

CA ~~UK~~ ~~Cartoon~~ (Sayerville)

(1976)

● Testimony of Allen Mallach (transcript)

PI #3364

50 pgs

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3 URBAN LEAGUE OF GREATER :  
NEW BRUNSWICK, et al, :

4 Plaintiffs, :

: Testimony of Allan Mallach

5 -vs- :

6 MAYOR AND COUNCIL OF THE :  
7 BOROUGH OF CARTERET, et al, :

(Sayreville)

8 Defendants. :  
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9  
10 New Brunswick, New Jersey  
February 26, 1976

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12  
13 B E F O R E:

14 HONORABLE DAVID D. FURMAN, JSC.  
15

16  
17 A P P E A R A N C E S:

18 DANIEL SEARING, ESQ.,  
19 Attorney for the Plaintiffs.

20 ALAN KARCHER, ESQ.,  
21 Attorney for the Borough of Sayreville.

22  
23 Daye F. Fenton,  
24 Official Court Reporter.  
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I N D E X        T O        W I T N E S S

WITNESS	PAGE
Allan Mallach	
Direct by Mr. Searing	2
Cross by Mr. Karcher	21

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

EXHIBIT	DESCRIPTION	IDEN.	EVIDENCE
P-151	Document	2	7
P-152	Document	2	7
P-153	Document		7
DF-1	Map	43	

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

3 THE COURT: Apparently we've passed by,  
4 irretrievably lost P-149, P-151 on.

5 (Documents received and marked P-151, 152  
6 and 153 for identification.)

7  
8 A L L A N M A L L A C H sworn.

9 DIRECT EXAMINATION BY MR. SEARING:

10 Q Would you identify, Mr. Mallach, P-151 for us

11 A Yes, sir, this is the Zoning Ordinance of the Borough  
12 of Sayreville.

13 Q Could you identify P-152 for us?

14 A This is the Planned Unit Development Ordinance of the  
15 Borough of Sayreville with an attached amendment.

16 Q Could you identify P-153 for us?

17 A This is a summary of Zoning Ordinance Provisions of the  
18 Borough of Sayreville prepared by me.

19 MR. SEARING: Your Honor having been shown  
20 too and examined by Mr. Karcher, I now move these  
21 into evidence.

22 MR. KARCHER: I object, your Honor, strenuously,  
23 their answers to interrogatories made no reference to  
24 exhibit, first exhibit, certainly made no reference  
25 to the third exhibit and their allegations, all of the

1           allegations contained in the complaint, all the  
2           allegations set forth in their answers to  
3           interrogatories have reference to a different  
4           ordinance than the Zoning Ordinance of the Borough of  
5           Sayreville that they now want to introduce.

6           THE COURT: Is this the current zoning ordinance?

7           MR. KARCHER: That's the current zoning ordinance,  
8           your Honor, 1142 and there's no, there's not an iota,  
9           not a scintilla of reference in any of the pleadings  
10          to that ordinance, it's been adopted in 1974, they  
11          say that they're in their answers to interrogatories,  
12          they said that they would amend their answers and  
13          they haven't. I've never been--

14          THE COURT: You asked to cite the exclusionary  
15          features of the present zoning--

16          MR. KARCHER: The only cite they have to any  
17          exclusionary features are the ordinances that are  
18          now moot and as to exhibit, excuse me, as to exhibit  
19          3--

20          THE COURT: You mean 153?

21          MR. KARCHER: P-153, the third one in this  
22          series, your Honor, I don't know what relevance it  
23          would have because it has no relationship to any of  
24          the pleadings, no relationship to any of the  
25          discovery. So, I would strenuously object to the

1 introduction of any of them.

2 MR. SEARING: I beg to differ, your Honor,  
3 the ordinance that we had introduced, it's my under-  
4 standing that they are similar to the ordinance which  
5 we received in response to our interrogatories,  
6 signed by the Mayor, dated January 22nd, 1975.

7 MR. KARCHER: Your Honor, they have been served  
8 at the publication date with every zoning ordinance  
9 and every amendment thereto within 7 days of the  
10 publication date of that ordinance, they have been  
11 served therewith.

12 I refer to their answers to interrogatories  
13 No. 4 and recitation of their allegations. They  
14 refer to an ordinance adopted in 1961 which has been  
15 voided since 1970. They refer to one adopted in  
16 1963 which has been voided since 1970. They refer  
17 to another one that was adopted in 1971 which of  
18 course which has been superseded by the new one which  
19 has been in effect for over a year, your Honor or  
20 almost a year which they've had in their possession  
21 since the date or almost since the date of publication.

22 MR. SEARING: I would respond--are you through,  
23 Mr. Karcher?

24 MR. KARCHER: Sure.

25 MR. SEARING: I would respond your Honor by

1           noting that in the request, in the response of  
2           defendant to the request for admissions we asked  
3           them to admit to certain sections of the zoning  
4           ordinance, as to certain zone requirements in the  
5           R-20 and R-10 Zone and R-7 Zone and in the, to  
6           certain zone requirements limiting gross density.

7           In many cases their response we received made  
8           specific reference to the P.U.D. Amendment which has  
9           been marked for identification. We had a dispute over  
10          the response to the answer to supplemental interrogatorie  
11          which are keyed to the request for admissions, when  
12          they were answered in response to an order of this  
13          court there was a response indicating that the  
14          special, that the Borough was relying upon the entire  
15          ordinance as being justified by particular  
16          circumstances and I might add that their pretrial  
17          memorandum filed prior to the pretrial conference makes  
18          several references to the P.U.D. Ordinance and it's  
19          not clear to me whether Mr. Karcher is claiming sur-  
20          prise but I would argue that.

21                 MR. KARCHER:    Your Honor, with all deference  
22          to counsel, I have no objection to their second exhibit  
23          which is the P.U.D. Ordinance, I have no objection to  
24          that and I've never contended I have an objection to  
25          that, it's just that I do not intend to defend as to

1           allegations which are irrelevant and with all  
2           deference to the requests for admissions, they're  
3           irrelevant. If he wants to introduce the P.U.D.  
4           Ordinance I have no objection. Mr. Mallach wants  
5           to testify about what that P.U.D. Ordinance says,  
6           I have no objection but if he's to testify as to  
7           allegations in the complaint and further other  
8           discovery which are now totally irrelevant, certainly  
9           I don't think he's entitled to do that.

10           THE COURT: I don't understand, is P-153  
11           directed to the current Zoning Ordinance, Mr. Searing?

12           MR. SEARING: That is my understanding your  
13           Honor, as supplied by the defendants in response to  
14           interrogatories.

15           MR. KARCHER: And the interrogatories said  
16           that they would amend their allegations to refer to the  
17           existing zoning ordinance and that's been in effect  
18           and they have failed to do so, your Honor.

19           MR. SEARING: I beg your pardon, I take the  
20           request for admissions in response to the directions  
21           of this court, the conference in April plus the  
22           supplemental interrogatories to the demand returned by  
23           Sayreville and the amendment, to avoid surprise and I  
24           believe in particular reference to the complaint that  
25           the, what is commonly termed notice pleading is allowed



1 in this state under the court rules.

2 MR. KARCHER: Your Honor, it's not a question  
3 of surprise, I'm not pleading surprise, I'm just  
4 pleading relevancy.

5 March 13th, 19--

6 THE COURT: The objection will be overruled,  
7 at this time P-151, 152 and 153 will be admitted  
8 into evidence.

9 (Documents received and marked in evidence.)

10 BY MR. SEARING:

11 Q Mr. Mallach, can you describe the principal  
12 features of this Zoning Ordinance for us?

13 A Yes, sir, I'd like to make one, there's one  
14 typographical error on this chart which I'd like to note  
15 that the Cluster Option Provisions listed under R-20 and R-10  
16 actually apply to the zone beneath them rather than above  
17 them.

18 In other words, the Cluster Option Provisions under  
19 R-20 are actually R-10 provisions and the floor areas  
20 should be 1400 square feet rather than 1500 with respect to  
21 the R-10.

22 The second set of Cluster Option Provisions actually  
23 belong with the R-7 rather than the R-10.

24 THE COURT: 1400 minimum floor area?

25 THE WITNESS: And it should be 1000 instead of

1           1400 in that because it's consistent with the R-7  
2           Provisions.

3       A     The Borough of Sayreville provides for three residential  
4       zones, one apartment zone, four business zones and two  
5       industrial zones. They provide a P.U.D. option which is  
6       available in various parts of two of the business zones and  
7       the two industrial zones.

8           The first residential zone is a R-20 single family  
9       zone, requires lots of 20,000 square feet, slightly under  
10       half an acre, frontage of 100 feet and minimum floor area  
11       of 1400 square feet.

12           The second zone is an R-10 single family zone,  
13       requires minimum lot of 10,000 square feet, frontage of  
14       100 feet, floor area of 1400 square feet.

15           The Cluster Option provides that through the clustering  
16       20 percent of the lots in the zone may be below the 10,000  
17       square foot minimum down to a minimum of 8,000 square  
18       feet but that the gross density of the entire tract may not  
19       exceed 2.4 dwelling units per acre. The frontage provision  
20       again may be reduced to 80 feet, the minimum floor area space  
21       the same.

22           The R-7, single family zone provides for lots of  
23       5500 square feet, frontage of 75 feet and minimum floor area  
24       of 1,000 square feet. A Cluster Option is permitted which,  
25       which may not exceed a gross density of 3.2 dwelling units

1 per acre.

2 In addition there's a town house option available  
3 under the R-7 Provisions, a developer with a minimum tract  
4 of 20 acres may build town houses up to a maximum density  
5 of 5 dwelling units per acre with minimum floor area require-  
6 ments of 800 feet, square feet.

7 The garden apartment zone allows for the development  
8 of garden apartments or tracts of 5 acres or more at a  
9 density of no more than 12 dwelling units per acre. In the  
10 garden apartment zone there's a requirement that open space  
11 be provided at a level of 10,000 square feet or 500 square  
12 feet per dwelling unit, whichever is greater.

13 There's a zig-zag facade provision as described  
14 earlier.

15 There's a requirement that two parking spaces be  
16 provided per dwelling unit and 25 percent of the parking  
17 be enclosed.

18 The P.U.D. Option is permissible in the B-3 and B-4  
19 business district in parts of those zones and in parts of  
20 the M-1 and M-2 industrial districts.

21 THE COURT: Is there new housing permitted  
22 in, new residential housing in the business or the  
23 industrial zones apart from P.U.D.?

24 THE WITNESS: No.

25 A Mobile homes are prohibited.

1           With regard to the P.U.D. provisions, these are  
2 summarized on the second sheet. The P.U.D. provisions  
3 vary to some degree, depending on the location. There are  
4 five separate P.U.D. provisions, two options in the M-1 Zone  
5 and one option for each of the other three zones in which  
6 P.U.D.'s are permitted.

7           In the M-1 Zone the first option, the tract must be  
8 at least 250 acres, 10 percent of the tract must be developed  
9 for commercial purposes, 25 percent must be developed for  
10 industrial purposes and 25 percent must be set aside for  
11 open space.

12           The gross density may not exceed 4.5 dwelling units  
13 per acre.

14           The single family units may not exceed 15 percent,  
15 garden apartments may not exceed 50 percent and town houses  
16 must be between 35 and 45 percent of the total dwelling  
17 units in the P.U.D.

18           Single family houses under this option may be developed  
19 on lots of 7500 square feet. Town houses may be up to 8  
20 units per acre density and garden apartments up to 12 units  
21 in acre density.

22           The minimum requirements for commercial, industrial  
23 and open space are identical for all of the P.U.D. options.  
24 The acreage requirement varies from a minimum of 50 acre tract  
25 to up to 250 minimum tract. The density varies, the density

1 in the other options is four dwelling units an acre.

2 The provisions for the distribution of housing types,  
3 single family residences, town houses and garden apartments  
4 are the same for all of the options, except the B-4 which  
5 specifies 25 to 35 percent town houses and does not specify  
6 a figure for garden apartments and the single family. The  
7 minimum lot size is 10,000 square feet for single family in  
8 the B-3 and 15,000 under the M-2 and the second M-1 option,  
9 it's not specified in the B-4, the densities for town houses  
10 and garden apartments are the same in all options.

11 There are a number of other provisions which are  
12 applicable to all the P.U.D. options. There's a provision  
13 which provides that senior citizens public or non-profit  
14 housing is allowable in P.U.D.'s as an excess over the  
15 residential maximums otherwise permitted.

16 The floor area requirements are 600 square feet for  
17 an efficiency apartment, 800 square feet for one-bedroom  
18 apartment, 950 square for two-bedroom apartments. Town house  
19 units must be at least 1000 square feet.

20 In the apartment areas there must be recreation space  
21 of 10 percent of the gross area of the apartment parcel.  
22 This is over and above the old, the general open space  
23 dedication.

24 There are 1.75 parking spaces per dwelling unit re-  
25 quired in town house and apartment zones. There's requirement

1 that no two adjacent buildings can have identical structural  
2 form and finally there's an elaborate--

3 MR. KARCHER: I object and I ask that that  
4 be stricken, elaborate is an opinion, not responsive  
5 to the question asked.

6 THE COURT: All right, I'll sustain that  
7 objection.

8 A There is a timing provision requiring, according to a,  
9 a formula involving various percentages that various  
10 percentages of the non-residential uses required in the  
11 P.U.D. be in place prior to the issuance of certain per-  
12 centages generally comparable of the residential, of  
13 residential uses permitted in a P.U.D.

14 With regard to vacant land availability, the Borough  
15 of Sayreville--

16 MR. KARCHER: I don't know that there's  
17 any question with reference to vacant land, he  
18 was asked characteristics of the zoning ordinance.  
19 I ask that he be instructed to be responsive to the  
20 questions pending.

21 THE COURT: You've completed your summary of  
22 the zoning ordinance provisions?

23 THE WITNESS: That's correct.

24 THE COURT: All right, ask another question.

25 Q Mr. Mallach, could you comment on the vacant

1 land distribution in the municipality of Sayreville, please?

2 A Yes, sir. Since the vacant land information is not  
3 provided by the Borough of Sayreville we've relied on the  
4 information provided in the D.C.A. Study, I believe that's  
5 P-104, for purposes of this analysis.

6 The study indicates that there are 4083 vacant and  
7 by their definition, developable acres in the Borough of  
8 Sayreville. Of these 3027 approximately 75 percent, are  
9 contained within the industrial zones, approximately 900 or  
10 approximately 22 percent are contained in the residential  
11 zones, divided more or less evenly between the R-10 and  
12 R-7 Zones. There is no land shown as being available in  
13 either the R-20 Zone or the G-1, garden apartment zone and  
14 there's 147 acres available in the business zone, though it  
15 does not specify to which business zones the reference  
16 is made.

17 With regard to the P.U.D. option, even though since the  
18 P.U.D. option was not in existence at the time this study  
19 was made, they did not specify land areas for the P.U.D.'s.  
20 However a rough look at the map would suggest that between  
21 a third and a half of the industrial land--

22 MR. KARCHER: I'm going to object to that,  
23 your Honor.

24 THE COURT: Rough?

25 MR. KARCHER: Don't want any rough looks at any

1 map, either he knows or he doesn't know.

2 THE COURT: I'll let him give an approximation.

3 Go ahead.

4 A Approximation would suggest that between a third and a  
5 half of the industrial land qualifies for the P.U.D. option  
6 and slightly more than a half of the business land qualifies  
7 for the P.U.D. option. This would be then between 1000  
8 and 1500 acres in the industrially zoned parts of the town  
9 and an undetermined number of acres in the business zones.

10 Q Do you relate the distribution of vacant land  
11 to plaintiff's Exhibit 105 in evidence?

12 A According to the study of the Middlesex County Planning  
13 Board the demand for industrial and related uses in the  
14 Borough of Sayreville through the year 2000 is approximately  
15 1124 acres. Using the approximation I mentioned it would  
16 appear that including the industrial lands, that is not  
17 zoned for P.U.D. and the minimum percentage of industrial  
18 land required within the P.U.D. development, that the Borough  
19 of Sayreville has between 1800 and 2200 acres of land in  
20 which residential uses are the permitted use which is there-  
21 fore approximately twice as much industrial land as a  
22 demand figure provided by the Middlesex County Planning  
23 Board.

24 THE COURT: I don't think that answer came out  
25 right.



1 Q You want the answer read back to you?  
2 THE COURT: Didn't he say 1800 to 2200 zoned?  
3 THE WITNESS: No, for industrial.  
4 THE COURT: You said residential, I believe.  
5 THE WITNESS: Sorry.  
6 THE COURT: You mean zoned for industrial?  
7 THE WITNESS: Yes.  
8 THE COURT: All right.

9 Q Now, Mr. Mallach, referring back to the  
10 testimony you gave summarizing the Zoning Ordinance  
11 Provisions and vacant land data, what if any of the features  
12 you have described have an adverse effect on the provision  
13 of housing for low and moderate income persons?

14 MR. KARCHER: I object your Honor, to that  
15 question, no foundation laid for that and the question  
16 is improperly phrased.

17 If you'd like me to elaborate, I don't want to  
18 tell counsel how to try his case but I would think  
19 perhaps he might suggest whether he has an opinion  
20 at all, if he does then--

21 THE COURT: That objection is overruled.

22 MR. KARCHER: Well--

23 THE COURT: Go ahead with your answer.

24 MR. KARCHER: Your Honor--

25 THE COURT: Go ahead with your answer, please.

1 A Yes, sir.

2 There are a number of provisions in the ordinance that  
3 have an adverse effect on the provision of housing for  
4 low and moderate income families. Referring specifically to  
5 the ordinance, without regard to the vacant land information,  
6 the provisions of the R-20 single family zone are greater  
7 than is required for reasonable and modest accommodation with  
8 regard to the lot size of 20,000 square feet, frontage of  
9 100 feet and the minimum floor area of 1500 square feet.

10 In the R-10 single family zone the lot size is at the  
11 boundaries of a modest lot size, the frontage requirement  
12 is of 100 feet is excessive and the minimum floor area re-  
13 quired, 1400 square feet is excessive.

14 The provisions of the R-7 Zone with regard to single  
15 family dwellings are not unreasonable.

16 With regard to the town house option in the R-7 single  
17 family zone the density ceiling of 5 units an acre is  
18 substantially below a density level at which town houses  
19 can be developed and meet reasonable planning standards.

20 The requirement that a 20 acre tract be provided to  
21 permit the town house option to have effect is restrictive,  
22 limits the number of areas in which town houses can be  
23 developed and bears no relation to the requirements of town  
24 house development.

25 With regard to the G-1, garden apartment zone, the

1 size acre requirement is restrictive in a similar manner as  
2 the requirement in the town house zone and it's particularly  
3 so in view of the apparent absence or relative small amount  
4 of land available in this zone.

5 The density of 12 to 1 units per acre is lower than  
6 densities at which garden apartments can be reasonably  
7 developed.

8 The provision to two parking spaces per dwelling unit  
9 of which 25 percent be enclosed is an excessive provision,  
10 tending to increase the cost of the development.

11 The zig-zag provision in the facades of the apartment  
12 development is also a provision tending to increase the costs.

13 The open space provision of 500 square feet per  
14 dwelling unit appears excessive and not directly related  
15 to specific open space needs.

16 With regard, the prohibition on mobile homes is as well  
17 a restriction on that housing type which is relevant to a  
18 low and moderate income housing need.

19 With regard to the P.U.D. option which represents  
20 apparently the principal vehicle for construction of mutli-  
21 family housing in the Borough of Sayreville, the requirements  
22 for substantial part of the P.U.D. option that one have a  
23 minimum of 250 acres or in some cases 100 acres to qualify  
24 for the P.U.D. development is restrictive.

25 The requirements that 10 percent of the land be

1 devoted to commercial uses and 25 percent of the land be  
2 devoted to industrial uses are both restrictive of the amount  
3 of housing that can be built in the P.U.D. areas and put a  
4 substantial burden on the developer in regard to uses which  
5 may be for--excuse me--uses, the feasibility of which may  
6 not be established, may be difficult to obtain in the  
7 development.

8 The lot size requirements for single family units in  
9 the P.U.D.'s under the M-2 area and option two in the M-1  
10 area which represent between them a substantial part of the  
11 P.U.D. potential development of 15,000 square feet are  
12 excessive, reasons I have mentioned before.

13 The provision that the senior citizens housing be  
14 provided over and above the residential ceiling on the P.U.D.,  
15 while reasonable in and of itself is unreasonable in that  
16 the same provisions are not provided for other possibly  
17 equally or even more needed subsidized public and non-  
18 profit housing development for non-senior citizen families.

19 The floor area requirements in the P.U.D. zone for  
20 apartments by bedroom five and for town houses are all in  
21 excess of reasonable minimums for the types of housing that  
22 they represent.

23 The requirement that no two adjacent buildings can  
24 have identical outside structural form is a cost increasing  
25 feature.

1           The nature of the timing provision in the P.U.D.  
2 Ordinance is such that it compliments the restrictive  
3 aspects of the high percentages of industrial and commercial  
4 land development required in the P.U.D. In other words,  
5 because of the difficulty of providing the amount of  
6 industrial and commercial development that may be required  
7 under this P.U.D. Ordinance the timing provision precludes  
8 the development of the residential part of the P.U.D. until  
9 the development of certain percentages of the industrial has  
10 taken place, which provides very little leeway for possible  
11 economic problems and feasibility problems associated with  
12 that non-residential development.

13           With regard specifically to the vacant land availability  
14 in the Borough of Sayreville--

15                   MR. KARCHER: I object, your Honor, I don't  
16 think that is responsive.

17                   The question was asked what zoning ordinance  
18 was, had adverse effects--

19                   THE COURT: Well--

20                   MR. KARCHER: Amount of vacant land has  
21 nothing to do--

22                   THE COURT: Well, I take it that it does,  
23 Mr. Karcher.

24                   Go ahead with your answer.

25                   MR. KARCHER: Maybe that question should be

1 put before him, what effect that has.

2 A The provisions of vacant land, the provision of more  
3 than twice as much land is as necessary for industrial  
4 purposes, restricts the availability of land for residential  
5 purposes. The fact, the, since the overwhelming majority--

6 THE COURT: Excuse me a minute.

7 A Since the great majority of the vacant land available  
8 for development of other than single family residential uses  
9 is located within the P.U.D Zone, this again restricts the  
10 development of housing in that first the provisions of the  
11 P.U.D. Zone, the minimum acreage requirements and the other  
12 provisions being restrictive, they preclude the development  
13 of more modest forms of multi-family housing, separate  
14 developments, separate low and moderate income developments  
15 outside the purview of the P.U.D. development.

16 With regard to the single family housing, however,  
17 it appears that a reasonable portion of the land zoned  
18 for single family housing is zoned in a manner that provides  
19 for modest housing of that type.

20 Q Does Sayreville have a public housing  
21 authority?

22 A No, sir.

23 Q Is there any state or federal subsidized  
24 housing within the confines of the municipality?

25 A Not to my knowledge, sir.

1 MR. SEARING: Your Honor, we have no  
2 further questions.

3 THE COURT: Would you prefer to hold off  
4 starting your cross?

5 MR. KARCHER: I'd prefer, your Honor.

6 THE COURT: All right, we'll recess until  
7 1:30.

8 (After the luncheon recess the trial  
9 continued.)

10

11 CROSS-EXAMINATION BY MR. KARCHER:

12 Q Mr. Mallach, just before we broke one of the  
13 last items you had spoken about was the absence of a housing  
14 authority in the Borough of Sayreville; is that correct?

15 A That's correct, sir.

16 Q And you're familiar with the workings and the  
17 functions and the statutory prerogatives of such housing  
18 authorities? A Generally  
19 speaking, yes.

20 Q All right. And would it be an accurate statement  
21 to say that the functions of a housing authority or that a  
22 housing authority operates within parameters that are  
23 optional and discretionary?

24 A I believe the statute provides that they're optional,  
25 yes, sir.

1 Q So that even if one were to exist it would in  
2 no way dictate or mandate that they do anything; is that  
3 correct? A That's correct.

4 Q Now, without telling me about your feelings  
5 or opinions or beliefs about the matter, can you tell me any  
6 facts which would indicate that the existence of a housing  
7 authority in Sayreville, rather a nonexistence of a housing  
8 authority somehow, somehow adversely affects the housing  
9 supply for low and moderate income families?

10 A You must recognize the presence of a housing authority  
11 does increase the probability--

12 THE COURT: Try to answer the question.

13 Q Don't want to know the problem about it, don't  
14 want to know about opinions or conclusion, want to know  
15 facts.

16 Do you know any facts? Do you know any facts?

17 You testified that the absence has an adverse effect,  
18 the absence of a discretionary and optional body has an  
19 adverse effect, I want to know what facts you have in your  
20 disposal indicate that that's accurate?

21 A The construction of low rent public housing requires  
22 a housing authority.

23 Q You mean there's no other way, no private builder  
24 can come in and build a low income housing that can be  
25 occupied by low income people without a housing authority,



1 you are telling me that?

2 A Only public housing which is a specific term.

3 Q Oh, public. So that's a conjecture, isn't it?

4 A No.

5 Q Well, if there, if what they do, once they're  
6 established is totally optional and discretionary, we have  
7 nothing here to prove that even if they were there they  
8 would do anything, do we, do we?

9 A That can't be proven.

10 Q That's right, okay, fine.

11 That can't be proven.

12 All right. So that when you said that it had an  
13 adverse effect you can't prove that it had an adverse effect,  
14 can you? A That--

15 THE COURT: You don't have irrefutable proof  
16 of that, do you?

17 THE WITNESS: No, I guess not.

18 Q Now, in fact the way that question was phrased  
19 to you--all right--it said, adverse effects, what things in  
20 the Borough of Sayreville Zoning Ordinance you had an opinion  
21 about that had adverse effects, your opinion; is that  
22 correct? A That's correct.

23 Q Only your opinion. And were you talking about  
24 potential adverse effects or present adverse effects?

25 A Since the Zoning Ordinance deals principally with what

1 will be built in the future, say principally speaking it's  
2 potential adverse effects.

3 Q Right, but that wasn't the way the question was  
4 framed, that's not the way you answered it, that's what you  
5 meant though, wasn't it, potentially adverse effects.

6 Is that correct? A Adverse effects from  
7 that point when the Zoning Ordinance went into effect through  
8 the future.

9 Q From the point it went into effect was March 13th,  
10 1974; is that correct? A That's correct.

11 Q Now we are at May or February 20th something or  
12 other, 1976, can you tell me of your own personal knowledge  
13 once again facts not opinions or conclusions, who has been  
14 restricted to your personal knowledge by the operation of  
15 that Zoning Ordinance? A You mean specific  
16 individuals or firms?

17 Q Yes. Who has been restricted?

18 MR. SEARING: I object, your Honor, that's part  
19 of an affirmative case.

20 MR. KARCHER: Well--

21 THE COURT: Who has been restricted, Mr. Karcher?

22 MR. KARCHER: Yes.

23 THE COURT: I'll have to sustain that  
24 objection.

25 Q Well, can we assume Mr. Mallach, that to your

1 knowledge there is no one who has been presently operating  
2 in time and space now who has been restricted in what you  
3 testified to, operates perspectively--

4 MR. SEARING: Same objection.

5 THE COURT: I'll sustain that objection.

6 Q Mr. Mallach, you at one time were employed by  
7 the State Government, isn't that correct?

8 A That's correct.

9 Q You testified you also as to the fact that you  
10 thought that the floor area requirements under Sayreville's  
11 P.U.D. were restrictive in the sense that it required the  
12 grand total of 600 feet for efficiency, is that correct,  
13 is that one of the things you testified to?

14 A That's correct.

15 Q Are you aware or isn't it a fact that you are  
16 aware that for instance the State of New Jersey establishes  
17 for those individuals that within the society you happen to  
18 be incarcerated for the commission of a crime, 500 square  
19 feet of living space.

20 Are you aware of that?

A No,

21 I'm not.

22 Q Are you aware that the Department of Education  
23 recommends that children attending public schools, that there  
24 be provided 500 square feet of space within the schools and  
25 recreational facilities, per pupil within a school system.

1 Are you aware of that? A Not specifically,  
2 no.

3 Q Assuming that those figures I gave you are  
4 accurate, do you still think 600 feet is too large a sum for  
5 people to live in? A I think the  
6 figures you gave me bear no relationship to this figure,  
7 you have completely separate instances.

8 THE COURT: The answer is yes?

9 THE WITNESS: The answer, I still consider this  
10 to be, my statement on this to be valid.

11 Q So 500 feet is sufficient for a criminal but  
12 600 feet is too much for an individual in a home, apartment;  
13 is that right?

14 MR. SEARING: That's, your Honor, I object,  
15 that's not what the witness said.

16 THE COURT: 600 feet too much for an individual?

17 MR. KARCHER: Yes, that's his testimony, 600  
18 feet is too much for a couple living in an efficiency  
19 apartment.

20 THE COURT: I don't think he said that, I think  
21 he said that 600 was too high a minimum floor area.

22 MR. KARCHER: Precisely.

23 THE COURT: Somewhat different from what you  
24 said, isn't it?

25 Q Mr. Mallach, would it be accurate to say what

1 you said earlier on direct examination was that 600 feet  
2 requirement for a couple living in an efficiency apartment  
3 within a P.U.D. Zone in the Borough of Sayreville somehow  
4 had an adverse effect on the housing supply?

5 A Yes.

6 Q And you say that even in light of the fact that  
7 the State of New Jersey recommends 500 square feet for single  
8 prisoner incarcerated in the penal system?

9 A Yes.

10 Q That's all I wanted to hear.

11 Now you also said that the Borough of Sayreville,  
12 by having within their ordinance, a regulation prohibiting  
13 look alike structures next to each other was restrictive  
14 and drove the price up; is that correct?

15 A That's correct.

16 Q Is that same thing true about other special  
17 regulations that are put into the ordinance?

18 A Some.

19 Q Don't all special regulations to a degree have  
20 the operate to drive the price of the cost of the building  
21 up?

22 Let me help you.

23 All right. Borough of Sayreville in Exhibit 151,  
24 I think it is, page 9--okay, in the top of the left-hand  
25 column talking about garden apartments, talking about this

1 morning--for instance they require that all apartment units  
2 include complete kitchen facilities, toilets, bathing and  
3 washing facilities.

4 Doesn't that drive the price up?

5 A Not above what is reasonable and necessary.

6 Q So that what you are saying is then, is that  
7 kind of a restriction, that kind of a restriction is  
8 reasonable?

9 A Yes.

10 Q And you're saying that the other one is un-  
11 reasonable. Is that what you are saying?

12 A Yes.

13 Q Now there must be a dichotomy between those  
14 regulations that a municipality puts in by way of a  
15 restriction, those that are reasonable, those that are un-  
16 reasonable. Is that correct?

17 A Well, to some degree.

18 Q And what you are testifying is that you are the  
19 arbiter of what is and what isn't?

20 MR. SEARING: Objection, your Honor, that  
21 characterization--

22 THE COURT: Testifying that he is the arbiter--

23 MR. KARCHER: Of what within the Borough of  
24 Sayreville's ordinance is restrictive, improperly  
25 restrictive and what is just good guy restrictive,

1           okay, having the toilets--

2                   THE COURT: I'll sustain the objection to the  
3           wording of it. He's offering himself as an expert  
4           on that subject.

5                   MR. KARCHER: Okay.

6                   THE COURT: Offering opinion, no question of  
7           it.

8           Q        So requiring a toilet is a restrictive and  
9           drives the price up but that's okay--

10                   THE COURT: Well--

11                   MR. SEARING: Your Honor, I object to that,  
12           that is not what the witness has testified to.

13                   THE COURT: I think it's a proper question.  
14           What is your answer to that?

15           A        That it is all right to require a toilet.

16           Q        Now how did you arrive at what regulations within  
17           the Borough of Sayreville Zoning Ordinance are good  
18           restrictions and which are bad restrictions? How did you  
19           arrive at that? What was your process?

20           A        Well, the immediate process was a review of the  
21           ordinances of the Borough of Sayreville, the more general  
22           basis for having arrived at that, these conclusions on the  
23           basis of that review with the experience, knowledge, background  
24           and observation that I've had over the past 10 years or so  
25           working in the area of housing and development.

1 Q Now in that experience isn't it, isn't it a  
2 fact that look alike housing depreciates values of real  
3 estate?

4 A No.

5 Q That's not in your experience in that, that is  
6 the raison d'etat or the reason or rationale of having a  
7 prohibition is that it depreciates real estate values?

8 A No, sir.

9 Q Just in there to pass the time?

10 A No.

11 Q Just arbitrary?

12 A Not necessarily.

13 Q How about esthetics, is it therefore esthetics,  
14 you think?

A It's often there on the  
15 basis of a certain kind of judgment about esthetics.

16 Q It's in there about a certain judgment about  
17 esthetics. Could that judgment be, esthetics be that houses  
18 that are not look alike and ticy-tacy happen to hold higher  
19 values that is, when you put them in unison and in  
20 duplication that it tends to depreciate the value?

21 A The term ticy-tacy and the term look alike are not  
22 certainly the same thing.

23 Q I had reference to Pete Seeger's song, they all  
24 look the same, isn't that really what was wrong with them,  
25 isn't that what prohibited--

A Not



1 necessarily by any means.

2 Q What did--

3 A What did what?

4 Q What did bring about prohibitions against look  
5 alike houses? A I believe, as I believe I

6 mentioned one of the factors was a judgment under the  
7 esthetic made by certain people under the esthetic pros and  
8 cons of the houses looking alike or not looking alike.

9 Q And that's not your judgment; is that correct?

10 A I--

11 Q Your judgment about esthetics is different?

12 A No, my first as, the point regarding the look alike  
13 is not a matter of--

14 Q That's not the question.

15 My question is, that is not your judgment about the  
16 esthetics of look alike houses.

17 A My esthetic judgment is not at issue and I'm not  
18 debating my esthetic judgment at this point.

19 Q Your opinion, that's all we're here for to talk  
20 about, your opinions. I'll substitute your opinions about  
21 esthetic values with regard to look alike buildings is  
22 different from the judgment of those who have instituted  
23 or initiated an ordinance prohibiting same--

24 MR. SEARING: Object your Honor, he's not

25 an expert on the esthetics, his testimony refers to the

1 effect of the provisions.

2 THE COURT: It seems to be proper in view of  
3 his testimony that this had an inhibiting effect as  
4 to low and moderate income housing.

5 You may answer that.

6 A My personal judgment on the esthetics of the matter  
7 is that the, whether or not houses look alike or not look  
8 alike in the context of typical subdivision design, does  
9 not substantially effect their esthetic quality, there are  
10 many other factors or substantially more important.

11 Q And without expressing opinions, conclusions,  
12 et cetera, facts only, what facts do you have to support  
13 the contrary of that, that they somehow or the corrolary  
14 of that, that it somehow changes the value or the cost of the  
15 house? Facts now, okay?

16 A Because there are specific, the, the provision of a no  
17 look alike ordinance can restrict, well, can increase the  
18 professional fees associated with the development and can in-  
19 crease--

20 Q I don't want to know can, I don't want  
21 hypotheticals I want to know what you know about it.

22 MR. SEARING: Can we ask the witness if he  
23 can finish the answer to the question he's trying  
24 to give an answer.

25 MR. KARCHER: Not a responsive answer.

1 MR. SEARING: We haven't heard it yet.

2 MR. KARCHER: What facts does he have of his,  
3 despite his talking about a hypothetical, it can, I  
4 don't want to know about hypothetical, I want to know  
5 what he knows.

6 THE COURT: Are you asking him whether he has  
7 any actual knowledge--

8 MR. KARCHER: Yes.

9 THE COURT: --of factual experience.

10 A I've had no personal experience with building under  
11 these provisions.

12 Q Fine, thank you very much.

13 So you have no knowledge then of whether or not in  
14 fact it does change adversely the price or cost of  
15 construction, do you?

16 A No first hand personal knowledge.

17 Q All right, fine, thank you very much.

18 Now going back to restrictions that are good  
19 restrictions and those which you think are bad, for instance  
20 the Borough of Sayreville does have mobile homes, doesn't  
21 it, as nonconforming uses?

22 A I believe there are some.

23 Q But they are prohibitive uses, are they not?

24 A That's correct.

25 Q And the Borough of Sayreville exercises its general

1 zoning powers to prohibit other things besides mobile  
2 homes, not just mobile homes we prohibit.

3 A That's correct.

4 Q Junk yards, that's a good thing, right? We  
5 put up a junk yard, that's okay?

6 A Not necessarily, that would depend on the specific  
7 circumstances.

8 Q How about we prohibit uses which emit objectionabl  
9 amounts of dust fumes, noise, vibrations and waste products.  
10 That's good?

11 A Unbalanced.

12 Q Your judgment-- A As a general  
13 rule, yes.

14 Q If we didn't it would probably, it would,  
15 you know, the--what would be the outcome or results of real  
16 estate values if we didn't prohibit them, you know,  
17 generally? A Again it

18 would depend on the specific circumstances.

19 Q So in other words, a house next to a junk  
20 yard or factory that emits fumes is worth as much as a house  
21 that's not situated in an area where those things are  
22 prohibited? A If the house

23 is immediately adjacent to such a use, might be worth less  
24 than a comparable house elsewhere.

25 Q Isn't it a fact that the situation, the situating

1 of mobile home parks and trailers once again depreciates  
2 real estate values. Isn't that accurate?

3 A No.

4 Q What proof do you have, facts, facts, what facts  
5 do you have to the contrary that it increases or maintains  
6 or stabilizes real estate values?

7 A From first hand personal knowledge?

8 Q Yes. A None.

9 Q Okay, thank you.

10 Now when you were going through your third exhibit, I  
11 think it's 153 which is your summary, you also testified as  
12 to once again your opinions as to what were the adverse  
13 factors with regard to low and moderate income families  
14 finding adequate housing supply, you had mentioned matters  
15 in reference to the R-20 Zone and the G-1 Zone, isn't that  
16 correct? In fact you had a litany of things that happen in  
17 those zones which were adverse; is that correct?

18 A I cited a number of factors.

19 Q Could you refresh my recollection just what  
20 were they again?

21 THE COURT: Well that seems to be burdening  
22 the record, Mr. Karcher.

23 MR. KARCHER: It's not that long of litany,  
24 Judge.

25 THE COURT: P.U.D. Zone, I think he took

1 about 10 minutes to go through them all.

2 MR. KARCHER: Well, I only, I really for the  
3 moment Judge only want R-20 and G-1.

4 THE COURT: All right, we can go through  
5 those.

6 A With regard to R-20 I cited the lot size, the lot  
7 width and the floor area.

8 With regard to G-1, I cited the lot size, the density,  
9 the parking requirements and the open space requirement.

10 Q Now, with regard to those two things in what  
11 you had read about both of them on the right-hand side of  
12 your analysis there's no land zone for those purposes any more,  
13 is it or there's no vacant land within those zones according  
14 to this? A Yes, that's correct.

15 Q All right. But you--so if there's no more land  
16 zoned vacant, vacant land zoned for those purposes my question  
17 to you is, how could anything that was in the ordinance have  
18 an adverse effect?

19 A There is a question mark next to the figure on that  
20 column, the absence of land zoned for those purposes is not  
21 definite but only possible, based on a source that it was  
22 not derived from the municipality.

23 Q Who put the question mark there, you or the  
24 D.C.A.? A I put the question mark  
25 there.

1 Q The D.C.A. figure say zero.

2 A They do not say zero, they merely have no entries.

3 Q Then, assuming that that is accurate that the  
4 D.C.A. was accurate, was no entry because there is no such  
5 land, vacant land, could you now--now the question is, still  
6 is, could any of those factors that you enumerated have any  
7 adverse effect or are they totally irrelevant?

8 A In the absence of any vacant land in those zones they  
9 would likely be irrelevant.

10 Q Fine, thank you again.

11 Now you testified as to--by the way, before we go off  
12 residential property, you had testified that the only things  
13 that could be built in Sayreville were on minimum of 7500-  
14 foot lots, square footage lots. Isn't that so? Isn't that  
15 your testimony, R-7 was the lowest zone?

16 A Yes.

17 Q In reviewing the Borough of Sayreville's  
18 Ordinance, did you come across Section 25 that, sorry,  
19 Section 25 Subsection, Section 2, A2, undersized lots which  
20 provides that within any residential zone, 50-foot lots,  
21 if they exist, can built upon. Isn't that what that provides?

22 A They existed prior to August 1961.

23 Q And if they're there people can build on them,  
24 isn't that correct? A Yes.

25 Q Mr. Mallach, have you ever been to Sayreville?

- 1 A I don't believe so.
- 2 Q Do you know where it is? A Yes.
- 3 Q You familiar with any of the existing housing  
4 that's in Sayreville? A Not from personal  
5 knowledge except from what one sees when one goes along the  
6 Garden State.
- 7 Q You've gone along the Garden State, you've  
8 driven on the Garden State Parkway?
- 9 A Yes.
- 10 Q That's Sayreville, you've been in Sayreville  
11 then.
- 12 Do you know how many houses already exist on 25 and  
13 50-foot lots? A No, I do not.
- 14 Q All right. This doesn't show anywhere in any  
15 of your studies; is that correct? A No.
- 16 Q Now do you know anything about the industries  
17 which are located within the Borough of Sayreville?
- 18 A Not specifically.
- 19 Q Have any idea what they manufacture, whatsoever?
- 20 A No.
- 21 Q You ever heard about anything with regard to  
22 any of the industries in Sayreville?
- 23 A I'm vaguely familiar but I don't remember any specifics.
- 24 Q You've come across the Garden State Parkway  
25 Bridge though, haven't you? A Yes.



1 Q And you've seen a large complex on the right-hand  
2 side? A That's right.

3 Q Now let me ask you this, the largest companies  
4 in Sayreville are N.L. Industries, Hercules, Dupont, Jersey  
5 Central Power and Light, Sunshine Biscuit. Do you know if  
6 any of those are in the housing business, you're familiar  
7 with the housing industry? A Dupont is.

8 Q And where are they doing any housing?

9 A Well, on the west coast, they, probably elsewhere as  
10 well.

11 Q And is independent or in conjunction with an  
12 industrial facility? A I don't  
13 believe it has any connection to the industry.

14 Q With their industry, all right, fine.

15 Now, when you talk about the figures you used for  
16 vacant land, the vacant land space, does anything in those  
17 figures reflect what percentage of that vacant land is  
18 constituted by bodies of water? A I believe the  
19 information on vacant land excludes bodies of water.

20 Q Even if the bodies of water are contained within  
21 zones that are within areas that are in, zoned for  
22 residential use or industrial use exclusive?

23 A Well, I believe, you know when there was the testimony  
24 on the collection of this data was made that the indication  
25 was that where the bodies of water were large enough to be

1 noticeable as a distinct entity they're excluded, although  
2 I guess minor creeks and brooks might have been excluded.

3 Q Well, so it's your belief, you're not sure it's  
4 your belief--

5 THE COURT: Well, wait a minute, Mr. Karcher,  
6 you may not have been here, Mr. Baker may have been  
7 here, all he is doing is summarizing what Mr. Sullivan  
8 from the State Department of, Division of Urban and  
9 Regional Planning, I guess, State Department of  
10 Community Affairs, testified to as to the exclusion  
11 of identifiable bodies of water from the tables in  
12 this P-104.

13 MR. KARCHER: I know, I didn't mean to be  
14 repetitive.

15 Q Both figures specifically do not exclude however,  
16 do they, those areas which have been mapped out and laid out  
17 for flood plain areas, do they?

18 A They do not exclude on the basis of the flood plain  
19 mapping but they do probably exclude a large part of that  
20 land where it's being, it's marshy as well as being in a flood  
21 plain.

22 THE COURT: Again, Mr. Sullivan testified  
23 that it would exclude swampy land but if there was  
24 flood plain land not identifiable as swampy then the  
25 Bureau of Geology, topographical map that would be

1 excluded in the estimate of vacant land,

2 Q Now, do you have any knowledge of how much of the  
3 land that is in here in these figures, falls within that  
4 euphemistic generic category of swampy?

5 A I don't have any--you mean within these figures is  
6 swampy?

7 Q Yes. How much of that is, do you know, do you  
8 have any knowledge of how much is swamp?

9 A None of this is swamp, swamp has been excluded from  
10 this.

11 Q Flood plains haven't but swamps have. Is that  
12 right? A Roughly speaking.

13 Q Now do you know of any other municipality in  
14 Middlesex County which is surrounded on three sides by  
15 tidal waters other than the Borough of Sayreville?

16 A No.

17 Q Have you had available to you the zoning map  
18 of the Borough of Sayreville? A Yes.

19 Q And which one do you have? Which one has been  
20 made available to you? A This is the one that's  
21 included in the exhibit P-151.

22 Q And on that there is a marginal footnote or a  
23 legendary footnote indicating that it has been, it has marked  
24 upon it the flood plain; is that correct?

25 A That's correct.

1 Q Now how much of that would you estimate is  
2 included within the Flood Plain Area.

3 Can you, I mean if you can, I don't know--

4 Q How much of the Borough?

5 Q Yes, how much of it? Your guess.

6 A Between 5 and 10 percent.

7 Q Now, with regard to the, Sayreville's P.U.D.  
8 Ordinance, is there, you had testified that the minimum  
9 acreage is somehow once again operates adversely, is that  
10 correct, is that your testimony?

11 A Yes.

12 Q Do you know whether or not--have you made any  
13 investigation as to ascertain whether or not the acreage as  
14 contained in, so zoned are singly owned?

15 A No.

16 Q Would that in fact make a difference as to their  
17 potential development if they were in single ownership?

18 A Yes.

19 Q And I take it that it would be easier--

20 A Somewhat.

21 Q --to develop.

22 Somewhat if they were in single ownership. Okay.

23 Now, are you familiar at all with the history and  
24 development of the Borough of Sayreville?

25 A No, sir.

1 Q Have you looked at any topographical maps or  
2 aerial maps with regard to the Borough of Sayreville?

3 A No.

4 Q You're not aware then that Sayreville at one  
5 time was one of the very substantial mining areas. You're  
6 not aware of that?

7 A Yes, I am aware of that.

8 Q Okay, you are aware of that.

9 Now, you do recognize therefore that a great deal of  
10 the property zoned within planned unit development might be  
11 euphemistically called marginal areas?

12 A Not specifically aware of that.

13 Q If you were to have an area photograph made  
14 available to you to compare to the zoning map which you have,  
15 could you compare and make that observation that the area  
16 zoned P.U.D. are mined out areas? A Possibly.

17 MR. KARCHER: All right, could I have  
18 this marked then, your Honor.

19 THE COURT: DF-1, for identification.

20 (Map received and marked DF-1, for identi-  
21 fication.)

22 Q Let's see, start, have this the same as your  
23 map, see the same hook here. All right?

24 Now, starting with M-2, P.U.D., can you fit that in on  
25 this map?

1 MR. SEARING: Your Honor, can we have an  
2 identification.

3 MR. KARCHER: It's an aerial photograph, I'm  
4 sorry, I apologize, it's an aerial photograph of the  
5 Borough of Sayreville.

6 MR. SEARING: Taken?

7 MR. KARCHER: Taken within the last year or  
8 so, I don't know.

9 THE WITNESS: 1973, April, 1973.

10 MR. KARCHER: Three years, I'm sorry, two  
11 years.

12 MR. SEARING: Thank you, sir.

13 Q This area here-- A This seems to  
14 be the area.

15 Q And would the aerial photograph seem to indicate  
16 that the M-2 P.U.D. is an area that has been heavily mined?

17 A It appears to be a, some mining in this area, yes.

18 Q Some, okay.

19 How about the B-3 P.U.D., can you see where that fits?  
20 Does that appear from the aerial photograph to be substantially  
21 mined? A Substantial part of

22 this appears to be mined.

23 Q How much is substantial on that, on that B,  
24 B-3 P.U.D.? 90 percent?

25 A Say 80 or 90 percent.

1 Q Okay, 80 or 90 percent, okay.

2 How about, let's move down here to this M-1 P.U.D. down  
3 here along the creek, it's on both sides. There's M-1 on one  
4 side of the Garden State Parkway and B-4 P.U.D. on the other  
5 side of the Garden State Parkway.

6 Does that aerial photograph show that they are  
7 substantially mined?

8 A It would appear that a good part of this has also been  
9 substantially mined.

10 Q All right, fine, thank you very much.

11 Now isn't it fair to say that a municipality has a  
12 legitimate concern that someone does not develop prime property  
13 without also assuming some obligation for the marginal areas  
14 or the result would be that the town would be left with just  
15 the worse of the worse. Isn't that an accurate statement?  
16 Isn't it a legitimate concern of the municipality?

17 A I think it's a legitimate concern of the municipality  
18 to try to provide development for the marginal areas.  
19 I'm not sure it has the obligation to require people to do  
20 that as well as develop primaries, should see that they get  
21 developed one way or another though, if they can.

22 Q Isn't it a legitimate thing to suggest that it  
23 is once again a legitimate judgment on the part of those  
24 making that determination that the facing of the P.U.D. with  
25 a mix of or first of all a P.U.D. option providing for

1 commercial, residential or industrial with a face in is one  
2 way that potentially handles that problem of insuring that  
3 your marginal areas don't get abandoned?

4 A I think the use of the P.U.D. option may be a legitimate  
5 approach to that problem.

6 Q Fine. Thank you.

7 Now lastly I just, a bit confused about the two  
8 things.

9 One, just so we understand it, you think that 600 square  
10 feet for an efficiency is too much, 800 for one bedroom is  
11 too much?

12 A Yes.

13 Q That whole category you think all of those are  
14 too high? A That's correct.

15 Q Can you tell within the geographical area of  
16 Middlesex County where to your knowledge you personally know  
17 of any construction within the last three years that has  
18 provided floor space or a minimum floor space that's less  
19 than that? A I'm not specifically  
20 familiar with any in Middlesex County in the last three  
21 years.

22 Q Okay.

23 Not sure that anywhere doesn't have but, all right.

24 Now as to one last thing as to the acreage, my figures  
25 added up differently than your figures added up, I think. My



1 figures seem to indicate that this chart from D.C.A. so that  
2 there were 327 available acres. That you would testify that  
3 the P.U.D. option for residential covered one-third to one-half  
4 of that available acreage and just to ask you--

5 A Of the 3,027.

6 Q 3,027 available and you had testified that the  
7 P.U.D. option and I would ask you to take a look at that  
8 again and just so we have, you know, no--

9 A Covers one-third to one-half.

10 Q One-third to one-half, okay. That the County  
11 Planning Board says that the Borough should need another  
12 1124 industrial acres.

13 Now, where I got confused, assuming the one-half acre  
14 giving me the benefit of the doubt, assuming the one-half  
15 figure at P.U.D. and 1124 from the County Planning Board,  
16 give us a total of rough figures of 26424 which would mean  
17 that there were only an excess of 400 acres rather than I  
18 think what you said 800.

19 A No.

20 Q I missed a figure.

21 A Because in addition to the industrial land that's  
22 left out of the P.U.D. there's, you have the provision, the  
23 25 percent at least of the P.U.D. land be industrially used.

24 Q I see.

25 A So it's a combination  
of the two.

1 Q I see how you got that. All right.

2 Now, then, my last questions, my last few questions with  
3 regard to the industries which presently own substantial  
4 property or I'm sorry I'm making a statement rather than--  
5 are you aware that the majority or the bulk of the land that's  
6 zoned industrially in the Borough of Sayreville is owned  
7 by operating industries? A Not familiar with the  
8 ownership of that.

9 Q Is it, assuming then, assuming then that N.L.  
10 Industries, Hercules, Dupont are all in heavy chemical  
11 manufacturing, okay, and also assuming that is between the  
12 three or four of them they own maybe 1500 of those acres,  
13 is it a legitimate concern for them to have a proper buffer  
14 area for, to shield themselves or to shield actually to shield  
15 residents from the operation that they are carrying on at  
16 those plants? A I do not have enough

17 information about their activities to answer that.

18 Q Okay. Is it a proper and legitimate concern  
19 for growing, strong, viable industries to hold industrially  
20 zoned land adjacent to their facility for possible expansion?

21 A It may be.

22 MR. KARCHER: Fine, thank you. I have no  
23 other questions.

24 THE COURT: All right.

25 (Whereupon questioning by Sayreville was completed.)

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

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URBAN LEAGUE OF GREATER :  
NEW BRUNSWICK, et al, :  
Plaintiff, :  
-vs- :  
MAYOR AND COUNCIL OF THE :  
BOROUGH OF CARTERET, et al, :  
Defendants. :

CERTIFICATE

I, DAYE F. FENTON, a Notary Public and  
Official Court Reporter of the State of New Jersey,  
certify that the foregoing is a true and accurate  
transcript.

*Daye F. Fenton*  
DAYE F. FENTON, C.S.R.  
Official Court Reporter