have to conclude that were there no zoning
13 or planning at all, perhaps some very terrible things would
14 ensue in the way in which land would be exploited without
15 constraint.

16 But, given the powers to zone and to plan, they
17 have been used in a manner which has not facilitated the
18 best use of land to accommodate the metropolitan growth
19 pressures, but rather to exploit them by seeking to extract
20 advantages for purposes of local tax benefits from some
21 uses, and blocking other uses which are considered to be
22 adverse to the local fiscal picture.

23 Q Does your contention in regards to the
24 exclusionary zoning allegation, is that contention based on

25

1 an after the fact observation of what appears, or have you
2 actually investigated the zoning ordinances of the
3 municipalities?

4 A I don't know what the reference to after the
5 fact would indicate in this context, but as I understand
6 your question, I did not examine the specific zoning
7 ordinances, but I did look into the overall pattern of
8 regional development in the northern New Jersey area, and
9 am knowledgeable as to its effects in Middlesex County.

10 I am only generally aware of what the exclusionary,
11 specific exclusionary devices are in suburban municipalities,
12 but without having analyzed the zoning ordinances of the
13 communities in Middlesex County, I could not address myself
14 to this.

15 Q Are you saying that you see the pattern that
16 presently exists, as far as development is concerned, and
17 from that you make the determination that exclusionary
18 practice must exist in order to give rise to the
19 current --

20 A Yes. I have to operate here in terms of a
21 cause and effect relationship, knowing that -- knowing what
22 the developmental patterns, as far as the economic base of
23 the New York metropolitan area are concerned, what those
24 patterns are and how they would express themselves, and I
25 would hold that the pattern that would emerge without zoning
or planning would be different.

1 It would also be different if there were -- if
2 planning and zoning existed but were used by local communities
3 to conform to the broad regional needs.

4 Q So that when you say you view a cause and effect
5 relationship, what you're telling me is you see what you
6 call the effect and from that observation you theorize the
7 cause?

8 A That's right. I theorize or attribute a cause,
9 yes.

10 Q Yes. But it's at this point more likely
11 a theory than anything else, because you don't in fact know
12 what has happened.

13 A Well, I do know the totals for the zoning
14 of vacant land for 1960-- I've looked at them, I don't
15 remember them. But for 1960 and 1970. I know that the
16 trend for the aggregate availability -- I should say
17 the availability of land on an aggregate in Middlesex
18 County for all communities, between '60 and '70, has been
19 for the amount of vacant land zoned for industrial purposes
20 to increase sharply, and the amount of vacant land available
21 for construction of multi-family dwellings, or the construction
22 of dwellings on lots of less than a half acre to have dropped
23 sharply.

24 Q Isn't it equally possible that the drop in
25 the small lot development can be attributed to the desires

1 of the home purchasers and the consequent increase in
2 income and living standards that has occurred since 1970?

3 A It's possible, but unlikely, in view of the
4 fact that the data shows that there are still large numbers
5 of people of incomes that do not permit them to purchase
6 homes on larger lots, or to build on larger lots.

7 Q Hasn't that situation existed since 1930,
8 1940?

9 A Yes. It's a matter of what the housing --
10 how the housing market is shaped incomewise. The home
11 building industry views the housing market as a pyramid.
12 The top of the pyramid represents the higher income groups,
13 and they are up at the top of the pyramid, but they are
14 also relatively narrow.

15 As you go down through each layer of income,
16 the number spreads. As you get down toward the base you
17 have the largest number.

18 So the building industry always speaks about how far
19 they can realistically dip down into the income spread to
20 find customers.

21 Of course, they would much sooner build large
22 numbers of houses for people of modest income than a
23 very few houses for people of high income.

24 And right now, the building industry is in a bad way
25 with many building companies going out of business, because

1 only those can survive who are in a position to meet the
2 high income market.

3 This is a situation which builders themselves under-
4 stand and have reacted to instinctively as businessmen,
5 because when there were a great number of lots available
6 in Middlesex County in the 50's, which were zoned for
7 modest sized, quarter acre or less, there was a building
8 boom on that sized lot.

9 But those lots were exhausted, and the towns have
10 instead of making more such lots available, have moved
11 obviously -- here again I can only go by the aggregate
12 figures for the county, have gone in the opposite direction.
13 Because more land was put into the industrial categories
14 and into larger lot sizes.

15 Q Don't you feel it not only prudent but
16 necessary that once a municipality has devoted a certain
17 amount of its territory to the quarter acre lot size, that
18 it also devote a certain amount to the larger lot size?

19 A Not if this runs counter to what the housing
20 needs of the population are.

21 Q But when you say population, you mean the
22 entire population rather than just the low and moderate
23 income, don't you?

24 A Well, yes, which includes the low and
25 moderate income. I would think that if there is a demand

1 for housing, which is being blocked by large lot zoning,
2 then the general welfare would be served if that zoning
3 were revised to permit housing for a larger number of
4 people, by virtue of including now people of lower income.

5 Q What would your views be if there were a
6 situation where a municipality had 15 or 20 years ago
7 provided a substantial number of small lot size building
8 areas, and those areas were developed to meet the then
9 moderate income need, but as a result of inflation or
10 whatever causes the price of a house to appreciate,
11 those houses are now beyond the reach of the low and
12 moderate income people.

13 Would you contend that this town has a further
14 obligation?

15 A Yes, I think that every town has an obligation
16 to share the housing -- the unmet housing need of low and
17 moderate income people. And this is a critical public
18 problem which I say is comparable to national disaster,
19 such as war or others.

20 To serve the public welfare one does what
21 is practical. And one way that one can do this practically
22 is to add to everyone's present housing stock units that
23 would serve low and moderate income families, but to add it
24 with some sense of fairness as to the amount of vacant land,
25 which such a community has.

1 So that we use two components, one, the percentage
2 added on to existing settlement, so that it can be absorbed
3 reasonably, but where there is a possibility of using
4 large amounts of vacant land, to add somewhat more there.

5 Q Do you recommend that individual
6 municipalities set a building rate?

7 A Well, I don't know that I would advocate it.
8 I think if you have a fair share plan which is reasonable,
9 I think that it becomes possible then to build in
10 accordance with a predetermined rate of growth. But
11 without such a fair share plan, then that could -- that
12 would be just as exclusionary as any other form of
13 development.

14 Q In regards to that fair share plan, were the
15 alleged substandard housing units taken into account in
16 arriving at the fair share allocations?

17 A Yes, they were, in that we assumed that
18 in communities where we were adding proportionately,
19 we should not take the substandard units into account,
20 because there the ability to meet fair share could in large
21 part be exercised through the renovation of existing units.

22 Q Now, as to those substandard units, do you
23 think that the number of substandard units is merely a
24 mathematical supposition based on income?

25 A Well, it's a supposition which the Bureau of the
Census has worked out, based on 1960 data, plus factors

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1 of plumbing deficiencies and overcrowding, as shown
2 in 1970, and certain mathematical, theoretical extensions
3 based on that.

4 Q Are you trying to tell me that the number
5 of substandard units alleged is basically a statistical
6 analysis which in itself is based on the number of low and
7 moderate income families residing in a community?

8 A No, I'm not saying that. Because there is
9 knowledge, I think, of the amount of substandardness
10 in different communities.

11 For instance, those 20 municipalities that joined
12 with the county in applying for, as an urban county,
13 for community development funds did list in their
14 applications substandard housing.

15 Q Are you familiar with this document entitled
16 analysis of low and moderate income housing need in
17 New Jersey?

18 A Yes, I am.

19 Q Isn't it a fact that the number of houses
20 alleged to be in deteriorated or dilapidated condition was
21 based on a statistical assumption that for a certain number
22 of low and moderate income families there is a certain
23 number of houses in a dilapidated or deteriorated condition?

24 A Yes, but that is not an arbitrary assumption.

25 The relationship of low income in a past pattern,

1 especially with relationship to the 1960 census when
2 dilapidation was a factor, is part of the process by which
3 the number of dilapidated units is arrived at.

4 Q If a municipality had, prior to the
5 compilation of this information, built two or three thousand
6 new units for low and moderate income people, wouldn't this
7 document then indicate that that municipality had a greater
8 number of deteriorated and dilapidated houses, merely because
9 of the fact that we now had two or three thousand more
10 low and moderate income families in there?

11 A Well, we do know how many low and moderate
12 income families are housed in standard housing by virtue
13 of knowing how many there are in a community.

14 Q I don't think that's the question that I asked
15 you.

16 Wouldn't the formula that they used -- are you aware
17 of the formula they used to arrive --

18 A I read the formula.

19 Q Applying that formula to my hypothetical
20 question, wouldn't the result indicate that greater number
21 of dilapidated and deteriorated houses, based merely on the
22 fact that two or three thousand more low and moderate income
23 families had moved into that community?

24 A Well, frankly, I would have to examine,
25 again -- this is a relationship which I have not examined,
it's highly complex, and I would have to retrace their

1 methodology to see whether that was taken into account or
2 not.

3 Q But you don't know, then, whether --

4 A I don't know for a fact.

5 Q Is it your contention that where people
6 live jobs develop, as opposed to jobs developing and then
7 people coming to live there?

8 A It works both ways.

9 Manufacturers want to be assured that there is some
10 reasonable access to labor supply before they build or rent
11 for manufacturing or any other business, but in common
12 parlance they say where will the workers come from?

13 On the other hand, for example, once the industry
14 is established, it often will attract persons who want
15 to live near it because of the availability of jobs.

16 Q Well, now, suppose we had a small municipality
17 which had a large industrial land area. Would you have
18 problems with that municipality's obligation, vis-a-vis,
19 the low and moderate income people?

20 A I find it difficult to respond because I'm not
21 quite sure what you mean by having problems.

22 Q Let me give you an example.

23 If we have a municipality in which 80 percent of the
24 available land is occupied by some sort of commercial or
25 industrial enterprise, which enterprise provides job

1 opportunities, but because of the area devoted to that
2 collection of enterprises there is not room for the
3 people who work at those enterprises to live there.

4 Would you still contend that in that situation that
5 municipality had an obligation? And if so, what would
6 be the extent of that obligation?

7 A Well, I would say that New Brunswick is
8 typical of a community that has large amount of land area
9 in non-residential uses, fairly high percentage of
10 employment, although it's declining. And I think that
11 New Brunswick should provide as much standard, decent
12 housing as is possible to permit people to live in New
13 Brunswick who work in New Brunswick, or who work very close
14 to New Brunswick.

15 So that I think there's always the possibility of
16 increasing the number of good units because density is not
17 the critical factor. The question is really the quality of
18 the housing.

19 Some people prefer to live in relatively dense
20 areas because they have other advantages. Some prefer
21 low density areas.

22 I think there ought to be the opportunity for people
23 to choose, but not to be constrained by the factor of price
24 in one or another situation.

25 Q Are you aware of any plaintiffs in this suit

1 who prefer to live in a high density area?

2 A I don't know, I haven't spoken to the
3 plaintiffs, but I do know that there are some people who
4 rent -- choose to live in New Brunswick and pay high rental
5 -- pay fairly high rental to be here, and this I gather is
6 true of every central city, because of transportation
7 convenience and other conveniences.

8 Generally, I would say, such cities also contain
9 large numbers of people who would prefer to live elsewhere
10 if they could afford it.

11 Q Isn't it true that some of the housing that
12 would otherwise be available for low and moderate income
13 people is now occupied by people of more substantial
14 means who cannot afford to find more expensive housing
15 which they would prefer to live in?

16 A That is very true.

17 Q Would it also be true, then, that a large
18 part of the needs of the low and moderate income people
19 not be met by constructing more expensive housing in order
20 to free up the housing that they could otherwise afford?

21 A That's very true.

22 Q Have you developed any figures as to what
23 expensive housing allocations each municipality should
24 make plans for?

25 A No, except to say that I would assume that

1 there ought to be a range of housing, as far as practical,
2 within the community, so that there's a kind of stepladder,
3 escalator, that as people's incomes increase, they might
4 be able to move to housing which is either larger,
5 to accommodate a growing family, or just more
6 commodious to accommodate their lifestyle, as
7 their income goes up.

8 And to be able to do that without going to
9 another county or another part of the county, but to do
10 it within relatively the same community in which they are
11 accustomed to living. If that's their choice, if they
12 like the community and want to stay there.

13 Q Would you recommend a ratio between the
14 various income levels?

15 A Well, I think the market does a great deal
16 of that, if it's not restricted by such things as arbitrary
17 bedroom restrictions or excessive lot sizes. Because each
18 builder looks for the largest possible market, and he's
19 going to be as competitive as he has to be to survive,
20 and he will come up with the most house for the best price
21 that he can under the permitted zoning.

22 Q Do you know if the amounts of money available
23 for housing assistance from state and federal sources,
24 already allocated for Middlesex County, will meet the
25 housing deficiencies noted in your report?

1 A I don't know the amounts, but my answer to
2 that is that in all probability it would not.

3 Q What is your suggestion for meeting that
4 deficiency?

5 A That there be a goodwill effort on the part of
6 each municipality to meet the deficiency.

7 Q I don't understand what you mean by a good will
8 effort.

9 Am I correct in assuming that part of what you
10 mean is it takes more than just rezoning, it takes money?

11 A Yes. Rezoning would be the first step. This
12 would create housing of all types, some movement between
13 houses. It takes effort to create a housing authority, as
14 permitted under state law. It takes -- taking fullest
15 possible advantage of the Federal Section 8 Program;
16 taking advantage of the State Housing Program by passing
17 a resolution of housing need. And in every way exploiting
18 whatever possibilities exist.

19 Now, I believe that if a community has exploited
20 all possibilities and is unable to meet its fair share,
21 I would like to see -- this is only my recommendation.

22 That there be a mechanism, whoever is administering
23 fair share would also be required to have some sort of a
24 basis for giving relief on grounds of hardship, of sheer
25 inability to achieve a share.

1 Q Have you taken into account the municipal
2 housing code enforcement programs that are already in
3 effect?

4 A I have, not to the effect that I know --
5 for instance, the Section 8 Program permits the use of
6 community development funds for renovation of housing,
7 and in the fair share plan I assume that cities like
8 Perth Amboy and New Brunswick will achieve a great deal
9 of their share through the renovation of substandard units.

10 And there are many ways in which municipalities can
11 encourage renovation, both by taking advantage of
12 federal and state programs and by doing whatever is
13 within their means as a municipality.

14 Q Have you made any independent study of the amount
15 and type of vacant land supposedly available in each
16 municipality?

17 A No, I have not. I have relied on the state
18 figures and on the answers to interrogatories.

19 Q Have you made any effort to calculate the
20 amount of available land that should be left vacant?

21 A Well, I don't think that it's within the
22 providence of any governmental body to enforce vacancy
23 upon land, except where the governmental agency for a public
24 purpose, either acquires it or leases it, or holds that it
25 would be a public danger to build on it, as in the case of

1 areas that are subject to flooding.

2 Q What I was driving at, really, parks,
3 recreation areas for the benefit of those who do live
4 in that community.

5 A Yes, I believe that there should be a
6 reasonable ratio of open space to population at various
7 levels, regional parks, county parks, city parks and neigh-
8 borhood parks.

9 And I feel that some considerable strides have
10 been taken due to the efforts of the Regional Plan
11 Association, I worked on part of this project when I was
12 on their staff, and also the Green Acres Program of the
13 State.

14 Q What ratios would you suggest?

15 A Well, I was once enamored with the ratios
16 that were developed by the National Recreation Association,
17 I think back in the 1940's, and made some futile efforts
18 to write those ratios into zoning in Passaic and Bergen
19 Counties.

20 My experience was that they were overly optimistic
21 as to the ability of communities to set aside that much,
22 and I have since, I think, concluded that there should be
23 a far more sophisticated relationship between open space
24 and how it's used, and where it's at, the density of
25 population.

1 I think one of the most precious pieces of open
2 space is the little pocket park that's probably about
3 50 by 100 in one of the side streets in Manhattan,
4 which gets intensive use, it was done by a private
5 donor who just -- public philanthropist who turned
6 over this land and made this lovely park with a waterfall.

7 So that I think from that up to large county
8 and regional parks, different pieces of open space have
9 different purposes.

10 I would think that even in densities, like
11 Manhattan, one can find little pocket parks which make
12 a great deal of difference in the quality of life.

13 So I do think that there should be and that there
14 is opportunity to set aside land for public use.

15 Q Do you contend that the zoning practices
16 of the municipalities involved effect a racial discrimination
17 as opposed to an economic discrimination? If any
18 discrimination at all exists?

19 A Well, yes. The zoning has a racially
20 discriminatory effect by virtue of the fact that such --
21 so much larger a proportion of the non-white population is
22 in the lower income groups, so that if one discriminates
23 economically, one effects them disproportionately.

24 Q Yes, but do you contend that the discrimination
25 is aimed at the race, if aimed at anything, or is it aimed

1 at the economic group?

2 A I can only assume that if the United States
3 is a racist society, as the Kerner Commission found,
4 that racism must pervade many decisions that effect
5 where people live, and that racial attitude on the part
6 of the majority of suburban communities is very much in
7 the thinking of those who have to make decisions.

8 Q Do you know of any municipality involved
9 in this suit, either by way of zoning policy or otherwise,
10 that would permit a low or moderate income white family
11 to move in where it would not a low or moderate income
12 black family to move in, as a result of the zoning
13 ordinance?

14 A The zoning ordinance itself, of course,
15 since the famous federal case, which outlawed racial zoning,
16 is not designed to exclude on the color or skin.

17 Therefore, if housing is permitted, it's permitted
18 for those who can afford to live there.

19 Now, beyond the mere zoning of land, for different
20 income levels, there are only community attitudes that
21 pervade the things that a municipality does, which become
22 common knowledge among those likely to be discriminated
23 against on grounds of race. And they often just
24 simply avoid certain communities because of police
25 harassment or unfriendly attitudes toward black children in

1 school or other reasons which cause them just to not
2 expose themselves to painful experiences.

3 Q Do you know of any such instances in any
4 of the communities in this case?

5 A I don't know of any such instances here of
6 my knowledge. Although I must say that there is a
7 state commission on civil rights, and I would assume
8 that their files must have complaints from Middlesex,
9 as they do from every county in the state.

10 Q So then isn't it true, if the zoning
11 ordinances in question effect any people at all, it
12 effects low and moderate income blacks and whites equally?

13 A Not equally, because I think that whites
14 have more opportunities in the housing market than blacks
15 do. So that blacks suffer unequally if -- in addition to
16 other problems that they encounter, also exclusion on grounds
17 of income.

18 Q Can you tell me how any of the zoning
19 ordinances effect whites less than blacks who are in the
20 same income categories?

21 A I think that whites of the same income
22 category have great mobility, in hearing about housing,
23 about looking for housing, about selling what housing they
24 have, if they own housing, by virtue of the fact that they
25 are not under the problems that people of minority race are.

1 And that, for instance, this was taken note of
2 by the Congress, more specifically, I think on a broad
3 statutory basis fair housing is required, but more
4 specifically the federal courts have interpreted this
5 statute to make it incumbent upon HUD to require home
6 builders to file a fair marketing plan, which indicates
7 how they will bring to the attention of minority households
8 and potential buyers or renters the availability of housing
9 which they are going to build somewhere.

10 And if -- and the rationale for this fair marketing
11 plan is that it has been found that minority families
12 were not aware of housing opportunities because they were
13 locked in ghetto areas, and housing put up outside the ghetto
14 would be applied for and occupied by whites long before
15 they even knew it was there.

16 So that there are just greater opportunities for
17 whites than for blacks.

18 Q But those greater opportunities that you
19 allude to are not the result of any zoning ordinances,
20 are they? Wouldn't it be mass media or some other
21 organization, if any, that is responsible for the problem?

22 A The point is that the tighter the market,
23 the fewer are the options for everybody, but there are
24 even fewer for those who have the problems of confinement
25 to certain congested racial areas. Or racially congested

1 areas, I should say.

2 Q Are you personally familiar with the zoning
3 ordinance of Woodbridge Township?

4 A No, I am not.

5 Q Are you personally familiar with Woodbridge
6 Township?

7 A I am familiar with Woodbridge Township to
8 the extent that I know generally where it's located, and
9 I think I've taken note of the fact that in our fair share
10 plan, I believe it has the single largest share of housing
11 that it's to provide as part of the plan.

12 So that the statistical and methological basis at
13 which I arrived at that give me some indication of what
14 statistical factors there are that relate to Woodbridge.

15 Q Then your involvement, really, is through the
16 statistics, the compilations or works of others,
17 as opposed to any personal knowledge?

18 A Well, I've been in Woodbridge. I also know
19 that, you know, Woodbridge is -- if New Jersey is at the
20 crossroads -- if Middlesex is at the crossroads of New Jersey,
21 you may say the most crossroads location in the county is
22 Woodbridge.

23 And it had, you know, the existence of the clay pits,
24 the development of the shopping center, development of
25 industry, the various other factors that were brought to

1 Woodbridge by virtue of state and federal investment,
2 created a tremendously rapid growth of employment and
3 housing in Woodbridge in the 50's and 60's.

4 Q Isn't it true that the housing that was
5 created back in the 50's and 60's was created for the
6 then moderate income people?

7 A Yes, I would certainly say in the 50's and up
8 to, I think, about 1965, most of Middlesex County
9 were building quite a bit of housing for moderate income
10 people.

11 Q So what would you suggest, if a community
12 such as Woodbridge, had developed back in the 50's and 60's
13 for the then moderate income people, but as a result of
14 inflation, or economics in general, those houses
15 now are beyond the means of today's low and moderate
16 income families?

17 A Well, even if they weren't, they are obviously
18 occupied housing, and there's still a tremendous growth
19 in industrial development, and increasing rateables for
20 the communities, some of which can be matched with state and
21 federal resources to continue to create a supply of housing
22 of the type that it has created in the past.

23 Q Assuming that there's sufficient available
24 land for building, isn't that so?

25 A Well, yes, assuming that, but I think that the

1 question of density is always relative.

-2 Q But you don't suggest raising certain structures
3 to build housing for low and moderate income people, do you?

4 A Well, it's done in cities. It was done in
5 New Brunswick.

6 Q I'm asking if you recommend that for Woodbridge?

7 A I wouldn't know unless I made a study of
8 Woodbridge. If it's reasonable, if the cost benefit
9 relationship would indicate that some substandard housing
10 in Woodbridge could be replaced with higher density standard
11 housing, if that made sense, there would be no reason not to
12 do it.

13 Q Can you identify the region that Woodbridge
14 belongs to, in your opinion?

15 A In my opinion, it belongs to the New York
16 Metropolitan Region; it belongs to the northern New Jersey
17 sub region, or sector of that region; and belongs to the
18 Middlesex, so-called New Brunswick-Sayreville-Perth Amboy
19 housing and labor market area.

20 Q Is it your opinion that the Township of Plainsboro
21 belongs in the same region that the Township of Woodbridge
22 belongs to?

23 A Yes, I would say so.

24 Q Is it your opinion that the Township of
25 Plainsboro belongs to no other regions than the Township of

1 Woodbridge belongs to?

2 A No. I would say that it doesn't belong,
3 but I would say that Plainsboro is probably more
4 effected by the Philadelphia region than Woodbridge is.

5 MR. SHAPIRO: I have no further
6 questions.

7 (Adjourned at 2:20 p.m.)
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I, *M. Virginia Guenta*, 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.

M. Virginia Guenta

Robert C. Guent