

3/3/76

CA - General  
transcript of  
r Testimony of Alan Mallach

pp. 166  
p.i. 3375

CA 0010405

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX COUNTY  
Docket No. C-4122-73 ✓

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URBAN LEAGUE OF GREATER :  
NEW BRUNSWICK, a non-profit :  
corporation of the State of :  
New Jersey; CLEVELAND BENSON; :  
FANNIE BOTTS; JUDITH CHAMPION: :  
LYDIA CRUZ; BARBARA TIPPETT: :  
KENNETH TUSKEY and JEAN WHITE, :  
On their own behalf and on :  
behalf of all other similarly :  
situated, :

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 COMMITTEE :  
OF THE TOWNSHIP OF PLAINSBORO; :

BOOK FRANK SCHATZMAN CLERK  
176 MAR 23 1976  
MIDDLESEX COUNTY

TESTIMONY OF  
ALAN MALLACH

FILED  
MAR 23 1976  
DAVID B. ...

1 MAYOR AND COUNCIL OF THE BOR- :  
2 OUGH OF SAYREVILLE; MAYOR AND :  
3 COUNCIL OF THE CITY OF SOUTH :  
4 AMBOY; TOWNSHIP COMMITTEE OF :  
5 THE TOWNSHIP OF SOUTH BRUNSWICK; :  
6 MAYOR AND COUNCIL OF THE :  
7 BOROUGH OF SOUTH PLAINFIELD; :  
8 MAYOR AND COUNCIL OF THE :  
9 BOROUGH OF SOUTH RIVER; MAYOR :  
10 AND COUNCIL OF THE BOROUGH :  
11 OF SPOTSWOOD; TOWNSHIP COMMITTEE :  
12 OF THE TOWNSHIP OF WOODBRIDGE, :

13  
14 Defendants. :

15 ----- :

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18 MIDDLESEX COUNTY COURTHOUSE  
19 NEW BRUNSWICK, NEW JERSEY  
20 FEBRUARY 18 and 19, 1976

21  
22 B E F O R E:

23 THE HONORABLE DAVID D. FURMAN, J.S.C.

24  
25 A P P E A R A N C E S:

26 BAUMGART & BEN-ASHER, ESQS.  
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1 A L A N M A L L A C H, having been called as a witness  
2 in behalf of the plaintiffs, being duly sworn, testified as  
3 follows:

4 DIRECT EXAMINATION BY MR. SEARING:

5 Q Mr. Mallach, would you please state your name  
6 and address.

7 A My name is Alan Mallach. I reside at 53 North Main  
8 Street, Pennington, New Jersey.

9 Q What is your educational background, Mr. Mallach?

10 A I am a graduate with a B.A. degree from Yale  
11 University as a Scholar of the House in political sociology  
12 in 1966. Since then, although I do not hold any graduate  
13 degrees, I've taken as an auditing student a course at  
14 Yale Law School and participated in a graduate seminar one  
15 year at Princeton University, School of Architecture.

16 Q Could you explain the circumstances as to your  
17 participation in that seminar?

18 A Yes. This was a seminar comprised of faculty and  
19 students at Princeton, with a limited number of others,  
20 studying the issues of the design and planning aspects of  
21 urban low and moderate income housing development, with  
22 particular reference to developing ways of involving urban  
23 residence in the planning of their housing and designing  
24 housing that was more suitable and responsive to low and  
25 moderate income families' needs.

1 Q Was there a product of this seminar?

2 A Yes. As a result of this seminar, a substantial  
3 publication of about six hundred pages was published at  
4 Princeton, entitled, if memory serves, "Planning and Design  
5 Workbook for Community Participation."

6 Q Did you participate in that study, in that  
7 publication?

8 A Yes, I did.

9 Q How has that study been used?

10 A This study--

11 MR. BERNSTEIN: Objection, your Honor. I'm not  
12 sure how the study can be used to go to anything, your  
13 Honor. The fact that he has participated goes to  
14 qualifications but not the use of the study per se.

15 THE COURT: I would think that would be so.  
16 That doesn't bear upon his qualifications.

17 MR. SEARING: Thank you, your Honor.

18 Q Mr. Mallach, what is your occupation?

19 A I'm the President of a consulting firm named Alan  
20 Mallach Associates, located in Trenton, New Jersey, and in  
21 addition I work individually as a consultant for the  
22 New Jersey County and Municipal Study commission.

23 Q Is your firm a corporation?

24 A Yes, it is.

25 Q How long has it been in existence?



1 A Since mid 1974.

2 Q And how big is it?

3 A In addition to myself, there's one other professional  
4 employee and one clerical employee.

5 MR. BUSCH: Your Honor, I object to the words  
6 "other professional". We haven't established a  
7 profession for this witness.

8 THE COURT: I'll overrule that objection. That  
9 will stand.

10 Q Mr. Mallach, what does the firm do?

11 A The firm's activities are principally but not  
12 exclusively in two general areas. One is the area of  
13 housing development for low and moderate income families,  
14 and the second is survey and social research and analysis.

15 Q As to your housing development activities, can  
16 you describe those for us, please?

17 A Yes. We are presently active in four projects around  
18 the State of New Jersey. Our role is that of loan  
19 consultant, as it is generally referred, or packager.  
20 Specifically, our responsibility is to take the project,  
21 working usually with a non-profit housing sponsor or a  
22 limited dividend company, to take the project from that  
23 point where it is a gleam in someone's eyes to negotiate  
24 all of the aspects of the project that have to be negotiated,  
25 including obtaining government financing and dealing with

1 the local officials on approvals, evaluating sites,  
2 retaining professionals, such as, architects, attorneys  
3 and general contractors, and generally working the project  
4 through from start to finish.

5 In this capacity, we are--I have been approved as a  
6 loan consultant-project planner by the New Jersey Housing  
7 Finance Agency.

8 Q In addition to this housing development agency,  
9 what other work has the firm been involved in?

10 A In addition to this, in survey research, which  
11 includes conducting surveys and social and demographic  
12 analysis and other related matters. We have also done  
13 statistical analysis, including municipal finance studies  
14 and cost revenue analyses for housing developments.

15 Q Now, you testified earlier that you work in an  
16 individual capacity for the Musto Commission. Would you  
17 explain what that is, please?

18 A Its official name is the County and Municipal  
19 Government Study Commission. It's informally known as the  
20 Musto Commission, after Senator Musto, who is the Chairman  
21 of the Commission.

22 This is a commission that was created by the State  
23 Legislature in 1966, with a mandate generally speaking to  
24 study problems of county and municipal government of  
25 interest to the State, generally, and to pose reports on

1 these problems and to make recommendations to the New Jersey  
2 Legislature to deal with the problems.

3 I began working with them--I'm sorry. Since being  
4 created in 1966, this commission has produced quite a volume  
5 of material. The first major report, which is well known,  
6 was a study of county government, entitled "Challenge and  
7 Change," which led to the adoption of the optional county  
8 charter law and since then to the adoption of new county  
9 charters by four of New Jersey Counties.

10 Since then, the commission has done work, published  
11 reports and made legislative recommendations in the area of  
12 inter-municipal cooperation, joint service agreements,  
13 consolidation, solid waste disposal, sewerage and water  
14 quality control, the role of the local health officer and  
15 multi-family housing.

16 Q What of those projects were you directly involved  
17 in?

18 A I was directly involved in and responsible for the  
19 report "Housing and Suburbs: Fiscal and Social Impact of  
20 Multi-Family Development," which was published by the  
21 commission in 1974.

22 MR. SEARING: Your Honor, I have a book I would  
23 like marked for identification.

24 THE COURT: P-103, book entitled "Housing and  
25 Suburbs: Fiscal and Social Impact of Multi-Family

1 Development," marked for identification.

2 Q Mr. Mallach, I show you plaintiff's exhibit 103  
3 marked, and I ask you to identify it, please.

4 A This is a copy of the report "Housing and Suburbs:  
5 Fiscal and Social Impact of Multi-Family Development," that  
6 I was responsible for the production of on behalf of the  
7 commission.

8 Q And this is the volume that you were responsible for

9 A That is the volume.

10 Q Thank you, Mr. Mallach.

11 What other studies were you involved in during your  
12 time at the commission?

13 A Well, in addition to the work that I did on this study,  
14 which included directing all aspects of the research and  
15 the writing of this report, I've been involved in a series  
16 of studies over the last roughly three years. Let me try  
17 to list them.

18 First, during the summer of 1973, utilizing some  
19 financial support from the Department of Community Affairs,  
20 I directed a study of planned unit developments, in which  
21 capacity during that summer I directed a field survey  
22 where we had interviews of a representative sample of  
23 residents in four major P.U.D.'s, as well as a random sample  
24 of residents of host communities where these P.U.D.'s were  
25 built.

1           In addition, later, after this field work was  
2 completed, we did a study of certain selected P.U.D.  
3 ordinances as well, and this resulted in a draft mimeographed  
4 report on the study, a technical document.

5           In 1974, I initiated a study of county and regional  
6 planning on behalf of the commission, in which capacity I  
7 directed the work of a group of law students who analyzed  
8 the New Jersey ordinances dealing with county and regional  
9 planning, studied ordinances in other states on this matter  
10 and conducted interviews with planning directors of twenty-  
11 one counties, and in some cases additional individuals as  
12 well, and wrote up technical material in that area.

13           These two studies as well as additional work in the  
14 area of land use and planning were incorporated in a study  
15 that's been completed in draft form entitled "Planning for  
16 the Future: Dealing with Land Development," which was  
17 completed in late 1975.

18           Q     I'm sorry. Were you finished?

19           A     No, sorry.

20           In late 1974, I began another study for the commission,  
21 which is a two-year study, funded in part also by the  
22 Department of Community Affairs, dealing with the area of  
23 neighborhood preservation. We're conducting independent  
24 research on the subject of why neighborhoods deteriorate  
25 and the problems with urban and small town neighborhoods

1 as well as monitoring and evaluating and working with local  
2 officials conducting neighborhood preservation efforts in  
3 thirteen municipalities around the State.

4 Finally, we just began a two-year study, which will  
5 be our major effort for the calendar year 1976, one in  
6 the area of public transportation with reference to the  
7 county government role in the public transportation field,  
8 and the second in the area of local and county government  
9 and their responsibilities for providing social services.

10 Q That brings us up to date on your activities  
11 with the commission.

12 A That's correct.

13 Q Mr. Mallach, could you trace your previous  
14 employment for us?

15 A Yes, sir.

16 While still a student at Yale, I began to work for an  
17 agency named Community Progress, Incorporated, which is an  
18 umbrella social service and community action agency for  
19 the City of New Haven, Connecticut. Upon graduating from  
20 Yale, I went to work for them full time and continued  
21 through the fall of 1967.

22 In that agency, I was, my title was, Manpower  
23 Evaluation Coordinator, and I was responsible for research  
24 evaluations, statistics and similar matters for the city  
25 manpower job placement and training program.

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In the fall of 1967, I came to New Jersey to work initially in the capacity of special assistant to the individual who had been appointed Executive Director of the New Jersey Housing Finance Agency. This agency had been created in 1967 in the spring but had not been activated, as it were, until the fall of that year.

My responsibilities in the agency included principally developing formulas, procedures, guidelines, standards and similar matters for this moderate income housing program, which was getting started and secondarily, doing preliminary site inspections and conferences with individuals who had submitted applications to the agency.

I--at the same time, in addition to working directly with the H.F.A., I worked within the Department of Community Affairs, of which the H.F.A. is a part. I advised the Commissioner of Community Affairs, and through him Governor Hughes, on technical issues connected with the urban platform of the National Governors Conference, prepared testimony for Governor Hughes on the Housing Act of 1968 as well as background materials on that act.

In the summer of 1968, I moved laterally as it were within the Department of Community Affairs to the Division of State and Regional Planning, where I became head of a unit within that division, known as the Community Development Planning Program, where I remained for the next two years.

1 The Community Development Planning Program is set up  
2 to be the arm of the planning division responsible for  
3 planning activities in the area of housing, economic  
4 development, urban and community development generally,  
5 and social and human resource issues, generally, though  
6 housing was our most substantial area of responsibility.

7 During that time, I was responsible for preparation  
8 for what is known as "The Housing Element of the State of  
9 New Jersey under the Federal Section 701 Planning Program."

10 The research that I compiled and conducted for this  
11 project was later summarized in a publication, "The Housing  
12 Crisis in New Jersey," of which I was principal author.

13 We--in addition, I directed studies of housing  
14 vacancies and the relocation situation in core cities in  
15 New Jersey, with particular reference to urban renewal.  
16 I acted as the State coordinator for the Federal Operation  
17 Breakthrough Program, of bringing together the technology  
18 of housing production, and which includes the responsibility  
19 for monitoring the county planning boards in analysis of  
20 the housing market conditions in twenty-one counties.

21 In addition, my staff and I were responsible for a  
22 great deal of technical assistance and advisory services  
23 of housing and planning in related areas in New Jersey  
24 municipalities. We were involved in, among others, I  
25 could cite, Bridgeton, where we designed a model community



1 development program, which later became a funded state-wide  
2 program for tying in housing, community development and  
3 social services in low income areas; the City of Camden;  
4 Trenton Model Cities Program; Shrewsbury Township, which  
5 we advised on rehabilitating their housing stock; Madison  
6 Borough, which we advised on establishing a housing  
7 authority to establish a housing program to meet their needs;  
8 Hoboken Model Cities Program.

9 In the City of Newark, we were the liason for the  
10 State Government on all housing matters arriving out of the  
11 negotiations that took place after the Newark riots in  
12 1967, and I acted as advisor and State liason to the Newark  
13 Housing Council, and all the subsidiary groups associated  
14 with rebuilding Central Ward, with mixed success.

15 We worked in Plainfield, Jersey City and Asbury Park,  
16 and that is to the best of my recollection.

17 Q What time period does that take you up to?

18 A This work was from mid '68 through mid 1970.

19 In mid 1970, I was promoted within the Department of  
20 Community Affairs to the position of Director of the Office  
21 of Program Development, which was at that time responsible  
22 as the grantsman for the Department of Community Affairs  
23 in obtaining and negotiating grants on behalf of the  
24 Department, and responsible for monitoring inovative and  
25 demonstration programs funded by the Department in New Jersey

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counties.

Q And what did you do following that?

A Following that, in early 1971, I moved from the Department of Community Affairs to Rutgers University, where I was appointed as an assistant dean in the academic affairs area of Livingston College. For the next two years, approximately, I was responsible for what one might call the non-traditional aspects of the Livingston College academic program, which included means of awarding students credit for work experience, field learning programs of the students, the internship program, cooperative education program, evening courses, programs to assist older students to come back to school and earn degrees, and related areas.

I was also responsible for the Community Outreach Program at Livingston College, both in terms of placing students in agencies and obtaining funds through the college for community activities, such as, an education--neighborhood education center, which I assisted in getting off the ground in the City of Linden.

At the same time, I continued to be involved on an individual basis with housing activities on a voluntary basis. I worked with Model Cities Programs in Perth Amboy and Plainfield on an advisory basis.

I was appointed a member of the Technical Advisory Committee of the Mercer, Somerset, Middlesex Regional

1 Study Council, located in Princeton, and a member of the  
2 Urban Program Committee of the American Friends Service  
3 Committee for the Northeastern United States, and was also  
4 active in the Union County Housing Coalition and the  
5 New Jersey Housing Coalition, which is a group of people  
6 we were trying to organize at that time.

7 Q And that takes you up to approximately--

8 A --early 1973.

9 Q And what did you do after that?

10 A In 1973, I was retained by the County-Municipal Study  
11 Commission on a part-time basis to act as Project Director  
12 for the H.U.D. grants, which resulted in publication of  
13 this report.

14 Q Were you engaged in other outside activities  
15 at that time?

16 A Yes. In the fall of 1973, I was appointed to the  
17 faculty of Stockton State College, as an assistant professor  
18 of administrative study, and I was a full-time--technically  
19 a full-time faculty member for the 1973-'74 academic year,  
20 and part time for the fall of 1974.

21 At Stockton, I taught a large number of courses,  
22 including, if memory serves, a course, a general course on  
23 housing, a course entitled "Architecture and Environment  
24 Behavior," dealing with the social behavior aspects of  
25 housing, and a course on inter-governmental fiscal relations

1 and a course on planned unit development in new counties,  
2 a research course on local planning, in which I supervised  
3 undergraduates in doing individual research on the planning  
4 practices of municipalities with which they were familiar,  
5 and in the fall of 1974 I conducted a course jointly with  
6 a member of the Environmental Study Faculty, an introduction  
7 to planning.

8 In addition to the college, I was active in working  
9 on an advisory basis with the municipality, Galloway  
10 Township, that Stockton State is located in, in terms of  
11 assisting them with a series of studies of their fiscal  
12 condition, natural resources and the social conditions,  
13 to assist them in their self evaluation and development.

14 Q Are there any other academic areas with which  
15 you are involved?

16 A I've been involved in a number of activities.

17 When I was at the administration of Livingston, I had,  
18 in addition, a part-time appointment in the Department of  
19 Community Development, and taught three courses there  
20 during my tenure at Livingston, one on urban systems, one  
21 on research methods and another jointly with the Political  
22 Science Department on urban application.

23 In addition, I served for two terms, previously as an  
24 adjunct assistant professor of science and technology at  
25 Fairleigh-Dickinson University, where I taught courses on

1 technology and urban problems, and I have lectured at the  
2 Harvard Graduate School of Design, Princeton University,  
3 Rutgers University and others. I've also served on juries  
4 to evaluate graduate planning programs and products at the  
5 University of Pennsylvania Graduate School and the Princeton  
6 Graduate School of architecture.

7 Q And you have described two publications of which  
8 you are primary author. I believe one was "Housing in the  
9 Suburbs," which was plaintiff's exhibit 103 for  
10 identification, and "The Housing Crisis in New Jersey, 1970"  
11 which is, for the record, plaintiff's exhibit 36.

12 Have you been involved in other publications?

13 A Yes, sir.

14 Q Can you give us a brief summary of those?

15 A Yes, sir.

16 The first publication that I was responsible for were  
17 in the Department of Community Affairs I wrote and published  
18 a pamphlet in 1968, entitled, "Housing in New Jersey:  
19 Needs and Programs" which was published prior to the  
20 campaign for the housing bond issue in 1968.

21 I also published a pamphlet entitled "The Hidden  
22 Subsidies to Suburban Home Owners," which was based on  
23 certain research materials that I did for the Governors'  
24 conference at that same time.

25 In 1973, I was commissioned to and prepared an article

1 for the County Municipal Government Study Commission,  
2 entitled "Changing Governmental Roles in Housing and Urban  
3 Development," dealing with the efficiency in the way the  
4 government is organized to deal with housing development  
5 problems, which was published in an anthology of papers  
6 they published as a supplement to a report of theirs on  
7 State and Federal aid to local governments. Then I published  
8 this housing report.

9 In early 1975, I was a speaker at a symposium on  
10 zoning litigation at Camden Law School, the results of which  
11 I published subsequently in an article in the Camden Law  
12 Journal, entitled "Do Lawsuits Build Housing: The  
13 Implication of Exclusionary Zoning Litigation."

14 In addition, I have submitted and I gather it would  
15 be published in an anthology of pieces dealing with the  
16 Mt. Laurel case and related matters, a paper on post Mt.  
17 Laurel litigation and housing production, which is slated  
18 to be published later in 1976.

19 Q And this is including the draft document, which  
20 you referred to when you were testifying about your  
21 activities with the Commission, the overall studies?

22 A Yes, sir. This--I anticipate that the report on  
23 planning for the future in some form will be published  
24 within the year by the Commission.

25 Q Now, Mr. Mallach, have you been asked to testify

1 on housing, planning and zoning in other litigation?

2 A Yes, I have.

3 Q Could you describe what litigation that was?

4 A Yes, sir. I testified as an expert witness on housing  
5 conditions and housing needs in Southern Burlington NAACP  
6 vs. Township of Mt. Laurel. I testified as an expert on  
7 similar matters with particular reference to low income  
8 families and welfare recipients in Welfare Rights  
9 Organizations vs. Cahill, which was a challenge in the  
10 Federal Courts to the change in the welfare shelter allowance  
11 that were adopted by the Cahill administration.

12 I testified as an expert witness on housing, planning  
13 and zoning matters, including an analysis of the zoning  
14 ordinance and its implications in the case of Allen-Dean  
15 vs. Township of Bedminster. And I testified on all of  
16 those matters as an expert witness in the case of Camden  
17 National Realty vs. Township of Cinnamington.

18 Q Are there any other cases in which you have worked?

19 A Yes. I was retained to prepare materials and testify  
20 in a case entitled Courier vs. Township of Randolph, but  
21 this case was dismissed for reasons unrelated to my presence,  
22 to the best of my knowledge, prior to trial.

23 I was also slated to testify on materials that I had  
24 prepared on behalf of a developer in the case of Garden  
25 Cities Development Corporation vs. Township of Mahwah,

1 but at this point it appears unclear as to whether this case  
2 will come to trial.

3 Q Now, at our request, have you done special  
4 investigation in the area of housing, planning and zoning?

5 A Yes, I have.

6 Q Have these put special emphasis on Middlesex  
7 County?

8 A Yes, they have.

9 Q Could you describe those investigations?

10 A Yes. I've conducted an analysis of the zoning  
11 ordinances in Middlesex County, of Middlesex County  
12 municipalities, of such information as is available on land  
13 availability in Middlesex County municipalities, such  
14 information as is available on subsidized housing in  
15 Middlesex County, such information as is available on the  
16 cost of construction and the relation to various features  
17 in Middlesex County.

18 MR. BUSCH: Your Honor, I'm going to object and  
19 ask that the information given be stricken. That  
20 would appear to be in connection with this case and  
21 I don't think that would qualify this witness to  
22 testify in this case.

23 THE COURT: It doesn't bear upon his general  
24 qualifications.

25 MR. BUSCH: That's my objection.



1 THE COURT: What he's done in preparation for  
2 this case would not bear upon his general qualifications  
3 as an expert.

4 MR. SEARING: I understand, your Honor. I see.  
5 All right.

6 All right. Based on Mr. Mallach's testimony at  
7 this time I would move to qualify him as an expert in  
8 housing, planning and zoning in New Jersey with  
9 particular emphasis on Middlesex County on behalf of  
10 the plaintiffs.

11 THE COURT: All right.

12 Is there one attorney who would ask for or whom  
13 you would agree to cross-examine as to qualifications?

14 (Legal argument takes place on the record.)

15 THE COURT: All right, Mr. Busch, you may ask  
16 him questions about his qualifications and background.

17 CROSS-EXAMINATION BY MR. BUSCH:

18 Q Mr. Mallach, I believe you stated that you  
19 received your B.A. from Yale in 1966. Is that correct?

20 A That's correct.

21 Q And you were a major in political sociology or  
22 was your major considered sociology at that time?

23 A No. Strictly speaking, under the program--the major  
24 was considered scholar of the house, independent of any  
25 formal department of the university. The topic of the

1 scholar of the house thesis that I produced was in the area  
2 of political sociology.

3 Q Did you have a major subject?

4 A Prior to that point, I had met--largely met the  
5 requirements in both the fields of sociology and music.

6 Q Music? A Music.

7 Q Okay. Did you take any formal planning courses  
8 as an undergraduate?

9 A I took one such course.

10 Q And did you take any formal economics courses  
11 as an undergraduate?

12 A No, I did not.

13 Q What was the title of the one planning course  
14 that you took?

15 A I don't recall specifically. It was a general course  
16 and it may have been entitled planning or general planning  
17 or something to that effect.

18 Q Did you do any independent research at Yale  
19 Undergraduate College in the field of planning other than  
20 the formal course that you took?

21 A Well, I did an independent field project for that  
22 course but it was within the context--

23 Q That was at the same course?

24 A Within the context of that same course, yes.

25 Q And I believe you mentioned either in depositions

1 or today that you also audited one course at Yale Law School.

2 Is that correct?

3 A That's correct.

4 Q And that was something on social welfare?

5 A Social welfare law, correct.

6 Q And you have never obtained an advanced degree  
7 other than your Bachelor's degree from Yale. Is that correct?

8 A That's correct.

9 Q Have you ever received a license from the State  
10 of New Jersey to practice any profession whatsoever?

11 A No, I have not.

12 Q Are you familiar with the licensing requirements  
13 under the New Jersey Statute 45:14A-1, dealing with  
14 professional planners?

15 A Yes, I am.

16 Q Are you presently licensed as a planner in the  
17 State?

18 A As a professional planner, no.

19 Q Do you have any official license in the State of  
20 New Jersey as any type of planner?

21 A The only license of any type of planner given by the  
22 State of New Jersey is what is known by the term of art  
23 professional planner and the answer is no.

24 Q So, when you distinguish between planner and  
25 professional planner, you have no license other than your

1 driver's license. Is that right?

2 A Well--

3 MR. SEARING: Objection, your Honor.

4 Q Well, do you have any other license from the State  
5 of New Jersey?

6 THE COURT: Wait a minute, Mr. Busch. There's  
7 an objection and let's hear it.

8 I'll sustain the objection to the question as his  
9 only license being a vehicle operator's license.

10 You may ask him as to any professional license.

11 Q Do you have any other professional license of  
12 any kind, Mr. Mallach?

13 A No, I do not, sir.

14 Q With regard to the date that you were first  
15 retained by the plaintiffs in this case, that was sometime  
16 in December 1975. Is that correct?

17 A That's correct.

18 Q And by whom were you retained at that time?

19 A By N.C.D.H.

20 Q Would you say it was approximately--well, when  
21 in December were you first approached as to your possibility  
22 of testifying in this case?

23 A I don't recall the exact date but it was very early  
24 in the month.

25 Q And did you have any conferences during the

1 of December with representatives of the N.C.D.H.?

2 A Yes, I did.

3 Q Was this a conference which was also attended by  
4 Mr. Carl Bisgaier?

5 A Yes, there was.

6 Q When did you first give a commitment to the  
7 plaintiffs or their attorneys that you would testify in this  
8 case?

9 A Roughly, again, in early December. Roughly that same  
10 time.

11 Q Did you make the commitment the first day that  
12 you were contacted?

13 A I made the commitment the same date that I was formally  
14 contacted by N.C.D.H.

15 Q At that time, were you told that there was a trial  
16 date scheduled for February 2, 1976?

17 A Yes, I was.

18 Q Were you told that it was possible that you might  
19 have to prepare a written report for the attorneys for the  
20 defendants?

21 A No. I was not asked to prepare a written report.

22 Q Was there ever a time in December, 1976, that you  
23 were told that you might have your deposition taken prior  
24 to trial--December, 1975. Excuse me.

25 A I don't recall if I was specifically told that or not.

1 I assumed it naturally.

2 Q You assumed that your deposition would be taken  
3 prior to--

4 A Could be taken.

5 Q --prior to February 2?

6 Do you recall during depositions when I showed you  
7 a copy of something called "Notification of Intention to  
8 use Expert Witnesses," dated January 9, 1976?

9 A Yes, I do.

10 Q And this was marked DEB-2 for identification.

11 Was the information contained on this document prepared  
12 or furnished by you to the attorneys for the plaintiffs?

13 A The substance of this information was, yes.

14 MR. BUSCH: For trial purposes, your Honor, could  
15 I mark this with the identification DEB-2, I believe?

16 THE COURT: All right.

17 (DEB-2, document, marked for identification.)

18 Q Have you attended or ever prepared a zoning  
19 ordinance, Mr. Mallach?

20 A I've never prepared a zoning ordinance.

21 Q Have you attempted or ever prepared a master plan?

22 A I've never prepared a master plan.

23 Q To the best of your knowledge of N.J.S.A. 45:14-1,  
24 do you know whether you're legally licensed or empowered  
25 to prepare a zoning ordinance or master plan?

1 A Under the provisions of N.J.S.A. 55-14A, I believe,  
2 I would not be authorized to prepare, to the best of my  
3 knowledge, a master plan or a zoning ordinance for any  
4 municipality.

5 Q Is there any law in the State of New Jersey that  
6 would authorize you to prepare a master plan or a zoning  
7 ordinance?

8 A Well, if there's one law that prevents me from doing  
9 so, I can't see that there would be another law which would  
10 permit me to do so.

11 Q You're not aware of any law that supercedes the  
12 one that prevents you, are you?

13 A Not to the best of my knowledge.

14 Q Now, with regard to the methodology employed by  
15 you in preparing for the--strike that. Excuse me.

16 MR. BUSCH: If the Court will bear with me for  
17 a moment, please.

18 Q You participated with regard to the County and  
19 ~~Municipal~~ Government Study Commission with a two-volume  
20 document called "Planning for the Future." Is that correct?

21 A That's correct.

22 Q And you were one of the authors of that report?

23 A I was the author of that report.

24 Q Do you recall at the outset of that report that  
25 you noted that there might be a tendency toward a regional

1 or national shifting of population away from the Metropolitan  
2 Northeast?

3 A I believe I may have so noted.

4 Q And do you recall that stating if in fact the  
5 Northeast was in effect slipping nationally that it might  
6 render the rest of the report irrelevant?

7 MR. SEARING: Your Honor, I don't see what that  
8 has to do with the qualifications.

9 THE COURT: I would tend to agree with that.

10 Q Was this report one of the documents cited by  
11 you as something you had authored for the Musto Commission?

12 A That's correct.

13 MR. SEARING: If the Counsel is conceding his  
14 expertise at this point I would think that was relevant,  
15 but if not, maybe at a time after his qualifications--

16 THE COURT: It would seem that this would be  
17 general cross-examination, Mr. Busch.

18 MR. BUSCH: I won't argue the point.

19 Q Were you also the author of a paper which was  
20 submitted to counsel and distributed to the attorneys for  
21 the defendant, called "Zoning Litigation and Housing  
22 Production: Unresolved Issues in the Wake of Mt. Laurel?"

23 A That's correct.

24 Q And, for the record, that would be a fifteen  
25 page document.



1           Would that be right?

2           A       That's correct.

3                   MR. BUSCH: Can we mark this for identification,  
4           your Honor?

5                   THE COURT: DEB-3 for identification.

6                   (DEB-3, fifteen page document, marked for  
7           identification.)

8           Q       Was the document marked DEB-3 for identification,  
9           which was apparently furnished by you to Mr. Searing,  
10          directed in any way to anyone other than Mr. Searing?

11          A       At any time?

12          Q       Yes. Was it furnished to any group?   Was it a  
13          paper?

14          A       Yes. This is a typed script of a paper that I was  
15          invited to submit for a publication to be sponsored by a  
16          group entitled "The Mt. Laurel Impact Committee of the  
17          Student Bar Association of Rutgers Newark Law School," for  
18          publication of an anthology of papers on the subject.

19          Q       And DEB-3 deals largely with what the Courts  
20          have done since and as a result of the Mt. Laurel decision  
21          on Mt. Laurel issues?

22          A       That's correct.

23          Q       And would it be a fair characterization to say  
24          that in that paper you stated that the Courts have ruled  
25          in such a way which I think you stated would be misguided

at best and lead to certain absurd conclusions?

A That may be the language.

Q You won't deny that that was the language, would you?

A No.

Q Specifically, you criticized the way the courts have interpreted Mt. Laurel since that case has been decided. Isn't that true?

A I criticized certain interpretations as being inconsistent with what one might call the logic of housing production.

Q Would it be fair to say that you were an advocate of a specific position in testifying in this case?

A Well--

Q Would--

A I think I can distinguish that. As an individual, I'm an advocate of certain positions. I hold certain philosophical principles and values. At the same time, I believe the substance of the testimony that I will be giving in this case will largely be independent of any particular bias or philosophical position.

Q Do you think that you have a bias or philosophical position with regard to housing?

A I do not acknowledge a bias. I will acknowledge a philosophical position.

Q Would you say that paper, DEB-3 for identification,

1 adequately presents your philosophical position?

2 A Well, I don't know--I don't know that I would go that  
3 far. There's certainly nothing in the paper marked DEB-3  
4 that is inconsistent with the position. It deals with a  
5 very specific area. It's perhaps not reflective of my  
6 position, generally.

7 Q In DEB-3 for identification, you espouse the  
8 principle that municipalities should adopt resolutions  
9 of need. Is that correct?

10 A Yes.

11 Q That they should engage in tax abatement programs  
12 to encourage low and moderate income housing?

13 A That's right.

14 Q And that they should waive standards in favor of  
15 State and Federal zoning--in other words, waive the local  
16 standards they might otherwise have.

17 A Yes. Where there were specific comparable standards  
18 in Federal, State programs, the municipalities could  
19 substitute those standards for the equivalent in their  
20 ordinance.

21 Q You in fact are being paid to testify in this case,  
22 are you not?

23 A That's correct.

24 Q And your hourly rate is thirty dollars?

25 A That's correct.

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THE COURT: You anticipate much more by way of  
voir dire?

MR. BUSCH: I believe there will be more, your  
Honor, at least fifteen minutes I would think. Perhaps  
ten minutes.

THE COURT: All right. We'll have to recess for  
the day. Nine o'clock tomorrow morning.

(The Court stands in recess for the day.)

\* \* \* \* \*

1 THURSDAY, FEBRUARY 19, 1976 Session:

2 (There is a discussion on the record between  
3 Court and Counsel.)

4 CONTINUED CROSS-EXAMINATION OF ALAN MALLACH BY MR. BUSCH:

5 Q Mr. Mallach, yesterday I believe you stated that  
6 you were a loan consultant and a financial planner. Is  
7 that correct?

8 A No. The term--well, it's present tense. I am a loan  
9 consultant-project planner for the New Jersey Housing  
10 Finance Agency.

11 Q Does that require the gathering of data of any  
12 financial matter?

13 A Yes.

14 Q And do you have a general methodology of  
15 gathering data? Do you have any generalized way about which  
16 you gather data?

17 A Well, there's a different matter for or methodology  
18 for each type of data. Could you be more specific?

19 Q Do you have any checks or balances within your  
20 organization to see that the data which is collected is  
21 to the extent possible correct?

22 A Well, it varies, again. For example, in terms of  
23 financial data, any financial data that I gather about a  
24 project, whether it's in terms of cost anticipation or  
25 revenue expectation or whatever, is verified and reviewed

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1 by the finance agency that it's submitted to, whether a  
2 State or Federal agency.

3 Q Maybe I didn't make myself clear.

4 Within Mallach and Associates, do you have a way of  
5 checking if one of your employees obtains data, does another  
6 do anything to check the veracity of that data?

7 A Sometimes. If there's any question or any uncertainty  
8 about the data, certainly.

9 Q And I believe you stated that you have never  
10 taken a formal economics course. Is that correct?

11 A That's correct.

12 Q With regard to establishing data for the present  
13 case, did you do all of the work on that yourself or did  
14 you delegate to others?

15 A I delegated some of the work to others.

16 Q Do you recall during the depositions questions  
17 were asked as to how land values were established?

18 A Correct.

19 Q And was the method in which you established land  
20 values in the present case similar to any other method you  
21 ever used to establish land data in a previous case?

22 A Definitely.

23 Q And the method of establishing land values in  
24 the present case was by having your employees make calls  
25 to realtors. Is that correct?

1 A That's correct.

2 Q And you didn't have at the time of depositions,  
3 on January 27, 1976, a record of who those realtors were,  
4 did you?

5 A Not at that time, no.

6 Q And you didn't have anything in writing from any  
7 of those realtors?

8 A Not at that time, no.

9 Q And you didn't have anything indicating the  
10 qualifications or the expertise of realtors who furnished  
11 information to you, do you?

12 MR. SEARING: I'm sorry. I don't see that this  
13 has to go to Mr. Mallach's qualifications.

14 THE COURT: I have to sustain the objection.

15 MR. BUSCH: Your Honor, I am trying to establish  
16 a methodology to see whether what he did in the past  
17 bears on this case.

18 THE COURT: I don't think it bears on the  
19 qualifications. I sustain the objection.

20 You can inquire into it on your general cross-  
21 examination.

22 MR. BUSCH: Thank you.

23 Q You also mentioned yesterday, Mr. Mallach, a  
24 report that was done in 1973 through the Department of  
25 Community Affairs on planned unit developments. Is that

1 correct?

2 A It was a study rather than a report.

3 Q I have been furnished with a two-volume document,  
4 entitled, "Draft for Discussion only: Planning for the Future,"  
5 County and Municipal Government study commission. Is any  
6 of the information that these two documents based upon or  
7 similar to the 1973 D.C.A. study?

8 A Well, I should mention it was not a D.C.A. study.  
9 The Department of Community Affairs provided some of the  
10 funds with which the Commission conducted this study.

11 The answer without qualification is yes.

12 Q And was it your findings or the Commission's  
13 findings that planned unit development would be an appropriate  
14 way to encourage low and moderate income housing?

15 A Part--one of the recommendations in that draft, which  
16 has not yet been made--adopted formally as a finding by the  
17 Commission is that planned unit development, appropriately  
18 done, can be a means of providing low and moderate income  
19 housing.

20 Q But didn't that draft actually encourage the use  
21 of planned unit development for that purpose?

22 A Suitably qualified, yes.

23 Q Were you aware of the fact that the Township of  
24 Mt. Laurel in fact had on its zoning ordinance at the time  
25 that the case was decided by the Supreme Court substantial



1 acreage devoted to planned unit development?

2 A Yes, I am.

3 Q Are you aware of the fact that the Supreme Court  
4 did not approve of the concept of planned unit development  
5 in Mt. Laurel?

6 A Yes, I am.

7 Q And this cast a doubt on the way that "deals"  
8 were made between townships and developers?

9 A Well, I think there's abundant evidence on the record  
10 that Mt. Laurel had used the planned unit development  
11 mechanics in a manner that was certainly not conducive to  
12 planned low and moderate income housing and actually inimical  
13 to it.

14 Q Are you aware that the Supreme Court specifically  
15 withheld approval of the planned unit development in that  
16 case?

17 A Yes.

18 MR. SEARING: I fail to see the relevancy of this  
19 to Mr. Mallach's qualifications.

20 THE COURT: The background familiarity with the  
21 Mt. Laurel facts, I suppose.

22 I'll allow it.

23 The answer was yes.

24 MR. BUSCH: Your Honor, for identification  
25 purposes, since the witness has identified these two

1 documents, could we mark them, please, as I believe  
2 DEB-3A and B?

3 The number may be wrong.

4 THE COURT: DEB-4 and 5.

5 MR. BUSCH: This is part of the same document.

6 I thought it should have the same number, for A and B.

7 THE COURT: All right. DEB-4 and 4A.

8 (DEB-4 and DEB-4A, a two-volume document entitled  
9 "Draft for Discussion Only: Planning for the Future,"  
10 marked for identification.)

11 Q Can you tell me, Mr. Mallach, how many persons  
12 participated in the preparation of DEB-4 and 4A?

13 A Well, if by preparation you mean the initial data  
14 gathering, research and analysis and what not, over a dozen.

15 Q And how many participated in the actual writing  
16 or the putting together of these booklets?

17 A This actual booklet was prepared by myself.

18 Q Okay. So that you would stand behind any  
19 statements that would be contained in these two booklets?

20 A Yes, I would.

21 Q As being your own work.

22 A As being my own work, yes.

23 Q And you stated in DEB-4 that the form of ownership  
24 of housing is as significant a distinction among housing  
25 types as its physical shell. Do you remember a statement

1 to that effect?

2 A Something to that effect, yes.

3 Q And in your expertise, in whatever field you may  
4 feel that you're qualified, do you feel that a municipality  
5 has an obligation to set forth in its ordinances that some  
6 units shall be owned and some shall be rented?

7 A As I believe I wrote, in that context, the issue was  
8 the potential problem of disappearance of rental housing  
9 stock because of certain difficulties with providing rental  
10 units and maintaining rental units, and I don't believe that  
11 I suggested that a municipality has an obligation to  
12 distinguish in that form, but I believe I did suggest as a  
13 general statement that some consideration should be given  
14 to means to maintain a reasonable percentage of rental  
15 housing in the total stock.

16 Q Well, wasn't it suggested on Page 33 of Volume I  
17 that in fact this distinction was significant and was an  
18 important obligation? And I'll be happy to show you the page.

19 MR. SEARING: May counsel show him the page.

20 Q I read the words to you, "It should be stressed  
21 that the form of ownership," and those words are underlined,  
22 "in a sense is as significant a distinction among housing  
23 types as is the physical shell, since it has a potentially  
24 significant effect on the potential population and the  
25 accessibility of units to different segments of the population."

1           That sentence appears on Page 33. Is that right?

2   A       That's correct.

3           Q       And you're suggesting that a municipality has a  
4   certain obligation to insure that some percentage of housing  
5   units would be in rental?

6   A       Again, although I don't remember--perhaps I may be  
7   mistaken. I don't remember referring to it as an obligation  
8   but I certainly consider it a desirable social goal.

9           Q       Are you aware of the cases involving Maplewood  
10   and Highland Park in which the Court specifically held that  
11   municipalities cannot attempt to regulate ownership but only  
12   use?

13   A       Not specifically.

14           Q       Now, with regards to your qualifications yesterday  
15   as a teacher and lecturer, you mentioned Fairleigh-Dickinson,  
16   Rutgers and Stockton as places where you had formal teaching  
17   appointments. Is that correct?

18   A       That's correct.

19           Q       And yet you never received a degree in teaching,  
20   have you, from a State teacher's college or the like?

21   A       Good God, no.

22           THE COURT: You needn't phrase it that way.

23           THE WITNESS: No.

24           Q       Did you say, "Good God, no," because you look  
25   down on a teacher's degree?

1 A No. Because I feel that a degree in teaching itself  
2 is not and has never been a relevant consideration for  
3 college lecturing.

4 Q And the colleges where you were able to find a  
5 job teaching didn't even require a Master's degree, did they?

6 A Well, I believe in the case of Stockton the President  
7 of the College applied for and received a waiver of the  
8 usual requirements from the Board of Trustees.

9 Q And with regard to your one course that you  
10 audited at Yale Law School, did you ever apply for admission  
11 to Yale Law School?

12 A No.

13 Q Did you ever receive any recognition by Yale  
14 that you were enrolled as an auditing student?

15 A No.

16 Q Did anyone know you were ever there?

17 A The professor.

18 Q The school had no record?

19 A Not a formal matter.

20 Q With regard to your qualifications for which  
21 you're testifying here, are you familiar with the A.I.P.?

22 A Yes, I am.

23 Q What does that stand for?

24 A The American Institute of Planners.

25 Q Are you familiar with any persons practicing

1 professional planning in the State of New Jersey who are  
2 members of the A.I.P.?

3 A I suspect many such are.

4 Q Are you a member of the A.I.P.?

5 A No, I am not.

6 Q Would you consider that to be the most important  
7 organization for professional planners of a professional  
8 nature?

9 A I suspect so.

10 Q You mention the panel on which you sat in Camden.  
11 Was that in 1975, after Mt. Laurel?

12 A I'm sorry.

13 Q I'm sorry. Did you sit on some panel, on a panel  
14 discussion?

15 A Oh, I'm sorry, yes. At the law school in Camden.  
16 That was in 1975 before the Mt. Laurel decision.

17 Q And I believe you mentioned that you wrote an  
18 article that appeared in the Rutgers Camden Law Journal  
19 that in effect followed from that panel or that conference.

20 A That's correct.

21 Q And did that article reflect the views of the  
22 people who sat on the panel as a composite or was it mostly  
23 your views?

24 A It was a personal article.

25 Q Can you tell me who sat on the panel at Camden?

1 A I'll try to remember. The participants included a  
2 gentleman from the law firm that represented Mt. Laurel in  
3 the Southern Burlington NAACP case. I believe his name was  
4 Mr. Thorndike, but I'm not certain. And Mr. Bisgaier, now  
5 the Public Advocate; Mr. Rose of Rutgers University, Judge  
6 Furman and a gentleman whose name I don't remember. I think  
7 it's Mr. Chamberlain, who was with Leon Weiner, a developer  
8 from Delaware.

9 Q Was there any agreement at that time among the  
10 panelists that one of you would write an article for the  
11 Rutgers Law Journal?

12 MR. SEARING: I object, your Honor. I don't  
13 see the relevance.

14 THE COURT: Agreement among--

15 MR. BUSCH: Well, I'm trying to understand, your  
16 Honor, whether that article reflected solely Mr.  
17 Mallach's understanding of the panel discussion or a  
18 request by the group to write the article.

19 MR. SEARING: I think he answered that it was of  
20 a personal nature.

21 THE COURT: I'll allow the question. You can  
22 answer it.

23 Was there any agreement among the panelists?

24 THE WITNESS: No.

25 THE COURT: As to who would write an article or

1 contribute an article.

2 THE WITNESS: None whatsoever.

3 THE COURT: All right.

4 Q Was there any substantial discussion among the  
5 panelists other than that which took place before the public?

6 A No, there was not.

7 Q There was no pre-meeting meeting?

8 A No.

9 MR. BUSCH: If your Honor will bear with me, I  
10 believe I'm done but I would like to check.

11 I have nothing further. Thank you.

12 THE COURT: Does anybody else have any questions  
13 on voir dire?

14 Mr. Selesky.

15 CROSS-EXAMINATION BY MR. SELESKY:

16 Q Mr. Mallach, you testified you hold yourself out  
17 as an expert in housing, planning and zoning. Is that correct?

18 A That's correct.

19 Q Now, you also testified on direct examination  
20 that in your occupation as a loan packager, I believe you  
21 called it--

22 A Loan consultant.

23 Q Loan consultant, that you would engage engineers  
24 and architects to carry forth the projects. Isn't that true?

25 A That's correct.



1 Q And the reason that you have to engage engineers  
2 and architects is because you are not qualified to draw up  
3 plans; you are not qualified to draw up information necessary  
4 to get a project underway of that nature in the State of New  
5 Jersey. Correct?

6 A Certainly not qualified to draw up all of it, no.

7 Q All right. You're qualified to draw up some of it?

8 A Well, not actual architectural and engineering work, no.

9 Q Now, isn't it true that in an architectural and  
10 engineering capacity it's necessary for the architect and  
11 engineer to exercise their particular expertise in working  
12 at a plan and determining the cost values of each item?  
13 Isn't that true?

14 A That's one aspect, yes.

15 Q And that's why you hire them in your business.  
16 Correct?

17 A No. The--Determining the cost value of the item is  
18 a secondary aspect of an architect's or engineer's work  
19 and certainly not the principle reason why I hire them.

20 Q When you engage a consultant, or when you are  
21 engaged as a consultant by potential corporation that is  
22 starting some development, do you do this work of drawing  
23 up what it's going to cost for a particular building or  
24 does the architect or engineer?

25 A Well, as a general rule I do the preliminary work

1 and the general overall work for cost purposes and then  
2 the architect and/or the engineer, after they've done their  
3 plans, their specific designs and plans, do the more detailed  
4 work, based on those specific details of those plans.

5 Q Oh. In other words, you would get the box car  
6 figures and the true, actual figures of what it's going to  
7 cost would come from an architect or engineer?

8 MR. SEARING: I object to that characterization.

9 THE COURT: I don't believe the term is fully  
10 understandable, Mr. Selesky.

11 Q Do you understand it?

12 A No.

13 THE COURT: And I'll sustain the objection to  
14 the wording of that.

15 Q Now, it's your testimony then that when you do  
16 a project you work out the figures of costing at the item  
17 or costing out the building in advance of having an architect  
18 or engineer do it?

19 A In general, under these programs, when most of these  
20 projects are built, it's necessary to provide the agency  
21 with preliminary cost figures prior to retention of  
22 architects or detailed work. There are various levels of  
23 detail that take place during the period of the project  
24 processing, which requires different levels of involvement  
25 for myself and the architect and engineers and so on.

1 Q And the specific question I asked you was do you  
2 lay out the particular cost items of a building when you are  
3 engaged as a consultant?

4 MR. SEARING: Your Honor, this is repetitious now.  
5 He's answered that question.

6 THE COURT: Well, I'll allow it.

7 You may answer it.

8 A I believe I stated I lay out the preliminary figures,  
9 which are usually more general than the final figures.  
10 The final figures are arrived at in consultation and  
11 conjunction with the architect and the engineers.

12 Q The end results is the client always uses the  
13 architect's and engineer's figures. Right?

14 MR. SEARING: Your Honor, I object to that  
15 characterization. That is not what the witness has  
16 testified to.

17 MR. SELESKY: It's a different question.

18 THE COURT: The objection is overruled.

19 You may answer it.

20 A The final figures that are provided to the client are  
21 not produced exclusively by the architect and the engineer  
22 but are produced with my involvement.

23 Q Okay. Did you ever take a course in statistics  
24 when you were an undergraduate at school?

25 A Yes, I did, sir.

1 Q All right. In representing a client in your  
2 occupation, you also engage attorneys. Isn't that true?

3 A That's correct.

4 Q And the attorneys handle the zoning problems  
5 before the boards of adjustment. Isn't that true? --if they  
6 have any.

7 A The attorney would make the formal appearance. That's  
8 correct.

9 Q Okay. The reason being your consulting organization  
10 cannot appear before a board of adjustment as representing  
11 a client in a zoning matter. True?

12 A That's correct.

13 Q Now, in the event a subdivision is required,  
14 isn't it true that you may engage for your client a planner?

15 A That's correct.

16 Q And the reason being your organization cannot  
17 testify as a planner before a board, before a planning board.  
18 Correct?

19 A As a general rule, we engage--we would engage an  
20 architect or an engineer to do that, the planning work in  
21 conjunction with the architectural or engineering work.

22 Q Well, they are authorized to appear before  
23 planning boards. Correct?

24 A Yes.

25 Q And you're not. That is in the presentation of

1 a plan before a planning board subdivision.

2 A I'm not sure that I'm precluded from making statements  
3 on behalf of my client in front of a planning board of a  
4 general nature. I am not--I recognize that I'm not able to  
5 present, you know, selling a plan or subdivision.

6 Q Now, in addition, you rely on attorneys for the  
7 zoning work, on planners for the planning work and engineers  
8 and architects for the drawing up of specifications and  
9 things of that nature.

10 A Correct.

11 Q Would it be fair to characterize your position  
12 then in your firm as an administrator?

13 A In part.

14 Q Are there any other administrators in your firm  
15 besides you?

16 A Administrators?

17 Q Yes. Anybody else?

18 A I don't think I would use that characterization, no.

19 Q Now, you testified that to gain real estate  
20 figures you made various calls to real estate agencies.  
21 Is that correct?

22 A That's correct.

23 Q And these were individual agents?

24 MR. SEARING: I object, your Honor. This goes  
25 to the substance of Mr. Mallach's testimony.

1 MR. SELESKY: I'll link it up in a minute, your  
2 Honor.

3 THE COURT: All right.

4 You may answer that.

5 A Yes.

6 Q And how many were they in number?

7 A Approximately half a dozen.

8 Q Are you aware of the fact that there are several  
9 hundred real estate agents in Middlesex County that belong  
10 to an organization called the Middlesex County Board of  
11 Realty and that would you have called them you would have  
12 obtained the monthly sales throughout the county?

13 You didn't do that, did you?

14 A We have the monthly sales throughout the county.

15 Q When you were drawing up this particular report,  
16 you relied on the individual real estate agents your  
17 assistants called. Isn't that true?

18 A In part.

19 Q Now, is it your testimony now that you relied on  
20 the sales of the Middlesex County Board of Realty for the  
21 preparation of your reports?

22 A No. We receive information, which is on all sales  
23 taking place in Middlesex County on a weekly basis from the  
24 Real Estate Data Service, which compiles and publishes all  
25 of that information as a standard source for all public

1 and private agencies; however, in the issue of land, which  
2 is at issue here, that data is unfortunately not usable for  
3 the purposes of cost estimation.

4 Q Now, have you ever engaged in the purchase and  
5 sale or receipt of a commission for the sale of real estate?

6 A Directly, no.

7 Q You're not a real estate salesman?

8 A No.

9 Q Or a broker? A No.

10 Q Have you speculated yourself in real estate to  
11 any degree?

12 A I do not speculate in real estate.

13 Q You would not tell the Court that you are an  
14 appraiser.

15 A I'm not an appraiser.

16 Q The information that you received in regard to  
17 this report gives the gross. These various reports, the  
18 monthly reports that came in or the weekly reports, is a  
19 sales service. Isn't that true?

20 A That's correct.

21 Q Now, that sales service is not the figures of  
22 the Middlesex County Board of Realty. Isn't that true?

23 A The sales--the sales service represents all sales  
24 transactions that are recorded in the county.

25 Q That's not the statistics of the Middlesex County

1 Board of Realty. Isn't that true?

2 A That's not the statistics of the Middlesex County Board  
3 of Realty.

4 Q And also, that is a service that comes in and  
5 checks the deeds and information and only gives the planning  
6 information of the sale price and that's about all.

7 A The sales price, the mortgage, the mortgage amount,  
8 the mortgage holder and a number of other matters.

9 Q Now, isn't it true or are you aware that the  
10 Middlesex County Board of Realty would contain data cards  
11 giving you the size of the structure, the amount of land,  
12 the purchase price and other considerations then?

13 MR. SEARING: Your Honor, I have to object as  
14 being repetitious at this point.

15 THE COURT: I'll sustain that objection.

16 MR. SELESKY: I have no further questions.

17 MR. STONAKER: I have some questions.

18 THE COURT: All on voir dire?

19 MR. STONAKER: Yes, your Honor.

20 THE COURT: All right, Mr. Stonaker.

21 CROSS-EXAMINATION BY MR. STONAKER:

22 Q Mr. Mallach, are you familiar with the Professional  
23 Planners' licensing Act?

24 A Yes, I am, sir.

25 Q And do you do any planning work at all, sir?



1 A I may do planning work depending on how the term is  
2 defined. I certainly avoid the term professional planning  
3 work.

4 Q What planning work do you do, sir?

5 A Well, again it depends on how you define the term  
6 planning.

7 Q Well, you define the term for me, sir.

8 A In the sense that planning can be defined as work or  
9 writing or teaching or analysis dealing with say the manner  
10 in which the country and its units prepare for the future  
11 and prepare and deal with developments, broadly defined,  
12 then I certainly do planning work.

13 Q You do planning work in--

14 A In that sense.

15 Q Do you do services primarily to guide governmental  
16 policy for its assurance of orderly and coordinated  
17 development of municipal, county, regional and metropolitan  
18 land areas in the State or portions thereof?

19 A ~~Not~~ in the context of the planning--professional  
20 planning act.

21 Q Not in that context?

22 A No.

23 Q And in what context do you do it then, sir?

24 A In a broad educational research or say writing  
25

1 standpoint rather than from the preparation of specific  
2 plans to guide the development of specific municipalities  
3 or counties.

4 Q Then you could not prepare a plan for the orderly  
5 development of a municipal and county or region in a  
6 metropolitan area? Is that correct?

7 A I could professionally; I could not under the Planning  
8 Act, Licensing Act.

9 Q You could not under the Licensing Act.

10 A That's correct.

11 Q Are you familiar with the qualifications under  
12 the Licensing Act?

13 A Yes, I am.

14 Q Could you qualify for a license in the State of  
15 New Jersey?

16 MR. SEARING: Your Honor, this is repetitious.  
17 Mr. Busch covered this yesterday.

18 MR. STONAKER: No, your Honor. I think this is  
19 very relevant.

20 THE COURT: But these are repetitious.

21 MR. STONAKER: I don't think that Mr. Busch--

22 THE COURT: Excuse me. I'm talking.

23 MR. STONAKER: I'm sorry, your Honor.

24 THE COURT: These are repetitions of questions  
25 asked by Mr. Busch. The objection is sustained.

1 MR. STONAKER: Your Honor, I don't recall any  
2 specific questions asked about whether he could  
3 qualify under the Licensing Act. I remember questions  
4 as to whether he did have a license in the State of  
5 New Jersey but not whether he could qualify for  
6 licensing in the State of New Jersey under the Licensing  
7 Act.

8 MR. BUSCH: I don't believe I asked that question,  
9 your Honor, and I would point out that there are  
10 various ways in which one can qualify in that act.

11 THE COURT: Anything further?

12 MR. STONAKER: Pardon me, your Honor.

13 THE COURT: Anything further?

14 MR. STONAKER: Yes, your Honor.

15 CONTINUED CROSS-EXAMINATION BY MR. STONAKER:

16 Q Mr. Mallach, are you familiar with the  
17 qualifications to qualify under A.I.P.?

18 A In a general sense.

19 Q Could you qualify for A.I.P.?

20 A Yes.

21 Q And in what area could you qualify for A.I.P.?

22 A I've been both--both on the basis of my own  
23 observations of the requirements and on the statements of  
24 individuals who are A.I.P. members. I've been told that  
25 I could qualify for full A.I.P. membership.

1 Q Doesn't it require an undergraduate degree in  
2 planning and three years of experience?

3 A I do not recall the specific--the specific  
4 requirements of the A.I.P. membership.

5 Q And a Master's degree and three years of experience?

6 A As I say, I do not recall the specific requirements.

7 Q If I showed you a pamphlet, would this refresh  
8 your recollection as to the requirements for A.I.P.?

9 A Perhaps.

10 MR. SEARING: While the witness is perusing the  
11 documents could we have an identification as to what  
12 it is?

13 MR. STONAKER: It's the American Institute of  
14 Planners document, and it indicates what the membership  
15 qualifications are.

16 Do you want to examine it?

17 Q Now, does that refresh your recollection?

18 A Yes, it does.

19 Q Mr. Mallach?

20 A Yes, it does.

21 Q Could you qualify under those membership  
22 requirements?

23 A I believe I could.

24 Q In what area, sir?

25 A I believe under the--under subparagraph 4F of this

1 document.

2 Q Subparagraph 4F, you've had six years of planning  
3 experience, sir?

4 A I believe so.

5 Q In what area?

6 A The work that I've performed for the Department of  
7 Community Affairs is relevant to planning experience, work  
8 that I have conducted for the County and Municipal  
9 Government Study Commission is relative to planning  
10 experience, the consulting work that I've performed for  
11 non-profit organizations in housing and development is  
12 relative to planning experience, and a case could be made  
13 that the work that I did for the Community Progress, Inc.,  
14 is relevant to planning experience.

15 The term planning is used by--as used by the A.I.P.  
16 is not strictly limited to physical planning in the narrow  
17 sense.

18 Q Have you attempted to obtain admission to the  
19 A.I.P.?

20 A No, I have not.

21 Q Your function here is to review all the zoning  
22 ordinances of the municipalities who are defendants in this  
23 action. Is that correct?

24 A That's correct.

25 Q Is one of those municipalities South Brunswick

1 Township?

2 A That's correct.

3 Q And is your wife the attorney for the South  
4 Brunswick Planning Board?

5 MR. SEARING: I object, your Honor.

6 MR. STONAKER: I think it's very relevant, your  
7 Honor.

8 THE COURT: That objection is overruled.

9 You may answer.

10 A That is correct.

11 Q And you intend to review the South Brunswick  
12 zoning ordinance?

13 A Prior to my wife's being retained by the South  
14 Brunswick Planning Board, the members of that planning board  
15 were provided full information, full disclosure on this  
16 relationship. Since her being retained, we have made a  
17 point of not discussing this matter. She has made a point  
18 of not participating whatsoever in any discussions with  
19 the Planning Board on this specific topic.

20 Q However, you're going to make a judgment today  
21 as to the South Brunswick Zoning Ordinance?

22 A I think it's unlikely we will reach it today, but at  
23 some point in the next week or two.

24 Q You will analyze the South Brunswick Township  
25 Zoning Ordinance?

1 A That's correct. She had nothing to do with the  
2 representation of that ordinance.

3 MR. STONAKER: I have no further questions.

4 THE COURT: Mr. Spritzer?

5 MR. SPRITZER: I have a few questions, your Honor.

6 CROSS-EXAMINATION BY MR. SPRITZER:

7 Q Mr. Mallach, on the questioning by Mr. Stonaker  
8 you indicated that you could qualify for A.I.P. membership  
9 under Section 4F. Is that correct?

10 A Yes.

11 MR. SEARING: Your Honor, I object. This is  
12 repetitious and A.I.P. or Mr. Mallach's membership  
13 or non-membership has been clearly established and  
14 A.I.P. membership qualifications are not on trial in  
15 this case.

16 MR. SPRITZER: That's correct.

17 THE COURT: I'm allowing testimony as to  
18 whether he is eligible as he understands.

19 It's repetitious. Are we leading into something?

20 MR. STONAKER: Yes, your Honor. I would hope so.

21 I don't want to waste your Honor's time.

22 THE COURT: All right. Go ahead.

23 Q As I read this 4F, Mr. Mallach, it states  
24 "Bachelor's degree in a field relating to planning and six  
25 years of planning experience, which must include at least

1 four years of professional planning experience."

2 Now, isn't it true that you have testified you are  
3 not a professional planner?

4 A I'm not a professional planner in the meaning of the  
5 New Jersey Professional Planning Licensing Act.

6 Q Are you saying that you are a professional planner  
7 under the A.I.P. definition?

8 A I believe I may be.

9 Q You may be.

10 A Yes.

11 Q But you're not sure?

12 A I can't be sure unless I applied formally.

13 Q Mr. Mallach, on your original examination I  
14 believe you were asked to characterize your field, and  
15 is it wrong to say that you specialize in housing developing  
16 housing development? Is that what you said?

17 A That is one of the areas.

18 Q You gave two categories.

19 A Two principle areas.

20 Q Two principle areas.

21 A Yes.

22 Q And I want to make sure that I understood that.  
23 One was housing development.

24 A Correct.

25 Q And what was the second one?



1 A The second was survey research and social research.

2 Q And those could be characterized as your field  
3 of expertise?

4 A Not exclusively; principally, but not exclusively.

5 Q In other words, you have other fields of expertise?

6 A Yes.

7 Q And what is your field of expertise?

8 A Well, one which I did cite on direct examination was  
9 that of fiscal analysis with regard both to fiscal impact  
10 of housing development and general municipal fiscal concerns.  
11 I believe there are probably others but those are the three  
12 in which the firm has been active in representing clients,  
13 undertaking work.

14 Q Now, at what point in time did you determine that  
15 these were your three fields of expertise?

16 A Well, this is somewhat circular. I'm referring here  
17 to the activities in which the firm, Alan Mallach Associates,  
18 is engaged, and these are the fields where we have expertise  
19 and in which that expertise is recognized and that people  
20 are willing to hire us to use that expertise.

21 I would say that in regard to housing development--

22 Q I just asked you at what point in time.

23 A Well, it varies for each one.

24 Q Was it prior to the time that you were on  
25 depositions on January 27?

1 Q Now, you recall those depositions I asked you:  
2 "What do you regard as your profession?"

3 A Yes.

4 Q Do you recall that question?

5 And your answer was: "A profession of consulting  
6 services in areas of competence." Is that correct?

7 A There's a typo in there. It was the provision of  
8 consulting services in areas of competence.

9 Q So the deposition is incorrect when it says  
10 "profession"?

11 A Yes.

12 Q And I said, "All right. That's a rather broad  
13 term. Correct?"

14 A Yes.

15 Q And you said, "It is." And you said, "It's  
16 deliberately broad."

17 Do you remember that?

18 A Yes.

19 Q You do remember that?

20 A Yes.

21 Q And I said, "That's the best you can do in answer  
22 to that question?" And you said, "Well, I can supplement  
23 that by listing what I consider or giving representative  
24 examples of what I consider to be areas of competency, which  
25 are unfortunately, I believe, too varied to lead themselves

1 to a single description."

2 Do you recall saying that?

3 A Yes, I do.

4 Q And I said, "Would that be a long list?" And you  
5 said, "Well, it depends on how broad you define competency  
6 and it could be," and you never described what you just  
7 described this morning, the three fields, did you?

8 A No, I did not.

9 Q Now, you've testified yesterday in respect to  
10 your testimony in a zoning litigation, I believe. Isn't  
11 that right? Is it Aliende vs. Township of Bedminster?

12 THE COURT: Allen-Dean.

13 A Allen-Dean. Allen dash Dean.

14 Q And in that case did you say you analyzed the  
15 zoning ordinance?

16 A That's correct.

17 Q And you gave testimony as to whether the ordinance  
18 was exclusionary or not.

19 A That's correct.

20 Q In that particular case, did you have available  
21 to you the provisions of the zoning ordinance?

22 A Yes, I did.

23 Q Did you have available to you the zoning map?

24 A Yes, I did, in somewhat disorganized form but  
25 nevertheless the zoning map.

1 Q Did you have available to you the land uses in  
2 the town?

3 A I had available to me some information on the land  
4 uses, not exhaustive.

5 Q Did you have available in that case the location  
6 of the vacant land in the community?

7 A Generally speaking, yes.

8 Q You knew where the vacant land was?

9 A Well, in the Township of Bedminster I think it was  
10 over ninety percent vacant land.

11 Q So it was easy to determine where the vacant land  
12 was?

13 A By and large, yes.

14 Q Now, in the other case you testified in, I have  
15 a little trouble with pronunciation. Is that Cinnaminson?

16 A Yes. That's correct.

17 Q And you also testified with respect to zoning.

18 A Yes.

19 Q Did you have availability of the zoning provisions  
20 of the zoning ordinance?

21 A Yes, I did.

22 Q Did you have the availability of the zoning map?

23 A Yes, I did.

24 Q Did you have the availability of the location  
25 of the vacant land?

1 A Yes, I did.

2 Q Now, in respect to the testimony you're about to  
3 give as an expert, did you have the availability of any  
4 zoning map of any of the communities concerning which you're  
5 about to testify?

6 A The zoning map was provided in some cases.

7 Q In some cases. A Yes.

8 Q How many cases?

9 A I don't recall.

10 Q Well, can you recall whether it was three or five  
11 or ten, approximately?

12 A I would say a little less than half.

13 Q All right. And did you have the location of any  
14 of the vacant land in the twenty-three municipalities before  
15 you made your analysis concerning what you're going to  
16 testify to?

17 A Well, in no case was precise information provided  
18 about the location at a level of detail say equivalent to  
19 tax block and lot; however, in some cases general information  
20 about location was available.

21 Q In general location.

22 A Yes.

23 Q You didn't have tax lot and block or you didn't  
24 have the vacant land pinpointed on the zoning map. Is that  
25 correct?

1 A That's correct.

2 Q All right. And you didn't have available to you  
3 before you made this analysis about which you're to testify  
4 the location of various uses in each community, did you?  
5 What I mean by that, did you know where the business uses  
6 were in each community? Did you know where the industrial  
7 uses were? Did you know where the multi-family uses were  
8 or the single family residences in each community?

9 A In some.

10 Q In each community.

11 A Not in each community.

12 Q And isn't it true, Mr. Mallach, that if you're  
13 qualified and you're about to testify in this case,  
14 basically you are going to reach your conclusions based on  
15 the zoning provisions given to you by your attorney and  
16 based on the amount of vacant land in each community, and  
17 that's all?

18 A That's not all but those are the principle items but  
19 not the only items.

20 Q What are the other items?

21 A In addition to the zoning ordinance and the overall  
22 amount of vacant land, we will rely--I will rely on  
23 information provided by defendants on the distribution of  
24 vacant land by zone and to the degree that information was  
25 provided by defendants in some cases additional supplemental

1 information qualifying the vacant land information or  
2 categorizing it.

3 In addition, I will be looking where appropriate at  
4 land subdivision, site plan and other municipal ordinances  
5 as well.

6 Q Those are ordinances. Correct?

7 A Yes.

8 Q You never made an on-site inspection of any of  
9 the land in any of the communities involved, have you?

10 A Well, I am generally familiar with much of it but  
11 I've not made a formal inspection of it, no.

12 Q And you never looked specifically at a land use  
13 map in any of the communities. Isn't that correct?

14 A That's correct.

15 MR. SPRITZER: Before your Honor rules--that's  
16 the end of my cross-examination.

17 (Motions and objections are heard at this time  
18 on the record.)

19 THE COURT: Now, do you have some general questions  
20 that you propose to ask Mr. Mallach before you proceed  
21 with the individual municipalities?

22 MR. SEARING: Yes, your Honor.

23 THE COURT: All right.  
24  
25

1 CONTINUED DIRECT EXAMINATION BY MR. SEARING:

2 Q Mr. Mallach, at our request, have you made an  
3 investigation of the zoning ordinances and in certain  
4 specific instances other ordinances of the twenty-three  
5 defendant municipalities?

6 A Yes, I have.

7 Q In making such an investigation, what did you do?

8 A I reviewed the text of each zoning ordinance and  
9 where appropriate the land subdivision or site plan or  
10 other relevant ordinances of the municipalities. Secondly,  
11 I reviewed the information provided by the municipalities  
12 for vacant land in the municipality in the manner in which  
13 this land was divided by zone, as well as any supplementary  
14 information relevant to that consideration provided by the  
15 municipalities.

16 Where that was not available, I reviewed the information  
17 provided by the Department of Community Affairs in their  
18 study of vacant developable land by zoning category, and  
19 if the zoning ordinance had not been apparently substantially  
20 amended since 1970 incorporated that information into the  
21 analysis.

22 In addition, I reviewed current cost estimates for  
23 various aspects of development in Middlesex County and  
24 related these matters to the zoning ordinance.

25 MR. SEARING: Your Honor, I have a document



1 which I would like marked for identification.

2 THE COURT: P-104 for identification.

3 (P-104, chart, marked for identification.)

4 Q Mr. Mallach, would you identify this for us, please.

5 A This is a tabulation prepared by the Division of  
6 State and Regional Planning, Department of Community Affairs,  
7 breaking down the acreage, vacant and developable, for each  
8 municipality in Middlesex County by various zoning provisions  
9 of the municipality, of the ordinance current at the time  
10 of the study.

11 Q Thank you.

12 MR. SEARING: Your Honor, for the record, this  
13 document is the source document for the information  
14 summarized in plaintiff's exhibit 37, "Land Use  
15 Regulation and Residential Land Supply," which is  
16 already in evidence, and for the relevant information  
17 in an exhibit previously identified as P-39 for  
18 identification.

19 Q Mr. Mallach--

20 (Objections are heard at this time on the record.)

21 Q Mr. Mallach, what are the principal features  
22 of the zoning ordinances in Middlesex County?

23 (Objections are heard at this time on the record.)

24 A The zoning ordinances have a number of general  
25 features. First, each ordinance provides for the land uses

1 that are permitted in the municipality: residential,  
2 industrial, commercial. Secondly, each ordinance, either  
3 through description in the ordinance or through an attachment  
4 of a map designates those land areas in the municipality  
5 that are appropriate, considered appropriate, for each land  
6 use. Thirdly, the ordinances provide for differentiation  
7 within land uses, such as, different single family residence  
8 zones of different character, density and type. Fourthly,  
9 the ordinance provides standards for development in each  
10 zone, such as, lot size requirements, frontage requirements,  
11 interior floor space requirements, and down often to a  
12 considerable level of detail. Fifthly, many of the  
13 ordinances provide for special exceptions of various sorts  
14 in certain zones of certain land uses that are permissible  
15 in the ordinance but only by variance rather than by right.  
16 Finally, many of the ordinances contain what can be  
17 considered special zones, in particular, mixed use zones,  
18 of a P.U.D. or similar nature, cluster zones, planned  
19 development zones of different sorts, providing for  
20 different kinds of flexibility, changes in provisions or  
21 combinations of land uses.

22 Q What effect, if any, do the features you describe  
23 have on the provision of low and moderate income housing?

24 (Objections are heard at this time on the record.)

25 A Many of the provisions of zoning ordinances have an

1 effect on housing for low and moderate income families.

2 I should start by saying that no zoning provision,  
3 in my judgment, has an inherently favorable impact on  
4 housing provision in that a zoning provision is by its nature  
5 more restrictive than the absence of a zoning provision;  
6 however, many zoning provisions or zoning features and  
7 zoning ordinances may have a neutral effect.

8 Q Which ones are those, Mr. Mallach?

9 A Well, an ordinance, for example, which provided for  
10 modest requirements and for a wide variety of housing types  
11 and provided in the mapping of the municipality for ample  
12 land for those would probably have a neutral effect in  
13 that it would not hinder the provision for low and moderate  
14 income housing.

15 Certain provisions have a negative effect, however.

16 Q Which ones are those?

17 A There are a number of set provisions. The first type--  
18 (Objections are heard at this time on the record.)

19 A There are many types of provisions that have a  
20 negative impact. These include, first, prohibitions on  
21 certain types of housing; secondly, excessive standards  
22 raising the cost or reducing the feasibility of building  
23 certain types of housing, even though the housing types  
24 may be permitted; thirdly, restrictive provisions, such as,  
25 bedroom restrictions limiting the flexibility of developers,

1 builders and non-profit sponsors to respond to housing needs;  
2 fourthly, narrow distribution of land, of vacant land,  
3 in a manner that is not reflective of the demand and the  
4 need for development of the different types provided by  
5 the ordinance; and fifthly, arbitrary or broadly discretionary  
6 provisions providing for the possibility of abuse of  
7 discretion.

8 MR. SEARING: Your Honor, I have a document that  
9 I would like marked for identification.

10 THE COURT: P-105 for identification.

11 (P-105, table, marked for identification.)

12 Q Mr. Mallach, could you identify this for us, please?

13 A This is a table, entitled, "Industrial Residential  
14 Demand and Zoning Provision-Middlesex County Municipalities."

15 It is a compilation of information from the Middlesex  
16 County Planning Board and other aforementioned sources  
17 on the subject.

18 Q Is this prepared by you?

19 A The compilation was made by me.

20 (Objections are heard at this time on the record.)

21 Q I'm sorry, Mr. Mallach. Could you identify this  
22 document for us, please?

23 A This is the Middlesex County Interim Master Plan report.

24 THE COURT: What is the number on it?

25 THE WITNESS: This is PN-40.

1 MR. SEARING: I'm sorry. I stand correct. P-40.

2 Q Did you utilize this document in compiling this  
3 table?

4 A Yes, I did.

5 THE COURT: Did you use that document exclusively?

6 THE WITNESS: No, sir.

7 THE COURT: What else did you utilize?

8 THE WITNESS: I utilized the information on vacant  
9 land provided by municipalities in response to questions  
10 by the plaintiffs' counsel, and where no such  
11 information had been provided, the information from  
12 the table that was subject to discussion earlier.  
13 Those municipalities where that information is used  
14 is designated by a double asterik.

15 THE COURT: And you put some reliance on what  
16 has been marked P-104, which in turn you've testified  
17 is a table of the Department of Community Affairs?

18 MR. SEARING: And which we will produce someone  
19 for cross-examination.

20 THE COURT: It would appear then that the same  
21 objection would apply to admitting P-105 at this time.

22 MR. SEARING: We understand, your Honor.

23 THE COURT: All right.

24 Now, Mr. Mallach, you previously reviewed features  
25 of the zoning ordinances which would have a negative effect.

1       Could you go back over those and explain how each operates  
2       in a negative manner on the provision for housing?

3       A       Yes, sir.

4               The first feature that I believe I cited had to do  
5       with the prohibition of certain uses.  Certain zoning  
6       ordinances either prohibit explicitly or make no provision  
7       for, which in some cases can have the equivalent effect,  
8       either for multi-family housing and in some cases for mobile  
9       homes.

10              The multi-family housing is a major element in  
11       responding to any housing need because very large parts of  
12       the population either seek multi-family housing by choice  
13       or, particularly among lower income people, seek multi-  
14       family housing by necessity so that the prohibition of multi-  
15       family housing could have a very deliterious effect on  
16       housing opportunities.

17              The prohibition on mobile homes is similar.

18              The second provision, which I discussed, was the  
19       imposition of standards for development, which are higher  
20       than what may be required by accepted planning practice or  
21       basic health and safety needs.

22              For example, if a municipality provides that all or  
23       virtually all of its residentially zoned land is in a zone  
24       that requires lots of forty thousand square feet, that is  
25       greater than is required--than may be required for health

1 and safety.

2           There are three features in particular that can affect  
3 housing opportunity by substantially increasing costs in  
4 this matter. These are excessive lot sizes, which may  
5 affect the cost of land and also affect the cost of landscaping,  
6 earth movement and clearance; excessive frontage, which  
7 also may affect the cost of land but does substantially  
8 affect the cost of site improvement, including streets,  
9 curbs, gutters, sidewalks and sewer and water lines, and  
10 the square footage requirement for the building itself,  
11 which affects the cost of construction, which is basically  
12 a function of square footage.

13           For example, the cost of typically required improvements  
14 on a site in terms of curbs, gutters and so on, can be in  
15 the area of sixty to seventy feet per foot of frontage--  
16 excuse me. Sixty to seventy dollars per foot of frontage.

17           MR. CHERNIN: Your Honor, I must object to the  
18 mentioning of any dollar figures or values until it  
19 can be appropriately established here at this time.  
20 If he's talking about generally or broadly, I suppose  
21 that we have to let him go.

22           THE COURT: I would sustain that objection at  
23 this time.

24           Limit yourself to the general discussion and  
25 what you say to be excessive standards.

L

1 THE WITNESS: Yes, sir.

2 A So, the lot size, frontage and floor space are the  
3 principal excessive standards.

4 There are other excessive standards which can be of  
5 a more technical nature, for example, wide street widths or  
6 sidewalk widths provided in a subdivision ordinance.  
7 There may be excessive standards in the provisions for  
8 multi-family housing, such as, parking--high parking  
9 requirements, air conditioning and other amenity features  
10 which should more appropriately be left to what is referred  
11 to as the test of the marketplace.

12 So these all could have a very strong impact on either  
13 increasing costs or reducing the feasibility of development.

14 The third area I believe I mentioned is largely  
15 self-explanatory. It is really a kind of prohibition which  
16 is restricting uses in a manner that reflects the feasibility  
17 of meeting housing needs. This is particularly relevant  
18 to multi-family housing where some ordinances have bedroom  
19 restrictions limiting the number of two bedroom units and  
20 often prohibiting three and four bedroom units, and other  
21 ordinances may have requirements that a certain minimum  
22 acreage lot be assembled before one can build multi-family  
23 housing, and this essentially reduces the feasibility of  
24 building because it reduces the practicability of assembling  
25 for multi-family development.



1           The fourth point I believe I made referred to the  
2 distribution of land by zone. It--even if the zoning  
3 ordinance provides for all the uses and all the entities of  
4 use that are appropriate, the zoning ordinance may still  
5 have a restrictive effect if the amount of land in the  
6 different zones is directed in a manner that is not  
7 responsive to the market demand. For example, as a general  
8 rule, at the moment, the concensus of the expert opinion  
9 is that there's greater demand for small--

10           MR. BERNSTEIN: I object.

11           THE COURT: Don't give us other opinions.

12           THE WITNESS: I'm sorry.

13           A       As a general rule, there is greater demand for smaller  
14 rather than larger, less expensive rather than more expensive,  
15 single family dwellings. If, however, an ordinance provides  
16 for much more land in a highly restrictive single family  
17 zone and much less land in a modest family zone, this may  
18 not be responsive to the market place and may restrict the  
19 **feasibility** of building housing that is needed.

20           This is so even if the acreage in the modest zone  
21 may be roughly equivalent to the market demand since all  
22 of the acreage in any given zone is not likely to be  
23 available for development or assemblable by developers and  
24 housing sponsors at any given point. So unless a given zone  
25 contains enough land for a market demand to be effectively

1 dealt with, the ordinance provision can be exclusionary  
2 despite the letter of the ordinance.

3 Q Now, Mr. Mallach, what other land use practices,  
4 if any, have an effect on the provision of housing for low  
5 and moderate income people?

6 A There are a variety of other land use practices  
7 independent of the zoning ordinance that municipalities  
8 engage in.

9 (An objection is heard at this time on the record.)

10 THE COURT: You had five categories of what you  
11 said were factors having a negative effect on low  
12 and moderate income housing opportunities.

13 THE WITNESS: I think I missed one.

14 THE COURT: Did you discuss what you meant by  
15 the fifth?

16 THE WITNESS: I missed that.

17 THE COURT: Let's hear that.

18 THE WITNESS: The fifth provision I referred to  
19 was the presence of broadly discretionary provisions  
20 in the zoning ordinance or other ordinances. For  
21 example, some municipalities may provide for a  
22 cluster ordinance which allows for relatively modest  
23 lot sizes with a dedication of open space and provides  
24 for a completely discretionary language as to the  
25 acceptability of the open space in the municipality

1 so that the municipal planning board can use this  
2 provision to discourage development.

3 A similar example would be where a municipality  
4 provides for use only by special exception and allows  
5 the zoning board to make a determination on the  
6 basis of very broad and very general criteria, the  
7 acceptability of the use.

8 In some cases--in one case I'm familiar with,  
9 even though it's not provided as a special exception,  
10 the multi-family, the multi-family use is held  
11 contingent to the broad finding of the suitability  
12 and benefit for the municipality that can be made by  
13 the planning board completely at their discretion.

14 So these provisions can further restrict the  
15 provision of housing opportunities.

16 THE COURT: All right. Then there was another  
17 question asked.

18 Would you recite the question or--

19 MR. SEARING: Yes.

20 THE COURT: --paraphrase it. If there's an  
21 objection to it, we'll hear that.

22 Q Mr. Mallach, are there other land use practices  
23 which have an effect on the provision of housing for low  
24 and moderate income people?

25 THE COURT: Do you mean municipal?

1 MR. SEARING: Municipal land use practices, yes,  
2 your Honor.

3 (An objection and legal argument are heard at this  
4 time on the record.)

5 (The pending question is read back by the Reporter.)

6 THE COURT: Other than zoning.

7 THE WITNESS: Other than zoning, yes.

8 A There are a number of municipal practices which have  
9 an effect on the provision of low and moderate income  
10 housing, some of which are positive and some of which are  
11 negative.

12 Q Some are positive. Would you explain that, please.

13 A Yes, sir. There are a number of actions in the  
14 housing sphere which I consider to be directly relevant to  
15 the land use sphere, which are positive. These can include,  
16 for example, the establishment of the local housing  
17 authority and the construction of housing pursuant to the  
18 provisions of The Housing Act of 1937. These can include  
19 the adoption of a resolution of need pursuant to the New  
20 Jersey Housing Finance Agency law enabling H.F.A. housing  
21 to be built in the municipality. These can include framing  
22 and applications to H.U.D. for Section 8 funds to be  
23 applied to existing housing units, thereby relieving  
24 financial stringency on renters, though low income renters,  
25 and these can include use of the good offices of the

1 municipality to facilitate non-profit housing development  
2 by providing zoning amendments and tax abatements and the  
3 like, and these are positive land use actions that the  
4 municipality can adopt.

5 (Objections are heard at this time on the record.)

6 THE COURT: Anything further in your answer?

7 THE WITNESS: I think these are the positive  
8 housing and planning actions that are covered.

9 Q You indicated that there were some negative ones.

10 A Yes. In addition to these--well, one, clearly the  
11 absence of positive provisions has a negative impact, so  
12 in that sense there's that corollary to the positive features.

13 In addition to that, there are additional provisions  
14 that can have a negative effect on low and moderate income  
15 housing opportunities which are sometimes found in other  
16 ordinances of a municipality, such as, the land subdivision  
17 ordinance, which is where there are often, first, cost  
18 increase in provisions, such as, excessive standards--

19 MR. BERNSTEIN: This is just what I was objecting  
20 to, your Honor.

21 THE COURT: Well, you may move to strike it.

22 MR. BERNSTEIN: I would move to strike any other  
23 reference other than to zoning ordinances.

24 THE COURT: I'll let him finish his answer.

25 Go ahead.

1 A The land subdivision and other ordinances related to  
2 but not included in the zoning ordinance can contain  
3 excessively high standards increasing costs, broadly  
4 discretionary provisions for the review and approval or  
5 disapproval of applications, stringent fee requirements  
6 and others tending to reduce the feasibility of housing  
7 development or increase the cost of that development.

8 THE COURT: All right.

9 (Objections are heard at this time on the record.)

10 THE COURT: Do you have other general questions  
11 you are asking Mr. Mallach?

12 MR. SEARING: Just one or two, your Honor.

13 THE COURT: Well, proceed with those then.

14 Q Mr. Mallach, your description of the positive  
15 aspects of other land use factors, were any of these points  
16 covered in your book on housing and suburbs, which is marked  
17 as plaintiff's exhibit 103 for identification?

18 A To a limited degree, yes.

19 Q Would you describe some of those, please.

20 A Well, in this report we devoted some attention to the  
21 manner in which apartment approval did or did not take  
22 place in a number of suburban municipalities, reviewing  
23 both the ordinance provisions and the actual practices  
24 independent of the ordinance provisions as such of a  
25 sample of municipal planning boards.

1 MR. PLECHNER: I move to strike that. It seems  
2 to me that he's describing what he said in this book,  
3 which I don't think has much relevance here. I think  
4 that is going to a point way beyond anything being  
5 tried here and we're not giving a book review.  
6 I think that question should have been specific as  
7 to the zoning and planning in Middlesex County.

8 THE COURT: I agree with that, Mr. Searing.

9 MR. SEARING: Well, your Honor, I would like at  
10 this time to move Mr. Mallach's book into evidence.

11 (There are objections and legal arguments heard  
12 at this time on the record.)

13 THE COURT: Now, I would also like to ask this:  
14 Have you concluded general questioning of Mr. Mallach?

15 MR. SEARING: Yes, your Honor. I have one more  
16 document that I would like to have marked for  
17 identification to offer into evidence, and that was  
18 one of the documents that I was going to attempt to  
19 receive a stipulation on this morning.

20 THE COURT: Well, we'll mark it for identification.

21 (P-106, report entitled "Status Report: Federal  
22 Low Rent Public Housing Programs in the State of New  
23 Jersey," marked for identification.)

24 Q Mr. Mallach, could you identify the document  
25 marked P-106 for identification?

1 A Yes, sir.

2 This is a report entitled, "Status Report: Federal  
3 Low Rent Public Housing Programs in the State of New Jersey,"  
4 dated June 30, 1975, and published by the Division of  
5 Housing and Urban Renewal of the New Jersey Department of  
6 Community Affairs.

7 MR. SEARING: I would note for the record there  
8 is attached a certification, indicating that this is  
9 a true and correct copy of official records maintained  
10 by the New Jersey Department of Community Affairs,  
11 and it is a document upon which I will request a  
12 stipulation.

13 THE COURT: All right.

14 Now, I would like during the recess for defendants'  
15 counsel to, if you can, reach a concensus as to  
16 whether you have cross-examination on this general  
17 testimony of Mr. Mallach unrelated to specific  
18 ordinances or whether you will withhold your cross-  
19 examination until each municipal attorney has the  
20 opportunity to cross-examine as to his particular  
21 ordinance.

22 All right. Court is in recess.

23 (A recess is taken at this time.)

24 (Legal argument takes place on the record.)

25 THE COURT: I suppose we might have these documents



1 marked in evidence, then.

2 Do they all have identifying numbers now?

3 MR. SEARING: Yes, they do.

4 THE COURT: All right. Tell us what they are.

5 MR. SEARING: The first ones are exhibits P-77,  
6 P-79 and P-80. These were marked only for  
7 identification and I would now move that they be  
8 marked for evidence.

9 THE COURT: P-77, P-79 and P-80 in evidence.

10 (P-77, P-79 and P-80, previously identified  
11 now marked and received into evidence.)

12 MR. SEARING: Moving into the next one, your  
13 Honor, which is P-90.

14 THE COURT: P-90. All right, P-90 in evidence.

15 (P-90, previously identified now received and  
16 marked into evidence.)

17 MR. BUSCH: Can I have that identified?

18 MR. SEARING: "State of New Jersey Residential  
19 Construction Authorized by Building Permits."

20 The next document was P-92 marked for  
21 identification, which is the "Births, Marriages by  
22 Occurrence and Deaths by Counties and Major Cities."

23 THE COURT: P-92 in evidence.

24 (P-92, previously identified, now received and  
25 marked into evidence.)

1 MR. SEARING: The next one is P-92A marked for  
2 identification, U.S. census data for New Jersey counties.

3 THE COURT: P-92A in evidence.

4 MR. SHAPIRO: Is that New Jersey Townships since  
5 1900 or some particular date as to when?

6 MR. SEARING: It's only 1970 census data.

7 MR. CUMMINS: Your Honor, on that document, P-92A,  
8 the tables don't match. I was trying to find some  
9 things in there and it's most difficult to find.  
10 I think if counsel is going to be putting it in, we  
11 should know what it's going in for and then we'll  
12 be able to find documents without perusing through  
13 one hundred fifty pages, because the table of contents  
14 doesn't work.

15 THE COURT: Are you able to provide any  
16 assistance on that, Mr. Searing?

17 MR. SEARING: Not at this time. I will make an  
18 effort to respond to Mr. Cummins' request.

19 THE COURT: All right, thank you.

20 MR. SEARING: The next is P-100, H.E.W. school  
21 enrollment statistics from the directory of public  
22 elementary and secondary schools.

23 THE COURT: P-100 in evidence.

24 (P-100, previously identified, now received and  
25 marked into evidence.)

1 MR. SEARING: The next one is P-106 for  
2 identification, "Status Report: Federal Low Rent  
3 Public Housing Programs in the State of New Jersey,"  
4 June 30, 1975.

5 THE COURT: P-106 in evidence.

6 (P-106, previously identified, now received and  
7 marked into evidence.)

8 THE COURT: May I see that, please?

9 (There is a discussion on the record between  
10 Court and counsel.)

11 MR. SEARING: Your Honor, I have a series of  
12 documents to be marked for identification.

13 THE COURT: P-107 and so forth.

14 (P-107, ordinance, and P-108, chart, marked for  
15 identification.)

16 THE COURT: Just two, Mr. Searing?

17 MR. SEARING: Yes, your Honor.

18 THE COURT: I thought that you said you had a  
19 series of documents.

20 MR. SEARING: Well, at one time I was considering  
21 introducing them all at one time and having them all  
22 identified, but I think that under your ruling I  
23 think it better and we'll move more effectively this  
24 way.

25 THE COURT: All right.

L

CONTINUED DIRECT EXAMINATION OF ALAN MALLACH BY MR. SEARING:

Q Mr. Mallach, I show you P-107 and ask you to identify it, please.

A This is a document entitled, "An Ordinance Concerning Zoning, Cranbury Township."

Q And I would ask you to identify P-108.

A This is a chart, entitled, "Cranbury: Summary of Zoning Ordinance Provisions," prepared on the basis of information in the ordinance and information supplied by the municipality, by me.

MR. SEARING: Your Honor, I would like to move that P-107 and P-108 into evidence.

THE COURT: Would you show those to Mr. Moran.

MR. MORAN: I have no objection to P-107, your Honor. I have a limited objection to P-108 inasmuch as the last column contains information which was provided by the Department of Community Affairs as to vacant land in the Township in various zones, which I believe was gleaned, it appears to me was taken from, P-104. I have an objection to that portion of the document being admitted into evidence.

MR. SEARING: That will not be relied upon.

THE COURT: All right.

P-107 and P-108 in evidence.

MR. MORAN: Your Honor, is there some way that

1 can be deleted from the document if it's going to be  
2 in evidence?

3 MR. SEARING: We can cross it off.

4 THE COURT: All right. Go ahead and do it.

5 Q Mr. Mallach, would you cross off the column on  
6 the chart marked "D.C.A."

7 A Yes.

8 (There is a discussion on the record between  
9 Court and counsel.)

10 THE COURT: All right. Let's mark those in  
11 evidence.

12 (P-107 and P-108, previously identified, received  
13 and marked into evidence.)

14 MR. SEARING: I would like your Honor to refer  
15 to the marked copy, 108, please.

16 I would ask that I have the ordinance be provided  
17 to the witness.

18 Q Mr. Mallach, can you describe the principle  
19 features of the ordinance for the Township of Cranbury?

20 A Yes, sir. The Township of Cranbury Zoning Ordinance  
21 contains six zones. Of these, two zones are for single  
22 family dwelling units, two zones are business zones, one  
23 is an industrial zone and one is an office and research zone.

24 In the single family dwelling zones, the R-170 zone  
25 provides for minimum lots of forty thousand square feet,

2 minimum frontage of one hundred and seventy feet, minimum  
3 unit size of one thousand square feet and in the case of a  
4 more urban one-story unit, a minimum first floor of seven  
5 hundred twenty-eight square feet. This zone also provides  
6 for a conversion option, specifically, that existing single  
7 family units of over twelve hundred fifty square feet floor  
8 area can be converted into two-family units. Each such  
9 unit to contain not less than five hundred square feet.  
10 The ordinance, specifically, however, precludes any  
11 construction of new two-family units or multi-family units  
12 in this zone.

13 The R-100 zone provides for lots of fifteen thousand  
14 square feet, frontages of one hundred feet and floor areas  
15 and conversion privileges similar to those of the R-170  
16 zone. Multi-family housing is not permitted in the Township  
17 and mobile homes and trailer parks are not permitted in the  
18 Township.

19 THE COURT: Well, how do you define multi-family  
20 houses?

21 THE WITNESS: In this case, it includes any units,  
22 any housing, other than single family. Though--

23 The vacant land in the Township is divided,  
24 as of the information provided by the Township, as  
25 follows: Of a total of six thousand eight hundred  
ninety-one acres, four thousand one hundred are in the

1 R-170 zone, with forty thousand square foot lot sizes  
2 and one hundred seventy foot frontages, thirty are  
3 in the R-100 zone, with fifteen thousand square foot  
4 lot sizes and one hundred foot frontages, six are  
5 in the highway business zone, none are in the neighbor-  
6 hood business zone, two thousand five hundred thirty  
7 five are in the industrial zone and two hundred twenty  
8 are in the office and research zone.

9 MR. SEARING: Your Honor, my next question  
10 requires an answer that will take us well beyond the  
11 12:30 point.

12 THE COURT: Well, let me ask you a question then.

13 Are new residences permitted in the neighborhood  
14 business zone?

15 THE WITNESS: I don't know, specifically. I  
16 can look that up.

17 THE COURT: I will be interested in whether new  
18 residences will be permitted in any of the business,  
19 industrial or office-research zones, and if so, what  
20 limitations, if any.

21 All right. Court will recess until 1:30.  
22  
23  
24  
25

L

1 THURSDAY, FEBRUARY 19, 1976, Afternoon Session:

2 CONTINUED DIRECT EXAMINATION OF ALAN MALLACH BY MR. SEARING:

3 Q Mr. Mallach, the Court had asked a question.

4 Are you prepared to respond to that at this time?

5 A Yes.

6 Q Now--

7 MR. MORAN: If your Honor please, I don't recall  
8 the question that was asked.

9 THE COURT: Whether new residences were permitted  
10 in the business and other zones.

11 MR. MORAN: I'm sorry.

12 A According to the ordinance, residences meeting the  
13 requirements of the R-100 zone are permitted in the  
14 neighborhood business district. The residences, strictly  
15 speaking, are not permitted in the industrial or office zone,  
16 but there's an agricultural provision which can be  
17 interpreted as permitting residences on three or more acres  
18 of lots per residence.

19 THE COURT: And where is agricultural use permitted?

20 THE WITNESS: Agricultural use is permitted in  
21 the industrial and office zones as well as in the  
22 R-170 residential zone.

23 THE COURT: All right.

24 Q Now, Mr. Mallach, what, if any, of the features  
25 you have described have an effect on the provision for low



1 and moderate income housing for families?

2 A There are a number of features in this ordinance which  
3 have an effect. With regard to the first--

4 (An objection is placed on the record at this time.)

5 THE COURT: Would it be convenient to get back  
6 to that question?

7 (The pending question is read back by the Reporter.)

8 THE COURT: Well, I would allow that question.  
9 Go ahead. You may answer it.

10 THE WITNESS: Yes.

11 A With regard to the first point, general point I made,  
12 by prohibiting multi-family dwellings or any dwellings of  
13 more than one unit from being constructed, this severely  
14 limits housing opportunities for low and moderate income  
15 families in this area; secondly, by prohibiting mobile  
16 homes and trailer parks, this is also a limiting factor.  
17 These two housing types, multi-family housing units and  
18 mobile homes, are capable of meeting certain housing needs.

19 (An objection is heard at this time on the record.)

20 Q Mr. Mallach, have you completed your answer?

21 A No, sir.

22 Q Would you continue, please.

23 A The second area that I would like to mention is the  
24 question of lot sizes and frontage requirements for single  
25 family dwellings. There are two zones which provide for

1 single family dwellings by right and the predominant zone  
2 requires a forty thousand square foot lot and one hundred  
3 seventy foot frontage, which are requirements that result  
4 in any housing being built in these zones as being exceedingly  
5 expensive.

6 The second zone, although more modest, is still well  
7 above what can be generally considered a reasonable minimum  
8 for modest house by any reasonable judgment.

9 MR. LEFKOWITZ: I object.

10 THE COURT: You mean the size of the house?

11 THE WITNESS: The size of the lot and the frontage.

12 MR. LEFKOWITZ: I object to the characterization.

13 He's using terms like reasonable and modest. These  
14 are terms that really lead us nowhere because there's  
15 no basis for it. There's no basis for the definitions.

16 THE COURT: What do you mean by reasonable?

17 THE WITNESS: Well, reasonable and modest or  
18 a reasonable standard for a modest--

19 THE COURT: I asked you what you meant by  
20 reasonable, first.

21 THE WITNESS: I'm sorry.

22 Reasonable, what I would consider to be the  
23 minimum standard at which a modest house can be built  
24 without eval--without any health or safety--

25 THE COURT: Reasonable with relationship to

1 health and safety problems?

2 THE WITNESS: Yes.

3 THE COURT: All right.

4 THE WITNESS: The standards in this zone are  
5 still in excess of reasonable standards defined thusly.

6 THE COURT: In other words, a smaller minimum  
7 floor area would still reasonably protect against any  
8 health or safety problems.

9 THE WITNESS: A small or minimum floor area as  
10 well as lot size and frontage would do that. Yes, sir.

11 MR. BERNSTEIN: Your Honor, if I could object  
12 to your Honor's question. I'm not sure this man has  
13 been qualified in the areas of health and safety.

14 THE COURT: My question was only to clarify or  
15 fully elucidate what he meant by the term reasonable.

16 MR. BERNSTEIN: Well, then I object to his  
17 comments on reasonable. He may be a planner but is  
18 he an expert in the field of health and safety?  
19 Even Mr. Eber testified at least at one point in  
20 depositions that I remembered to the Court that he  
21 couldn't give exact dimensions as to apartments.  
22 And this man is qualified in three areas. Is health  
23 a fourth?

24 THE COURT: That objection is overruled.

25 MR. LEFKOWITZ: If your Honor please, I didn't

1 hear any testimony with regard to floor area. I  
2 thought we were talking about lot frontage.

3 THE COURT: Minimum floor area and lot frontage  
4 and minimums of lot size.

5 MR. LEFKOWITZ: He did. Okay.

6 A A further provision in both the R-170 and the R-100  
7 zone is that even though the maximum square footage of the  
8 house is set at one thousand square feet, the maximum square  
9 footage of the first floor of any more than one floor house  
10 is set at seven hundred twenty eight square feet.

11 Leaving aside the question of how this exact number  
12 was arrived at--

13 THE COURT: You mean minimum.

14 THE WITNESS: Minimum. Minimum.

15 THE COURT: All right.

16 A --from the practicality of building--

17 THE COURT: What number was arrived at?

18 THE WITNESS: The number of seven hundred twenty  
19 eight.

20 THE COURT: All right.

21 A --would result as a general rule in requiring that  
22 multi-story units built with this requirement would be well  
23 in excess of the one thousand square feet.

24 The final provision that I'd like to mention is the  
25 manner in which the land use is distributed. According to

1 the defendant's information, only thirty acres in the entire  
2 township of vacant land permit the construction of houses  
3 under the R-100 provisions, which are the more modest of the  
4 two resident zones. This would appear to be substantially  
5 less than market demand would reflect, considering there  
6 are four thousand, one hundred acres under the R-100 and  
7 two thousand, seven hundred fifty-five in zones that are  
8 industrial or office, in which three acre residential is  
9 permitted, and these are the points that I consider would  
10 have an effect, a significant effect on housing provisions.

11 THE COURT: Do you know how present farm land  
12 has been treated with respect to other vacant land  
13 area or not?

14 THE WITNESS: These figures, I believe, do include  
15 farm land as, "vacant".

16 THE COURT: I see.

17 Do you have any specific data as to what the  
18 amount of farm land is, the acreage?

19 THE WITNESS: No, sir.

20 Q Mr. Mallach, does this municipality have a  
21 public housing authority?

22 A No, it does not.

23 (Objections are heard at this time on the record.)

24 Q Mr. Mallach, is there any other Federal or State  
25 subsidized housing within this municipality?

1 A Not to the best of my knowledge.

2 MR. SEARING: Your Honor, we have no further  
3 questions on direct.

4 THE COURT: Is there a zoning map with the zoning  
5 ordinance? I don't believe I've seen that.

6 P-107. You're not offering a zoning map?

7 MR. SEARING: No, your Honor. We are not. We  
8 asked for material pertaining to the zoning ordinance  
9 in the interrogatories. In some instances a map was  
10 provided and in some it wasn't. Apparently in  
11 Cranbury it was not.

12 THE COURT: All right.

13 Mr. Moran.

14 CROSS-EXAMINATION BY MR. MORAN:

15 Q Mr. Mallach, you testified on the general direct  
16 examination before you got to Cranbury Township itself  
17 concerning a number of standards which you considered to be  
18 restrictive. By that I assume you meant restrictive of  
19 low and moderate income housing. Is that correct?

20 A That's correct.

21 Q In other words, that the existence of these  
22 standards in the zoning ordinance or in other township  
23 ordinances had a limiting effect on the ability of somebody  
24 that wanted to build such housing to actually build it.

25 A That's correct.

1 Q I don't know if you were here when Dr. Mann  
2 testified, but as I recall his testimony he made a statement  
3 to the effect that really any zoning regulation to some  
4 degree has a restrictive effect on the ability to build  
5 certain types of housing. Would you agree with that?

6 A I believe I stated so explicitly under my own testimony.  
7 Yes, sir.

8 Q So that the various factors or the features that  
9 you pointed out on your direct examination only differed  
10 from other types of zoning restrictions in a matter of degree.  
11 Would that be accurate?

12 A One could say that, but the degree can be considerable.

13 Q Pardon?

14 A The degree can be considerable.

15 Q What you're saying, these in some way are worse  
16 than other types.

17 A Yes. I should add in some cases it's a matter of degree.  
18 It's arguably a matter of degree like the question of  
19 frontage or lot size. In other cases, where it's a matter  
20 of prohibition of a land use, it's a matter of kind.

21 Q Well, whenever a municipality sets aside a  
22 given area for given types of uses, they have the effect  
23 of restricting all other types of uses in that area, don't  
24 they?

25 A That's correct.

1 Q Have you ever--I believe you did testify you  
2 have never prepared a zoning ordinance. Is that correct?

3 A That's correct.

4 Q If you were to prepare a zoning ordinance, for  
5 any municipality, where would you begin?

6 A I would begin with a proper plan for the municipality.

7 Q A master plan?

8 A Well, it could be considered a master plan, though I  
9 believe it would have to include a great deal of information  
10 which is not always included in a master, in many of the  
11 master plans done today.

12 Q It would be even broader than most of the master  
13 plans that you've seen?

14 A I think that there are areas that should be included  
15 beyond what are generally in many master plans, yes.

16 Q In preparing your analysis of Cranbury's  
17 ordinance, did you consult with its master plan?

18 A No, I did not.

19 Q Do you know whether Cranbury Township has a master  
20 plan?

21 A No, I do not.

22 Q After preparing--well, let's get back a step.

23 As you prepared the plan, what factors regarding the  
24 given municipality would you take into account?

25 A Well, I would study the fiscal character of the



1 municipality, environmental characteristics. I would study  
2 the housing needs in the municipality and in a reasonably  
3 refined region within which that municipality is a part.  
4 I would study the infra structure of municipal services  
5 characteristic of that municipality and develop, try to  
6 develop, a plan that would tie in environmental and open  
7 space protection, provision of a fair share or however  
8 defined of housing needs and an orderly process of expanding  
9 and developing the municipality's infra structure of  
10 services and facilities.

11 THE COURT: What do you mean exactly by infra  
12 structure?

13 THE WITNESS: Well, everything from sewer and  
14 water lines to school buildings and fire stations  
15 and the like.

16 Q Did you determine or did you do any such studies  
17 in Cranbury Township?

18 A Beyond the degree that the absence of such planning  
19 can be deduced from the ordinance, no.

20 Q I asked if you did any such studies.

21 A No.

22 Q Do you know whether or not Cranbury Township  
23 has a sewer system of any type?

24 A To the best of my knowledge, it does not.

25 Q Do you know whether or not it has a water system

1 of any type?

2 A I do not know.

3 Q Could you describe the infra structure of  
4 Cranbury Township?

5 A Well, in general terms. It's a modest infra structure.

6 Q As it exists.

7 A Well, an infra structure of some sort exists for  
8 every municipality in that there is a municipal building,  
9 a police station, a small public library, a certain number  
10 of municipal employees and services. To the best of my  
11 knowledge, there is not a public sewer system and as I say  
12 I do not know whether or not there's a public water system,  
13 city water as it's referred, in Cranbury.

14 Q Do you know whether or not it has a municipal  
15 building?

16 A I believe there is a municipal building. I've driven  
17 by it.

18 Q Where is it located?

19 A On Main Street.

20 Q Would you consider in planning your zoning  
21 ordinance the existing character of the municipality?

22 A Yes, I would.

23 Q Have you studied the existing character of the  
24 Township of Cranbury?

25 A I am familiar with it, of the character of Cranbury.

1 Q Would you describe it?

2 A I would describe Cranbury in essence as being a large  
3 township or a moderate-sized township, containing roughly  
4 in its center a small village, which is more typical of  
5 those that became boroughs in the late 19th century, a small  
6 relatively densely built-up village, which is surrounded by  
7 land that is largely vacant or agricultural but which  
8 contains some non-negligible industrial development and  
9 some subdivisions.

10 THE COURT: "Non-negligible", you mean appreciable?

11 THE WITNESS: Yes, sir. Appreciable, substantial.

12 Q How large is the township?

13 A In square miles, sir?

14 Q Yes. Or acres, whichever figure you use.

15 A I don't have the figures in front of me. I believe  
16 it's approximately fourteen or fifteen square miles.

17 Q In preparing your zoning ordinance for a  
18 municipality, would you consult with the existence of the  
19 county master plan with regard to that area of the county?

20 A I would certainly study the county master plan to  
21 see what information of value it may provide.

22 Q Have you made such a study of the county master  
23 plan with regard to Cranbury Township?

24 A No, I have not.

25 Q Do you know what the county master plan provides

1 for Cranbury Township?

2 A No, I do not.

3 If I could qualify that. In one regard I do know  
4 what the county master plan provides for Cranbury in the  
5 sense of its projection of the increased residential and  
6 industrial development from now into the year 2000 in the  
7 Township of Cranbury.

8 Q Do you know what the county master plan projects  
9 for the Cranbury Township in terms of the existence of  
10 agricultural land in the year 2000?

11 A I recall seeing that. I don't remember the exact  
12 number.

13 Q Do you know whether it's a substantial figure?

14 A I can really refer to it. I know where it's located  
15 in this document.

16 Q If you would then.

17 A Do you want me to read you the figure?

18 Q If you have it.

19 A Yes. According to the--according to the interim  
20 master plan by the year 2000 they propose that approximately  
21 three thousand six hundred and sixty-eight acres will  
22 remain in agricultural use within the Township of Cranbury.

23 Q Do they have similar figures for the year 1980?

24 A Yes, they do.

25 Q Could you tell us what that figure is?

1           The figure for the year 1980 is four thousand, four  
2 hundred sixty eight acres.

3           Q     Are you familiar with the difference between  
4 the county master plan, the document that you're holding  
5 there, and the master plan alternative?

6           A     No, I am not.

7           Q     You're not?

8           A     No.

9           Q     Would it be fair, if you can by reference to the  
10 document that you have, to characterize the amount of  
11 agricultural land which is shown in the master plan in both  
12 the years 1980 and the year 2000 for Cranbury Township as  
13 having the largest amount of agricultural land per square  
14 mile of any municipality in the county?

15          A     Well, I can't say for sure, not having made that  
16 calculation, but it appears to be a reasonable supposition.

17          Q     Is the preservation of agricultural land a  
18 valid land use planning goal?

19          A     Yes.

20          Q     If it is a valid land use planning goal in  
21 preparing a zoning ordinance for a municipality and a plan  
22 for a municipality, would you take into account the soil  
23 types that exist in the municipality?

24          A     As one consideration.

25          Q     Did you do such a study in Cranbury Township?

1 A Yes.

2 Q Would you also--you said you would study the  
3 existing character. Would you thereafter take into account  
4 the type of housing that was already built up in the existing  
5 zones?

6 A To a limited degree.

7 Q For example, would you look into the amount of  
8 land in a given residential zone that had already been  
9 developed?

10 A Only with regard most likely to the land immediately  
11 adjacent to that already developed area; not with regard  
12 to the community as a whole.

13 Q In other words, when we start out planning for  
14 a municipality, we start from now and we disregard largely  
15 what has happened until now?

16 A No. On the contrary. For example, in Cranbury there  
17 is an existing village in the center of Cranbury which does  
18 have a distinctive character and to the degree that you're  
19 proposing to build immediately adjacent to that village you  
20 may want to take into consideration that character.

21 To the degree that you're building somewhat removed,  
22 where the development will not be adjacent to the village,  
23 you may want to give less consideration to that character  
24 and more consideration to other factors.

25 Q Is that an efficient way of developing a

1 municipality the size of Cranbury, to have substantial  
2 development at remote places from the built-up area?

3 A That would depend on a large number of other factors.

4 Q Well, have you studied those factors in Cranbury  
5 Township?

6 A No.

7 Q Now, you stated that there are only thirty acres  
8 available for development in the R-100 zone and that would  
9 be less than the market demand for land of that lot size.  
10 What market are you referring to?

11 A Well, I'm referring generally speaking to the market  
12 for moderately priced, modest, single-family homes in  
13 Middlesex County.

14 Q Just in Middlesex County?

15 A Well, I think the same would be true in most parts  
16 of the New York Metropolitan area.

17 Q Have you made a study of that market?

18 A Not specifically, no.

19 MR. MORAN: Well, then, your Honor, I would move  
20 that portion of the witness' testimony concerning the  
21 market demand for housing in the R-100 zone in  
22 Cranbury be stricken since he has not made a study  
23 of the market demand in the area.

24 MR. SEARING: I would have to object, your Honor.  
25 I think it's well within his area of expertise as to

1 the existing market.

2 MR. MORAN: It's within his area of expertise  
3 if he made a study but he hasn't made a study.

4 THE COURT: Upon what did you base that testimony?

5 THE WITNESS: Well, based upon the experience  
6 that I've had with housing developments and the work  
7 I've been doing, there is at present a very large--

8 THE COURT: I'm just asking you what it's based on.

9 THE WITNESS: I based it on general experience.

10 THE COURT: General experience. All right.

11 He states now without having made a study, he  
12 based that testimony on general experience.

13 Q And what does that experience consist of?

14 A That experience consists of having actively worked  
15 with that data that goes into housing market analysis for  
16 all parts of this State steadily over the last few years.  
17 It consists of attempting to develop modest single-family  
18 housing in some parts of the State. It consists of regular  
19 contact with both personnel and written communications  
20 from other people active in this field and of a regular  
21 nature over an extended period of time.

22 Q What specifically has been done in Middlesex County?

23 A I beg your pardon?

24 Q What specifically has your experience consisted  
25 of in Middlesex County?



1 A My experience in Middlesex County has consisted of  
2 familiarity with those statistical aspects of Middlesex  
3 County which are relevant to housing market analysis.

4 Q Pardon. I'm sorry.

5 A I'm familiar with the statistics I'm applying to  
6 Middlesex County from which one analyzes housing markets  
7 and housing market demand.

8 Q What statistics are they?

9 A Well, statistics such as the population of the county,  
10 the units that are being built in the county, some of the  
11 housing--the information which relates housing and employment.

12 Q And specifically as it relates to Middlesex  
13 County, what is the housing profile in the county?

14 A Middlesex County is a--well, the housing profile of  
15 the county is a mixture of all housing types from very  
16 modest to relatively expensive. There's a predominance of  
17 single-family housing outside the central cities and that  
18 single family housing tends to be by and large of a modest  
19 to moderately expensive rather than an extremely expensive  
20 nature. The population of Middlesex County is heavily  
21 in the middle, roughly speaking, of the income profile,  
22 and as such is potentially a population, as new families  
23 are formed and new families move into the county or seek  
24 to move into the county, is a population with a potentially  
25 large demand for moderately priced, single-family dwellings.

1 Q And what is there that leads you then to conclude  
2 or draw the conclusion as to the existence of a market  
3 demand for the R-100 zones in Cranbury Township?

4 A Well, it's relative. There is a market demand for  
5 housing in the R-100 zone by comparison to the R-170 zone.  
6 In other words, the basic conclusion I reached was that  
7 there's a greater market demand for more modest rather than  
8 more expensive housing, and that if one compares the two  
9 zones that are available in a Township of Cranbury, one  
10 arrives at the conclusion that there's--there would be more  
11 demand for housing in the more modest zone than the more  
12 restrictive zone.

13 Q Coming back to the zoning ordinance that we  
14 were constructing, would it be fair to say that you could  
15 not delineate the amount of land that you would put into  
16 various zones in the municipality and to the exact--and make  
17 decisions as to the exact nature of those zones, both as  
18 to residential and industrial and the size of the zones,  
19 without having done all of the things that you outlined?  
20 In other words, draw up a plan for the municipality, take  
21 a look at the sewer situation and the water situation and  
22 the infra structure, generally, examine the county master  
23 plan with regard to the municipality and in effect do an  
24 overall in depth study of the municipality and the existing  
25 features of the municipality.

1 A I believe I said the zoning ordinance, the steps  
2 leading down to a zoning ordinance, should include all of  
3 those elements.

4 Q And you have done none of those things or at least  
5 very few of them for Cranbury Township.

6 A That's correct.

7 Q And as I take your testimony then, you're only  
8 testifying to the effect that the existence of certain  
9 features in Cranbury Township's zoning ordinance are the  
10 same as those features as you outlined on your general  
11 testimony as having a restrictive effect on low and moderate  
12 income housing.

13 A Well, yes.

14 Q But because of the fact that you have not done  
15 this exhaustive study that we just described you cannot  
16 state that Cranbury Township is unreasonable, can you?

17 A Yes, I can in a sense to--if I can borrow a legal term--  
18 I believe I would argue on the basis of this information  
19 that it is facially unreasonable and even though that  
20 finding could be modified to some degree by detailed  
21 information that would be provided about certain conditions  
22 in the township.

23 Q But you don't know to what degree it could be  
24 modified, do you?

25 A Well, in many cases where municipalities felt that

1 these conclusions could be substantially modified, data  
2 to that effect was provided in their responses to  
3 interrogatories, which I have tried to take into consideration.

4 MR. CHERNIN: May I object to that kind of a broad  
5 scope examination, when he's outside of Cranbury as  
6 to what other municipalities could, should or in fact  
7 did do.

8 THE COURT: I would strike that and disregard that.

9 Q You didn't study those factors in Cranbury  
10 Township. I believe you already testified to that effect.

11 A With the exception of those things that I've cited,  
12 I'm not aware of specific factors in Cranbury Township.

13 Q And so without studying those factors you cannot  
14 state precisely as to what degree your opinion with regard  
15 to the ordinance would be changed, can you?

16 A Not precisely.

17 Q All you're saying is that on the face of it it  
18 appears that the ordinance may be unreasonable.

19 A I wouldn't qualify it quite that much.

20 Q Well, you can't state to what degree you think  
21 it is unreasonable because of the fact that you haven't  
22 made these other studies. Is that correct?

23 A That's correct, but I think that the distinction  
24 that I was drawing, on the face of it I would say it's  
25 unreasonable rather than maybe unreasonable.

1 Q But you cannot say to what degree.

2 A Not precisely, no.

3 Q And your opinion may be changed to some extent  
4 if you did do the studies that we just talked about.

5 A It could be.

6 Q Do you know what the population of Cranbury  
7 Township is, Mr. Mallach?

8 A Not precisely. I believe it's between two and three  
9 thousand people.

10 Q Do you know how many towns there are in the  
11 State of New Jersey of that size, that size population,  
12 and the geographic size of Cranbury Township, have local  
13 housing authorities?

14 A No, I do not.

15 Q Do you know of any that do?

16 A I don't have specific information. I could look  
17 through the documents that were provided and give you that  
18 answer.

19 THE COURT: Offhand you don't know.

20 THE WITNESS: I don't know.

21 Q Offhand you don't know of any that do?

22 A I don't know.

23 Q Do you know of any towns that size of both  
24 population and geography that have any subsidized housing  
25 projects in them?

1 A I think there are some but I don't know specifically  
2 which.

3 Q In other words, you can't say one way or the other.

4 A No.

5 Q As to each of the items that are listed from  
6 Cranbury Township's ordinance, for example, the large lot  
7 size in the R-170 zone, the minimum floor area requirement  
8 and so on, in deciding whether or not they should stay in  
9 a given zoning ordinance is not a factor. Isn't it a fact,  
10 rather, that you would also have to study the infra structure  
11 of the municipality, the housing demand in the municipality  
12 and the region in which the municipality is located and  
13 the character of the municipality and the other competing  
14 goals that we've gone over?

15 A Yes. With one qualification. I don't think it was  
16 quite clear that when I discussed the infra structure  
17 previously I was not saying that the zoning ordinance or  
18 the plan or the housing provision should be based on the  
19 existing infra structure but it should be based on a plan  
20 equivalent to a capital improvement program, if you will,  
21 whereby the infra structure would be expanded.

22 Q Would it not, though, the ability of the  
23 municipality to extend the infra structure, depend on the  
24 existing infra structure?

25 A In part.

1 Q I believe you also indicated that one of the  
2 things you would look at would be the housing needs in the  
3 region in which the town was located.

4 A That's correct.

5 Q Have you made a study of the housing needs in  
6 the region in which Cranbury Township is located?

7 A I have not made such a study. I have familiarized  
8 myself with some of the documents on that matter.

9 Q But with specific regards to Cranbury Township  
10 you have not made such a study?

11 A No, I have not.

12 Q Now, if Cranbury were to make a study in preparing  
13 this zoning ordinance, should they look at all of the  
14 neighborhood municipalities as a bare minimum?

15 A Well, they should look at a region that would be  
16 consistent with the principles set down in the Mt. Laurel  
17 decision, I would believe.

18 Q Would that, as a minimum, include the neighboring  
19 municipalities?

20 A Some or all of them.

21 Q Can you think of any reason why you wouldn't  
22 include the neighboring municipalities?

23 A Well, there's a situation that you get into in  
24 defining regions whereby you can't define a--for purposes  
25 of doing housing allocation or evaluation of housing needs,

1 what have you, you have to define regions that make sense  
2 as regions. So, for example, if hypothetically Middlesex  
3 County is a logical region for purposes of being a consistent  
4 labor market area and having a reasonable room, opportunity,  
5 to meet housing needs in terms of vacant land and so on,  
6 then it's conceivable that a municipality at the edge of  
7 Middlesex County might be considered part of a region which  
8 would include some but not all of its neighboring municipalities.  
9 Even though that may appear somewhat unreasonable, it is  
10 probably far more reasonable in its impact than having each  
11 municipality define its own region and ending up with five  
12 hundred sixty seven fair share plans and allocation schemes  
13 no one of which is consistent with the other.

14 Q Are you aware of any studies that the Division  
15 of State and Regional Planning have done concerning regions,  
16 either State-wide or with regard to Cranbury Township?

17 A Well, I believe the Division of State and Regional  
18 Planning did a study many years ago as a kind of--I think  
19 it was called "A setting for regional planning," or  
20 something to that effect, which dealt with regions. I'm  
21 not familiar with any other studies that they have done  
22 dealing with regions.

23 Q Are you familiar with that study?

24 A I know of its existence. I have not reviewed it.

25 Q So you don't know in what context it was prepared?



1 A No.

2 Q Have you studied the existence of transportation  
3 facilities available to Cranbury Township?

4 A No, I have not.

5 Q Would that be a factor that you would take into  
6 account in preparing a zoning ordinance for a township such  
7 as Cranbury?

8 A It would depend. The highway network affecting the  
9 municipality such as Cranbury would certainly be a significant  
10 factor and that's a factor I'm familiar with, at least in  
11 a general sense. The public transportation network would  
12 be a minor factor.

13 Q A minor factor.

14 A Yes.

15 Q How about in preparing the master plan for the  
16 municipality?

17 A Well, I would, inasmuch as present the public  
18 transportation networks are totally inadequate everywhere,  
19 the existing public transportation network would not be an  
20 essential factor but it certainly will be one when one is  
21 preparing the master plan that one might prepare for future  
22 development in that area.

23 Q I believe you answered a question for the Judge  
24 and you indicated you did not know the amount of land in  
25 Cranbury Township that is currently being farmed. Do you?

1 A No, I do not.

2 Q And you gave some statistics that were based on  
3 P-108 as to the amount of land that was in the R-170 zone,  
4 in the industrial zone, of the office and research zone.  
5 Do you know whether all of that land is available for  
6 development?

7 A No. I assume that some of it is not available for  
8 development.

9 Q Do you know to what extent it is not available  
10 for development?

11 A No, I do not.

12 Q Do you know, for example, if the figure that you  
13 gave includes roads?

14 A They do include roads.

15 Q Does it include stream areas?

16 A Most probably.

17 Q Flood plains?

18 A Perhaps.

19 Q So that in order to determine the amount of land  
20 available for development in a town you would have to deduct  
21 the appropriate figures. Is that correct?

22 A That's correct.

23 Q Do you know whether or not the county master plan  
24 has developed such figures for Cranbury Township, either  
25 now or sometime in the future?

1 A With regard to--

2 Q Well, for example, the amount of land that will  
3 exist in roadways in the future.

4 A I can check. I don't recall specifically whether their  
5 figures in that area include a specific item for roadways.

6 Q Would you check, then, please?

7 A Certainly.

8 Yes. They do contain a figure for roadways.

9 Q Pardon?

10 A Yes. They do contain a figure for roadways.

11 Q Well, we talked about a 1980 figure a few minutes  
12 ago. How much land do they show in Cranbury Township for  
13 roadways in 1980?

14 A Six hundred and one acres.

15 Q So that four years from now, presumably, if the  
16 plan is accurate, from these figures, just for roads alone  
17 we would have to deduct that amount of land. Is that correct?

18 A Perhaps. The data is rather inconsistent because  
19 the--the year 2000 figure is five hundred and seven acres,  
20 so it's possible they expect some land to be removed.

21 Q Do they also show figures for stream beds and  
22 flood plains and the like?

23 A No, they do not. Not in this report, at least.

24 Q And your figures that you have in P-108 have not  
25 made deductions for those items?

1 A No, they have not.

2 MR. MORAN: I don't have any other questions at  
3 this time, your Honor; however, I would like to move  
4 to strike that portion of Mr. Mallach's testimony  
5 that regards the statistics of housing needs and the  
6 market demand. I realize I already made this motion  
7 once before, but I draw the Court's attention to the  
8 depositions that were taken of Mr. Mallach, with  
9 specific reference to questions that were asked, I  
10 believe, by Mr. Plechner, when Mr. Searing made the  
11 statement, "We are willing to stipulate that Mr.  
12 Mallach is not the expert in development of statistics  
13 on housing needs, and if you want to avoid a series  
14 of questions in that area."

15 And then in answer to questions by Mr. Plechner,  
16 he stated, "Mr. Erber is the one that is going to go  
17 into that."

18 Now, Mr. Mallach is here giving statistics on  
19 housing needs and he's basing his opinion on  
20 statistics on housing needs and market demand.

21 MR. SEARING: I fail to see the inconsistency  
22 in either statement. Mr. Erber was the one  
23 responsible for the developing of detailed statistics  
24 and Mr. Mallach is entitled to use his knowledge in  
25 arriving at the opinion within his area of expertise.

1 THE COURT: Actually, the testimony I heard from  
2 you, Mr. Mallach, was with respect to market demand,  
3 wasn't it?

4 THE WITNESS: That's right.

5 THE COURT: And, for example, if Cranbury is a  
6 particularly advantageous or a desirable place to live,  
7 there may be a demand which is higher than what be  
8 called the need for housing. Is that right?

9 THE WITNESS: It could be.

10 THE COURT: So you testified as to market demand  
11 based upon your general experience.

12 THE WITNESS: That's correct.

13 THE COURT: And also based upon the statistics  
14 from the County Planning Board as to population,  
15 housing, income.

16 THE WITNESS: County Planning Board, U.S. census.

17 THE COURT: All right.

18 That objection is overruled then.

19 MR. MORAN: Could I pursue that further, a little,  
20 then?

21 THE COURT: All right.

22 CONTINUED CROSS-EXAMINATION BY MR. MORAN:

23 Q You characterized a profile in connection with  
24 market demands of Middlesex County. Can you do a similar  
25 profile for Cranbury Township?

1 A It could theoretically be done.

2 Q Well, can you do it now in testimony here today  
3 before this Court?

4 A I can go through such data as I have here and try to  
5 cite the pertinent data for Cranbury Township.

6 Q When you did the profile for Middlesex County,  
7 as I recall, you were able to do it pretty much off the top  
8 of your head and didn't refer to any statistics.

9 A Correct.

10 Q Are you saying that you cannot do the same for  
11 Cranbury Township?

12 A That's correct.

13 Q Yet you did make the statement without referring  
14 to any of the statistics as to market demand for the R-100  
15 zone in Cranbury Township?

16 A As a generalization, yes.

17 MR. MORAN: I don't have any more questions, your  
18 Honor.

19 THE COURT: All right.

20 Are we moving then on to East Brunswick?

21 MR. SEARING: Yes, your Honor.

22 MR. SELESKY: Your Honor, before we begin, there  
23 was some discussion previously of some data or figures  
24 that were going to be introduced by this witness. Is  
25 he going to be going through the whole chain of

1 twenty-three again with regard to that?

2 THE COURT: No. The chain, as you call it, of  
3 the twenty-three direct and cross-examinations, then  
4 general testimony as to cost, cost analysis.

5 MR. SEARING: Your Honor, I have some documents  
6 I would like marked for identification.

7 THE COURT: That will be P-109 and so forth.

8 (P-109, zoning ordinance with amendments; P-110,  
9 document entitled "Land Subdivision Look-Alike  
10 Ordinances of the Township of East Brunswick"; P-111,  
11 chart, marked for identification.)

12 CONTINUED DIRECT EXAMINATION BY MR. SEARING:

13 Q Mr. Mallach, I show you P-109. Could you  
14 identify it for us, please.

15 A Yes. The zoning ordinance with amendments of the  
16 Township of East Brunswick.

17 Q Would you identify P-110 for us, please.

18 A This document is entitled "The Land Subdivision Look-  
19 Alike Ordinances of the Township of East Brunswick."

20 Q Could you identify P-111, please?

21 A This is a chart entitled, "East Brunswick, Summary of  
22 Zoning Ordinance Provisions, which I compiled from the  
23 information provided by the Township of East Brunswick.

24 (Motions and objections are heard at this time  
25 on the record.)

1 (P-109 and P-111, previously identified now  
2 received and marked into evidence.)

3 MR. SEARING: I would like the Court to refer to  
4 P-111 during the testimony.

5 Q Mr. Mallach, could you describe the principle  
6 features of the ordinance of the Township of East Brunswick?

7 A Yes, sir. The Township of East Brunswick contains  
8 four single-family residential zones, designated R's 1  
9 through 4; and office, professional or multi-family zone,  
10 designated O-1; five commercial, business or office zones,  
11 designated C-1 through 5; and four industrial zones. One  
12 is a planned industrial park zone and the others are  
13 designated M-1 through 3.

14 In the R-1 residential zone, single family units only  
15 are permitted under two options. One is a conventional  
16 option in which the lot size minimum is one acre, the  
17 frontage minimum is one hundred fifty feet and the minimum  
18 floor area is one thousand, five hundred square feet. The  
19 other is a cluster option which provides for lots of  
20 twenty thousand square feet, frontage of one hundred and  
21 twenty feet. It does not change the interior floor space  
22 requirements.

23 The cluster option further provides that at least  
24 five acres be dedicated to open space and that the average  
25 density in terms of a number of units on the tract as a whole



1 be no less than that under the conventional use of the zone.

2 The R-2 zone contains a conventional and cluster  
3 provision as well. The provisions for the conventional  
4 zones are twenty thousand square feet lots, one hundred  
5 twenty feet frontages and fifteen hundred square feet floor  
6 area. The cluster option, fifteen thousand square feet  
7 lot, one hundred foot frontage and similar floor area  
8 requirements. The provisions requiring five acres of open  
9 space and no reduction in average density apply to this  
10 cluster option as well.

11 Cluster options do not exist in the other two  
12 residential zones. These are a R-3 zone, which requires  
13 fifteen thousand square feet lots, one hundred foot frontages  
14 and fifteen hundred square foot houses, and a R-4 zone,  
15 providing for ten thousand square foot lots, seventy-five  
16 foot frontages, twelve hundred fifty square foot floor areas.

17 In addition to the overall floor area requirements,  
18 the first floor of a multi-story, single-family house  
19 in the R-1 through 3 zones must have at least eight hundred  
20 fifty square feet and in the R-4 zone seven hundred square  
21 feet.

22 The O-1 zone provides multi-family housing as an  
23 option as well as office and professional uses. To qualify  
24 for the multi-family housing option, the lots must be  
25 four acres or more, the density of the proposed development

1 may not exceed twelve units per acre, and a number of  
2 specific provisions must be met, such as, thirty-five percent  
3 of the first floor area must have a basement, there must  
4 be two parking spaces for each two-bedroom unit and 1.5  
5 parking spaces for each one-bedroom unit, air conditioning  
6 must be provided and one thousand square feet of recreation  
7 area, not including swimming pools, must be provided for  
8 every ten units.

9 The C-1 through C-3 commercial zones permit residential  
10 uses under the R-3 provisions.

11 The planned industrial park zone permits the  
12 continuation of existing residential streets and subdivisions  
13 under the R-1 provisions. The other commercial--

14 THE COURT: Permits what? I'm sorry. I didn't  
15 understand what you said. Would you say it again.

16 THE WITNESS: It's not entirely clear from the  
17 text of the ordinance, but apparently where there is  
18 an existing residential subdivision or street partly  
19 or entirely within the planned industrial park zone,  
20 those streets can be extended and lots can be added  
21 on, adjacent to the existing residential use, that  
22 meet the R-1 requirements.

23 I'm sorry. This is in the M-1 zone, not the  
24 planned industrial park zone.

25 A The other industrial and commercial zones do not

1 permit residential uses.

2 Mobile homes are not permitted in the Township.

3 With regard to vacant land, the distribution of land  
4 in the Township, we have only limited information available.  
5 The Township provided plaintiffs with a breakdown of acreage  
6 by zone but which does not distinguish between vacant and  
7 developed, and figures on acreage in the R-1, 2 and 3 zones  
8 only. Specifically, in the R-1 zone two thousand seven  
9 hundred and fifteen acres are vacant, which is approximately  
10 eighty percent of the vacant--I'm sorry. Eighty percent  
11 of the land area of that zone. In the R-2 zone,  
12 approximately four hundred sixty-nine acres are vacant,  
13 which is approximately half of the total land area in that  
14 zone. The R-3 zone, five hundred and sixty-one acres of  
15 land are vacant, which is approximately twelve percent of  
16 the land area of the zone.

17 The Township also provided information that  
18 approximately half of this zone was not developable, having  
19 to do with problems of premature subdivision and the like.  
20 So that--

21 THE COURT: Of the R-3?

22 THE WITNESS: Of the R-3.

23 THE COURT: You mean of the remaining vacant land.

24 THE WITNESS: That's correct, sir.

25 A They estimate the potentially developable acreage in

1 the R-3 zone is between one hundred fifty to two hundred acres.

2 There was no information as to the distribution of  
3 the remaining vacant land by zone.

4 The total vacant land stated by the Township is six  
5 thousand four hundred seventy acres, which means that there's  
6 approximately two thousand seven hundred acres divided  
7 among the remaining zones.

8 There's no information on the vacant acreage in the  
9 office, professional, multi-family zone, but the total acreage,  
10 vacant and developed, is one hundred eleven acres, which  
11 is less than one percent of the land area of the Township.

12 THE COURT: Now, what does this "N/A mean--"

13 THE WITNESS: Not available.

14 THE COURT: --as to the R-4?

15 THE WITNESS: Not available.

16 Q Mr. Mallach, what, if any, of the features you  
17 have described have an effect on the provision for housing  
18 for low and moderate income families?

19 A A number of these features in this ordinance have  
20 an effect on housing for low and moderate income families.

21 Now, the minimum lot and minimum frontage requirements  
22 in the R-1, R-2 and R-3 zones are all in excess of what  
23 I consider a reasonable minimum for modest, single-family  
24 dwellings. In the case of the R-1 zone, which appears to  
25 have far and away the greater amount of vacant land

1 available, the provisions are substantially in excess of  
2 modest requirements. Specifically, it's one acre lots,  
3 one hundred fifty foot frontages. The minimum floor area  
4 requirements in all zones for single family houses are well  
5 in excess of modest requirements for single family dwellings.  
6 In fact, in the R-1 and R-2 and R-3 zones, they are  
7 substantially so.

8 I might add that there is a requirement that houses  
9 built under the ordinance require a basement covering all  
10 or most--sorry. Not cover, covering. Underneath all or  
11 most of the first floor area.

12 Q Which zones does that apply to?

13 A This applies to all zones, thereby excluding housing  
14 from being built on slabs.

15 This is another provision which increases the cost  
16 of the housing.

17 In the office, professional and multi-family zone,  
18 the provisions for multi-family development can also result  
19 in housing being more expensive than may be required.  
20 ~~The~~ requirement that one have a lot of four acres in order  
21 to build multi-family housing can potentially limit the  
22 availability of land for multi-family development and the  
23 feasibility of construction.

24 The parking requirement results in added costs for  
25 parking spaces and may be in excess of what is required

1 by the residents.

2 The air conditioning requirement, even though this  
3 may be a desirable amenity, should be--is a requirement in  
4 an area that can be easily left up to the dictates of the  
5 market place.

6 The addition of the recreation requirements are of  
7 a similar nature.

8 The result of these is that any apartments built  
9 under this ordinance are likely to be more expensive than  
10 apartments can be built for. In addition, to the degree  
11 that information is available, it would suggest that the  
12 distribution of vacant and available land in the Township  
13 is very heavily weighted towards the most expensive housing  
14 units, which can be afforded only by a very small part of  
15 the population and against both modest, single-family  
16 houses--multi-family dwellings, rather.

17 Q Thank you, Mr. Mallach.

18 Does East Brunswick have a public housing authority?

19 A No, it does not.

20 MR. BUSCH: I object to that, again, your Honor,  
21 as being part of this case.

22 THE COURT: That objection will be overruled.

23 Q Is there Federally subsidized housing within  
24 this municipality?

25 A Not to the best of my knowledge.

1 Q Is there any State subsidized housing within the  
2 confines of this municipality?

3 A Not to the best of my knowledge.

4 MR. SEARING: Your Honor, we have no further  
5 questions on direct.

6 MR. BUSCH: Your Honor, may I have about three  
7 minutes to organize, since I have to move a lot of  
8 material to the other end of the table?

9 THE COURT: All right. We'll take a recess.

10 (A recess is taken at this time.)

11 CROSS-EXAMINATION BY MR. BUSCH:

12 Q Mr. Mallach, I believe you stated on direct  
13 examination with regard to East Brunswick that the factors  
14 set forth in the chart which you prepared had a negative  
15 impact on the development of low and moderate income housing.  
16 Would that be a fair summary?

17 A That's correct.

18 Q And you also stated in response to Mr. Moran's  
19 questions on behalf of Cranbury that if you were to prepare  
20 a zoning ordinance for a municipality you would want to  
21 know certain things that might even be broader than the  
22 standard master plan. Is that correct?

23 A That's correct.

24 Q You would want to inquire into the nature of the  
25 environment in the municipality itself?

1 A Yes.

2 Q You would be interested in the road networks?

3 A Yes.

4 Q In the bearing capacity of the soil to sustain  
5 construction?

6 A Yes.

7 Q Would you be interested in the water intake and  
8 recharge areas and the aquifer formation in the area?

9 A That's part of the overall environmental picture. Yes.

10 Q In preparing the document P-111 for the Township  
11 of East Brunswick, did you make specific study of any  
12 environmental factors in the Township of East Brunswick?

13 A No.

14 Q Specifically, I refer to something called "A  
15 Natural Resource Inventory for the Township of East Brunswick,  
16 with a heading date of May 8, 1975. Did you ever examine  
17 this?

18 A No, I did not.

19 Q Did your attorneys or the attorneys for the  
20 plaintiffs indicate that this volume was available for your  
21 study?

22 A No, they did not.

23 Q I show you something called "Preface to Planning:  
24 The Township of East Brunswick, New Jersey," dated May 1975,  
25 and I ask you did you examine this document before you



1 prepared P-111?

2 A No.

3 Q Are you aware of the fact that East Brunswick  
4 presently has a master plan?

5 A Yes.

6 Q I show you a rather worn copy of a master plan,  
7 dated June 16, 1970. Did you ever examine this before  
8 preparing P-111?

9 A No.

10 Q I also show you P-49 in evidence, which is the  
11 "Long Range Comprehensive Plan Alternative, Volume 21," of  
12 the Middlesex County Planning Board. Specifically, I make  
13 reference to the map appearing on Page 12 and ask if you  
14 referred to this map in any way before preparing P-111?

15 A No, I did not.

16 Q Working in reverse order, Mr. Mallach, I ask you  
17 to look at the document that is in front of you now, Page 12  
18 of Volume 21, and would it be fair to say that the document  
19 among other things shows highly productive soils and major  
20 aquifers on the subject of the map?

21 A This map does show major aquifers and highly  
22 productive soils.

23 Q Are you familiar, generally, with the location  
24 of East Brunswick within Middlesex County?

25 A I think so, though it is rather hard to tell exactly

1 on this map.

2 Q I direct your attention to the cent/  
3 map and ask if you can tell me whether or not it wo.  
4 appear that there is highly productive soils in the gener.  
5 center area of this map?

6 A Yes.

7 Q With your knowledge of East Brunswick's location  
8 on a map of Middlesex County, limited to whatever extent  
9 it is, would you deny that at least some of the highly  
10 productive soils are in East Brunswick?

11 A Will you let me orient myself for a minute?

12 Q Sure.

13 MR. SEARING: Your Honor, I think I would object  
14 to the use of a general map unless counsel has an  
15 overlay showing the location of East Brunswick.

16 THE COURT: If he's unable to identify East  
17 Brunswick, he may say so; otherwise he may answer.

18 That objection is overruled.

19 Q Are you able to identify East Brunswick on Page 12  
20 of P-49?

21 A Very roughly.

22 Q Can you identify whether there are any highly  
23 productive soils in East Brunswick?

24 A There appears to be some highly productive soils in  
25 East Brunswick.

1 Q Can you identify whether there are any major  
2 aquifers or stream valleys in the area of East Brunswick?

3 A There appears to be a stream valley running along  
4 roughly speaking the northwestern border of East Brunswick  
5 with North Brunswick and New Brunswick.

6 Q Would you believe in preparing a zoning ordinance  
7 for a town information such as that shown in P-49 should  
8 be considered?

9 A That information would be one of the factors that  
10 should be considered.

11 Q Would you agree that flood plains should be  
12 considered in preparing the zoning ordinance?

13 A Yes.

14 Q Would you agree that a knowledge of the soil  
15 bearing or the bearing capacity of the soil and a  
16 description of land from least developable to most  
17 developable would be a relevant factor?

18 A Well, knowledge of the bearing capacity of the soil  
19 should be a relevant factor in determining some of the  
20 zoning features. A simple characterization from least  
21 developable to most developable is really something of an  
22 oversimplification.

23 Q If that simplification, as you refer to it, consists  
24 of some five hundred seventy-five pages or so with a lot  
25 of supporting documentation, would you feel that that might

1 be relevant?

2 A Well, the analysis and the information in a properly  
3 done natural resource inventory is certainly relevant.

4 Q If that natural resource inventory were done by  
5 nationally known planners in the field, would that have any  
6 factor as opposed to just citizen input?

7 MR. SEARING: Your Honor, I object to this unless  
8 he has an opportunity to examine whatever pages Mr.  
9 Busch is looking through and identification of the  
10 planner. I object to the characterization of a  
11 nationally known figure without any identification.

12 Q Are you familiar--

13 THE COURT: Wait a minute. There's an objection.  
14 Are you withdrawing the question?

15 MR. BUSCH: I'm willing to meet the question  
16 that was raised by Mr. Searing.

17 If he thought that I was intentionally not showing  
18 the book to the gentleman, I was not.

19 I'll rephrase the question.

20 THE COURT: All right.

21 Q Are you familiar, by any chance, Mr. Mallach,  
22 with Margaret Bennett and Associates, Natural and Historic  
23 Resource Association in Philadelphia?

24 A No, sir.

25 Q If in fact a document were prepared for the town

1 by an independent outside expert and attempted to categorize  
2 land between least developable and most developable, would  
3 that be something that you would want to consider in  
4 preparing either a master plan or a zoning ordinance?

5 A I would certainly want to examine the document and  
6 I might want to consider it.

7 Q Although you concede that something even broader  
8 than the conventional master plan should be done before  
9 granting an ordinance, do you further state that you haven't  
10 looked at any other documents that I've just shown you with  
11 regard to P-111? Is that correct?

12 A That's correct. I'm not drafting an ordinance.

13 Q I understand. Nor are you licensed to and I'm  
14 just asking you in response to what Mr. Moran asked you  
15 whether you would consider these factors.

16 A I would consider those factors.

17 Q With regard to definition of a region, do you  
18 feel that a region necessarily stops at the county line?

19 A Not necessarily. I think there are practical  
20 arguments for doing so when it is feasible to do so, but  
21 it's not a hard and fast rule.

22 Q Are the practical arguments that if there's  
23 already a data bank for a county that you should use that  
24 county?

25 A That is one of the arguments.

1 Q Even if in fact the region bears no relationship  
2 to the county?

3 A If a logical region bears no relationship to a county,  
4 then clearly the region's boundaries should not stop at the  
5 county line. There must be some logic in this as well.

6 Q Is the relationship created to a certain extent  
7 by transportation corridors?

8 A Could be.

9 Q Are you aware of East Brunswick's location vis-a-  
10 vis the New Jersey Turnpike?

11 A Yes, I am.

12 Q Are you aware that Exit 9 is located in East  
13 Brunswick?

14 A Yes, I am.

15 Q Are you aware of the fact that State Highway 18  
16 runs through East Brunswick and generally down to the  
17 Monmouth County area?

18 A Yes, I am.

19 Q In determining the region, would you be interested  
20 in the journey to work from East Brunswick to Monmouth  
21 County and vice versa?

22 A Yes.

23 Q Would you be interested in commutation via the  
24 New Jersey Turnpike to and from East Brunswick?

25 A I would certainly look at all those factors.

1 Q Would you also concede that East Brunswick may  
2 have a regional obligation not just in terms of housing but  
3 in terms of furnishing a water supply?

4 A Hypothetically that could be possible.

5 Q And if East Brunswick's soil happens to be on  
6 top of the Farrington Sands, or the Old Bridge Sands,  
7 which constitute a major aquifer for the region, would that  
8 be a factor in developing that area?

9 A I think that you have to look at the water supply  
10 situation in terms of the regional context as well in  
11 determining what is the overall supply picture to the region,  
12 and what are the production areas and what is the demand  
13 and arrive at some kind of a regional solution.

14 Q And if in meeting a regional need for housing  
15 East Brunswick destroys a regional supply for water, would  
16 that be a factor?

17 A Well, if you arrive at an either/or situation, where  
18 it was impossible to accommodate a reasonable amount of  
19 regional need without quite severely destroying the region's  
20 ability to drink water, then you might--certainly you  
21 would have to consider that.

22 Q Certainly, if there were no aquifer in a town,  
23 that would make the land more developable than if there  
24 were an aquifer, would it not?

25 A If there were no aquifer, one could argue from a

1 regional standpoint one would direct more of the development  
2 into that area. The land may or may not be more or less  
3 developable in the market sense.

4 Q You are not just concerned with vacant land in  
5 your field of expertise but rather developable land, aren't  
6 you, Mr. Mallach?

7 A Principally.

8 Q In coming up with a plan, would you also consider  
9 drainage factors?

10 A One always considers drainage factors in a plan.

11 Q Would you consider pollution of a water supply  
12 if the land were developed?

13 A Yes.

14 Q And by drainage and pollution, would you also  
15 consider then surface run-off?

16 A Yes.

17 Q You didn't consider any of these in preparing  
18 P-111, did you?

19 A No, sir.

20 Q Now, you mentioned some of the various methods  
21 of towns having an impact on low and moderate income  
22 housing, but I don't think that you ever defined low and  
23 moderate income housing.

24 Can you tell me your definition of low income?

25 A Yes. I would use in this area the definition that's



1 based on the Federal Section 8 Program, specifically, that  
2 families of low income for a family of four at fifty percent  
3 of the county or region median income, and which would  
4 vary, of course, upwards or downwards, depending on family  
5 size.

6 Q Are you familiar with the median income for the  
7 county?

8 A I'm familiar with a reasonable estimate of the--

9 Q What is that?

10 A For 1974, the estimated median income is \$16,310.

11 Q What would then be your definition of low income  
12 at fifty percent of that figure?

13 A Well, these are figures--scratch that.

14 Q I didn't mean to limit. What is your definition  
15 of low income?

16 A For a family of four, low income would be approximately  
17 eight thousand dollars or less. The figure would, of  
18 course, be lower for smaller families and higher for larger  
19 families.

20 The figure would be in the area of five to six  
21 thousand for an individual or couple and up to ten or  
22 eleven thousand dollars for large families of seven or more  
23 members.

24 Q Do you have any particular basis for stating  
25 that you have expertise in determining low or moderate

1 income families?

2 A Well, these figures that I'm using are based on the  
3 official Federal definition of low income for the purpose  
4 of Federal housing programs.

5 Q Do you also have figures for moderate income?

6 A Yes.

7 Q What would that be?

8 A The moderate income category is distinguished between  
9 two types of modest income population, which are sometimes  
10 distinguished by the terms moderate-subsidized and moderate-  
11 conventional.

12 The first group, moderate-subsidized, is defined in  
13 the Federal Department of Housing and Urban Development  
14 as the second priority category for use of Section 8 funds,  
15 as people earning between fifty and eighty percent of the  
16 median income of the county for a family of four, and  
17 again varying by family size. So for a family of four,  
18 this would be people earning roughly between eight thousand  
19 and thirteen thousand dollars a year, a total family income.

20 For a single individual or couple, it would be eight  
21 to ten thousand dollars. And for a large family it would  
22 be fifteen to sixteen thousand dollars.

23 Q Now, are you familiar with the median income  
24 for the Township of East Brunswick in the 1970 census?

25 A I have that material in my notes here, if you would

1 like me to track it down.

2 Q Please.

3 A The median income of the Township of East Brunswick  
4 in the 1970 census was \$14,855.

5 Q And that in fact places it tops in the county.  
6 Is that right?

7 A That's correct.

8 Q Would you, in coming up with any kind of fair  
9 share plan, take into account the character of the community  
10 in any way based on its existing income?

11 MR. SEARING: Your Honor, I object. Mr. Mallach  
12 is not testifying as to a fair share plan.

13 Is that what you said? A fair share plan?

14 MR. BUSCH: Your Honor, he has gone into remedy  
15 to a certain extent. I understand that Mr. Searing  
16 is not presenting him as his fair share expert. I  
17 wonder whether this would be a factor that he's  
18 taking to account.

19 THE COURT: You may answer that.

20 Q Would you take into account the character of  
21 the community as reflected by its mean income?

22 A I believe that could be a factor, yes.

23 Q Would you be interested in knowing if it were  
24 largely a commuting, white-collar, middle management type  
25 of community?

1 A Well, that would--that would give me a guide to  
2 certain relevant aspects. Those factors may not be relevant  
3 in themselves as to a fair share plan.

4 Q Now, with regard to what was stated on the R-1  
5 through R-4 zones having an impact inhibiting low and  
6 moderate income housing, I ask you to take the opposite tack  
7 and ask you whether you would be interested in knowing the  
8 existing housing on smaller lots than those shown in the  
9 zones?

10 A With regard to a fair share plan?

11 Q Or with regard to determining whether or not  
12 the present lot size is reasonable.

13 Would you be interested in knowing what the existing  
14 use is?

15 A Not with regard to assessing the lot size of vacant  
16 land of the Township.

17 Q If seventy-five percent of the existing housing  
18 was on frontages of seventy-five feet or less, would that  
19 in any way justify a town in having the remaining lots  
20 zoned on larger frontages?

21 A Not in and of itself.

22 Q Did you make any attempt to study the housing  
23 that presently exists in the Township of East Brunswick?

24 A Not in detail.

25 Q Would you be aware of the fact that there are

1 ninety percent of the homes in the River Road area on  
2 frontages of fifty feet, for example?

3 A I did not know that fact.

4 Q Or two hundred eighty-five lots of sixty feet  
5 near the high school?

6 A I did not know that fact.

7 Q You didn't go into detail as to how many lots  
8 are on frontages of less than seventy-five feet. Is that  
9 right?

10 A I did not do a frontage survey of existing housing  
11 in East Brunswick Township.

12 Q You were saying that lot frontages of a **hundred**  
13 feet and more or lot widths of a hundred feet or more are  
14 arbitrary on their face without regard to actual physical  
15 development of the town.

16 A I was arguing that a zoning ordinance and a  
17 distribution of vacant land in a municipality which provided  
18 for the greater part of the available and hypothetically  
19 developable land could only be developed with lot frontages  
20 of a **hundred** and twenty and a hundred and fifty feet and  
21 **similar** ones was arbitrary on its face and I do feel that  
22 way independently of the frontages of the developed areas  
23 of the municipality.

24 MR. CHERNIN: If your Honor please, I don't  
25 want to interrupt Mr. Busch, but I think I would move

1 to have that answer, particularly as to his conclusions  
2 as to what is arbitrary and what is not, completely  
3 stricken as being not responsive and not qualified  
4 and supported here at the moment. He is now called  
5 on for an opinion or at least volunteered an opinion  
6 as to a bottom line issue in this case which he is  
7 not suited to give an answer to. That's your function,  
8 not his, after you heard all the testimony.

9 THE COURT: I take it that he was giving an  
10 explanation of why he said this has a restrictive  
11 effect, a negative effect.

12 MR. CHERNIN: For the explanation purposes, your  
13 Honor, it is all right, but my point is he comes up  
14 with a final bottom line conclusion as to a minimum  
15 of X number of feet in width being arbitrary,  
16 capricious or what have you.

17 THE COURT: All right. That will be stricken.

18 Q Do you think a town is entitled to receive  
19 credit to the extent it is presently meeting its fair share  
20 of the moderate and low income housing?

21 A To some degree, yes.

22 Q Do you think that credit is based in some degree  
23 upon the small lots and small homes that exist?

24 A That would be a factor in it,

25 Q Before you could categorically state that

existing zoning is unreasonable, wouldn't you have to know the physical makeup of the town?

3 A Excuse me. How do you mean "physical makeup?"

4 Q The existing use on the existing lots, despite  
5 what zone they may be assigned to.

6 A I think that one could arrive at a facial finding of  
7 the unreasonableness of the zoning ordinance without such  
8 an analysis; however, in arriving at a fair share remedy  
9 for the municipality, it would have to go obviously well  
10 beyond the information that you needed for the initial  
11 finding on the zoning ordinance.

12 Q So what you're saying is that the town which  
13 had such existing small homes on small lots could in effect  
14 overcome a presumption or rebut a presumption that you say  
15 would be a facial showing?

16 A I would doubt very much that the existence of small  
17 homes on small lots in and of itself would be a significant  
18 enough factor to rebut such a presumption.

19 Q You've made no study of East Brunswick as such  
20 other than P-111. Is that right?

21 A That's correct.

22 Q You have no idea how many acres the county has  
23 acquired or is acquiring for park land of the vacant land  
24 that remains?

25 A Not how many. I'm aware that there's a--there's some

1 county park land acquisition in East Brunswick but I do  
2 not have a figure for the acreage.

3 Q Are you aware that Jamesburg Park in East Brunswick  
4 alone will consist of at least eight or nine hundred acres?

5 A No. I was not aware of that.

6 Q Are you aware of the fact that the county is in  
7 the process of assembling Island Brook Park on the border  
8 with South Brunswick?

9 A That I was not aware of.

10 Q The plaintiffs in this case have stated, Mr.  
11 Mallach, with regard to the Township of East Brunswick,  
12 among other things, that there are excessive amounts of  
13 land zoned for industrial and commercial use. Is there  
14 anything in your P-111 that addresses that issue?

15 A As I pointed out, sir, the information provided by  
16 the Township in response to the interrogatories did not  
17 provide specific information on the amount of acreage zoned  
18 for commercial and industrial use; however, as I suggested,  
19 there is approximately twenty-seven hundred acres of vacant  
20 land that are not accounted for by the categories that  
21 were provided by the Township in response to interrogatories  
22 and if--if one can assume hypothetically that all or nearly  
23 all of that twenty-seven hundred acres is in commercial  
24 and industrial zones, because that's a reasonable assumption,  
25 I think it's reasonable to state that there may be an

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1 excessive amount of industrial and commercial land zoned.

2 Q And you're willing to testify to that without  
3 any idea of the amount of commercial and industrial land  
4 absorbed each year in East Brunswick?

5 A Well, I can arrive at some judgment on that on the  
6 basis of a comparison of data provided by the Middlesex  
7 County Planning Board and their projections of demand from  
8 now into the foreseeable future for industrial land use.

9 Q Is it your opinion that the, quote, overzoning  
10 for industry takes away from residential land?

11 A Well, it certainly can.

12 Q I call your attention to a document which has  
13 been marked in evidence, P-37, "Land Use Regulation, the  
14 Residential Land Supply," Department of Community Affairs.

15 Are you familiar with this document?

16 A Yes, I am.

17 Q I call your attention to a statement made on  
18 Page 7. "Although Middlesex County appears to have zoned  
19 an excessive amount of land for industrial use, this factor  
20 by itself does not appear to have reduced the county's  
21 net residential land supply to a point which could affect  
22 the housing shortage."

23 Would you agree then with that statement, Mr. Mallach?

24 A Not necessarily.

25 Q And then specifically to a conclusion which the

1 D.C.A. found on Page 25, "Item 2. Overzoning for industrial  
2 use."

3 "Although a pattern of industrial overzoning has been  
4 noted, its effect has not been to reduce the supply of  
5 residential land."

6 Do you agree with that statement?

7 A No.

8 Q You do not? A No.

9 Q Now, you also stated that East Brunswick with  
10 regard to minimum square footage requirements was, I  
11 believe you stated in the R-1, 2 and 3 zones, far in excess  
12 of the minimum need. Would that be right?

13 A The minimum standard for minimum requirements.

14 Q Are you aware of the standards that are set forth  
15 on Page 19 of P-37, which lay out the dwelling unit floor  
16 area required in square feet, based upon the number of  
17 occupants?

18 A I'm aware of this table, yes.

19 Q Okay. And when the Department of Community  
20 Affairs indicates that a reasonable square footage minimum  
21 or requirement for a family of four would be a thousand  
22 eleven--one thousand, one hundred fifty, would you agree  
23 with that number?

24 A Certainly not.

25 Q And for a family of five, fourteen hundred square

1 feet. Would you agree with that?

2 A Certainly not.

3 Q And for a family of six, one thousand five hundred  
4 fifty square feet.

5 A Certainly not.

6 Q You fully disagree not only with their conclusion  
7 as to land, quote, overzoned for industry, close quote,  
8 but also with the D.C.A.'s conclusions on the minimum square  
9 footage. Is that right?

10 A Not only that, but I might add that the New Jersey  
11 Housing Finance Agency--

12 Q I'm not asking you to add, Mr. Mallach. I'm  
13 asking you to answer my question, not what you want to answer.

14 THE COURT: He answered no.

15 A No.

16 Q Do you feel it's reasonable to have minimum  
17 square footage requirements in some way tied to the number  
18 of people who are intended to occupy a dwelling?

19 A There are reasonable ways of doing that, yes.

20 Q Do you feel that the number of intended occupants  
21 is a factor in determining square footage?

22 A Yes.

23 Q And if in fact in a single family home there are  
24 four bedrooms, do you think that the town administration  
25 and council can assume that there will be a certain number

1 of people occupying such a home.

2 A They can assume that the number of people occupying  
3 that home will fall within a general range as a rule.

4 Q And they can provide for a minimum square feet  
5 of some number, can they not?

6 A They should provide for some standard for that purpose.

7 Q And would it be reasonable for a town to rely  
8 on a State body such as the Department of Community Affairs?

9 A To the degree that that State body was in a position  
10 to make formal and precise recommendations, yes.

11 Q With regard to the amenities, as I believe you  
12 called them, which are part of the garden apartment  
13 requirements in East Brunswick, is it your opinion that a  
14 thousand square feet of recreational space for ten dwelling  
15 units is unreasonable?

16 I may have given that number wrong.

17 A That's the correct number.

18 Q Is it your opinion that that is unreasonable?

19 A Excuse me one second. I think that's a high figure.

20 Q A thousand square feet recreation space for ten  
21 dwelling units. Right?

22 A Correct.

23 Q Or if you want to put that another way, that would  
24 come out to one hundred square feet, or a little square  
25 ten by ten, for one dwelling unit. Correct?

1 A That's correct.

2 Q Do you feel that it is ever reasonable for a  
3 municipality to put in any kind of recreational requirement  
4 into an apartment complex?

5 A Yes. I believe that the nature of the occupancy,  
6 depending upon the nature of the occupancy of the complex  
7 a municipality may require provision of recreational  
8 facilities consistent with the needs of the occupancy of  
9 that complex.

10 Q Wouldn't it be easier to rely on what you call  
11 the market place and not require any amenities whatsoever  
12 and let the tenants complain about it?

13 A Not necessarily. It depends on the type of amenity  
14 that you're talking about and the type of project that  
15 you're talking about. For example, in most cases, for  
16 example, Government subsidized programs, there are either  
17 provisions for certain amenities and certain types of  
18 facilities in the development and the municipality could  
19 certainly, you know, allow a developer under one of these  
20 programs to substitute whatever requirements the program  
21 had for their own.

22 Q If the municipality required no amenities  
23 whatsoever in a garden apartment complex, are you suggesting  
24 that the market would create a demand for such amenities  
25 and the developers would simply put them in?

1 A I think by and large that would be the case.

2 Q Are you suggesting that the developers would put  
3 in air conditioning units if they were not required by some  
4 local code?

5 A It would depend. In the case of a--if it was a  
6 conventional developer aiming at a population that had  
7 reasonable housing choice and so that this development was  
8 competitive with others, they probably would do so.

9 Q Are you suggesting that a developer would put  
10 in two parking spaces for a two-bedroom apartment if he  
11 weren't required to by a municipality?

12 A In that case, probably not.

13 Q Isn't it true that some of the provisions of  
14 what you call amenities are meant to protect the public?

15 A I don't see how these provisions protect the public.

16 Q You don't see how the provision of adequate  
17 parking in a garden apartment complex protects the public?

18 A The provision of adequate parking protects the public;  
19 the provision for more than necessary adequate parking  
20 does not protect the public.

21 Q Do you have any evidence that the parking  
22 required in East Brunswick is excessive with regard to  
23 garden apartment complexes?

24 A I have no precise statistical evidence but I have  
25 general evidence from observation.

1 Q You have observed the East Brunswick garden  
2 apartment complexes?

3 A No, I have not observed the East Brunswick garden  
4 apartment complexes.

5 Q So when you say you don't have precise information,  
6 you don't have any information concerning the adequacy of  
7 parking in East Brunswick. Isn't that so?

8 A Specifically for East Brunswick garden apartment  
9 complexes, no.

10 Q Precise or otherwise.

11 A I said specifically, no.

12 Q Now, you mentioned mobile homes as one of those  
13 catch words if you don't have them you're exclusionary  
14 and somehow in trouble. Isn't that right?

15 MR. SEARING: I object to that characterization.

16 THE COURT: I sustain the objection to the  
17 wording, "somehow in trouble."

18 Q Would you conclude--

19 MR. BUSCH: It's the end of the day, your Honor.  
20 I'm sorry.

21 Q Would you conclude, Mr. Mallach, that a town  
22 that did not specifically zone for mobile homes is somehow  
23 being exclusionary?

24 A I would think that that might be worth considering,  
25 certainly.

1           Q     Is it your opinion that every municipality  
2 represented by counsel in this case should have a zone or  
3 zones providing for mobile homes?

4           A     Not necessarily.

5           Q     If some town had it would that possibly meet  
6 the regional needs so others would not have to so provide?

7           A     Well, that raises a question which I think goes back  
8 to some of the issues in the Mt. Laurel decision. I mean,  
9 at least in theory, if the sum total of the regional need  
10 was met in some town in an ideal world, then the other  
11 towns would not have to provide it. If, on the other hand,  
12 in the absence of a means of nationally allocating those  
13 units and finding the ideal location, there seems to be  
14 no bases for excluding one town or another from that  
15 responsibility.

16           Q     But if East Brunswick's neighbor to the south  
17 and to the west, South Brunswick, had an adequate number  
18 of mobile homes.

19                     MR. SEARING: Your Honor--

20           Q     And that met the immediate need--

21                     THE COURT: He probably has already answered the  
22 question.

23                     MR. BUSCH: Well, I haven't gotten the question  
24 out.

25                     I'll rephrase it.



1 Q Do you feel it is at all a relevant factor as  
2 to whether or not there are presently existing mobile homes  
3 as non-conforming uses?

4 A Not a major factor, no.

5 Q In deciding whether or not to zone a town to  
6 permit mobile homes, would you want to know whether or not  
7 such exist at the present time?

8 A No.

9 Q You would not?

10 A No.

11 Q Are you aware of whether or not there are a  
12 mobile home park or parks in the Township of East Brunswick?

13 A Yes, I am.

14 Q Are there any?

15 A There's, to the best of my knowledge, one such.

16 Q Do you know how many mobile homes are there?

17 A I think between forty and fifty.

18 Q Very good, Mr. Mallach.

19 Isn't it true that mobile homes are the most expensive  
20 forms of housing in terms of depreciation?

21 A Well, depreciation is not specifically speaking an  
22 expense. I mean, if you mean to ask me do mobile homes  
23 depreciate faster than conventional houses, yes.

24 Q They are more like cars rather than real estate  
25 in terms of depreciation.

1 A There's a resemblance.

2 Q Notwithstanding that they may tend to be in the  
3 long run the most expensive form of housing, you feel that  
4 a town should have a provision for mobile homes?

5 A Well, we're talking about short and long range needs,  
6 and certainly there are--the long run implication of mobile  
7 homes are one thing, but their ability to meet short run  
8 and immediate needs of again a certain segment of the  
9 population is another, and that's what's at issue.

10 Q I believe you stated in response to Mr. Moran's  
11 questions that you feel it is a valid municipal zoning  
12 purpose to preserve agricultural land, did you not?

13 A No, I did not.

14 Q Do you feel it is?

15 A Not in the zoning ordinance.

16 Q Do you feel that adequate means can be made in  
17 a town other than by zoning to preserve agricultural land?

18 A I believe that to the degree that preservation of  
19 agricultural land is a policy of the municipality or the  
20 State, they should look towards other means, such as,  
21 acquisition or transfer of development rights and so on to  
22 preserve agricultural land. I think this is separate from  
23 the zoning ordinance as such.

24 Q Are you aware that the statute permitting  
25 transfer of development rights has not yet been passed?

1 Are you aware of that?

2 A Yes.

3 Q Do you suggest that a township should take a chance  
4 in the hope that it would be passed?

5 A I know a number of attorneys who suggest that.

6 Q That was not responsive. I'm asking you whether  
7 you are suggesting a municipality should pass an ordinance  
8 on transfer of development rights?

9 A I suggest it should be considered and that advice of  
10 counsel should be certainly solicited.

11 Q In the document which was marked this morning,  
12 the two-volume exhibit, DEB-4 and 4A, you stated on Page 36  
13 and I quote, "The Farmer's Home Administration has found,  
14 for example, that houses can be built meeting their modest  
15 standard in many parts of New Jersey and selling at prices  
16 between twenty-five and twenty-eight thousand."

17 Is that a fair reading of what is in this document?

18 A It is.

19 Q Are you aware of any way that housing can be  
20 built in the Township of East Brunswick between twenty-five  
21 thousand and twenty-eight thousand dollars?

22 A I think it may be possible.

23 Q You do?

24 A Yes.

25 Q And you are prepared to give cost estimates to

1 give that documentation?

2 A Well, I have not done a specific analysis to arrive  
3 at that conclusion. I'm prepared to do a cost estimate and  
4 determine whether or not it is possible. At this point  
5 I'll say that it may be.

6 Q You wouldn't think that those figures have  
7 application possibly to a more remote or rural part of New  
8 Jersey?

9 A Well, certainly there's no question that they have  
10 greater application to more rural parts. The question is  
11 whether they have any application to East Brunswick and  
12 they may.

13 Q Are you aware of the population of the East  
14 Brunswick Township, Mr. Mallach?

15 A It's approximately thirty-five thousand people.

16 Q Are you aware of the square feet or acreage or  
17 square miles of the town?

18 A Not specifically.

19 Q During your depositions, one of the attorneys,  
20 I believe Mr. Spritzer for Metuchen, read a quote to you  
21 from "Jobs and Housing," which has been marked DEB-1 for  
22 identification, prepared by the National Committee Against  
23 Discrimination in Housing. I'd like to read it to you.

24 "As an immediate action recommendation, declarations  
25 of emergency by governors of Connecticut, New Jersey and

1 New York, suspending zoning ordinances in all municipalities  
2 with less than ten percent of vacant land for multi-family  
3 use and with less than twenty-five percent of all existing  
4 dwelling units in multi-family structures. Such a  
5 declaration would be justified under emergency powers to  
6 protect the public welfare from the effect of the housing  
7 crisis." Do you remember that paragraph being read to you  
8 at depositions?

9 A Yes, I do.

10 Q Do you think that that paragraph is a valid and  
11 reasonable solution to whatever the existing problem may be  
12 today?

13 A No, I do not.

14 Q You do not agree that the Governor of the State  
15 of New Jersey should suspend the zoning ordinance that  
16 comes within that definition?

17 A I think that's a little drastic.

18 MR. BUSCH: Nothing further.

19 Thank you.

20 THE COURT: In view of the hour, we will recess  
21 until 9:00 o'clock on Monday morning.

22 I would suggest that the following municipalities  
23 be here: Carteret, Dunellen, Edison, Helmetta,  
24 Highland Park, Jamesburg, Old Bridge.

25 MR. CUMMINS: Judge, are we going to have a

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witness on first from the State?

THE COURT: Yes, we are. I understand.

MR. CUMMINS: So he will be ahead of Mr. Mallach.

THE COURT: Yes. He may be fairly brief.

MR. RAFANO: Your Honor, the list that you read,  
was that for the morning or the whole day?

THE COURT: The whole day.

(The Court stands in recess for the day.)

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION-CHANCERY DIVISION  
Docket No. C-4122-73

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THE URBAN LEAGUE OF GREATER :  
NEW BRUNSWICK, et al, :

Plaintiffs, :

vs. :

CERTIFICATE

THE MAYOR AND COUNCIL OF THE :  
BOROUGH OF CARTERET et al, :

Defendants. :

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I, FREDERICK S. AUMICK, do hereby CERTIFY  
the foregoing to be a true and accurate transcript of  
the above testimony to the best of my knowledge, ability  
and belief.

Frederick S. Aumick  
FREDERICK S. AUMICK, C.S.R.