

CA - general

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volume II of depositions upon
oral examination of
Alan Mallach

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

Plaintiffs,

-vs-

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

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DAVID D. ...

VOLUME II OF

DEPOSITIONS UPON

ORAL EXAMINATION

OF

ALAN MALLACH

RICHARD C. GUINTA
CERTIFIED SHORTHAND REPORTER
53 PATERSON STREET
NEW BRUNSWICK, N.J. 08901

PHONE: 247-5551

1 COMMITTEE OF THE TOWNSHIP
2 OF PLAINSBORO; MAYOR AND
3 COUNCIL OF THE BOROUGH OF
4 SAYREVILLE; MAYOR AND COUNCIL
5 OF THE CITY OF SOUTH AMBOY;
6 TOWNSHIP COMMITTEE OF THE
7 TOWNSHIP OF SOUTH BRUNSWICK;
8 MAYOR AND COUNCIL OF THE BOROUGH
9 OF SOUTH PLAINFIELD; MAYOR AND
10 COUNCIL OF THE BOROUGH OF SOUTH
11 RIVER; MAYOR AND COUNCIL OF THE
12 BOROUGH OF SPOTSWOOD; TOWNSHIP
13 COMMITTEE OF THE TOWNSHIP OF
14 WOODBRIDGE.

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Defendants.

TRANSCRIPT OF DEPOSITIONS, taken by and before
RICHARD C. GUINTA, Notary Public and Certified Shorthand
Reporter of the State of New Jersey, at the Metuchen
Borough Hall, Metuchen, New Jersey, on Wednesday,
January 28, 1976, commencing at 8:45 a.m.

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

2
3 MESSRS. BAUMGERT & BEN-ASHER
4 By: DANIEL A. SEARING (Esquire of Counsel)
5 Attorneys for the Plaintiffs

6 RICHARD F. PLECHNER, ESQUIRE
7 By: ALAN O. DAVIDSON, Esquire
8 Attorney for the Borough of Helmetta

9 MESSRS. RUBIN & LERNER
10 By: LAWRENCE LERNER, Esquire
11 Attorneys for the Borough of Highland Park

12 MARTIN A. SPRITZER, ESQUIRE
13 Attorney for the Borough of Metuchen

14 DENNIS CUMMINS, ESQUIRE
15 Attorney for the Borough of Dunellen

16 MESSRS. JOHNSON & JOHNSON
17 By: EDWARD J. JOHNSON, JR., Esquire
18 Attorneys for the Borough of Middlesex
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I N D E X

WITNESS

CROSS

RECROSS

ALAN MALLACH

By Mr. Lerner

2

By Mr. Cummins

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By Mr. Lerner

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By Mr. Cummins

35

By Mr. Davidson

58

By Mr. Johnson

71

By Mr. Davidson

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

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3 CROSS EXAMINATION BY MR. LERNER:

4 Q Good morning, Mr. Mallach. My name is
5 Lawrence Lerner, and I am the attorney for the Borough
6 of Highland Park.

7 I wonder if I can ask you to please open your
8 large printed sheet --

9 A Regarding Highland Park.

10 Q Yes. In which you dealt with Highland
11 Park.

12 The information contained upon that sheet was
13 derived from what source?

14 A The information regarding the zoning
15 categories and the standards for the zoning categories
16 when they're cited was obtained from the Highland Park
17 Ordinance.

18 It's my impression that the information regarding
19 the total land and zone was extracted from the
20 interrogatories. This is not, however, vacant land.
21 Information under the heavy horizontal line refers to,
22 the first item is a notation from the interrogatories
23 and the admissions, and the second reference to the DCA
24 study, reference was made to earlier, residential land supply.

25 Q DCA is Department of Community Affairs?

1 A Yes.

2 Q May I see that sheet for a second? Only
3 because I don't have mine today.

4 You don't know -- who made the writings here?

5 A The writings are Mr. Prior's handwriting.

6 Q Who is Mr. Prior?

7 A He is my associate, who worked with me
8 under my supervision on the analysis of the ordinances.

9 MR. SEARING: That was covered
10 yesterday.

11 A This was covered in some glory detail
12 yesterday.

13 Q The question as to the ownership of the
14 land, the Department of Community Affairs, you don't
15 know if that land is owned by municipality, state entity?

16 A No. If it was -- if the land was a
17 formal institution, such as, you know, a state institution
18 or county institution, in use as such, and within the
19 boundaries of such, it would not be considered vacant land.

20 Q If in fact that was the case, the DCA studies
21 would in fact be in error?

22 A No. What I'm saying is, the DCA study
23 did not consider land that was in use for institutional
24 or governmental purposes, as vacant and developable land.

25 Q And my point is, if in fact they did, the

1 figures are in error?

2 A Possibly. There's a judgement matter there.

3 Q If you in fact said that land was not
4 included, that in fact was not in use by a state unit,
5 and in fact this land is owned by a state unit, and
6 is not developable by any action by the municipality,
7 then the figures of the DCA are in error?

8 A If the figures of DCA include land as
9 developable, which is not developable, they are in error.

10 It's my understanding as a general rule they excluded
11 such land.

12 Off the record.

13 (Whereupon, at this time, a
14 discussion was held off the record).

15 A The answer to the question is, it can be.
16 It can be in error. I'm not familiar with the detailed
17 work sheets that the study worked from, so I can't
18 vouch for that one way or the other.

19 Q As I understand -- as I understand your
20 testimony yesterday, if I may paraphrase it, you
21 indicated that you felt that there should be some kind
22 of a mix in zoning.

23 A That's correct.

24 Q Where various uses are provided within the
25 zoning structure.

1 A Correct.

2 Q You've had an opportunity to examine the
3 Highland Park ordinance, I believe.

4 It does in fact provide for high density multi-story
5 homes, does it not?

6 A It does.

7 Q It does in fact provide for garden apartments?

8 A It does.

9 Q And it in fact provides for single family
10 dwellings? A It does.

11 Q In fact, doesn't Highland Park ordinance --
12 isn't it absent a minimum lot size?

13 A That's correct.

14 Q So that any available piece of land within
15 the Borough of Highland Park is capable of being built
16 on, is that correct? Inasmuch as a minimum lot size is not
17 part of the provision.

18 A In that sense, yes.

19 Q Do you believe, or is it your position,
20 that there should be zoning in the sense of allocating
21 certain uses to certain areas within the confines of the
22 municipal structure? The geographic lines.

23 A Yes.

24 Q The alternative is that you don't believe
25 just because there's a vacant lot in the middle of a block

1 of single family homes, that someone should be able to build
2 a grocery store in that spot?

3 A Not necessarily.

4 Q Or a gasoline station?

5 A Certainly not inherently. I mean, I
6 believe I testified yesterday quite explicitly that in
7 situations when you're talking about vacant lots within
8 fully built up areas, that there would be many constraints
9 that don't necessarily apply to more open areas.

10 Q Are you specifically familiar with the
11 Borough of Highland Park?

12 A Not in great detail, but in general.

13 Q Have you visited it?

14 A Yes.

15 Q Have you visited the facilities available
16 within the confines of the Borough? I mean the municipal
17 facilities?

18 A With regard to what facilities?

19 Q Schools, shopping, streets, roads?

20 A Some. For example, I'm generally familiar
21 with the roads, at least the Raritan Avenue shopping area.
22 I don't know in any detail about the school facilities.

23 Q Have you observed the new senior citizen
24 high-rise building being constructed?

25 A I haven't observed it. I'm aware that there is

1 such.

2 Q Is it anywhere reflected upon your plan?

3 A It's not reflected in this chart. It's
4 reflected, I believe, in the information that I mentioned
5 yesterday regarding the notes on the existence of assisted
6 housing developments in the county.

7 Q I'm sorry, I missed that. You are aware
8 that Highland Park does in fact have assisted housing?

9 A That is my impression, yes.

10 Q We do in fact have a Housing Authority?

11 A Yes.

12 Q And we do have a low income housing provided
13 by the Authority?

14 A The senior citizen housing.

15 Q No.

16 A Low income housing?

17 Q Low income housing.

18 A I was not specifically -- I should have that
19 information. It's one thing to have it, another thing to
20 find it. I'll accept it.

21 Q You discussed at some length yesterday the
22 ability to fund certain building proposals.

23 Did you find what you were looking for?

24 A Yes. The answer is yes. Twenty-four units.

25 Q Is that a formula that the Department of

1 Housing and Urban Development, and/or the Federal
2 Government, or a relative -- a responsible federal
3 agency has as to determining the number of federally
4 funded units you can construct, that they will assist
5 in the construction of?

6 A No, no set formula.

7 Q They don't have a formula where they
8 determine a need, and whether or not you can build to
9 satisfy that need is not a prerequisite?

10 A No. They provide -- under the Housing
11 and Community Development Act, the cities that are
12 participating in that Act, and the counties that are
13 participating in that Act, as so-called Urban Counties,
14 of which Middlesex is one, submit what is known as a
15 Housing Assistance Plan to the Department of Housing and
16 Urban Development, which contains that county's best estimates,
17 or that city's best estimates, of the need by category
18 within that city.

19 And this is used -- well, this is first reviewed by
20 HUD and reviewed by other regional agencies, state agencies
21 and the like, and in some cases revised.

22 The Housing Assistance Plan that is eventually
23 accepted by HUD is used as a general basis for determining
24 allocations of subsidy funds, under the Community
25 Development Act.

1 Q Let me stop you right there.

2 So that in fact a thought process of some sort,
3 analysis, evaluation, is then conducted pursuant to the
4 Housing Assistance Plan?

5 A That's correct.

6 Q So that regardless of the statement of
7 need by either the municipality, local Housing Authority,
8 or county, the figures are scrutinized, analyzed, and
9 evaluated, and a decision reached by some other unit
10 determining whether or not that need is in fact real.

11 A Not -- I wouldn't go quite that far.

12 The municipality or the county as the case may be,
13 prepares the data, and the scrutiny is usually not
14 extensive, but eventually the Housing Assistance Plan
15 is accepted as being that municipality or that county's
16 assessment.

17 It's not binding in any sense on HUD, or does not
18 necessarily reflect their analysis, or their feelings on
19 the subject, but it's accepted as a starting point.

20 Q But without HUD's approval, it would not
21 be acted upon?

22 A Well, the HUD approves the Housing Assistance
23 Plan before -- as a condition of providing the community
24 development revenue sharing block grant funds to the area.

25 Q So to get the sequence down, what I'm trying

1 to establish is, in fact, that without HUD's approval,
2 funds don't flow?

3 A Well, without HUD's approval, the funds --
4 some funds are contingent on the Housing Assistance Plan,
5 other funds are not.

6 Q But the Housing Assistance Plan, in any event,
7 still must be approved by HUD?

8 A The Housing Assistance Plan must be approved
9 by HUD, but some HUD funds are not contingent on approval
10 of the Housing Assistance Plan, others are.

11 Q What HUD plans are not contingent upon
12 approval by either HUD or some other federal government
13 agency?

14 A HUD funds are contingent on approval by HUD.
15 They're not contingent -- I'm saying they're not always
16 contingent on approval by HUD of the Housing Assistance Plan.
17 That's the only distinction I'm making.

18 Q So that the point I'm trying to make with you
19 is that regardless of the presentation by the local Housing
20 Authority, and/or the county, it still depends upon HUD?

21 A Oh, certainly.

22 Q As to whether or not any funds are spent
23 and any housing built?

24 A Federally subsidized housing?

25 Q Yes. Federally subsidized, federally built.

1 A That's correct.

2 Q Now, is it true that any purchase of land
3 for the construction of a developable project is subject to
4 analysis and review by the Federal Government?

5 A That's correct.

6 Q And if in fact they determine that the land
7 cost or site acquisition cost or site development cost,
8 exceed in their opinion what it should cost, they do
9 not approve the project?

10 A It depends. It depends on the different
11 programs. In the case of the traditional public housing
12 program, that was certainly the case. In the case of the
13 section 8 program, there is some room for maneuver, as it
14 were.

15 If the local organization or entity proposing the
16 development can show that despite the high acquisition costs,
17 the total project will still fit within the HUD cost ceiling
18 for total costs, they can get approval of a high land cost.

19 Q But then if you in fact are acquiring a high
20 land cost, you are then going to have to, as a practical
21 matter, cut other things short?

22 A You may. Again, it's a -- there are a number
23 of options available. I mean, first, the cost ceilings are
24 based on what are known as fair market rents, which are HUD's
25 assessments based on their even market studies of what a

1 building can be built for in a given area and rent for in
2 the absence of subsidy funds.

3 These are somewhat more realistic figures than the
4 traditional public housing ceilings, for example.

5 And very often, in an expensive area, the fair
6 market rents will reflect higher land costs for the area,
7 or, failing that, there is machinery available through
8 which a local organization or entity can appeal the
9 fair market rent set for an area, and if they can document
10 the fact that the actual costs in an area are higher than
11 is reflected in the fair market rents, they can receive
12 either an exception for a specific project or a judgement
13 of the fair market rents for the area.

14 Q Haven't you found that land cost is
15 really reflective of availability?

16 A Yes.

17 Q So that the greater the amount of land avail-
18 able for development, that in fact dictates the purchase
19 price of the land?

20 A That is not dictated.

21 Q One of the prime -- one of the prime
22 considerations?

23 A It's one of the influences, certainly.

24 Q In fact, your testimony about amenities
25 for areas like Georgetown and Society Hill, were based upon

1 the higher density, was because of the factors of the
2 availability of land and the cost necessary thereto?

3 A It's hard to say. The higher density
4 preexisted the increase in land costs in this case.

5 In other words, the higher density was the result of
6 development patterns that took place, you know, well before
7 the areas became desirable areas.

8 Subsequent to their becoming desirable, however,
9 and attractive and expensive, the land costs rose to the
10 point where now development of these areas takes place often
11 at even higher densities than the original layout of the
12 areas.

13 Q Are you familiar with any modern writing
14 in which people are now thinking that high densities
15 of people is not what is to be sought?

16 A I am familiar with some writing to that
17 effect.

18 However, I am also aware that none of that writing
19 has any meaningful statistical or substantive research
20 basis for it whatsoever.

21 Q Are you familiar with any writings or
22 directives that indicate that senior citizen housing
23 should not, or will not be located, in an area adjacent
24 to, contiguous to, and/or in the immediate vicinity of, a
25 low income housing project?

1 A No, I am not.

2 Q Would it surprise you that such a guideline
3 exists from HUD?

4 A It would not surprise me. They're capable
5 of anything.

6 Q Do you think that their thinking is in fact
7 not good?

8 A I would say that an arbitrary rule of that sort
9 is undesirable, because of the rather considerable
10 variations between the different kinds of projects,
11 different kinds of locations. I think something like
12 that should be left up to -- very much a case to case
13 determination.

14 Q Are you aware in fact -- are you in fact
15 aware of any statistics that equate crime with density?

16 A I am aware of statistics that purport
17 to equate crime with density. I am also aware that
18 those statistics are based on what is known in the trade
19 as a spurious correlation, by virtue of their failure to
20 take into account a variety of other factors which do have
21 meaningful correlations with crime.

22 Q What do you consider to be the errors of that
23 thinking?

24 A The errors of that thinking are that typically
25 in this society, in this country, for a wide variety of

1 reasons, having to do with economics, social pressures,
2 discrimination and what not, you have the people who tend
3 to be ~~poorest~~ least educated and most likely to crime, if
4 you will, tend to be concentrated by and large in the high
5 density areas.

6 There are many cases where you have high density
7 areas occupied, by affluent people that are not crime prone.

8 At the same time, there are cases, not particularly
9 in New Jersey because there are very few low income,
10 low density areas in New Jersey, but there are in other
11 parts of the country, and in those areas, for example,
12 in the southwest and the south, you find the correlation
13 of crime having nothing to do with density.

14 The point being that crime is certainly influenced
15 by social characteristics, by environmental characteristics,
16 by municipal service characteristics, and a variety of other
17 things.

18 And that these characteristics tend to overlap with
19 density in many areas, but that the relationship is not one
20 of crime in density but is one of crime and a variety of
21 other social, economic and physical characteristics.

22 Q Do you believe that taxation based upon the
23 property tax is confiscatory?

24 A In and of itself, certainly not.

25 Q Do you believe that towns that have no industry

1 and must provide all of its services based upon a
2 real estate tax would find themselves unable to keep
3 coping with the increasing need of municipal services?

4 A That would depend on the value of their
5 residential tax base, the increase in the value of that
6 tax base, the appreciation of the properties in the municipality,
7 the level of the increase of demand for municipal services,
8 and a variety of other factors.

9 In and of itself, one can't generalize.

10 Q Are you aware of any decreasing cost
11 factors in municipal government, such as salaries or
12 material?

13 A In and of itself, certainly the cost of
14 individual salaries or the cost of the materials purchased
15 by municipalities for the provision of municipal services
16 do not decline. And with few exceptions, the overall cost
17 of providing the service does not decline, even though
18 occasional economies of scale do take place.

19 The point, however, in this case is not that they
20 decline, but whether or not they're increasing at a rate
21 substantially faster than the tax base, the appreciation
22 of properties in the municipality and so on.

23 Q When you refer to the statement, increasing
24 of the tax base, if there is no new construction, then there
25 is no increase in tax base, is that correct?

1 A No. Because in many cases, the tax base will
2 increase as a result of the appreciation of the existing
3 properties.

4 Q How is this accomplished?

5 A Through the invisible hand of the marketplace.

6 Q Are you aware of revaluation procedures under
7 the tax laws of the State of New Jersey?

8 A I'm aware that municipalities are expected
9 to revalue, reassess their properties regularly, on the
10 basis of market realities.

11 Q And if in fact they are at 100 percent of the
12 true value, and they revalue to 100 percent of true value,
13 theoretically the tax base is exactly the same. The
14 same tax dollars have to be earned.

15 A It depends, the definition of the base may
16 vary. If you're referring to the number of parcels, the
17 number of buildings, as the base, they may stay the same.

18 However, the value of those same properties and
19 parcels is likely to change, each time the municipality
20 does a revaluation.

21 Q Aren't we really talking about an amount of
22 dollars that the municipality needs to function?

23 A I thought we were talking about the property
24 tax base.

25 Q And isn't that amount of money received --

1 required by the municipality to function, isn't that
2 the reason that properties are in fact taxed, to provide
3 that money? A Yes.

4 Q So as long as the requirement is the same
5 for the money, then they don't need to increase the tax,
6 assuming everyone is paying their fair share at 100 percent
7 of true value?

8 A Assuming -- yes, assuming the requirements
9 for funds are the same, the tax rate would be the same,
10 yes.

11 Q And the only need to increase the taxes,
12 in tax dollars, is only the need because of the municipality's
13 needs to earn more money?

14 A And the school district and the county, yes.

15 Q Well, the municipality has the obligation of
16 providing the funds for the school district.

17 A Precisely.

18 Q So whatever the school budget is, it's
19 passed to the municipality for it to collect?

20 A Correct.

21 Q And in fact the county does the same?

22 A Correct.

23 Q They send a bill to the municipality
24 and it's the municipality's function to collect the money
25 for all three?

1 A Correct.

2 Q So that the money demands upon the municipality
3 come from those various sources?

4 A Yes.

5 Q But if those sources are a constant, there's
6 no need to increase taxes?

7 A Yes.

8 Q And the only time the actual taxes ever go
9 down is if there's an increase in the tax base, meaning, an
10 increase in taxable property to the tax roll that was not
11 there before?

12 A Well, it depends on how you define your
13 terms.

14 Now, let me return to the point I was trying to
15 make and perhaps rephrase it.

16 If you have a given number of properties, that -- that
17 at one evaluation are considered to be worth one million
18 dollars and when the town reevaluates on the basis of changes
19 in marketplace, they're now worth a million and a half dollars,
20 and these are realistic, honest values.

21 Now, if the municipality was raising \$30,000, say --

22 Q I understand what you're saying. And I
23 understand your whole point.

24 MR. SEARING: I think you're debating the
25 witness.

1 A I don't believe your comments suggest
2 that you've understood the point.

3 If the municipality raises \$30,000 from the
4 million dollars, the tax rate is three percent. When the
5 value of those same properties is increased to a million
6 and a half dollars, if the municipality is now raising, let's
7 say, \$40,000, because of the increase in service costs,
8 the tax rate is now 2.7 percent.

9 Now, the individuals living in those homes
10 are paying more taxes, in a sense their tax bill is larger,
11 but their tax bill as a function of the value of their homes
12 is smaller, so that the tax base in that sense has
13 increased, even though new properties have not been added
14 to the tax rolls.

15 Q Do you believe that a rising tax rate
16 can theoretically destroy a municipality?

17 A It's hypothetically possible, I suppose.

18 Q Are you aware of the situation in Newark?

19 A I'm aware of many situations in Newark.

20 Are you referring specifically with regard to the property
21 tax rate?

22 Q That's correct.

23 A I'm aware of the property tax rate in Newark.

24 Q Are you able to render an opinion as to why the
25 municipal tax rate in the City of Newark --

1 (Telephone interruption).

2 (Whereupon, pending question was
3 read back by the reporter).

4 CROSS EXAMINATION BY MR. CUMMINS:

5 Q What the rising tax rate has done to the
6 City of Newark?

7 A Well, I don't know if one can distinguish
8 between what the rising tax rate has done to the City of
9 Newark and what the City of Newark has done to the rising
10 tax rate, if you will.

11 In other words, if the rising tax rate is not really
12 the result of a series of things that have happened to the
13 City of Newark, in terms of the massive loss of jobs in
14 industry, the rapid deterioration of residential property,
15 resulting in its downward revaluation.

16 The City of Newark has had a shrinking tax base,
17 while at the same time, because of the increasing number
18 of low income citizens, the increasing level of unemployment
19 and so on, the City of Newark has simultaneously had tremendous
20 pressures to increase the level of services, while at the same
21 time it was losing its tax base.

22 So in a sense, I would suspect that the tax rate is
23 more a result of other factors than a cause of those factors.
24 Though certainly, once the chain is set in motion, it becomes
25 somewhat circular.

1 Q Incidentally, Mr. Mallach, my name is
2 Dennis Cummins, I'm representing the Borough of Dunellen.
3 Off the record for a minute.

4 (Whereupon, at this time, a
5 discussion was held off the record).

6 Q Mr. Mallach, I notice here that -- I have a
7 sheet of paper --

8 A Which is rather uninformative.
9 Off the record.

10 (Whereupon, at this time, a
11 discussion was held off the record).

12 CONTINUED CROSS EXAMINATION BY MR. LERNER:

13 Q Are you aware of the fact that the Mayor of the
14 City of Newark is now reducing municipal services because
15 he cannot, to published sources, in good conscience, let
16 the property tax go up any higher?

17 A I'm aware of that.

18 Q So that the necessary required municipal
19 services are now being cutback.

20 A I'm very much aware of that. It's a very
21 serious problem.

22 Q I understand from yesterday's transcript that
23 you were retained by the National Committee Against
24 Discrimination in Housing in December of 1975, is that
25 correct?

1 MR. SEARING: That's correct.

2 Q Were you in fact consulted prior to that
3 date regarding this matter? I'm talking now specifically
4 with regard to the drafting of the pleadings in this
5 case, the original complaint?

6 A No, I was not.

7 Q Were you familiar with the pleadings of this
8 case in 1974?

9 A I was familiar, not with the pleadings as
10 such. I was aware of the existence of this case and
11 had a general idea of the substance of the case. But I
12 was not familiar with any of the actual pleadings or any
13 of the papers that were submitted.

14 Q So that the causes of action alleged against
15 the various municipalities in the complaint are not reflective
16 of your thinking at that time, meaning your work product?

17 A Not specifically, except to the degree that
18 they are certainly coincidental.

19 Q It would merely be coincidental at this
20 point, because you were not consulted?

21 A That's correct.

22 Q With regard to land being zoned for
23 town houses, for example, and not being built upon, or
24 for garden apartments and not being built upon, or for
25 high-rise and not being built upon, at a time when everyone

1 concedes there's a need for housing, would that be an
2 economic decision, more than likely, that would prevent it
3 being built upon?

4 A It could be a economic decision, There could
5 be other factors as well.

6 Q Do you think that the construction industry
7 is overworked in the State of New Jersey this year or
8 last year?

9 A There's no evidence to that effect.

10 Q Do you think that there's a shortage of
11 skilled and semi-silled and unskilled labor in the State of
12 New Jersey at this particular point?

13 A I have no evidence to that effect.

14 Q Do you in fact have evidence to the contrary,
15 that there is a massive construction industry awaiting work?

16 A I have seen newspaper reports to that effect,
17 yes.

18 Q Do you know what the unemployment rate is in
19 New Jersey?

20 A The unemployment rate in New Jersey is
21 11 percent, roughly, if you accept the federal methodology
22 of calculating it, and roughly 13 percent according to the
23 State Department of Labor and Industry.

24 Q Do you know what the unemployment rate is for
25 Middlesex County?

1 A Not specifically.

2 Q Do you know whether or not it's higher or
3 lower than the federal rate?

4 A You mean than the statewide rate?

5 Q The statewide rate or the federal rate
6 ascribed to the state.

7 A I don't know.

8 Q Do you believe -- strike that.

9 Do you know various industries in the area of
10 Perth Amboy and Middlesex County are being effected by
11 Environmental Pollution Control Administration?

12 A I do not know.

13 Q Do you know whether or not New Jersey has been
14 described as the most -- the state with the greatest
15 incidence of cancer?

16 A I believe one of your colleagues made some
17 point of that yesterday afternoon.

18 Q Are you aware of that?

19 A Well, I thought I'd seen something to that
20 effect, but I assume Mr. Busch would not have misrepresented.

21 Q If that fact was statistically true, do you
22 think that that would enhance the real estate market in the
23 State of New Jersey?

24 A Well, I can't say that that fact taken in itself
25 would be likely to enhance it. It's hard to tell, however --

1 Q Would it in fact detract from it?

2 A That is very hard to tell. It's hard to
3 tell what effect it would have on the real estate market.
4 There are many other factors.

5 Q Do you think that a person would knowingly
6 move into an area, to a state, first of all, that is
7 known as being the state that has the highest incidence
8 of cancer?

9 A The only way I can answer that is with
10 another question.

11 Do you think that a person would knowingly smoke
12 cigarettes? The answer is, certainly, they do.

13 Q Do you notice a distinction at all between
14 whether or not, choosing where to live and smoking, one
15 of them being a habit? That someone may find a
16 physiological dependence upon?

17 A It's been my experience that at least some
18 people appear to have a physiological dependence on living
19 in New Jersey. I think it's an arbitrary distinction.
20 People do things, whether they have to do with physiological
21 habits or life choices, based on motivations and pressures.

22 Q Do you understand the fact, then, that -- do
23 you equate the selection of an area within which to live
24 as being equivalent to a physiological dependence?

25 A Not equivalent, but similar in that they

1 both stem from a wide variety of motivations and pressures
2 on the individual.

3 Q Do you think that the choice of where to
4 live is a function of the person's employment?

5 A I think employment is one factor in the choice
6 of where to live.

7 Q Would you consider it the most important
8 factor in determination of a person's choice?

9 A That I'm not certain.

10 Q What would you consider to be the most important
11 factor in determining the selection of a place to live?

12 A I don't believe there is likely to be any one
13 most important factor. As a general rule..

14 Though in the case of each individual, one thing is
15 likely to predominate over others.

16 Q But you're not able to say what would be the
17 most important?

18 A Not for everybody. I can cite a number of
19 factors, the importance of which would vary depending upon the
20 individual.

21 Q What are the factors?

22 A One is certainly employment. Another is place
23 of birth or location of family, relatives and friends.

24 Another is preference in terms of physical or visual
25 environment.

Another for some people is access to recreational,

1 cultural or educational facilities.

2 Q Are you aware that Middlesex County has been
3 designated as the state with the highest, or one of the three
4 highest rates of cancer in the state of New Jersey?

5 A I'm aware that Mr. Busch made a statement to
6 that effect yesterday.

7 Q Do you believe there's any distinction that
8 would preclude Monmouth County as being an area within which
9 to live and work in Middlesex County?

10 A Again, I think it would depend upon the
11 individual and the individual's needs and references.

12 Q Are you familiar with the closing of the
13 plants in the area of Perth Amboy that were announced last
14 week?

15 A No, I am not.

16 Q Would that effect your thinking regarding
17 increasing density of areas, such as Perth Amboy?

18 A I don't believe that I'm on record as having
19 advocated increasing the density of Perth Amboy.

20 Q Are you on record as having advocated
21 increasing the density in any municipality?

22 A As such, no. I am on record as having
23 advocated or having stated that there is a need for
24 apartments and town houses of certain typical densities
25 in many municipalities.

1 Whether or not this results in increasing the
2 density overall of these municipalities is really an
3 irrelevant consideration.

4 Q In fact, according to your theory, it would
5 not be meaningful to designate any municipality, because of
6 the formula applied, it applied, regardless of the name of
7 the municipality?

8 A I don't follow that.

9 Q The requirements that you dictate, that you
10 state that are necessary, such as a mix in zoning --

11 A Yes.

12 Q -- would be for all municipalities, is that
13 true?

14 A The general principle would hold for all
15 municipalities.

16 Q And if anyone was guilty of exclusionary
17 zoning, that would be wrong?

18 A Certainly exclusionary zoning is wrong. I
19 believe that's the burden of the Mount Laurel decision.

20 But the application of those principles would vary
21 very widely from one municipality to the next. And the
22 impact on density would vary very widely as well.

23 Q Why would they vary from one municipality
24 to the next?

25 A Because there are differences in the capacity

1 of a municipality, there are differences in the existing
2 housing stock of the municipality.

3 To take one very straight forward example,
4 if, given a constant density for future development, for
5 example, a municipality that's present built up with very
6 high density could even have a future development pattern
7 which might conceivably reduce the density of that
8 municipality to some degree, or the subsequent built
9 up areas, without being exclusionary.

10 On the other hand, a municipality which had
11 developed up to now in an extremely low density fashion
12 may well find that a remedy for its exclusionary patterns
13 would have the result of increasing the density.

14 Certainly I've not argued at all that any kind of
15 formulas or remedies have to be applied in a sort of
16 arbitrary manner, irregardless of the characteristics
17 of the municipality.

18 Q Have you prepared a fact sheet concerning
19 the various zones and the numbers of units, vacant land,
20 et cetera, for Perth Amboy and New Brunswick?

21 A No.

22 Q Is there any reason why you have not?

23 A It's my understanding they are not parties
24 to the suit.

25 Q And who advised you of that?

1 A Mr. Searing.

2 Q Do you believe that they should be parties
3 to the suit?

4 A That's hard to say. I think a case could be
5 made in either direction.

6 Q Why would you make a case against them
7 being in the suit?

8 A Because the available statistical evidence
9 shows that the people -- or, scratch the people.

10 The municipalities of New Brunswick and Perth Amboy
11 accommodate a substantially disproportionate share of the
12 low and moderate income populations of Middlesex County.

13 Q If you were to statistically analyze the
14 number of economically deprived people, statistically
15 poor people, low middle class, or moderate middle class --

16 A Whatever term, yes.

17 Q In Middlesex County, would you statistically
18 apportion them on a square area basis, then?

19 A No.

20 Q If you say someone has a disproportionate
21 share, wouldn't it be that their number is
22 disproportionate to its area, as opposed to its gross
23 number?

24 A No, I'm not referring to area. I'm saying
25 that -- I was referring to the percentage of low and moderate

1 income families as a percentage of the total families
2 in the community.

3 For example --

4 Q So it's based only on population, then?

5 A Distribution of population.

6 Q But the figures only deal with numbers of
7 population as opposed to area?

8 A They deal with population as opposed to
9 area, that's correct.

10 Q So your density, your use of the word density,
11 is only a relative term to numbers of population as opposed
12 to density being equated with land mass?

13 A Well, the two are --

14 Q And concentration in land mass?

15 A The two are interchangeable.

16 Q I understand that. But I'm only trying to
17 limit your definition, then, only to population.

18 A No. Because -- no. You weren't present at
19 the time. But when the discussion took place yesterday
20 with -- regarding appropriate types of housing, zoning mix,
21 so on and so forth, the discussion did focus, and I did use
22 the term density extensively to dwelling units per acre
23 and similar measures, having to do with land mass, or building
24 mass as distinct from population.

25 Q I don't mean to try and alter that opinion at

1 all whatsoever. I'm only trying to relate it only for the
2 purpose of your reason for excluding Perth Amboy and New
3 Brunswick and a basis for it, and you're just saying,
4 at least in answer to my one singular question, that you
5 would not -- you would have excluded them, or deemed as a
6 basis for excluding them the fact that they have a substantially
7 higher share --

8 A Percentage of low and moderate income
9 families.

10 Q And that's only number against number, as
11 opposed to including its land mass?

12 A The land mass issue did not strike me as
13 being crucial for this particular consideration, because the
14 point of the suit, as I understand it, dealt with exclusionary
15 zoning, and exclusionary zoning principally with regard to
16 low and moderate income families.

17 Q Do you know of any particular zoning
18 characteristics in the cities of New Brunswick and Perth
19 Amboy which would have given greater impetus to this
20 kind of low economic development?

21 A No, I do not, or I am not, whatever the
22 appropriate syntax is.

23 Q Do you believe that the capacity of the
24 municipality to provide local services is a determining factor
25 in its gross population?

1 A No.

2 Q Do you believe that any person has a right
3 to live wherever he or she chooses?

4 A I don't believe that a person has a right
5 to live wherever he or she chooses, but I believe a person
6 has a right to live -- to have a reasonable variety and
7 choice in accommodations available to him or her.

8 Q Must all choices be provided in each and
9 every municipality?

10 A I doubt if it's feasible to provide all
11 choices in each and every municipality.

12 I can think of few ways to induce the very rich to
13 return to Perth Amboy.

14 Q You can think of a few?

15 A Yes.

16 Q Do you know of -- are all your
17 suggestions for increasing housing relative to federally
18 funded and/or publicly assisted housing? And I also
19 include in that Section 8 or 235, rent assistance, rent
20 subsidy.

21 A I believe yesterday I discussed extensively
22 the federally assisted approaches to providing housing, state
23 assisted approaches to providing housing, and certain manners
24 in which housing could be provided without the use of
25 external subsidies. I discussed this in great detail on the

1 record.

2 Q You believe that the private sector of the
3 economy can still provide housing to satisfy some of the needs
4 of some of the people?

5 A That's correct.

6 Q Do you believe that the private sector of the
7 economy can satisfy all of the needs?

8 A No, I have discussed that point and stated to
9 the best of my ability the specific degree to which the
10 private sector can satisfy housing needs, on the record.

11 Q Do you believe it's the function of a municipality
12 to provide the housing for all of the sectors?

13 A I believe it's the function of the municipality
14 to encourage and facilitate provision of housing within the
15 realm of feasibility.

16 Q But you don't believe it's the function of the
17 municipality to provide the housing?

18 A In its entirety and on its own, no.

19 MR. LERNER: No further questions.

20 CROSS EXAMINATION BY MR. CUMMINS:

21 Q So that you don't think -- then obviously
22 a town cannot be mandated, if you will, to go into
23 Section 8 and 235 and H.F.A. programs?

24 A No, I don't see why not, really. Because in
25 that case, certainly -- I would not mandate a town, for

1 example, to go into a low income subsidy program on the
2 basis that federal subsidies were not available and they would
3 be mandated to pick up the entire costs out of the municipal
4 budget.

5 However, as a general principle, and leaving aside,
6 you know, the legal scope of it, I don't see anything that
7 should preclude mandating a town, at least to facilitate
8 or -- in various ways the production of Section 8 housing,
9 through steps that it can reasonably take within its
10 reasonable resources.

11 Q Are you aware of a proposition in our
12 form of government of separation of powers?

13 A Yes, I am.

14 Q And given that concept, when you say mandate,
15 are you talking about a court mandate?

16 A I'm saying that it's conceivable -- I
17 prefaced that by saying that I certainly am not, you know,
18 qualified to argue the specific legality or appropriateness
19 of a court mandate in that area. That's a question for the
20 judiciary and for the legal profession to resolve. I'm
21 talking about, you know, from a planning or housing standpoint.

22 Q Well, are you aware of the principle, I guess
23 first enunciated by Lincoln, the principle of subsidiarity?

24 A Not in so many words. Perhaps if you described
25 it I would remember it.

1 Q The principle that government works best
2 at that level where government, I guess, can handle a
3 particular function, and where that particular government
4 can't handle that particular function, another form of govern-
5 ment should handle it.

6 In other words, we shouldn't have, perhaps, the
7 federal government going everything.

8 A I certainly agree with that proposition.

9 Q Now, sir, getting back to my blank piece of
10 paper. A Yes.

11 Q What is the significance of the fact --

12 A Continue.

13 Q What is the significance of the fact of
14 this piece of paper being blank for Dunellen?

15 A The significance of that fact is that
16 the ordinance requirements regarding the construction of
17 single family houses in Dunellen are of a modest and relatively
18 unspecified nature, so that one can't place a precise
19 value on costs for development in Dunellen, in the same
20 manner that one can in a municipality which has very explicit
21 frontage, setback, et cetera.

22 Q All the towns in the county, and this is the
23 only one you didn't have a fact sheet, that was filled in,
24 is that correct?

25 A I believe so. Well, with the three
26 exceptions that I mentioned earlier, the three towns that were

1 not studies.

2 Q What three were those?

3 A New Brunswick, Perth Amboy and Madison.

4 Q So what you're saying is that Dunellen,
5 from an analysis of the zoning ordinance, does provide
6 a moderate type of home?

7 A I think that's a reasonable statement.

8 Q Put in another way, the zoning ordinance
9 does not preclude the building of a home that at least,
10 subject to market conditions, is either low or moderately
11 priced. And I said subject to market conditions.

12 A That's correct.

13 Q Because obviously if market conditions
14 dictate, a low income house could not be built.

15 A Correct, Without subsidy.

16 Q You mentioned yesterday that-- in your
17 cost analysis that perhaps lots, or acres, I think you used
18 the term acres, could be bought in Middlesex County for
19 between 1,000 and 3,000 per acre?

20 A No. I believe what I was saying is that
21 depending on the prior zoning and the location, one could
22 buy land, to develop it for multi-family housing, at densities
23 of about 10 units an acre, with an end land cost, per unit,
24 of 1,000 to 3,000. The cost per acre would be 10 times that.

25 Q Okay. Mr. Lerner had asked you before,

1 if Mr. Lerner can keep quiet and I can concentrate, something
2 about whether or not you were aware of any publications
3 relating density to some type of, not necessarily abnormal
4 behavior, and you said you were aware of such writings
5 but that you were not aware of any research.

6 A That they lack credibility. Let me comment
7 on that point. I consider myself familiar with the literature
8 in that area.

9 I have taught a course on the specific subject of
10 the environment and architecture on behavior.

11 I've studied the literature, participated in
12 conferences and seminars on the specific subject, and
13 have conducted a limited amount of primary research of
14 my own on this specific issue.

15 I find on the basis of that experience that the re-
16 search has been done in this area has been unable to
17 demonstrate with any credibility any pattern of connection
18 between density, taken as a variable, and any significant
19 behavioral characteristic.

20 Q Are you aware of some studies, or some research
21 done recently with rats?

22 A The Calhoun experiments. I'm familiar with
23 those experiments.

24 Q Are you saying that you would not correlate those
25 studies, however elemental they maybe in their behavioral

1 effects, to that of human behavior?

2 A I'm saying that neither I or any other
3 responsible analyst in the field would do so.

4 Q You said before that you didn't participate
5 in the pleadings but that you were subsequently aware of
6 their, I guess --

7 A Substance, gist.

8 Q Perhaps even their formation?

9 A No.

10 Q Oh, okay. But at least their substance.
11 Do you happen to know why Middlesex County was
12 chosen?

13 A It's my impression that Middlesex County is
14 a reasonably -- first, it's defined as a separate SMSA, or
15 metropolitan area for the purpose of the census.

16 It's a separate labor market area, for the purpose
17 of the Employment Security Division of the State, and it
18 has a very internally consistent pattern, if you will,
19 in terms of the relationship of people's residences and
20 their employments.

21 This isn't to suggest that some people, do not,
22 you know, commute out of the county or into the county to work.
23 But that relative to other counties, the more urbanized parts
24 of the state, Middlesex County tends to be relatively more
25 self-contained in that regard than most.

1 MR. SEARING: I would like the record
2 to reflect that Middlesex County was chosen,
3 if I may use your words, because there are
4 clients in the county who were interested in
5 expanding housing choice. The factors that
6 Mr. Mallach has just enunciated in his opinion
7 were factors going to the validity of whether
8 the clients had a proper claim.

9 MR. LERNER: The record will speak for
10 itself.

11 Q Mr. Lerner had a question before about the
12 land mass issue with regard to Perth Amboy and New Brunswick.

13 Now, just so we understand each other, what do you
14 mean by the land mass issue?

15 A Mr. Lerner used the term, I did not. I'm still
16 not --

17 Q What was your understanding of that term?

18 A I assume he was driving at some kind of
19 connection between the area occupied by New Brunswick and
20 Perth Amboy as a percentage of the total area of the county.

21 Q Okay. So that, I guess put in its most
22 elemental sense, assuming that their percentage of land mass
23 area was less than, say, five percent, are you saying that
24 their population should have been about the same?

25 A No, no. I did not -- I wasn't arguing an issue
of density or population relative to land mass. I was

1 willing to argue that that is -- that is not a significant
2 consideration.

3 My concern was the disproportionate number of low and
4 moderate income families, relative to the population of
5 those communities, whatever the population was.

6 Q Now, sir, have you ever been to Dunellen?

7 A Yes.

8 Q Are you familiar with the geographical size
9 of Dunellen?

10 A Yes, I am.

11 Q We can agree it's approximately almost one
12 square mile? A Yes.

13 Q And you're familiar with the population
14 figures?

15 A In general. Not down to --

16 Q Approximately 7,000?

17 A 7,000 people roughly, yes. works

18 Q So that that, very elementally / out to
19 7,000 people per square mile?

20 A Right.

21 Q Would you consider this, in and of itself,
22 without any other factor, a higher, a lower or an optimum
23 density per square mile?

24 A Well, I don't believe there's an optimum, but
25 I would say that that does translate into a medium, medium

1 density, perhaps slightly on the high side of the medium.
2 It's substantially lower than what would be considered high
3 density, but at the same time it's not low density.

4 Somewhere's in the middle.

5 Q Middle, tending, in other words, if you were
6 to use a scale of 1 to 100, it would be over 50 percent --

7 A But not very much over, probably.

8 Q Do you -- your contribution to this case,
9 then, I take it, does not center about fair share, or does
10 it?

11 MR. SEARING: Yes. Your statement is
12 correct.

13 MR. LERNER: I thought it was a question.

14 A It's my understanding that the principle
15 responsibility for enunciating the fair share approach
16 will be that of Mr. Erber. Is that correct, counsel?

17 MR. SEARING: That's correct,

18 Mr. Mallach.

19 Q Now, you are aware, I guess, that New Jersey
20 is the most -- running neck and neck, I guess, with Rhode
21 Island, but I think now New Jersey is the most densely
22 populated state in the country?

23 A Yes.

24 Q And that areas of New Jersey are perhaps the
25 most densely populated in the world?

1 A No, I doubt that that's the case. There are
2 certain areas in the world, particularly in parts of Asia,
3 which are apparently more densely populated than any
4 sub areas of New Jersey.

5 Q Perhaps more than 50,000 people per square
6 mile? A Certainly.

7 Q Well, in any event, when you consider --
8 withdraw that.

9 Are you considering the United States as a whole
10 when you consider housing needs, or are you just considering
11 New Jersey, or are you just considering Middlesex County?

12 A Well, when I think about housing needs, I
13 can think about them on all of the levels. When you translate
14 that into specific goals or programs, a given program or
15 goal has to be related to an area.

16 For example, the Congress of the United States hope-
17 fully should and some day hopefully will come up with
18 programs relevant to national housing needs.

19 At the same time, those would be independent of the
20 location. Those would be framed in terms of numbers,
21 because as you pointed out earlier, the federal government
22 is hardly in a position to identify exactly where that
23 housing should go.

24 However, when looking at more localized housing
25 needs, I believe that the formulation that was used, or

1 suggested in the Mount Laurel decision, namely, to
2 develop regions that are appropriate for housing planning
3 and fair share allocation based on the various factors
4 that were discussed yesterday, is appropriate.

5 Now, I think, even though I have not gone into this,
6 it's my impression that Middlesex County may, as a county,
7 be considered an appropriate region for this purpose.

8 At the same time, there are certainly other counties
9 in New Jersey which could not be considered appropriate
10 regions in and of themselves, would have to be
11 combined with other counties.

12 So it would vary very much depending on the location
13 and the specific features of the area.

14 Q I assume that if you were charged with the
15 responsibility of determining whether or not, from a
16 national point of view, New Jersey needed more housing,
17 or had too many people, that if you were charged with
18 that responsibility and you took that same principle,
19 and same set of facts and applied it to Middlesex County,
20 vis-a-vis, the rest of the state, would you say that
21 Middlesex County had, or was approaching a point where
22 it was becoming, perhaps in certain areas, too densely
23 populated?

24 A I know of no specific evidence to that
25 effect. It's certainly conceivable that some parts of the

1 county might be too densely populated.

2 However, I don't believe that the issue of density
3 can be seen in and of itself.

4 The manner in which the areas are laid out, the
5 quality of housing, independent of its density, the quality
6 of this municipal services and so on, would have an effect
7 whether a given area was adequately supporting the people
8 who lived there.

9 If I could add one other point to that question.

10 One of the major housing needs that has to be
11 dealt with, and I think is an element in the fair share
12 approach, is that of upgrading the living conditions of
13 the people who live in the area, so that would exist
14 independently of whether there was likely to be, or it was
15 desirable to have substantial population growth over and
16 above that.

17 Q Are you personally -- strike that.

18 Do you recall from the facts as presented to you that
19 Dunellen is a balanced community?

20 A I think it may be.

21 Q And perhaps outside of upgrading its housing,
22 or building inspection or maintenance program to insure
23 that the present structures remain adequate, you, at least
24 at this point, offer no suggestion to Dunellen?

25 A I could offer a couple of suggestions to
Dunellen. Gratuitously.

1 In Dunellen, according to the Department of
2 Community Affairs report on low and moderate income housing
3 need, there were 200 and 300 families showing what the
4 Department in this study defines as financial housing
5 need.

6 Q If I may just interrupt.

7 The figures that you are using there -- what you're
8 going to say is predicated upon those figures being
9 accurate, is that correct?

10 A That's correct.

11 Q And if those figures are not accurate,
12 then, insofar as their inaccuracy is concerned, your
13 testimony would be adjusted accordingly?

14 A To the degree that there was -- particularly
15 to the degree that there was reason to believe, there was
16 some evidence which would suggest in which direction they
17 may be inaccurate.

18 Q So, for instance, if those figures show
19 that there was 190 units that lacked plumbing facilities,
20 and that in fact, either then or now, is not true --

21 A That would raise questions about the
22 validity of an analysis based on that number, that's
23 correct.

24 Q So that my question to you before, when I
25 said that outside of addressing itself to its housing

1 inspection or building maintenance, inspection type of
2 thing, knowing about those studies, I had included that
3 in my question?

4 A Yes.

5 Q Anticipating your reference, perhaps, to
6 those figures.

7 A But my reference to them goes beyond the
8 question of maintenance.

9 The housing needs defined in the study are of two
10 kinds.

11 One has to do with physical housing needs, which is
12 the presence of substandard housing.

13 The second has to do with what they refer to as
14 financial housing need, which is the situation. And I
15 believe these figures are likely to be accurate, because
16 I think they are taken directly from census data. So they
17 were at least accurate for 1970.

18 Those families who are living either in standard or
19 substandard housing, but who are of lower income and are
20 paying over 25 percent of their income for shelter costs.

21 Independently of using the police power to maintain
22 the quality of the housing, one activity which Dunellen,
23 and similarly situated municipalities could engage in, would
24 be to solicit or facilitate others soliciting funds under
25 section 8 and similar programs, either for rent assistance to

1 families in the units that they presently occupy, or for
2 construction of replacement units at a modest scale,
3 to replace either physically substandard housing, or to
4 enable families in financial stringency to move into units
5 that they can afford.

6 So either of those would be appropriate possibilities.

7 Q Now, I'm not saying necessarily that this is
8 the case in Dunellen, but would you agree that there remains
9 with, let's say, the body politic and the government body,
10 the choice perhaps to not want to, let's say, accept
11 government subsidy.

12 In other words, are we not involved now with
13 philosophical choices, politically?

14 A It's definitely a philosophical issue.

15 Q Politically?

16 A Well, it's both. That's a very -- that's an
17 interesting question. I guess the question could be argued
18 that the stand on principle in opposition to the use of
19 federal government subsidies is one that can be justified
20 in the abstract.

21 However, the question is, does a governing body have
22 the right, and this is really a philosophical question, not
23 a legal one, have the moral right to maintain such a stand
24 on principle, when by so doing it significantly interferes
25 with or impairs the welfare of some percentage of its

1 citizens. And if -- you could argue hypothetically that
2 by refusing government subsidies, in this case, which might
3 be available, that there are X number or X percent of
4 residents of Dunellen who are indeed in dire straits
5 financially, or otherwise, and whose situation could be
6 significantly ameliorated with no significant disadvantage
7 to the rest of the body public, if such subsidies were
8 sought out.

9 Q We now, of course, rather than being at a
10 seminar and debating this, we are now in a court of law,
11 where we have to deal with principles, such as the
12 principle of the separation of powers, the principle that
13 the court does not entertain questions on political issues.

14 MR. SEARING: You asked the question.

15 Q I know it.

16 A There are political issues, however.

17 The federal case, the Shaw case, involving a
18 municipality in Mississippi, where it was the political
19 philosophy of that municipality to provide differential
20 levels of services to different parts of the municipality.

21 Now, the court rules that to do so under the
22 circumstances of that case was not within the sole purview
23 view of the municipality, but was something in which the
24 judiciary had a reasonable right to interpose itself, if you
25 will.

1 Q Surely. Probably under the Civil Rights
2 Act because of discrimination.

3 A So I am willing to -- I'm not going to take
4 a definitive position on whether it's appropriate for the
5 judiciary to involve itself in this situation. It may be,
6 it may not be. Let the judiciary be the ones to decide
7 that, or the legislature, as the case may be.

8 Q Would you say, sir, that the Dunellen
9 Zoning Ordinance, as you see it now, does not discriminate
10 against anybody on account of race, color, creed,
11 religion or national origin?

12 A Not to the best of my knowledge.

13 Q Do you know of any if the ordinances do,
14 that you've analyzed?

15 A To the best of my knowledge, no.

16 Q Do you feel that you're being called upon
17 to give testimony with regard to that issue in this case?

18 A Specific evidence of discrimination against
19 race, color --

20 Q Yes.

21 A No.

22 MR. CUMMINS: Off the record.

23 (Whereupon, at this time, a
24 discussion was held off the record).

25 Q Well, let me ask you this now.

1 You're aware, of course, that we have a State of
2 The Union Address which called for a lessening of at least
3 federal government involvement in, perhaps, some areas of
4 our everyday life?

5 A I remember noticing that there was a State of
6 Union Address delivered recently by someone or other.
7 I forget his name.

8 Q So that there was, at least, from a point of
9 view of a government in power, there was a call for less
10 government involvement?

11 A Well, yes and no. As I recall, the substance
12 of the changes proposed, domestic areas, was the extension
13 of the block grant, revenue sharing concept, at least to the
14 area of health and possibly additional areas, beyond those
15 that it's already been embodied in.

16 Q And as a sociologist, do you perceive a sort
17 of an almost imperceptible rational mood of people wanting
18 the government to, maybe, step back a bit, or be a little
19 bit less involved in their everyday affairs?

20 A I'm not sure. I think the national mood
21 is a difficult thing to psych out. I think certainly people
22 feel that they would like the government, generally speaking,
23 to take a smaller part of their paychecks away from them,
24 in many cases. And I think this is partly a function of the
25 economic pressure that some people feel.

1 It's also partly a function of the degree to which
2 a series of incidents, such as the whole Watergate
3 episode, as well as the cumulative effect of the
4 Viet Nam War and other factors, have tended to reduce
5 people's confidence in government, and reduce the credibility
6 in many people's minds of the activities that governments
7 take.

8 Whether it's a matter of seeking reduced involvement
9 with government, or a different one, or some kind of a
10 reform or cleansing or what have you, this is hard to tell.

11 Q What I meant was, you said that you did
12 notice a desire to take less money, and therefore have
13 less money available for subsidies, or for grants or
14 for tax supported work.

15 A Conceivably, though -- again, the question is
16 whether this is a matter of less money, period, or whether
17 it's a question of a feeling that priorities are out of
18 whack, and that the money should be diverted into different
19 areas.

20 On the other hand, I'm not sure that a real consensus
21 has emerged yet as to which areas it should be taken from,
22 or which areas it should be given to.

23 So I think things are very much in flex.

24 Q Just getting back to Dunellen for one little
25 area.

1 I take it that, and assume that you have a situation
2 that will be presented at the trial which will show a
3 community largely built up with vacant lots, let's say,
4 in the middle of a block, or that type of thing.

5 Do you feel that the effect of the Mount Laurel
6 decision would be as applicable there than in, perhaps,
7 some other communities in the county?

8 A As applicable, probably not. I think there
9 would be certainly a substantial difference in degree
10 among the municipalities in the county.

11 Q So that am I to assume, at least, at
12 first blush, that the absence here on this blank sheet of
13 paper, would seem to indicate that Dunellen might not
14 be a target community, if I can use that phrase?

15 A Well, I'm not inclined to go quite so far.
16 But I think that certainly the evidence would suggest
17 that those requirements of those impositions, what have
18 you, that could justifiably be imposed upon Dunellen would
19 be more likely of a substantially more modest character
20 than those in some other cases, and furthermore, that
21 they could -- again, this deals to some degree, to the
22 degree with which the court will feel itself appropriately
23 getting into these areas, but that a principle thrust of that
24 obligation could conceivably have to do with the issues of
25 maintaining the existing housing stock and providing for the

1 existing population, more so than in some of the, you know,
2 the growing suburban parts, more suburban parts of the
3 county.

4 Q So that the issues, if you will, in, let's
5 say, the Winona case. Are you familiar with that?

6 A Yes.

7 Q And the series of cases, I think there's a
8 couple.

9 A Yes. Washington and Demarest have been
10 certified by the Supreme Court.

11 Q And I believe Winona has too?

12 A No, not to the best of my knowledge.

13 Q Okay. Winona, then, would say that in
14 applying Mount Laurel to a community such as Winona,
15 it won't say it's not applicable?

16 A That's the impression I have from the
17 Appellate Division ruling on that case.

18 Q Do you agree with that Winona decision?

19 A No, I do not.

20 Q So that you would say that a town such as Winona
21 would still have to comply with Mount Laurel?

22 A In some degree, in some sense, appropriate to its
23 condition and size and resources.

24 Again, you know, Winona is smaller than Mount Laurel,
25 proportionately more built up, although not that much more,

1 actually, and generally its burden, if you will, under
2 the Mount Laurel principals, would strike me as undoubtedly
3 being substantially less than that of large townships,
4 such as Mount Laurel.

5 But I don't believe it should be a -- what I'm
6 arguing, I guess, in a nutshell, is that I believe that the
7 difference should be one of degree, based on the circumstances
8 of the municipality, rather than drawing a line and saying
9 everyone on this side of the line -- it's applicable to
10 those, and those on that side it's not applicable.

11 That's the gist of my argument.

12 Q Assume that rather than Winona being
13 the defendant in this case, assuming it was Dunellen.

14 A Well, that would have been an interesting
15 situation.

16 You see, I think the Winona case dealt with a
17 developer plaintiff who was seeking approval to build a
18 multi-family complex.

19 Now, the question there, which was not resolved in
20 the Winona case, because the case was dismissed, the challenge
21 of the ordinance was dismissed, and by extension, the
22 denial of the variance, but which is an issue in the
23 Demarest, the Washington and the Madison cases, is, what
24 happens to the developer plaintiff in this situation if,
25 for example, the municipality's ordinance was found

1 exclusionary?

2 Now, if there was a developer in Dunellen, let's
3 say hypothetically there's a tract of some size there, and
4 a developer bought that tract and proposes to build some kind
5 of multi-family housing on it and challenges it in the manner
6 it was challenged in Winona.

7 I think the real test of whether the municipality
8 could be justifiably ordered to grant a variance, say, to
9 that developer, would be the question of the degree to
10 which the proposed housing development met a definable
11 need in both Dunellen and in its region, for housing.

12 Q Or if the zoning ordinance were exclusionary.

13 A And if the zoning ordinance were
14 exclusionary.

15 However, it's -- the degree to which the two, how the
16 two factors, the need and the exclusionariness of the
17 ordinance, would actually interact in arriving at a
18 sound decision, could be rather complex.

19 Let's say hypothetically that a zoning ordinance --
20 let me back up.

21 If there were a limited number of vacant tracts
22 of major developable vacant tracts in a municipality,
23 especially if there were only a handful or a couple,
24 then the key test of the exclusionariness of the ordinance
25 would be not the ordinance as a whole, but the ordinance

1 as it applied to those tracts,

2 Q Looking at Dunellen's ordinance, you didn't
3 see anything?

4 A Looking at Dunellen's ordinance, assuming that
5 there was a vacant tract zoned in the manner which the
6 residential land generally in Dunellen is zoned, I would
7 not -- that would not be exclusionary, because the
8 provisions, the density provisions, the floor area provisions,
9 are on balance reasonable, and certainly fall within the
10 scope of the government housing programs, the low income
11 housing programs.

12 One could argue, however, again, if that issue came
13 up, if it was a low and moderate income housing development,
14 that the municipality of Dunellen was operating in
15 exclusionary fashion, if it did not -- if it was unwilling
16 to pass the resolution of need that I mentioned or if it
17 was unwilling to provide the tax abatement that was called
18 for.

19 The ordinance on the face of it would not in itself
20 preclude the housing developments.

21 MR. CUMMINS: Mr. Mallach, I thank you.

22 (Recess at 10:18 a.m.)

23 (After recess at 10:26 p.m.)

24 CROSS EXAMINATION BY MR. DAVIDSON:

25 Q Mr. Mallach, you remember that yesterday we

1 examined your work sheet in some detail, but not too much,
2 concerning your proposed cost of a one family dwelling
3 in the Borough of Helmetta.

4 A Correct.

5 Q And we came up with a bottom line figure
6 based upon your numbers of \$53,210.

7 A Yes.

8 Q And I notice that you have a figure here
9 of \$10,000 for land, is that correct?

10 A That is the figure that I used for this
11 hypothetical.

12 Q And we went into yesterday how you arrived
13 at that figure.

14 A Correct.

15 Q Now, that figure is based upon an area of
16 22,500 feet, is that correct?

17 A Yes.

18 Q Now, in your opinion, what is a minimum lot
19 size for a one family dwelling of this number of square
20 feet that is palatable for a family of four to live in?

21 A I don't know what the absolute minimum would
22 be. I have previously testified the figures of 8,000 square
23 feet are certainly reasonable and are shown to be non-
24 deleterious.

25 Q I trust, then, it would not offend you to use

1 a figure of 7,500 square feet?

2 A For purposes of argument or hypotheticals,
3 no.

4 Q Would you be able to estimate how much a parcel
5 of 7,500 square feet would cost?

6 A I have no idea. Undoubtedly less.

7 Q Based upon your figure of \$10,000 for
8 22,500 square feet --

9 A Well, the change in the cost, you see, would
10 be a function of a number of factors.

11 It would be effected by the actual diminution of the
12 square footage, it would be effected by questions of both
13 the feasibility and the desirability of building on such a
14 lot in Helmetta, the cost and the marketability of the unit
15 that could be built on that lot.

16 Q Can you come up with an estimate figure?

17 A I would guess, and this is only a guess, that
18 it might be in the area of \$4,000 or \$5,000.

19 Q All right.

20 A But that's certainly only a guess.

21 Q Let's use a figure of \$4,000.

22 If we then diminish the land cost by \$6,000, what
23 does that now make our gross total for the cost of a one
24 family home in the Borough of Helmetta?

25 A Well, you don't only diminish the land cost when

1 you reduce the footage, and you reduce the frontage,
2 because what you now have, with a frontage of 70 or
3 75 feet, or thereabouts, you now have a site improvement
4 cost which goes down from \$11,000 or so, described here,
5 to approximately \$5,000. So instead of reducing the
6 cost by \$6,000, you've reduced it by approximately \$12,000.

7 Q Would there be anything else which you would
8 reduce as a direct result?

9 A Well, there are some areas which it's
10 variable.

11 For example, the landscaping would be reduced.
12 Of course, that's a minor feature, so that's only a matter
13 of a couple of hundred.

14 The carrying charges could be reduced partially,
15 say \$1,000 there.

16 So all in all, you'd be talking about a reduction
17 of, say, 13 plus thousand. Still assuming that, you know,
18 the conventional profits and fees, you know, could be
19 supported by the market and were tacked onto the house
20 by the developer.

21 Q All right. So is it then your testimony
22 that if land costs were approximately \$4,000 for a 7,500
23 square foot lot, that a home would cost approximately
24 \$40,000 in the Borough of Helmetta?

25 A Well, I testified -- there are ways to further

1 reduce the cost, but assuming these -- assuming the
2 continuation of these fees for profit, fees, construction
3 and the like, which are basically based on what the
4 market will bear, the cost of that house would be \$39,000
5 to \$40,000.

6 Q Now, yesterday --

7 A As well as refraining from any economies
8 in the construction.

9 Q Yesterday you referred to three income levels
10 which you believed would be benefited by the ridding of
11 exclusionary practices in various municipalities.

12 You identified them as low income, the moderate
13 income subsidies and moderate income conventional.

14 A That's correct.

15 Q Would any of those groups be able to
16 afford a house that cost \$40,000?

17 A The upper part of the last group may be able
18 to.

19 Q And you're talking an income of approximately
20 how much?

21 A \$16,000 to \$19,000.

22 Q Hypothetically, if we said that people were
23 generous and going to give land away for free, what would that
24 make our bottom line cost?

25 A Well, again, if you hypothesize that people

1 give land away for free, you may want to hypothesize
2 certain changes in terms of profit and construction cost
3 as well.

4 However, for the purpose of the hypothetical, if you
5 reduce an additional \$4,000, you now have a figure of
6 approximately \$35,000.

7 Q And how many of the income groups mentioned
8 would be able to afford a house that cost approximately
9 \$35,000?

10 A A \$35,000 house, at least in theory, would
11 be -- could be affordable by a family possibly earning
12 \$14,000 or \$15,000, which is -- we're now at an area which
13 includes most of the moderate conventional people and
14 may begin to reach into what I think I referred to yesterday
15 as the crust of the moderate subsidized group.

16 Q Would you elicit for us what you believe
17 the Borough of Helmetta should do to alleviate what you
18 consider to be their exclusionary practices?

19 A It's my impression -- well, I think there's
20 still a question which has not been answered precisely
21 as to the amount of the vacant land in Helmetta that is
22 reasonably developable and the amount that is not.

23 It's my impression that in the admissions from the
24 Borough of Helmetta, a figure of approximately 200 acres
25 was cited of vacant and developable land.

1 I'm not certain that the definition is precise,
2 because the Department of Community Affairs report cited
3 a smaller figure.

4 However, whichever figure is used, there is
5 still enough vacant land in the Borough of Helmetta to
6 allow for non-negligible amounts of development in the
7 future.

8 Q What types of development?

9 A Well, under the ordinance, however, the
10 only type of development that's permitted is single
11 family homes on what by any reasonable definition would be
12 considered at least moderately large lots.

13 I think it's reasonable to argue that given the vacant
14 land, there should be some provision for multi-family
15 housing, and some provision, particularly given the
16 predominant character of the housing stock in Helmetta
17 today, some provision for more modest single family
18 homes, under the present ordinance.

19 Q What about mobile homes or trailer parks?

20 A Mobile homes or trailer parks may be
21 depending upon more detailed analysis of the available
22 sites and locations and the character of the existing
23 housing than I have at my disposal at this point.

24 Q And without looking at facilities for sewer,
25 drainage, things of that nature, but solely looking at the

1 terrain in question, if that land was physically incapable
2 of supporting multi-family homes, any multi-family use whatso-
3 ever, whether it be low-rise or high-rise, but just take that
4 as an assumption, would it be your testimony that the
5 Borough of Helmetta would have eliminated all alleged
6 exclusionary practices if it merely toned down the size
7 of its minimum lot and possibly added for mobile homes
8 and trailer parks?

9 A Possibly. Certainly I would not assert
10 that any court should order a municipality or any
11 individual to do anything that is physically impossible.

12 I said yesterday, I believe, that it's my understanding
13 of enviromental circumstances in relationship to building
14 that the conditions of physical impossibility that you
15 mentioned are few and far between.

16 However, accepting arguendo your statement, I would
17 say that certainly a moderation in the size of lots,
18 and for some reasonable amount of the vacant area, the
19 possible permission of mobile homes and/or trailer parks,
20 depending on what appears to be appropriate.

21 Another question which again is, I believe, at
22 issue -- which may be at issue is the distribution of
23 vacant land between the residential and the industrial
24 zone of the municipality.

25 Again, I don't have precise information on that,

1 because of the question I mentioned earlier about the
2 uncertainty.

3 Certainly another aspect would be to see to it
4 that once the zones in which the mobile homes and moderately
5 priced single family homes were established, that these
6 zones contained a reasonable proportion of the vacant
7 and developable land area.

8 Another issue which may be relevant, given the
9 nature of the existing housing stock in Helmetta, is the
10 degree to which the borough should undertake activities
11 to maintain the housing stock, or to facilitate meeting the
12 financial stringency problem that I referred to in the
13 discussion of Dunellen earlier today.

14 Again, exactly which of these, you know, are most
15 important or most necessary or what have you would await
16 to some degree further study, but I think all of these
17 should be considered.

18 Q Viewing the Helmetta ordinance as a whole,
19 do you find it rather offensive in terms of exclusionary
20 practices, or do you find that it's more in line with
21 your statements made before with regard to Dunellen?

22 A No, I believe it's certainly substantially
23 more offensive in the broad sense of the term than the
24 Dunellen ordinance.

25 Q I realize that you will not be testifying

1 at length with regard to fair share, or region, but I believe
2 that as all these concepts are interrelated, I just wanted to
3 ask you one basic question.

4 Do you read the Mount Laurel case to say one or the other
5 of the following statements.

6 First, once we have a region defined, each municipality
7 within that region must provide a fair share of a low and
8 moderate income population?

9 Or, second, once a region is defined, the low and
10 moderate income population may be distributed in any way
11 through that region, so long as the region provides in
12 full?

13 MR. SEARING: The witness can answer,
14 but you may be asking for a legal conclusion,
15 and he's not a lawyer.

16 MR. DAVIDSON: I'm asking him how he
17 reads the Mount Laurel case, that's all.

18 A My understanding is that the Mount Laurel
19 decision reads the first meaning, even though there is
20 language in it which suggests that in an ideal world, the
21 second meaning -- the second situation that you describe
22 could conceivably be preferable..

23 But in the context of New Jersey law and practice,
24 the first meaning is the applicable one.

25 Q Finally, would it be correct if I assumed that

1 you believe housing to be a necessity of life?

2 A I think I believe housing to be a necessity
3 of life.

4 Q Could you name other amenities to life which
5 you consider to be essentials, necessities, as it were?

6 A Well, there are certain necessities which
7 are matters of basic physical survival, if you will. And
8 which become matters of psychological or emotional or
9 personal reasonableness.

10 Housing is a matter of physical survival, in the
11 climate of New Jersey he who is not housed dies. It's
12 cold out there.

13 Food, of course, is a similar necessity.

14 Somebody who is provided with shelter and food
15 can live. However, for normal, decent existence, there are
16 a number of other factors which would, for example,
17 include decent emotional and intellectual stimulation
18 through the society of others, the opportunity to work or
19 to have something productive to do with one's life.

20 Q Let me be more specific.

21 Do you consider a car a necessity?

22 A A car is not a necessity of the same order as
23 housing and food, but more possible people --

24 Q Are clothes a necessity?

25 A Clothes one could argue are cultural artifact,

1 except when one leaves one shelter the cold weather. For
2 that purpose they are a necessity.

3 Q You testified you put food on the same level
4 with housing, I believe?

5 A Yes. Water, too.

6 Q In your opinion, should the level of subsidation
7 for housing be equated with the level of subsidation
8 for food? That is, the present food stamp program as
9 it exists, assuming that to be a valid basis?

10 A I don't know if one can draw a precise
11 equivalent, but the notion is one that's worth exploring.

12 Q Should the federal or state government
13 subsidize the purchase of automobiles for persons in low
14 income groups?

15 A It's an interesting question.

16 The question would be the degree to which the
17 inability to purchase automobiles is indeed a serious
18 problem, or a constraint on basic survival.

19 Now, the trickle-down theory does work in the case of
20 automobiles, although it does not in the case of housing,
21 particularly well.

22 One can buy an automobile that works after a
23 fashion, relatively inexpensively.

24 Q Can not a person buy a house once it's been
25 used for several years, in an inexpensive fashion?

1 A In some cases, but rarely quite as easily and
2 with quite as much choice as is available for automobiles.

3 Q And in your opinion, should a federal
4 or state government subsidize the purchase of clothes
5 by a low income family?

6 A Well, again, I think a distinction has to be
7 made.

8 For example, for those families, such as the people
9 receiving welfare of different sorts, the federal government
10 subsidizes, or the state or county or whomever, subsidizes
11 the purchase of clothes, the maintenance, if not the
12 purchase of the automobile --

13 Q Is not that included in the overall sum
14 received in welfare payments?

15 A Correct.

16 Q So why should not the subsidation of housing
17 be considered any different? Why should not the total sum
18 received in the welfare payment, since some money is being
19 paid to these people, at a level which the government,
20 at whatever level deems to be the level of subsistence,
21 which they want to bear the burden for, why should not that
22 be the level at which a government should subsidize an
23 individual for housing?

24 A Well, the government -- the reason housing
25 differs is somewhat the same reason why food stamps are

1 singled out, and in some cases medical care.

2 Because while, for example, some form of clothing
3 is available at relatively low cost, and people have
4 some kind of an income, however modest, can usually afford
5 to clothethemselves after a fashion, the same is not necessarily
6 true of housing, just as the same is not necessarily true
7 of medical care.

8 So that the reason housing is singled out, or at
9 least in the minds of those people active in the field
10 should be singled out, as an area where people above the
11 welfare level should receive some form of subsidation,
12 is because of the great cost of decent housing, relative
13 to the incomes of gainfully employed lower income people,
14 in contrast to clothing.

15 MR. DAVIDSON: Nothing further.

16 CROSS EXAMINATION BY MR. JOHNSON:

17 Q Mr. Mallach, Ed Johnson for the Borough of
18 Middlesex.

19 When I asked you a couple of questions yesterday
20 with respect to the Borough of Middlesex, you indicated
21 that you yourself had not prepared the chart or reviewed the
22 ordinance in the Borough of Middlesex but you do have the
23 benefit of the chart which was prepared by your associate.

24 A I do.

25 Q You list as types of exclusionary practices

1 excessive lot size as one of the types of exclusionary
2 practices.

3 In the example which you used yesterday, you chose
4 a lot size of 8,000 square feet to use as your example.
5 I assume that you chose that because you feel that that
6 particular lot size is not excessive and would not qualify
7 as an exclusionary practice, is that correct?

8 A As a general rule, though I refrain from
9 characterizing that particular lot size as what I would
10 consider the right lot size for an ordinance.

11 I think it would vary, depending on the community
12 and the terrain, you know, the usual factors.

13 Q You have the copy of the Middlesex breakdown
14 in front of you, I believe?

15 A I do.

16 Q Middlesex Borough has one zone which is an R-100
17 zone, which required a minimum lot size of 20,000 square
18 feet, is that correct?

19 A Correct.

20 Q And then the remaining zones that are zoned
21 for residential properties all have minimum lot sizes which
22 are below 8,000 square feet?

23 A That's correct.

24 Q Would it be your opinion, therefore, that with
25 respect to the Middlesex zoning ordinance, in view of the

1 fact that most of the lot sizes are below the 8,000 square
2 foot size, that they would not be exclusionary practices,
3 with respect to lot size, operating in Middlesex?

4 A I will agree that the lot sizes for single
5 family homes provided by the Middlesex zoning ordinance
6 are not in themselves exclusionary lot sizes.

7 Q Also in your example yesterday, one of
8 the other exclusionary practices which you have listed is
9 floor area requirements.

10 A Correct.

11 Q Again, yesterday you chose a figure of
12 1,000 square feet for a dwelling unit size.

13 Referring again to Middlesex, you have the chart
14 showing floor areas, the only area that requires more than
15 1,000 square foot for the dwelling I see is the R-100,
16 single family zone, is that correct?

17 A That's correct.

18 Q Do you know what portion of the Borough of
19 Middlesex is located -- is zoned R-100?

20 A If the DCA figures are valid figures,
21 then it would suggest that about three percent of the vacant
22 land is in that R-100 zone.

23 Q So it's negligible portion of the total
24 vacant land?

25 A Minor, certainly.

1 Q With respect to the other residential
2 zones in the borough, we have a situation where the
3 floor area requirements are all less than your 1,000
4 square foot per dwelling unit size, is that correct?

5 A That's correct.

6 Q Just so that I understand you correctly,
7 in the R-60B zone, in the Borough of Middlesex, there's
8 a provision for two family dwellings. The minimum floor
9 area for a two family dwelling in that zone is 1,500
10 square feet, but it's broken down into 750 for each dwelling
11 unit.

12 Do you feel that the 1,500 square feet is excessive
13 in view of the fact that it's broken down into two separate
14 units?

15 A No, I do not believe that 1,500 square feet
16 as an accumulative total of two units is excessive.

17 Q So with respect to the minimum floor areas
18 set forth in the Middlesex zoning ordinance, would it be your
19 opinion that, on their face, they are not exclusionary
20 as you have defined exclusionary in your presentation?

21 A The minimum floor areas provided in the
22 R-75 and R-60 zones in the Borough of Middlesex are not
23 in themselves exclusionary provisions.

24 Q Now, under the high-rise apartments, they
25 are permitted in the R-4 zone in the Borough of Middlesex.

1 You have broken it down, you've got the minimum
2 lot size, four acres, under minimum width, you have 16,
3 and what?

4 A Dwelling units per acre.

5 Q You've got a breakdown in cost for one bedroom
6 apartments of \$1100 per unit.

7 How did you arrive at that figure?

8 A I'm not sure what that -- I was wondering
9 myself as I was looking at that what that figure referred
10 to. I'm not sure that's a cost figure. I don't know what
11 those figures refer to. I don't believe that they're cost
12 figures.

13 MR. SEARING: Can we supply it?

14 THE WITNESS: I will track it down. I
15 will refresh my memory on that. I don't
16 believe they're cost figures, in any case.

17 MR. SEARING: I'll give you a call
18 or a letter.

19 Q Fine. You have the vacant land information,
20 you have gotten that from the study made by the state, is that
21 correct? A That's correct.

22 Q And the figures there are the same figures
23 that the state used?

24 A Should be, yes.

25 Q You don't know whether those figures reflect

1 the actual conditions as they exist in Middlesex today,
2 do you?

3 A Today, no. They date from some point in
4 presumably the early 1970's.

5 Q Do you know whether those figures take into
6 consideration the flood zones which have been delineated
7 through certain areas of the State of New Jersey?

8 A They may not be able to take into account the
9 exact delineations, because those delineations were not
10 made until after the Flood Control Act of '72 was passed.
11 But they did make an effort to take into account areas subject
12 to flooding and exclude them.

13 Q When is the last time that you visited the
14 Borough of Middlesex itself?

15 A I'm not sure that I have visited the Borough of
16 Middlesex.

17 Q I believe you said earlier that you had lived
18 for a certain period of time in Piscataway?

19 A No, I worked in Piscataway. '71 through '73,
20 early '71 through early '73.

21 Q My notes indicate --

22 A I guess there's some question about whether
23 Livingston College is part of Piscataway. The township
24 fathers would rather disown it.

25 Q I believe in your testimony, as my notes

1 indicate, you stated yesterday that the study that was
2 made by the DCA to arrive at figures that they came up
3 with was limited to parcels of five acres of land?

4 A That's what they say, yes. Five acres or
5 more.

6 Q So that if there was area, vacant land less
7 than five acres in one tract, that would not be reflected
8 in this particular study?

9 A That's correct.

10 Q So in those communities that had small lots,
11 let's assume that there were several small lots interspersed
12 throughout a community, which were less than five acres,
13 there might be vacant land that wasn't really shown on the
14 study that was made by the state, and would not be reflected
15 in the totals that the state has come up with, is that
16 correct?

17 A That could be, yes.

18 Q What specific aspects of the Middlesex
19 zoning ordinance do you feel are discriminatory,
20 Mr. Mallach?

21 A Exclusionary.

22 Q Exclusionary, excuse me?

23 A Two specific features I'd like to cite.

24 First is the question of multi-family housing. The
25 high-rise apartment zone, A, has a stringent bedroom

1 restriction in it, 85 percent one, 15 percent two and no
2 units larger than two bedrooms in it.

3 Secondly, the acreage specified for the multi-family
4 housing is also a negligible percentage of the designated
5 vacant land, according to the DCA study.

6 Thirdly, there's no provision for more conventional and
7 more widely useable garden apartments or town houses in the
8 ordinance.

9 High-rise housing is a rather specialized need, and
10 of less general applicability than the other types.

11 So that in this sense, there is a major problem here.

12 Q Are you aware that there are several garden
13 apartment complexes which have been constructed in the
14 Borough of Middlesex by way of variances?

15 A Not specifically, but I'm not surprised
16 by that. They do it all the time.

17 Q Would you feel that this might change your
18 position as far as the need for additional areas to be zoned
19 as high-rise for high-rise apartments in Middlesex?

20 A I'm not necessarily arguing that there should
21 be additional areas zoned for high-rise. I do suspect,
22 however, despite the presence of garden apartment complexes
23 by variances in the borough, that it may well be justifiable
24 to zone additional areas for low-rise, garden apartments or
25 town houses.

1 Q Do you feel that there's any relationship
2 between the amount of vacant land that is actually developable
3 and the amount of that land that should be designated for
4 garden apartment development?

5 A As a flat percentage, I wouldn't suggest
6 one. I would say this is something, as I believe I
7 mentioned, that should grow out of the fair share analysis
8 rather than be the starting point.

9 First one has to study what the need is and how
10 that need distributes by different social and demographic
11 characteristics, and then figure out what that means in
12 terms of the number of apartments.

13 The other factor I'd like to cite is the fact that
14 according to the DCA study, nearly half of the vacant land
15 in the borough is zoned industrial.

16 On the basis of a rule of thumb, at least, that
17 seems facially excessive.

18 Q You might have testified to this yesterday,
19 during the time that I was out, and if you have, I don't
20 want to be repetitive.

21 When you were going through your rental figures
22 for garden apartment complexes, you indicated that a moderate
23 income family could afford a garden apartment based on being
24 able to pay \$2800 for rental, which represents one fourth
25 of their gross income.

1 Do you accept the figures, the relationship
2 between rental and income as 25 percent, or should be
3 25 percent?

4 A I think it should not exceed 25 percent.
5 I feel if, whenever possible, and whenever reasonably
6 feasible, it's desirable that it be lower. But it can be
7 up to 25 percent as a general rule, without becoming
8 a hardship.

9 Q From your experience, do you feel that
10 people in moderate income levels today are paying more
11 than 25 percent of their income for their housing needs?

12 A A non-negligible percentage of them are,
13 definitely.

14 MR. JOHNSON: No further questions.

15 FURTHER CROSS EXAMINATION BY MR. DAVIDSON:

16 Q With regard to what you were talking about,
17 the 25 percent of income for housing costs, should
18 earning potential be taken into account? So that if on a
19 particular day or month a person is spending in excess of
20 25 percent of his income on housing, but he has the potential
21 such that within a reasonable period of time he will be
22 paying under 25 percent, then --

23 A Well, I think certainly the individual takes
24 those things into consideration in making his or her own
25 decisions. But as a matter of public policy, it seems to be

1 unreasonable to take earning potential into account unless
2 you can somehow work out a schedule for making rent
3 payments due, only when the earning potential turns into
4 reality.

5 In other words, for -- given that on the whole,
6 in the last couple of years, income -- the average, or the
7 representative income has barely kept pace with cost and
8 in many cases dropped beneath that, I think it would be
9 unreasonable as a matter of public policy to build in any
10 projection of increased earnings relative to costs for the
11 typical family need.

12 Q And if we talk about a family of four where
13 the wife does not work and the husband has, let us say,
14 masters in business and administration degree from Columbia,
15 has an excellent job with a Wall Street firm, and one day
16 finds himself walking and pounding the pavement because
17 he's been laid off, should that family also qualify for such
18 subsidized housing?

19 A Well, it would depend on the circumstances.
20 Clearly if somebody has been earning a high income and has
21 been paying for relatively expensive housing on the basis
22 of that high income, that person has a temporary loss
23 in income --

24 Q Do we know it's temporary?

25 A A loss in income assumed to be temporary.

I mean, there are certain principals built in.

1 For example, the whole concept of unemployment
2 compensation is based on the assumption that there is a
3 certain period that is generally held to be temporary.

4 That if an individual loses his or her job,
5 that individual has a right to receive a kind of subsidation
6 from the government to tide that person over during the loss
7 of employment.

8 At some point, in something over a year at this
9 point, there is a decision that has to be made as to whether
10 this loss of employment and this drop in income is indeed
11 temporary, or whether it's permanent.

12 At that point, the question has to rise.

13 Q If you assume it's permanent, insofar as a
14 particular earning level is concerned, and if we assume
15 that that family has been living modestly, in terms of its
16 housing costs, then should that family, where the husband
17 clearly has an earning potential of \$20,000 a year, should
18 that family qualify, as well as a family where the
19 principal wage earner does not have the earning potential
20 even close to that figure?

21 A But you see you're contradicting yourself.
22 Because if you are assuming that the low income of that
23 income is permanent, then that individual cannot possibly
24 have a higher earning potential.

25 Q By permanent, I'm talking about a period in

1 excess of the period that the unemployment will run.

2 A Well, the provision -- if the person has
3 no income at all after the unemployment compensation has
4 run out and no immediate likelihood of getting any employ-
5 ment at all, then the government in its wisdom and
6 generosity provides for welfare; for such people.

7 If a person has some income, has been able to get
8 a job that's below what might be hypothetically the person's
9 earning potential but is of a more moderate nature, and
10 if subsidies are available, and if the family is in
11 financial stringency in the absence of subsidies, I see
12 no fundamental reason why that person shouldn't be provided
13 with subsidies during that period.

14 On the other hand, I'm not sure it would be the
15 highest priority for limited subsidy funds.

16 MR. DAVIDSON: I have nothing further.

17 (Adjourned at 11:12 a.m.)
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Richard C. Quinta the officer before whom the foregoing depositions were taken, do hereby certify that the witness (es) whose testimony appears in the foregoing depositions was (were) duly sworn by me and that said depositions are a true record of the testimony given by said witness (es); that I am neither attorney nor counsel for, nor related to, nor employed by any of the parties to the action in which the depositions were taken; and further, that I am not financially interested in the action.

Richard C. Quinta