

CA - Piscataway

21-Mar-84

Deposition of Lester Nebenzahl

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

URBAN LEAGUE OF :
GREATER NEW BRUNSWICK, :
et al., :
 :
Plaintiffs, : CIVIL ACTION
 :
v. : DEPOSITION OF:
 :
THE MAYOR AND COUNCIL : LESTER NEBENZAHL
OF THE BOROUGH OF :
CARTERET, et al., :
 :
Defendants. :
----- :
 :

TRANSCRIPT of deposition taken by and before MARY
LUKENSOW, a Certified Shorthand Reporter, and Notary
Public of the State of New Jersey, at the offices of
PISCATAWAY MUNICIPAL BUILDING, 455 HOES LANE,
PISCATAWAY, NEW JERSEY, on WEDNESDAY, MARCH 21, 1984,
commencing at 9:30 a.m.

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
LESTER NEBENZAHL				
By: Mr. Gelber	3			

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1 L E S T E R N E B E N Z A H L, having
2 offices at the Municipal Complex of Piscataway, New
3 Jersey, being first duly sworn by the Notary according
4 to law testified as follows:

5

6 DIRECT EXAMINATION BY MR. GELBER:

7 Q. Les, how long have you been Township Planner
8 for Piscataway?

9 A. Approximately six years.

10 Q. You started in --

11 A. 1977, I believe, October, full time. Before
12 that, I was a consultant for two years.

13 Q. So you worked with the Township in some
14 capacity since 1975?

15 A. Either the end of '75 or the beginning of '76,
16 yes.

17 Q. And have you been Township Planner
18 continuously since '77?

19 A. Yes.

20 Q. Have you had an opportunity to review the
21 consensus report that was prepared by Carl A. Lerman?

22 A. Yes.

23 Q. Did you participate in those meetings
24 concerning that report?

25 A. Most of them. Two meetings, I believe.

1 Q. Do you agree with the approach taken by the,
2 that consensus report and the terms of region,
3 definition of region?

4 A. No, I do not.

5 Q. In what respects do you disagree with the
6 report?

7 A. For the definition of region with regard to
8 the determination of present meet, I believe that that
9 region is not realistic, especially insofar as the
10 allocation of excess need is distributed from all
11 portions of that region, all of the urban aid
12 municipalities, for instance, which I would say a
13 greater proportion of substandard, that's substandard
14 in quotes, housing and how that excess is reallocated
15 to municipalities in the growth area regardless of
16 their location within that same region. I believe the
17 region is too large and doesn't really reflect the
18 journey to work, from one portion of the region to
19 another.

20 Q. Do you believe it's appropriate to consider
21 journey to work in terms of reallocating present --

22 A. Yes, I do.

23 Q. Why?

24 A. Because I believe that's the most realistic
25 indicator of a true housing market. I don't believe

1 that a low or moderate income family, which is living
2 in a substandard housing unit in Newark, for instance,
3 would actually desire to live in Piscataway, simply
4 because a housing unit would be available that was,
5 quote, standard in Piscataway.

6 Q. If jobs were available in Piscataway for
7 that family living in Newark, isn't it conceivable
8 that that family could and would move?

9 A. Yes, and -- but I believe similarly, it's
10 conceivable that by the same token, any family from
11 any part of the United States, if they had a job
12 opportunity in Piscataway, would certainly want to
13 locate near that job.

14 Q. Isn't it also true that a large portion of
15 the unreallocated present need in that larger 11
16 county region is located outside of Newark, is located
17 closer into Piscataway?

18 A. That may be, I am not sure. I don't know
19 the answer to that.

20 Q. Do you have any data or other information
21 which you are relying for your opinion about the
22 present need region?

23 A. My reading of the Rutgers study indicates to
24 me that the center firm policy research did a very
25 thorough analysis, they went into annual census

1 reports through taping procedures and to me, it makes
2 a lot more sense to use the Rutgers region because
3 they have actually gone and done that homework.

4 Q. Is there any portion in the report in
5 particular or any data in the report in particular on
6 which you are relying, particular chart or other
7 information?

8 A. I couldn't pull it out for you right now, no.

9 Q. A statement was made in the pre-trial
10 statement for Piscataway, indicating that
11 modifications might be made to the present need region
12 containing the consensus report that would be
13 acceptable to the Township. Could you tell me what
14 those modifications are? Do you know what I am
15 referring to?

16 A. No.

17 Q. Why don't you just take a look at page, they
18 aren't numbered. Take a look at that page relating to
19 the present need region?

20 A. Could you repeat the question?

21 Q. Sure.

22 A. What would the changes be?

23 Q. That's right.

24 A. That we would agree to? I believe if the
25 Township of Piscataway is given credit, either through

1 the allocation process itself or even after the
2 allocation, for existing units, dwelling units in
3 Piscataway, which are capable of housing low and
4 moderate income households, then the Township of
5 Piscataway, and I for one, would have no problem with
6 the allocation process, insofar as how it would affect
7 Piscataway Township.

8 Q. How would that address the problem you have
9 raised about the size of the region though?

10 A. In what respect? I still, I would still
11 have problems theoretically with the size of this
12 region, for present need.

13 Q. I see.

14 A. Just that limited issue.

15 Q. So what you are saying is that this
16 modification would then make the entire procedure
17 acceptable, maybe not conceptually but acceptable so
18 the modification you are referring to doesn't relate
19 to particularly to, you are concerned about the size
20 of the region, as it relates to the whole. Is that
21 correct?

22 A. Yes, I would say so.

23 Q. Which region, what is your position with
24 respect to the present need region, in particular,
25 what is the appropriate region for Piscataway?

1 A. Well, I believe that the region should be
2 the same for both present need and any allocation for
3 future need. I don't see any rational basis for
4 different, so that if the quote commuter shed region
5 is being used for allocation of future need, I think
6 it should also be used for present need. I think it
7 makes a lot more sense.

8 Q. And what is that region?

9 A. For Piscataway, that comprises Middlesex
10 County, Somerset County, Union County, Morris County,
11 did I say Hunterdon County?

12 Q. No.

13 A. And Hunterdon County, I believe.

14 Q. So it is a five county region?

15 A. That is listed in the latest Plaintiffs'
16 consensus report. It was based on certain assumptions
17 concerning travel time, and for purposes of data
18 availability when using those assumptions, one can
19 travel into an out lying county, one would include the
20 entire county for purposes of the analysis.

21 MR. PALEY: Off the record.

22 (Discussion off the record.)

23 Q. Just to clarify, do you agree with the
24 consensus in terms of its approach to prospective need
25 region?

1 A. Yes.

2 Q. But you would apply that same region for
3 both prospective and present need. Is that correct?

4 A. I would do that, yes, although I think I --
5 even there I have to qualify it. When we prepared our
6 fair share housing report, our region became much
7 smaller than that, and that was because realistically,
8 I believe and based on the information contained in
9 the 1980 census, people don't travel that far. I
10 don't think they want to travel that far, and an ideal
11 situation for a housing market would be in the
12 neighborhood of a half hour trip to work. The region
13 we just mentioned is larger, so that theoretically, I
14 would prefer a smaller region, although realizing the
15 goals I believe that the Supreme Court had in mind,
16 that a larger region is somewhat necessary to take
17 advantage of the resources of a larger region to house
18 presently ill-housed people, for instance, that I
19 could go along with that, I could agree through the
20 advantages of that larger region.

21 Q. And that larger region is the one that is
22 identified on page seven of Carl A. Lerman's report,
23 which shows an eight county region of Piscataway. Is
24 that right? Here it is.

25 A. Yes.

1 Q. And it is your position that that is a
2 reasonable approach?

3 A. Reasonable, yes.

4 Q. Is it no longer your position that the
5 region defined in your May 1983 fair share housing
6 study is the appropriate approach to Piscataway?

7 A. I think it's the ideal approach for every
8 municipality, and if I were only concerned with
9 Piscataway and Piscataway's fair share, I would still
10 say that the ideal region would be the one we
11 identified in our fair share housing report. I think
12 it's the most realistic, in terms of actual trips to
13 work, in terms of the travel time, and the most
14 realistic in terms of what people wish to travel.

15 Q. Do you have any data on which you rely,
16 other than the data you cite in the fair share housing
17 study, concerning commute to work time for Piscataway
18 residents?

19 A. The data is contained in the 1980 census, I
20 believe it's the average or the median travel time to
21 work for Piscataway resident was in the neighborhood
22 of 26 minutes and similarly for Middlesex County
23 residents as a whole.

24 Q. What about for the State of New Jersey, do
25 you know?

1 Q. You are familiar --

2 A. Because the planner's consensus report, and
3 I have no way of again getting to this, does not take
4 into account when allocating that need what is to be
5 credited to a municipality, and in essence, what --
6 without that credit factor, what bothers me about the
7 planner's consensus report, in terms of determining
8 that need is that a municipality that has, for
9 instance, numerous garden apartments which are
10 typically smaller, no rear bedrooms than single family
11 houses, detached, gets penalized because of the over
12 crowding issue. It would be those units which would
13 be over crowded. The municipality which had no garden
14 apartments or multi-family dwellings, for instance,
15 would typically have very few over crowded units. A
16 municipality such as Piscataway, where there are some
17 4,000 garden apartments in the town, would almost by
18 definition have more over crowded units and without a
19 deduction, with that in mind, I have a problem with
20 even the determination of the present need. I agree
21 that factor such as over crowding, units lacking
22 complete plumbing and the concept of the -- all the
23 factors, including the factor of units without central
24 heating, are all items which should be included in
25 determining present need in the region.

1 A. Offhand, I don't know. I believe it's in
2 the neighborhood of that same area.

3 Q. Do you agree that under the State
4 Development Guide Plan, that is Piscataway is
5 classified entirely as growth area?

6 A. Yes.

7 Q. Do you have any disagreement with the
8 appropriateness of the classification?

9 A. No, I don't.

10 Q. Do you agree with the consensus, the method
11 taken by the consensus for determining present need,
12 this is for determining the need, not allocating the
13 need?

14 MR. PALEY: Do you mean the manner in
15 which they arrived at the number, which is allocable
16 throughout the entire region?

17 MR. GELBER: No, I mean identifying and
18 defining present need for purposes of Mount Laurel.

19 Q. Let me ask you this, doesn't the consensus
20 essentially take the same or similar approach to that
21 taken by you in your fair share housing study, they
22 look at the number of over crowding units, units
23 without, that lack plumbing, all or some plumbing and
24 units that lack heating, based on the 1980 census?

25 A. Only to a certain extent.

1 Q. So are you saying, do you agree that an over
2 crowded unit is an indication of present need, present
3 housing --

4 A. Insofar as yes, I don't believe people
5 should have to live with more than one person per room,
6 yes.

7 Q. And do you agree that it should be
8 considered in determining present need for purposes of
9 Mount Laurel?

10 A. Yes.

11 Q. So your disagreement is then how that is,
12 how the final fair share figure is calculated and what
13 you determine the indication of present need. Is that
14 right?

15 A. Yes.

16 Q. Do you have any disagreement with the
17 figures, figures for indigenous need for Piscataway
18 that are defined in the consensus report?

19 A. If that figure was somewhere near 300 or 400
20 units --

21 Q. I believe it's 401?

22 A. I have no -- using the methodology that the
23 consensus report determined, I have no problem with
24 that. That's from the census and that's the best data
25 we have.

1 Q. It's actually lower than the indigenous need
2 that you defined in your May 1983 report, I believe?

3 A. I am not sure, I think it's in the same
4 neighborhood.

5 Q. Okay. Just so I understand, you have no
6 disagreement then in the original calculation of
7 present need, the method that they used to define the
8 number of units that indicate a present housing need?

9 A. Indigenous need for Piscataway?

10 Q. Present need for the entire region,
11 irrespective of how it's calculated or dealt with, you
12 have no problem with the actual determination of the
13 present need in the consensus report. Is that correct?

14 A. I suppose not, although, to be -- there is a
15 concept which we mention in the fair share housing
16 report which is relatively new and that I haven't seen
17 it used in any of the literature in the past, and that
18 is there is no consideration for those units which may
19 exist, which are under utilized, and by that I mean in
20 a municipality or in a region, there maybe X number of
21 units over crowded and there maybe a situation though
22 where there are many, many units which are under
23 utilized and it maybe that the construction of a new
24 unit is not necessarily required to free up a unit for
25 that over crowded situation.

enzahl - direct

1 Q. How would you free up that unit without
2 constructing a new unit?

3 A. I am not sure. I don't know.

4 Q. Do you agree that Piscataway is responsible
5 for providing housing to and for its indigenous need?

6 A. Yes.

7 MR. PALEY: I object to the question,
8 because I believe that the question asks for an
9 ultimate determination, which is part of the entire
10 proceeding that we have in court and it's up to the
11 Court to resolve that.

12 Having filed that objection, you may
13 answer the question.

14 A. I believe I did, I said yes.

15 Q. Do you believe that the approach taken by
16 the consensus for determining the amount of excess
17 present need in the region to be reallocated to towns
18 in the region is a reasonable approach?

19 A. In and of itself, yes.

20 Q. So that basing it on a region wide average
21 of percent in the housing stock need -- percent need
22 to the housing stock and then taking the excess over
23 the average to identify a pool to be reallocated is a
24 reasonable approach?

25 A. I would agree with the concept, if there

1 were some mechanism for deduction.

2 Q. Now, could you please explain what
3 mechanisms you would propose and why?

4 A. I think a municipality, we'll have to
5 digress a little bit.

6 Q. Sure.

7 A. Which has complied with what the Mount
8 Laurel obligation is all about should not be penalized
9 for providing for low and moderate income housing in
10 the past. If we are going to look at a municipality
11 which has married student apartments, for instance,
12 which has 4,000 garden apartments, which has at least
13 half of its housing stock meeting Mount Laurel
14 guidelines for low and moderate income, any allocation
15 of regional totals should take that kind of
16 information into consideration. It maybe that
17 Piscataway shouldn't be responsible for the excess
18 need in Newark, for instance, simply because it is
19 defined as a growth municipality, and there maybe some
20 indicators which could be used to deduct from those
21 totals and it maybe that they could be built into the
22 allocation formula.

23 Q. Doesn't the inclusion of an income factor to
24 some extent, isn't that intended to address that
25 concern?

1 A. I think it maybe intended to address that
2 concern. I don't believe the way it was done at all
3 did in fact address the concern, and for instance, I
4 can tell you that Piscataway's median income in 1980,
5 was reported by the census was below the county
6 average, Middlesex, and because of the scope of the
7 region defined, however, our allocation actually has
8 increased. It makes no sense to me at all. I don't
9 believe the income factor was given enough weight, the
10 way it was utilized.

11 MR. PALEY: Just for the record, when
12 you refer to the use of the income factor, you are
13 referring to Mr. Lerman's recent report of four pages,
14 which was distributed to Counsel at the pre-trial
15 conference last week?

16 MR. GELBER: That's correct.

17 In fact, why don't we have you identify that?
18 Les, are you familiar with a memo prepared by Mr.
19 Lerman dated March 13, 198 --

20 MR. PALEY: We'll stipulate to the
21 identification of it.

22 A. Yes.

23 Q. Let me make sure I understand. If what you
24 would propose is to give more weight to that factor
25 than in fact was given by the approach taken in this

1 memo. Is that correct?

2 A. Yes.

3 Q. And you would also use a county wide average
4 as opposed to an 11 county region average?

5 A. No.

6 Q. What approach would you take?

7 A. I would take the commuter shed region. I
8 would look at the variables such as per capita rate
9 variables, not only family income. I believe the
10 reason given in the memorandum that accompanied the
11 numbers for not using per capita rate was that some
12 municipalities, the numbers were affected or impacted
13 too much. I don't believe that's a valid reason for
14 not using a figure.

15 Q. I believe the position taken in the
16 memorandum was that the valuation per capita was
17 likely to shift, provide a higher fair share to
18 municipalities that were substantially developed and
19 therefore, unable to accept, to accommodate the
20 additional need. Isn't that correct?

21 A. I am not sure.

22 Q. Why don't you take a look at it, these third
23 and fourth paragraphs on the March 13th memo, and let
24 me know if you disagree with what is stated there and
25 in what respect.

1 A. I am not sure I agree with the statements.

2 Q. Could you tell me in what respect you
3 disagree?

4 A. I would have to read the numbers, so to
5 speak. I don't have the data in front of me, it was
6 never given to us, so --

7 Q. So you think the concern expressed may not
8 be borne out by the figures, is that what you are
9 saying?

10 A. It may or may not, yes, and what I read in
11 here is it may, says 'additionally, the variants that
12 contribute to valuation might be expected to give rise
13 to considerable disagreement regarding the validity of
14 assigning, et cetera, and I don't believe anything
15 giving rise to disagreement should be used to justify
16 not using the variable.

17 Q. Isn't the point though in that paragraph
18 that the higher per capita valuation doesn't
19 necessarily indicate a fiscal capability, capability
20 of absorbing Mount Laurel housing?

21 A. It may or may not, but given the methodology
22 that the planner's consensus came up with, I think
23 it's quite obvious that in total, the methodology
24 itself is not giving weight in Piscataway Township's
25 case, as to what is reasonably realistic for the

1 absorption of the number of units in the first place.

2 Q. In Piscataway, would the valuation per
3 capita be higher or lower than your region wide
4 average?

5 A. We ran the numbers just for Middlesex County,
6 I believe, and what that variable does is bring
7 Piscataway into an average situation. Piscataway
8 valuation per capita, according to our rough analysis,
9 was almost near the median, and if that were given
10 equal weight to the other variables used in the
11 allocation process, that would significantly reduce
12 the numbers for Piscataway because the other variables
13 used, which are almost based solely on employment, the
14 ones that make sense in my view anyway, for Piscataway
15 are so much higher than any of the other variables.

16 Q. Do you believe financial need should be
17 considered in determining present need for purposes of
18 Mount Laurel?

19 MR. PALEY: Financial need of whom,
20 prospective homeowners or municipalities?

21 Q. Of homeowners?

22 A. Do I believe the financial need, the
23 financial ability of future homeowners?

24 Q. Let me put it another way.

25 Do you believe that households that weigh a

1 certain greater than a certain percentage of their
2 income for housing costs should be included in
3 defining present need for purposes of Mount Laurel?

4 A. That's a tough one. My first inclination is
5 to say no because many households, regardless of their
6 income, choose to spend more than the rule of thumb
7 figures for their housing costs. I think there are
8 choices made where the household doesn't necessarily
9 have to spend as much for housing costs as they do, in
10 some instances, and if there were a rational way to
11 incorporate that into a rational allocation, I would --
12 I might be able to change my mind on that, but I
13 haven't seen anything yet that or read anything yet
14 that makes me believe that that would be a valid
15 variable.

16 Q. So you are saying within that pool of people
17 paying over a certain percentage of their income, some
18 may represent need but some do not?

19 A. Yes.

20 Q. And so far as you know, no one has
21 determined a way of calculating that to incorporate
22 that into need?

23 A. Yes.

24 Q. Wouldn't that lead you to believe that the
25 approach taken in the consensus for determining

1 present need is to some extent an under estimate?

2 A. No.

3 Q. Why not?

4 A. For one, the variable I mentioned before,
5 which is under utilized units not being considered at
6 all in the process. Number two, the fact that nine
7 out of ten low and moderate income families are
8 adequately housed.

9 Q. Nine out of ten?

10 A. Mm-hmm.

11 Q. On what do you base that?

12 A. I base that on the Rutgers study, and I
13 couldn't pull that out for you now, it's based on
14 discussions that the author or one of the authors of
15 that study had with a group of his students at a
16 seminar at Rutgers University about a month ago, Dr.
17 Burchell.

18 Q. And was that based on an analysis of
19 available data?

20 A. I believe that Dr. Burchell stated that that
21 was based on an analysis of the annual housing survey.

22 Q. I am sorry, I am not sure I follow this. Is
23 this something that Dr. Burchell said at a seminar or
24 something contained in the Stern --

25 A. He said it at the seminar for sure and it's

1 probably in the book, I couldn't tell you where. I
2 might add to that another variable as well, it's not
3 really taking into consideration, many of the Mount
4 Laurel, the quote Mount Laurel households are not
5 comprised of income earning, presently income earning
6 families, and by that I mean senior citizens or those
7 households who maybe retired, who don't actually
8 produce income after they retire but who may have the
9 resources from their prior income earning years to be
10 housed more than adequately and who in fact may own,
11 for instance, a single family dwelling which has no
12 mortgage left on it but who do not any longer work.
13 Those types of households are not incorporated into
14 present need either.

15 Q. But that would address, that might reduce
16 present need, if you considered the ability of the
17 household to pay, it doesn't address problems relating
18 to the house, substandard conditions of the house
19 itself. Is that right?

20 A. I agree with you. I think it's -- I think
21 it's more pertinent to future need.

22 Q. I gather you do not agree with the consensus
23 in terms of its approach to prospective need, defining
24 prospective need. Is that right?

25 A. That's correct.

1 Q. I believe in the pre-trial, the statement
2 was made that the population projections used by the
3 consensus were fraud.

4 A. In my view, they are unrealistic in that
5 they are too high.

6 Q. Could you tell me on what you base that
7 conclusion?

8 A. The actual figures thus far available from
9 the United States census in their annual population
10 counts for the states and the United States census
11 population projections for the states, to 1990.

12 Q. Where do I find those figures? Do you have
13 them with you?

14 A. Yeah. By the way, they are available, they
15 are published.

16 Q. The last, what I am interested in is just
17 finding out the source of material from which you
18 relied, so just sort of the name --

19 A. United States Department of Commerce, Bureau
20 of the Census, current population reports, population
21 estimates and projections. Do you want me to get more
22 specific?

23 Q. Sure. Which date?

24 A. We have got series P-25, issued May '82 and
25 that's it.

1 Q. Now, do these contain a summary of actual
2 population growth for certain periods. Is that right?

3 A. They contain projections.

4 Q. From when to when?

5 A. They rely on the most recent estimates on a
6 yearly basis. The population projections are for 1990
7 and 2000.

8 Q. So what this report gives us is a projection
9 to those years, based on the first -- our experience
10 with the first few years in the decade. Is that
11 correct?

12 A. Yes, and for example in the publication
13 which I just referred to, the population for the State
14 of New Jersey estimated by the United States census
15 for July 1, 1982, is shown as seven million 438,300,
16 which represents an average annual percent change of
17 point 44, zero point 44 for 1980 to 1982. The
18 projection for July 1, 1990 becomes seven million
19 513,100, and that would represent an even lower
20 average annual percent change, zero point two zero.
21 The figures being used by the consensus are very, are
22 much higher and are based on an average of two sets of
23 projections done by the State Department of Labor and
24 Industry.

25 I might point out to you that traditionally,

1 if one relies on the governmental agency that is
2 projecting population data, if one is projecting for
3 itself that governmental agency, the figures will be
4 higher and, for example, the typically, a municipality
5 planning division would project the population higher
6 than what would be shown by county projections for the
7 municipality or state projections for the municipality
8 and that holds true as you take into consideration
9 each governmental unit. The State of New Jersey
10 official population projections would typically be
11 higher than what the federal government would project
12 for New Jersey.

13 Q. Why is that?

14 A. I don't know why. I know that traditionally
15 that is the case. I don't have a study to show you
16 that. The planning term for that is local boosterism.

17 Q. Is that a term of art? Do you have any
18 specific disagreement with the methodologies employed
19 in the two O.D.E.A. models that were employed by the
20 consensus?

21 A. The state labor and industry? Specific
22 objections, no, I haven't studied their methodologies
23 in detail.

24 Q. Okay. In support of your contention that
25 the population projections used by the concensus are

1 too large, do you rely on anything else other than
2 what we have already talked about?

3 A. No.

4 Q. Could I get a copy of the, of those
5 population reports?

6 Les, in the pre-trial statement, there is
7 also a statement made that the population models used
8 by the consensus report include group quarters for
9 students. Do you agree with that statement?

10 A. Yes, I do.

11 Q. On what do you base that conclusion?

12 A. Because there is no indication that any
13 population in group quarters is discounted.

14 Q. Do these models rely on the U.S. Bureau of
15 Census data, do you know?

16 A. I don't know which model.

17 Q. But --

18 A. Offhand right now, I don't know.

19 Q. But as far as you know, they do include
20 group quarters for students, dormitories, things like
21 that?

22 A. As far as I know, there is no discounting or
23 mention, so I assume that any growth, for instance, at
24 Rutgers University, if the population projection were
25 incorporating all the population growth in the state,

1 would necessarily have to include that population.

2 Q. Doesn't the use of head shifts take care of
3 any increase that would be attributable to that?

4 A. I don't think so. I don't know, because for
5 group quarters, you have a very unique situation.
6 There are four students living in a student dorm room,
7 for instance, or three students comprise one household.
8 I don't know.

9 Q. Isn't it true in the census that they do not,
10 they are not counted as households?

11 A. They are counted as persons in group
12 quarters.

13 Q. And are persons in group quarters counted in
14 the household calculations?

15 A. Shed shift rate --

16 Q. No, I am now just talking about a census
17 information by household.

18 A. No, not the dorms, the married student
19 apartments are.

20 Q. Do you know how they distinguish between the
21 two, what is considered a group quarter and what is
22 considered married student housing, is there a
23 technical definition or distinction?

24 A. I am sure there is a definition somewhere in
25 the census volumes. I don't have it with me, I am not

1 sure what it is.

2 MR. GELBER: Okay. Just for the record,
3 why don't we have this marked as Plaintiffs'
4 deposition Exhibit No. One?

5 (Exhibit P-1 marked for identification).

6 MR. GELBER: It's the Estimates of the
7 Population of States, the census data that Les was
8 referring to earlier.

9 Q. With respect to the allocation formula that
10 was adopted by the consensus, a statement was made in
11 Piscataway's pre-trial statement that the formula is
12 unfair because it relies almost exclusively on
13 employment data. Do you agree with that statement?

14 A. Yes.

15 Q. Isn't it true that in terms of the
16 allocation formula, only one of the three factors used
17 for reallocating present need relates to employment
18 data?

19 A. Existing -- let me pull out my report.

20 Q. Let me withdraw that. Why don't we go right
21 to the heart of it. Do you think it's appropriate to
22 consider existing employment as a factor in the
23 allocation formula?

24 A. For present need, yes.

25 Q. And what about for prospective need?

1 A. Well, I feel that if you are going to use it
2 for present need, that perhaps you use, you would be
3 preferable to use a projection of employment for
4 future need, not using present need both times, and
5 even though that may hurt Piscataway in the process, I
6 can't see where it makes sense to use present
7 employment in both allocations. If you are going to
8 be allocating based on the future population
9 projections, for household projections, I think you
10 should be using the employment projection variable for
11 that projection, for that allocation process.

12 Q. But don't the employment projection figures
13 and existing employment measure two very different
14 things?

15 A. Yes.

16 Q. Isn't it appropriate to consider both,
17 existing employment which is a reflection that the
18 base of employment, how large compared to the region
19 and employment growth indicating some, whether or not
20 things are improving or not in the municipality
21 relative to the region?

22 A. Well, I think you are doing that if you use
23 existing employment in allocating present need and
24 employment projection for future need.

25 Q. But aren't they two entirely different pools

1 of need?

2 A. Well, the projection should be based
3 somewhat on existing employment. That certainly has
4 to be taken into consideration in the projection
5 itself, so I think it is in fact being used, if you do
6 that. Aside from the fact that it would raise
7 Piscataway's allocation.

8 Q. Well, what would you propose, you would
9 propose using --

10 A. You know, I have no --

11 MR. PALEY: Les, before you answer the
12 question, Mr. Gelber, is your question of Mr.
13 Nebenzahl what he proposes, what modifications he
14 would propose to the entire allocation formula? Or is
15 your question what would he propose limited to
16 employment?

17 MR. GELBER: Right now, let's confine
18 the question to employment. I ultimately am going to
19 ask the question, asking Les to summarize the entire
20 allocation procedure that he would propose.

21 MR. PALEY: Okay. Limit it to
22 employment.

23 Q. Which allocation factors would you propose
24 with respect to consideration of employment?

25 A. I am not sure I understand the question.

1 Which allocation factors with respect to employment?

2 Q. Let's withdraw that.

3 You disagree with the allocation formula
4 adopted by the consensus. Is that right?

5 A. I have to until I see the compliance issue
6 addressed.

7 Q. What alternative would you propose with
8 respect to an allocation formula?

9 A. Insofar as vacant land is concerned, I would
10 certainly not rely on the total area of a municipality
11 in the growth area. I realize the problems with the
12 availability of accurate data and the out-datedness of
13 the state development guide plans data or the state's
14 housing allocation report, but it makes absolutely no
15 sense to me to use the total area of a municipality in
16 the growth area when only a portion of that land maybe
17 developable. That variable, I don't believe has any
18 merit at all, the way it's being used by the consensus
19 report.

20 Q. What would you propose in lieu of that, to
21 consider vacant land?

22 A. I would propose that each municipality which
23 is either preparing a fair share report or any
24 municipality in litigation, to be able to set forth
25 their vacant developable land and have that percentage

1 vacant, developable land used in the allocation
2 process.

3 Q. But for an allocation formula, don't you
4 need data for every single municipality located within
5 the appropriate region?

6 A. And that data would have to be gathered and
7 collected in some form in order to adequately address
8 the problem, I think.

9 Q. I don't think there is any disagreement on
10 that point. Do you know if it is, if anyone has done
11 that or if it's -- if it's at all possible to do that
12 within the next several weeks?

13 A. I don't think it's -- well, given enough
14 resources, I think it's possible. Every municipality
15 is required, I believe, to keep accurate tax records,
16 I believe the tax records indicate how the land is
17 used. It would not necessarily incorporate
18 environmental constraints of the land. Obviously it
19 can be done. The state did it in the past, the
20 problem is now the data is outdated. I don't know,
21 you know, I couldn't do it in the next couple of weeks
22 myself, given enough resources.

23 Q. Is it your opinion -- let me ask you, would
24 it be preferable to use the admittedly outdated data
25 gathered by the Department of Community Affairs or

1 would you prefer the approach taken by the consensus,
2 using the S.G.D.P. growth area with 20 percent add on?

3 A. I wouldn't use either.

4 Q. But you would include in your allocation
5 formula consideration of vacant land, vacant
6 developable land. Is that right?

7 A. Yes.

8 Q. What other factors -- one other question on
9 that before we go on. Do you believe it is a
10 reasonable approach to consider the amount of growth
11 area, increase the need by 20 percent to account for
12 any need that is not accommodated because of lack of
13 vacant land and deal with the lack of vacant land
14 question in terms of each individual municipality
15 based on data about that municipality?

16 A. Well, when you say deal with each
17 municipality, that's where -- that's where I have a
18 real problem because I don't know what that means.
19 The 20 percent figure comes right out of the sky, as
20 far as I am concerned. Realistically, I don't believe
21 even given a total lack of any development regulations,
22 whether some of the numbers that we are talking about,
23 the units could actually be constructed, just given a
24 free market place, so I don't know. I guess the
25 answer to that is no.

1 Q. What other factors would you include in your
2 allocation formula?

3 A. I would include an employment projection for
4 allocating future need, future fair share.

5 Q. Okay.

6 A. And I don't believe that any municipality in
7 the growth area should be entitled to be immune from
8 given a fair share.

9 Q. You would not exclude towns that have no
10 vacant land?

11 A. Oh, no, that's not what I meant. I would
12 not exclude an urban aid municipality, for instance,
13 which had a tremendous employment base, if all the
14 other municipalities are going to be allocated a fair
15 share based on that same variable.

16 Q. Are there -- I am sorry.

17 A. I would include, I believe the question was
18 what variables would I include. Is that correct?

19 Q. Yes.

20 A. Future employment projections, I would, I
21 would suppose I would include an accurate, somewhat
22 realistic picture of vacant developable land, and I
23 believe a financial component should also be included.

24 Q. Of what type?

25 A. Would probably be a combination. Our fair

1 shair study did not include that component, I don't
2 believe. The answer is I am not sure.

3 Q. I believe earlier we were talking about at
4 least two types, one related to median income and I
5 believe your testimony was that you would adjust the
6 approach taken by the consensus in terms of the size
7 of the region and the weight given to the fact. Is
8 that right?

9 A. I believe so, yes.

10 Q. And then there was also discussion of
11 valuation per capita. Is it your position you would
12 include both?

13 A. Yes, I would probably include some indicator
14 of both components.

15 Q. So we have identified four factors. Are
16 there any others that you would include as appropriate
17 in an allocation formula?

18 A. I feel it's absolutely necessary to address
19 the existing housing stock within a municipality.
20 Whether that be done in the allocation formula itself
21 or whether it be done after these magic numbers are
22 produced, I am not sure until I know what could be
23 done after, if that's the approach taken.

24 Q. Okay.

25 A. I think it would be beneficial if that could

1 be incorporated somehow into the allocation process
2 itself in a realistic way. I don't know that that way
3 is available to us though.

4 Q. So at this point, you have, you yourself
5 have not developed a formula for considering that
6 factor, existing housing stock. Is that right?

7 A. That's correct.

8 Q. Do you know if anyone has, that you know of?

9 A. No. I know there are some formulas that
10 include subsidized units, for instance. My reference
11 to existing low, moderate income units goes well
12 beyond subsidized housing.

13 Q. One thing I am confused about is you did
14 testify that you would include a factor relating to
15 future employment projections. Would you include that,
16 would you apply the same list of factors for
17 reallocating the present need and prospective need?

18 A. No, for present need, I would rely on --

19 Q. Existent --

20 A. Present employment.

21 Q. So those two factors would be substitutes
22 for one another, the other factors would remain the
23 same in each formula. Is that --

24 A. I am not sure I understand you.

25 Q. Okay. You would apply, tell me if I am

1 correct, you would apply a vacant land factor for both
2 present and prospective. Is that correct?

3 A. Yes.

4 Q. You would apply a financial component factor
5 for both vacant and prospective?

6 MR. PALEY: Present prospective? I
7 believe you said vacant.

8 Q. Present and prospective?

9 A. Yes.

10 Q. And I believe you testified that you would
11 include both consideration of median income and per
12 capita evaluation?

13 A. Yes.

14 Q. And you would apply a factor relating to
15 existing employment for present need and a factor for
16 future employment projections for prospective need?

17 A. Yes.

18 Q. Now, earlier you testified that you believe
19 no municipality should be excluded from the
20 reallocation of any need, but then you qualified that.
21 I want to make sure I understand what you would
22 include, what you would not include. Would you
23 exclude towns that have no growth area?

24 A. Not for indigenous need.

25 Q. How about --

1 A. Not necessarily for reallocation of present
2 need either, because I think if all municipalities
3 were to include that component, the growth
4 municipalities as well as non-growth, that the impact
5 would be significantly reduced for all municipalities
6 so that the impact on the non-growth municipalities
7 would be --

8 Q. What about towns without any vacant land or
9 let's say less than a certain amount of acreage?

10 A. I don't think they can be excluded. I think
11 some factor would have to be stipulated, as the
12 planner's consensus group does with the 20 percent
13 figure, take that into account, but I think somewhere
14 along the line, the ideal situation we would have some
15 provision for rehabilitation of existing housing stock
16 and the like. Just because a town has no developable
17 land, I don't feel that there will be absolutely no
18 growth or no ability to --

19 Q. No fair share? Can you think of any
20 circumstance in which you would, you would want to
21 exclude an urban aid community, municipality, from the
22 allocation process?

23 A. Completely excluding it from the allocation
24 process? No. I could not think of any circumstances.

25 Q. Have you actually run the figures with this

1 type of an approach?

2 A. No.

3 Q. Do you have any present plans to do so?

4 A. No.

5 Q. The approach you have described today is
6 somewhat different from the approach taken in the May
7 1983 study. To the extent that they differ, is it now
8 your testimony that you rely, you will be relying on
9 what you have testified to today and not the earlier
10 study. Is that correct?

11 A. No, that's not correct.

12 Q. Please explain.

13 A. I think what I have been describing today
14 would be those factors and that type of methodology
15 which I would employ if I had the ideal situation
16 which would allow me tremendous resources, in terms of
17 man power and time, including for instance the ability
18 to go through or collect tax assessing records for all
19 municipalities in the region and the like. It is
20 something that the Division of Planning in Piscataway
21 Township certainly could not do by itself. I think it
22 represents an ideal situation which we really can't
23 accomplish here. The fair share housing report which
24 was prepared in the summer of '83.

25 Q. May of 19 --

1 the number.

2 A. I think an ideal number for Piscataway would
3 be that which is being provided for realistically in
4 the Township's recently adopted master plan and
5 development regulations. If a mandatory set aside of
6 two units per acre were included in our ordinances or
7 our P.R.D.S. and I would, I would also just like to
8 say that the township or there will be moderate income
9 housing produced, I believe, within those P.R.D.s,
10 even without the mandatory census.

11 Q. And the total number of acres, now
12 incorporated vacant developable acres, incorporated in
13 those P.R.D.s is what?

14 A. It has been provided, I know, in the Answers
15 to Interrogatories, and I would like -- what I'll do
16 is supplement that now because there has actually been
17 an increase.

18 Q. Les, I am looking at the answers to 27, A,
19 B, C.

20 A. What I have referred to as the P.R.D. areas
21 would include the permitted development as a
22 conditional use within our R-10A and R-20A zones, and
23 the answer given in the Interrogatory as 118 total
24 vacant acres in the R-10A area should be increased by
25 the 18 acres because the estimate of 70 acres for one

1 of those tracts, we have found yesterday to be
2 actually 88 acres so there would be --

3 Q. 136?

4 A. 118 plus 18 plus 96.

5 Q. And the 96 is in the --

6 A. R-20A.

7 Q. 232?

8 A. 232 acres.

9 Q. So is it your position then that the fair
10 share obligation for Piscataway is 464 units?

11 A. No.

12 Q. Please explain.

13 A. I think a realistic number would be in the
14 neighborhood of approximately 900 units, and I believe
15 that those units, if for instance we assume be a 50
16 percent split, we would end up with about 450 units
17 each, would be provided without mandatory when some of
18 the P.R.D.s are developed. I believe when the senior
19 citizen housing area, which is zoned for a density of
20 20 units per acre, is developed, I think we will be
21 providing some low income housing there, the potential
22 of 180 units even.

23 Q. Do you have any present intention to revise
24 the May 1983 fair share housing study or prepare
25 another report for purposes of trial?

1 A. No.

2 Q. Other than what we have already talked about
3 today, is the 900 number, the number of 900 fair share
4 obligation that you have just given me, is that based
5 on any other calculations or methodology other than
6 that which we have talked about today?

7 A. No. I believe it's what can be provided
8 realistically, and based on the numbers produced in
9 the fair share report.

10 Q. When you said split 50-50, were you
11 referring to a split between low income and moderate
12 income?

13 A. Yes.

14 Q. Do you agree with the approach taken by the
15 consensus to determining median income and housing
16 affordability?

17 A. Yes.

18 Q. Do you agree with the median income figures
19 that were relied on in the consensus report?

20 A. Yes, although I think I have to qualify that
21 as well.

22 Q. Sure.

23 A. I believe the consensus report derives,
24 suggested the derivation of the regional income
25 figures for the 11 county region. I am not sure that

1 it significantly impacts the whole process, but I am a
2 little concerned that since in fact the income, the
3 median income varies by county, we know by county
4 because that's the way the data is produced, for
5 instance, that we should be actually incorporated the
6 entire regional total. I am not sure that we
7 shouldn't be county specifying -- in other words, the
8 figure -- I am not sure whether it's higher or lower
9 in Middlesex County, is for the region as a whole, but
10 if the median income in Middlesex County is X dollars,
11 I think it maybe, it maybe more appropriate to use
12 that figure for municipalities in Middlesex County.
13 We are talking about meeting affordability and
14 actually providing the housing.

15 Q. Wouldn't it be your position that you should
16 use the median income for the commuter shed region
17 that you favor as opposed to, for example, the 11
18 county region used in the concensus?

19 A. In order for me to adequately answer that, I
20 would really have to do some research and find out
21 where those differences lie. I don't know, I don't
22 know.

23 Q. Okay.

24 A. At this stage, but when HUD sets the
25 guidelines for instance for section eight rental

1 subsidies and establishes fair market rents for
2 eligibility of rental costs, they are site specific,
3 they say that in Piscataway, for instance, "Here is
4 your median income figure, here is your rental guide
5 line, if a unit comes in at X number of dollars, the
6 unit is eligible for section eight subsidy." It
7 doesn't use this larger regional figure, I think it
8 relies more on a local, more local figure.

9 Q. But once you derive the appropriate median
10 income, you have no disagreement with the approach
11 taken by the consensus to determine affordable housing?

12 A. No, I think it's in full compliance with the
13 decision.

14 Q. I gather from your testimony that you are
15 going to continue to rely on the May 1983 study, fair
16 share housing study, to some extent?

17 A. To some extent.

18 Q. On page 26, there is a discussion of two
19 steps in your allocation formula, steps five and six,
20 and I would like to ask you if you will continue to
21 rely on that part of the formula and if so, I would
22 like you to explain it for me.

23 A. What page are you on?

24 Q. 26.

25 A. When you say rely on, can I ask you what you

1 mean there?

2 Q. Well, is it your -- still your position that
3 that is an appropriate approach to determining fair
4 share?

5 A. It's one of many appropriate approaches, I
6 would say.

7 Q. Is it one on which you will rely?

8 A. I am not sure. I don't know.

9 Q. What is the significance of determining the
10 income that is needed to afford an average priced
11 house as opposed to doing the reverse, which is
12 determining the price that would be affordable to low
13 and moderate income households?

14 A. I think they are almost one and the same.

15 Q. Okay.

16 A. I have no argument for the most part with --
17 you have -- I have no argument with the consensus
18 approach to determining what the market value should
19 be for housing to meet the guidelines.

20 Q. Okay. Let's see, one or two more questions.

21 A. Although, I have to qualify that, although
22 when you are on the border line, I don't think you can
23 simply say, you know, if a unit came in at a hundred
24 dollars over that value, I don't think you can say
25 that the unit couldn't qualify. I think there should

1 be ranges of figures and no one has really discussed,
2 I don't think, other than our report is the only one I
3 have seen, we talk about ranges of figures as opposed
4 to absolutely putting the dollar on it and saying "If
5 you are below this guideline, you if you are below,
6 you don't fall within the range."

7 Q. Isn't it also true that the range has got to
8 go not only possibly somewhat above --

9 A. Right.

10 Q. -- the guideline, but also somewhat below so
11 that you have a pool of people who could afford the
12 housing?

13 A. I think so.

14 Q. In other words, it can't be right at -- you
15 can't have a strict limit because you essentially cut
16 out your pool, there are very few people who would be
17 qualified and able to afford the house at precisely
18 that, so you need a range?

19 A. Exactly.

20 Q. Okay. On page 19 of the fair share study,
21 there is a reference to the fact that Piscataway's
22 average rental costs are comparable to those in the
23 region. What is the significance of that, for
24 purposes of determining fair share? This is the first
25 full paragraph.

1 A. What is the significance in determining the
2 fair share?

3 Q. Yes.

4 A. Well, if my contention that one should
5 consider such things as existing garden apartments in
6 a municipality holds true, obviously one would not
7 necessarily consider luxury apartments but I think one
8 would consider garden apartments where contract rates
9 were comparable with a region, for instance. I am not
10 sure why that particular paragraph is where it is in
11 our fair share report. I think what it does show
12 though is that the contract rents in 1980, by the way,
13 we have done a survey which brings that more up to
14 date, but the contract rates in 1980 are very near
15 those for the county. I think that's all that
16 paragraph shows.

17 Q. Okay. But you would consider, would you
18 consider those existing garden apartments as relevant
19 to fair share, even if the rents were not affordable
20 to low and moderate income households?

21 A. If they were, if they were totally not
22 consistent with the guidelines, then I don't see how
23 we would be able to consider. I believe the fact is
24 that in Piscataway, they are consistent.

25 Q. In the Township's Answers to Interrogatories,

1 there were a number of references to measures taken by
2 the Township since ordinances enacted or resolutions
3 passed since 1976, which were meant to address the
4 Mount Laurel obligation, and I would just like to run
5 through a couple of those with you to learn a little
6 bit more about them. You have copies of the answers?

7 A. Yes.

8 Q. Okay. The answer to question 12A refers to
9 a resolution of need, I believe you have provided me
10 with a copy of that.

11 A. Yes.

12 Q. I would like to ask you, was that resolution
13 enacted in response to any particular program or
14 project, do you know?

15 A. If I recall, it was initiated through the
16 request for senior citizen housing, by non-profit
17 incorporation.

18 Q. And is that the same proposed project that
19 is referred to in item number two, in answer to 12A?

20 A. More or less. I don't know that that non-profit
21 corporation is still a viable group. We have shown in
22 the master plan a particular parcel of land which was
23 approved by our zoning board of adjustment for the use,
24 for that housing, regardless of the entity, at this
25 point.

1 Q. By the non-profit group, are you referring
2 to the group that originally asked for the resolution
3 of need in 1975 or are you referring to the group that
4 asked for the resolution granting the variance in 1979?

5 A. I believe they are the same group. I maybe
6 mistaken.

7 Q. And you are not sure they are continued
8 viability at this point?

9 A. Right.

10 Q. Has any housing been built or resulted in
11 anyway from either of the items described in 12A?

12 A. What page are you on?

13 Q. I am on page eight and just on the item,
14 just 12A.

15 A. No.

16 Q. Is there any -- what is the likelihood that
17 this housing will be built, if you know?

18 A. I think the housing will definitely be built.
19 I think it's a question of time. I can tell you that
20 my division is one of those responsible for working
21 with the state. We have had initial conferences with
22 people from the Department of Community Affairs to see
23 what we can do to get that senior citizen housing
24 constructed. My time and resources and our staff's
25 time and resources have been very geared to the Mount

1 Laurel decision in this case for the last few months
2 and we have not been able to devote time to projects
3 such as that. I know that the add -- the current
4 administration of Piscataway, what is committed to
5 seeing that senior citizen housing constructed and I
6 am sure we will be working towards that end,
7 regardless of --

8 Q. Is there any assurance or guarantee that any
9 housing produced as a result of this variance will
10 include low and moderate income units?

11 A. At this point, no, at this point. Although --

12 Q. The regulation --

13 A. I am sorry, although, I believe, that the
14 officials of Piscataway recognize the need for that
15 type of housing and we will be working to accomplish
16 that senior citizen housing for those most in need.

17 Q. Now, the area that we are talking about now
18 is currently zoned as senior citizen housing. Correct?

19 A. Correct.

20 Q. And that zone is not subject to the density
21 bonus that applies to the P.R.D. Is that right?

22 A. Right.

23 Q. On 12B, the next item, you have a reference
24 to the Middlesex County Housing Community Development
25 Committee, and a reference to the fact that Piscataway

1 is an active member. Could you tell me something
2 about that committee, what does it do and why does
3 your membership in the committee represent a step to
4 facilitate construction of public housing or --

5 A. Well, for instance, it is through that
6 county organization that our existing section eight
7 rental subsidies are processed and in effect, attained
8 by the federal government. Any municipality which is
9 a member of this consortium of municipalities is
10 obligated to prepare or to be subject to the
11 preparation of the housing, federal housing assistance
12 plan, for the county, is bound through the acceptance
13 of funds to assist low and moderate income households
14 and families, even insofar as the eligibility of the
15 projects themselves, even without considering housing,
16 for instance. In addition, some of the funding which
17 is allocated to municipalities is ear marked to the
18 housing component of the committee and those funds are
19 utilized for housing rehab, for low and moderate
20 families.

21 Q. This is funding that Piscataway would
22 otherwise receive, is then turned back into activities
23 for the committee, is that --

24 A. Yes.

25 Q. How many units of low and moderate income

1 subsidized housing have resulted from these activities?

2 A. I don't know how many have resulted totally,
3 because we understand from the county that there is an
4 annual allocation in the section eight rentals. Our
5 latest figures are that only 31 units are subsidized,
6 although there are many, many more applications to the
7 county or actually to HUD through the county for those
8 subsidies.

9 Q. So there are 31 units in Piscataway. Is
10 that right?

11 A. Presently subsidized.

12 Q. In Piscataway, under the section eight
13 existing housing program?

14 A. Yes, and I have got that information.

15 Q. Okay. I believe we asked for those in the
16 Interrogatories, and it was indicated that it would be
17 provided to us, so that's -- off the record.

18 (Discussion off the record.)

19 (Recess taken.)

20 Q. Les, let me ask you this. Is there a public
21 housing authority in Middlesex County or is the -- or
22 does the County Housing Community Development
23 Committee serve that function?

24 A. I believe the County Community Development
25 Committee serves that function.

1 Q. So they administer HUD section eight
2 existing housing program?

3 A. Yes.

4 Q. There is no other independent public housing
5 authority?

6 A. I don't believe so.

7 Q. Does Piscataway have an independent public
8 housing authority?

9 A. No.

10 Q. Now, you have referred to section eight
11 existing units. Has any other housing, low and
12 moderate income or subsidized housing, resulted from
13 or been developed as a result of your participation in
14 the community development committee?

15 A. In Piscataway?

16 Q. In Piscataway?

17 A. I don't think so.

18 Q. In answer to Interrogatory 12B, there is
19 also a reference to -- in answer to Interrogatory 12B,
20 there is a reference to the execution of a cooperation
21 agreement, with other Middlesex County municipalities.
22 What does that refer to?

23 A. That's the agreement which every
24 municipality must enter into in order to become part
25 of the consortium.

1 Q. So that's the corporation agreement you
2 enter into with the county itself. Is that right, to
3 receive block grant money?

4 A. I think both with the county and the other
5 municipalities, which are members.

6 Q. Has any section eight, new construction or
7 substantial rehabilitation housing, been built in
8 Piscataway?

9 A. There maybe a few rehab units, but nothing
10 substantial, I don't think. I am not aware.

11 Q. Do you know if the Township, since you have
12 been Township Planner, do you know if the Township has
13 been asked to comment on a proposed, any proposed HUD
14 subsidized housing under the section 213 process?

15 A. Not to my knowledge.

16 Q. That would include section eight, new
17 construction and section eight rehabilitation, section
18 202 elderly?

19 A. The elderly, I believe the non-profit
20 organization we mentioned before with senior citizen
21 housing, filed an application for section 202 funding.
22 Given the very limited availability of funds, I don't
23 think they were successful in attaining, I believe the
24 town, I am sure if the town was requested to make any
25 indication to either HUD or any governmental agency,

1 it would have been a favorable recommendation to them.

2 Q. On the senior citizen project?

3 A. Yes, that's the only one that I know, I know
4 of.

5 Q. Has any low income public housing been
6 proposed for or developed in Piscataway, that you are
7 aware of?

8 A. No.

9 Q. What about housing under the section 236 or
10 rent supplement program?

11 A. Not to my knowledge.

12 Q. In answer to Interrogatory 12C, there is a
13 reference to incentive zoning. Is that right?
14 Incentive zoning has been included in Piscataway
15 zoning ordinances since 1978.

16 A. Correct.

17 Q. That reference is to the two unit breaker
18 density bonus for development of low or moderate
19 income housing?

20 A. Correct.

21 Q. And I believe earlier you said that I think
22 232 acres have been zoned subject to that. Is that
23 right? Subject to that bonus?

24 A. Well, not -- that wouldn't be since '76
25 though, because we recently included additional

1 acreage. All of our P.R.D. areas where those now are
2 the R-20 and R-20A areas, contain the density bonus
3 provision.

4 Q. Has any low or moderate income housing been
5 developed as a result of the density bonus?

6 A. Not yet developed.

7 Q. Are any of them subject to preliminary
8 approvals for site plans?

9 A. No, although an application -- an informal
10 hearing was held before the planning board, notice was
11 given to surrounding property owners for a 55 acre
12 tract, supposed to be developed, incorporating the
13 density bonus provisions.

14 Q. Okay. Do you know when you anticipate a
15 preliminary application?

16 A. Soon as the engineering is done on the
17 project. That's the indication from the developer.

18 Q. Do you know what the timing is on that?

19 A. Within a few months. He expects, by the way,
20 to construct approximately 550 units, within a year
21 and a half.

22 Q. Do you know what number of those will be low
23 income and what number will be moderate?

24 A. Will be one unit per acre low and one unit
25 per acre moderate.

1 Q. So that's --

2 A. At our request. He has indicated, "he"
3 meaning the developer, have indicated that they will
4 attempt to comply with that request.

5 Q. Is there any assurance that they will comply
6 with that request?

7 A. Well, there certainly will be, in terms of
8 the density that is proposed for the tract. In other
9 words, they can not build at the density, unless they
10 comply. The ordinance itself calls for written plan
11 assuring the occupancy or continued occupancy of those
12 units by the appropriate households.

13 Q. What is the name for this project, do you
14 know?

15 A. I don't know that they have given it a name
16 yet. The name of the developer is Hovnanian.

17 Q. Is this a condominium project or --

18 A. Condominium.

19 Q. Do you know what the proposed sales prices
20 are for the low units and for moderate income units?

21 A. They have indicated they will comply with
22 the guidelines thus far set forth by the planner's
23 consensus group.

24 Q. Which was based on a median income for the
25 11 county regions. Is that right?

1 A. Yes.

2 Q. And in answer to 12E, you have a reference
3 to rezoning of 70 acres. Just for the record, what I
4 would like to do is just identify the location of the
5 each of the rezonings in Answers to Interrogatories.

6 A. That is the tract, by the way, which is now,
7 which is really 88 acres.

8 Q. Okay. Let's clarify that.

9 Let's have this marked as deposition exhibit
10 number two.

11 (Exhibit D-2 marked for identification.)

12 Q. Could you identify the 70 acres that were
13 referred to in answer to 12E one, that I believe you
14 said is actually how many acres now?

15 A. 88.

16 Q. Put an A by that and give, I am giving you a
17 red pen so it will show up clearly.

18 And that is, I am sorry, 88 acres?

19 A. Yes.

20 Q. Has any housing been developed as a result
21 of that rezoning?

22 A. Yes and no. The zoning incorporated more
23 than the R-10A area has shown on the map, it also
24 incorporated acreage that was previously zoned for
25 industrial purposes and rezoned to single family

1 detached 10,000 square foot minimum lot sizes. That
2 portion of the property has been in the developing
3 stages for the last three or four years and is now
4 nearing completion.

5 Q. Is that the Birch Run project?

6 A. Yes, it is.

7 Q. Are there any low or moderate income units
8 in that project?

9 A. No, not to my knowledge.

10 Q. Have any low and/or moderate income units
11 yet been developed in the portion indicated as R-10A?

12 A. No, although yesterday morning, preliminary
13 sketch was shown to me by the owner or developer that,
14 of that tract, is calling the project Canterbury, and
15 we had preliminary discussions based on that sketch
16 which we normally do with any major project. He has
17 indicated that he is getting very near the point where
18 he would like to submit an application.

19 Q. Do you have any sense of when you anticipate
20 receiving a preliminary application?

21 A. Based on what I indicated to him, I have a
22 feeling that it will be very near after the time of
23 the litigation.

24 Q. Do the preliminary plans include any plans
25 to build low and moderate income housing?

1 A. At this stage, they do not. I indicated to
2 him that he should redo the plans and incorporate one
3 unit per acre low and one unit per acre moderate.

4 Q. Is Canterbury, the Canterbury project being
5 built by the same developer that is building Bertron?

6 A. Yes.

7 Q. That is Lackland brothers. Is that right?

8 A. Yes.

9 Q. In answer to 12E three, there is a reference
10 to 40 acres that were rezoned in 1983 from E.R. to
11 P.R.D. Could you put, identify that on the map, where
12 they are going to be?

13 And who presently owns that?

14 A. Rutgers University.

15 Q. Has any housing been built, any low and
16 moderate housing been built as a result of that
17 rezoning?

18 A. No.

19 Q. Do you anticipate that any housing, low and
20 moderate housing, will be built as a result of the
21 rezoning?

22 A. Yes.

23 Q. On what basis?

24 MR. PALEY: What was the question, on
25 what basis?

1 Q. Do you anticipate that low and moderate
2 housing will be built?

3 A. Based on the zoning that's in place, based
4 on the incentive bonus provision and based on my
5 experience as to the normal development process in
6 this municipality, that is to say when the developer
7 approaches municipality, it will strongly be suggested
8 given our existing ordinance that we will wish to see
9 one unit per acre low and one unit per acre moderate.

10 Q. Have preliminary applications been filed for
11 that site?

12 A. No.

13 Q. When do you anticipate it, if at all, that
14 they will be filed?

15 A. I have not had any personal contact with the
16 university officials on that piece, so I really don't
17 know.

18 Q. Do you know if there is presently a
19 developer interested in developing that tract?

20 A. Only by rumor. I would have to say no.

21 Q. No personal contact?

22 A. No.

23 Q. In answer to Interrogatory 15, which is on
24 page 13, let's just run through those. I believe
25 there are four references to rezoning. Let's identify

1 those on deposition exhibit two.

2 A. Okay. This relates to 1976. Right?

3 Q. Actions taken since 1976.

4 A. Oh, okay. Fine.

5 Q. The first one, first reference is to a
6 rezoning in 1978 of 45 acres from R-10 to P.R.D. If
7 you would put a C by that tract.

8 A. It is the Ethel Road tract.

9 Q. Has any housing, any low and moderate
10 housing been developed as a result of that?

11 A. No.

12 Q. Do you anticipate that any low and moderate
13 income housing will be developed?

14 A. Yes, but again I think that is going to
15 require some time.

16 Q. That tract, is that tract entirely owned by
17 the Township?

18 A. Not entirely. There are some, what we refer
19 to as out parcels, within the tract. They are rather
20 small. I have had preliminary discussions with the
21 mayor and other Township officials as to how we may,
22 as a municipality, begin to fund the acquisition of
23 those out parcels and to make that site attractive for
24 construction of low and moderate income housing.

25 Q. As a planner, do you believe that is a

1 suitable site for development of low and moderate
2 income housing?

3 A. Yes.

4 Q. What would be involved to facilitate
5 development of that for low and moderate income
6 housing?

7 A. I am not sure I understand.

8 Q. Okay. Let me withdraw that.

9 Has the Township undertaken any actions
10 other than the rezoning at this point?

11 A. No formal actions.

12 Q. With respect to developing that tract?

13 A. No formal action yet.

14 Q. Okay.

15 A. Although I believe the Township has plans
16 for construction of a sewer line, a sanitary sewer in
17 Ethel Road in the very near future.

18 Q. Do you have funding for that?

19 A. Yes, I believe that is being funded by the
20 municipality itself.

21 Q. What is your opinion as to the feasibility
22 of developing that for low and moderate income housing,
23 that site?

24 A. Absolutely feasible.

25 Q. Let's identify the next item, which was a

1 rezoning in 1978, from I guess RR-1 and R-15 to RM.
2 That is 25 acres and it's item B in answer to that
3 Interrogatory.

4 A. A portion of this site -- what kind of mark
5 would you like on this one?

6 Q. Let's make that D.

7 A. Your letters are not referring to these
8 letters here?

9 Q. No.

10 A. Okay. D?

11 Q. Yes.

12 A. And a portion of this zone.

13 Q. So the 25 acres referred to in answer to the
14 Interrogatories is not a contiguous site?

15 A. Correct.

16 Q. Why don't we put, put D-1 on the 12 acres
17 that were rezoned from RR-1. Does it divide up that
18 way?

19 A. We have got this marked for question 27D,
20 let me refer to that.

21 Q. Sure.

22 MR. PALEY: Off the record.

23 (Discussion off the record.)

24 Q. You are putting D-1 to identify the site
25 that was the rezoning from RR-1 to RM?

1 A. Correct.

2 Q. And D-2 on the parcel that was rezoned from
3 R-15 to RM?

4 A. Correct, and again, this is a portion of --
5 this is not --

6 Q. Only a portion of those two tracts were
7 rezoned in 1978?

8 A. Exactly.

9 Q. Okay. Was low and moderate income housing
10 developed as a result of either of those rezonings?

11 A. Yes, all of the units, the rentals are
12 coming in at moderate income rental levels.

13 Q. For which tract?

14 A. Both.

15 Q. Let's talk about D-1 first. What is the
16 name of the project that was developed as a result of
17 the rezoning?

18 A. Birchview Gardens.

19 Q. And when was that developed? Do you know
20 when it was first occupied?

21 A. It maybe being occupied now even.

22 Q. It is still under development?

23 A. Unless they are finished. It has been in
24 the last few years, been continuously under
25 construction.

1 MR. PALEY: Just so you understand,
2 there was an existing apartment -- garden apartment
3 developing called Birchview Gardens, I believe there
4 has been an addition to Birchview, which is what Mr.
5 Nebenzahl is just referring to.

6 Q. Okay. Do you know how many units in the
7 addition were developed and available for occupancy
8 after 1980?

9 A. After 1980, well, I can tell you that there
10 are in the addition, 116 -- off the record for a
11 second.

12 (Discussion off the record.)

13 A. 170 units.

14 Q. Were all these developed and made available
15 for occupancy after 1980?

16 A. I believe so.

17 Q. Do you have certificates of occupancy on all
18 those units?

19 A. I would assume so. I don't have them, our
20 instruction code official would.

21 Q. Could you tell me what -- are these all
22 rental units?

23 A. Yes.

24 Q. Could you tell me what the rents are, the
25 rental breakdown is for size of unit for the 170 units

1 developed since 1980?

2 A. 96 -- 96 one-bedroom units at \$520.

3 Q. Does that include utilities, do you know?

4 Off the record just a second.

5 (Discussion off the record.)

6 Q. I believe you said there were 96 one-
7 bedroom units at a rental of 520 and the question was
8 does that include utilities or no?

9 A. We don't know for this particular project.
10 In addition, there are 14 two-bedroom units at 585,
11 28 two-bedroom units at 550 and 32 two-bedroom units
12 at 530.

13 Q. And you are not sure about the utilities on
14 any of them?

15 A. No, not for that.

16 Q. Do you know what the density is in that
17 tract?

18 A. 15 units per acre.

19 Q. The 116 units that existed prior to the
20 rezoning were developed prior to 1980. Is that right?

21 A. Yes. Their rentals are much lower, by the
22 way.

23 Q. Do you have information concerning their
24 rentals?

25 A. Yes.

1 Q. On the chart that you are referring to?

2 A. Yes.

3 Q. Could I have a copy of that?

4 MR. PALEY: Sure.

5 Off the record.

6 (Discussin off the record.)

7 Q. The prices that you have given me, are those
8 prices as of a certain date on the rentals?

9 A. Yes, January '84.

10 Q. Do you have information as to the prices,
11 the rental prices, on initial occupancy?

12 A. No.

13 Q. Do you have information on the current
14 vacancy rate in the project?

15 A. No.

16 Q. Do you have information on the income levels
17 of the individuals who are now renting units in that
18 project?

19 A. No.

20 Q. Do you have intention of securing that
21 information?

22 A. No.

23 Q. Now, we were referring to the tract
24 identified as D-1. If you could go to the tract
25 identified as D-2, which was -- has any housing been

1 developed as a result of that rezoning?

2 A. Yes.

3 Q. What is the name of that project?

4 A. Ridgedale Gardens.

5 Q. And --

6 A. Let me qualify that answer. I am not sure
7 that the housing was constructed as a result of the
8 rezoning or whether we rezoned it since it was under
9 construction. At any rate, I believe that, that was
10 an application for a use variance before the Board of
11 Adjustment, the Board of Adjustment granted the
12 variance, so in effect, the units I believe are
13 already approved when we rezoned.

14 Q. Can you tell me when, when construction
15 began on that project?

16 A. No, I could only estimate it. I really
17 couldn't even estimate.

18 Q. What year?

19 A. Probably around 1977, '78.

20 Q. Prior to 1977, '78, were there any housing
21 in the tract identified as D-2?

22 A. Well, no, I don't -- no. I believe the area --

23 MR. PALEY: Don't forget, Mr. Gelber,
24 D-2 shown there refers to a portion of that entire
25 area. Okay? If your question is was there housing

1 within the portion, then maybe Mr. --

2 A. Only the portion that we spoke of and
3 designated as the --

4 Q. Could you identify which portion with the
5 red pen, just roughly?

6 A. I can roughly do it.

7 Q. That's fine.

8 A. Something like this. Both sides of the road.

9 Q. Now, prior to -- all the housing that
10 existed outside of the portion that you have just
11 identified was constructed prior to 1977?

12 A. Yes.

13 Q. Now, do you have any information on the
14 number of units and the rental range for those units
15 for the housing located in D-2?

16 A. Yes, that's known as Ridgedale Gardens, it
17 is a total of 192 units, 92 one-bedroom units at 490
18 and 100 two-bedroom units at 575.

19 Q. Do you know when certificates of occupancy
20 were issued on those units, roughly?

21 A. That was through a period of years, probably
22 around, beginning probably in 1980 through 1982 or
23 three.

24 Q. Do you have any -- what is the density in
25 that, in that zone?

1 A. 192 units and we gave the acreage at 12 or
2 13 acres. It should be probably, it is going to be 15
3 units per acre.

4 Q. Okay. And do you have any information on
5 the income levels of the individuals renting units
6 there?

7 A. No.

8 Q. Do you have any intention of securing the
9 information?

10 A. No.

11 Q. Do you know what the rental levels were on
12 initial occupancy?

13 A. No.

14 Q. The rental levels you have given me are from
15 January of '84?

16 A. Yes.

17 Q. Has any other housing been developed in D-2,
18 other than what you have referred to?

19 MR. PALEY: Since 1980 or --

20 Q. Since 1980? Well, at any time, in the
21 portion identified as D-2?

22 A. No.

23 Q. Let's go back to the answer, to page, answer
24 to Interrogatory 15, I think there were one or two
25 other items on that.

1 There is a reference to a rezoning in 1979
2 of 18 acres, zoned from R-20 to P.R.D. Could you
3 identify that with the letter E?

4 In a letter from your Township attorney to
5 me dated March 12, '84, there is a reference at the
6 bottom of the first page to a rezoning of 18 acres,
7 from R-20 to P.R.D. in 1978. Is that referring to the
8 same tract?

9 A. Yes.

10 Q. It is. So the intent of the letter was just
11 to clarify that it occurred in 1978 rather than 1979.
12 Is that accurate?

13 A. I don't know what the intent of the letter
14 was.

15 Q. But it does refer to the same tract?

16 A. Yes.

17 Q. Can you tell me if any housing has been
18 developed, low and moderate income housing has been
19 developed in that tract?

20 A. I believe so.

21 Q. What is the name of the project?

22 A. University Heights.

23 Q. Can you give me the information about the
24 number of units, the rental charges and persons per
25 unit?

1 A. They are fee simple, for sale units. There
2 is 104 two units in total on the 18 acre tract. I
3 happen to live there, so I know that I paid \$69,990
4 for a four-bedroom duplex, and if we utilize the
5 guidelines for family size, we may be approaching
6 moderate income. Given my salary in Piscataway, I
7 assure you --

8 MR. PALEY: I object.

9 A. Although maybe I spent more than 25 percent
10 of my income. There are two streets in the
11 development, one of the streets is comprised of
12 duplexes, the other street is comprised of what we are
13 calling townhouses. They are attached in groups of
14 six and eight units. The majority of the units are
15 the townhouse units, and they are less expensive, so
16 that on initial, at initial sale, I believe and of
17 course it depended upon whether an enclosed garage was
18 incorporated with the unit, whether an additional
19 bathroom was added to the unit, whether a fireplace
20 was included, those smaller units though were selling
21 for approximately \$60,000, I believe, and they at the
22 time had a minimum of I believe three bedrooms.

23 Q. Was the housing developed as a result of the
24 rezoning?

25 A. No. Again, a use variance --

1 MR. PALEY: If you want, I don't think
2 it's necessary to go into the legal history, but there
3 had been an application before the zoning board and
4 there was an appeal from a denial of that application,
5 I believe the Superior Court directed that, I believe
6 144 units of the constructed, subsequently in informal
7 discussions between the developer and the township
8 administration, it was reduced to 142, and there were
9 some modifications in streets.

10 Q. So the construction was as a result of the
11 litigation. Is that correct?

12 Did the litigation involve any Mount Laurel
13 claims or allegations?

14 MR. PALEY: I'll respond to that, if
15 you don't mind, Mr. Gelber. My response is I do not
16 recall. I am sure that the developer cited the then
17 extant decision of Mount Laurel to justify his
18 position, I don't know whether that's fully responsive
19 to your question.

20 MR. GELBER: Do either of you know the
21 name of the caption?

22 A. I am sorry, of the what?

23 Q. Caption of the litigation?

24 MR. PALEY: I could make an informed
25 guess, it would be Castle --

1 THE WITNESS: No, because they
2 purchased it from the people --

3 MR. GELBER: Off the record.

4 (Discussion off the record.)

5 Q. Do you recall when the decision came down
6 from the Superior Court, approximately?

7 A. I think I was a consultant at the time, so I
8 think it was before '77. I think it was about 1976.

9 Q. Do you recall if it was after Judge
10 Fuhrman's decision in this case?

11 A. I do not recall.

12 Q. I believe you said that 142 units were
13 developed on that tract. Is that right?

14 A. It is still under construction.

15 Q. Do you have specific information about the
16 sales prices on individual units and the dates on
17 which they were available for purchase?

18 A. Only from my own unit and my recollection is --

19 Q. There is no information contained in the
20 chart that you are looking at?

21 A. No.

22 Q. What is the name of the developer again?

23 A. Castle Group.

24 Q. And they are still units under construction.
25 Is that right?

1 A. Yes.

2 Q. Do you know how many units have been
3 completed and sold?

4 A. I could give you an estimate. It would only
5 be an estimate. I would say probably about a hundred
6 units completed and sold.

7 Q. When were the first units completed and sold?

8 A. About 1980.

9 Q. And again to the extent that you know, what
10 were the arrange -- what were the price ranges on the
11 duplexes?

12 A. The first section comprised large,
13 relatively large houses, meaning four-bedroom units,
14 1600 square feet of living space and a full basement,
15 and those units sold for approximately \$70,000.

16 Q. Do you know what they sell for today?

17 A. They have increased in value. I don't know
18 how much. On a resale, you mean?

19 Q. On a resale?

20 A. I really don't know.

21 Q. Are all of the duplexes completed and sold
22 at this point?

23 A. I believe so.

24 Q. And roughly how many duplexes are there in
25 the whole project?

1 A. I would guess maybe 50, that's a guess.

2 Q. Are there any smaller duplexes, more modest?

3 A. Yes, than the first section. After the
4 first section was constructed, the second section of
5 duplexes, the housing was reduced in size to the size
6 of the townhouses that were being constructed in the
7 first section so that in effect, even though the units
8 were attached in only twos, then the unit was the same
9 size as the smaller units, and similarly, the smaller
10 units were reduced in size to become smaller, the
11 townhouse units.

12 Q. Okay. What was the bedroom, number of
13 bedrooms on the units in this section, second section?

14 A. Of duplexes?

15 Q. Of duplexes?

16 A. I believe three bedrooms.

17 Q. And do you know what they were sold at,
18 roughly?

19 A. I believe they were sold at the same price
20 that the originally four-bedroom units sold, and they
21 don't have basements in them.

22 Q. And how many units are included in that
23 second section roughly?

24 A. Roughly half of the total number of duplexes.

25 Q. I see, the 50 is the total, so --

1 A. Duplexes.

2 Q. So there are 25 in each section, roughly?

3 A. Yeah, and that's only an approximation.

4 Q. Okay.

5 A. I would suggest you give the developer a
6 call, he would be very cooperative with you, I am sure.

7 Q. Is the developer located in Piscataway?

8 A. Yes, he is. His name is Mr. Tony Ross.

9 Their offices are at the complex.

10 Q. Just to complete this, on the townhouse
11 units, I gather there are roughly 90 or so townhouses
12 or those are proposed, so there are roughly 50
13 townhouses now constructed and occupied? Is that
14 about right?

15 A. I suppose. There maybe more, there may only
16 be about 30 still under construction.

17 Q. Do you know what the townhouses were sold
18 for, approximately?

19 A. The original townhouses in section one, is
20 this?

21 Q. That's right.

22 A. I believe approximately \$60,000.

23 Q. And those were mostly two-bedroom?

24 A. I think originally they were three bedrooms.

25 Q. Okay. And then there was another section

1 built with smaller --

2 A. Yes, and they are two bedrooms.

3 Q. Do you know what those were sold for?

4 A. I would only guess that they are probably
5 selling for the \$60,000.

6 Q. Okay. Do you have any information about the
7 income other than your own income, of course, the
8 income levels of the individuals occupying the units?

9 A. As a matter of fact, I do. There was a
10 study done by a Rutgers University student, and I have
11 that in my office. I am not sure whether it would
12 come as part of that survey.

13 Q. Do you intend to rely on that study?

14 A. No.

15 Q. Other than the information you have given me
16 today, do you intend to secure any additional
17 information about the prices and the dates of
18 occupancy on these units?

19 A. No.

20 Q. There was one last item provided in answer
21 to Interrogatory 15, which was in 1983, rezoning of 55
22 acres from R-20 to R-20A, if we could label that F.

23 A. 55 acres to R-20A. Right? That's right.

24 Q. Now, is that the site that you referred to
25 earlier that is now being proposed for development by

1 Hovnanian?

2 A. Yes.

3 Q. Are there any other rezonings that have been
4 rezonings or site approvals or any other kind of
5 action by the Township since 1976 that were designed
6 to promote development of low and moderate income
7 housing other than those that we talked about?

8 A. You haven't marked the senior citizen.

9 Q. Let's mark that G.

10 And that is the site involved in the
11 variance, that is referred to in answer to 12A.
12 Anything else?

13 A. There was a rezoning of a tract which was
14 zoned for industrial purposes, zoned to R-75, which
15 was a single family detached lot size of 7500 square
16 feet, and it's my feeling and I think it was the
17 planning board's feeling at the time that obviously
18 that would permit the construction of lower cost
19 housing and the majority of the vacant land,
20 residentially zoned vacant land at the time. At that
21 time, we were, I think really dealing with least cost
22 housing and --

23 Q. Do you remember what year that was?

24 A. I believe -- I believe that was rezoned
25 along with the other changes we mentioned, it was

1 accomplished in 1978.

2 Q. And it was rezoned from what to what?

3 A. I believe it was zoned industrially before,
4 I think M-1.

5 Q. Okay. To R-75?

6 A. Right.

7 Q. Now, why don't you mark that with an H?

8 A. I would like to point out to you that since
9 that rezoning, an application was brought before the
10 board for the construction of that housing through the
11 approval process, it was found that the soil, for the
12 most part at that location was contaminated by a
13 chemical manufacturer, which had, which buildings had
14 burned many years ago. I believe that area is now in
15 the list, super fund list, and no housing is suggested
16 for that property until that situation is cleared up.

17 Q. Is it your opinion that the contamination
18 makes development unlikely on any portion of the site?

19 A. That's questionable, because I understand
20 that there have been some preliminary discussions with
21 the owner of that property, which comprises sort of a
22 proposal that the northern portion of the property be
23 developed for residential purposes, that that
24 development would help off set the costs incurred to
25 clean up the rest of the site, but I am not -- I am

1 not sure of the extent of the contamination and I
2 would certainly not recommend any residential
3 development in that vicinity until we know more about
4 how, what and when it is going to be taken care of.

5 Q. Okay. This preliminary proposal that you
6 referred to, does that include any low and moderate
7 income housing?

8 A. I really don't know. The proposal wasn't
9 even made to me.

10 Q. Other than the rezonings and the projects we
11 have referred to, is there any other measure,
12 resolution or any step taken by the Township since
13 1976, that was designed to produce the development of
14 low and moderate income housing, that you can recall?

15 A. Not at the moment.

16 Q. Do you want to clarify that?

17 A. Yeah. Again, I don't think we, at the time
18 we were dealing with low and moderate income housing,
19 with the same understanding that we are today, so that
20 when we thought of least cost housing, for instance,
21 about the specific guidelines, there were other
22 changes made in zoning, for instance, from R-20
23 residential, which required half acre lots to R-10
24 residential and R-15 residential. There were changes
25 that we mentioned previously to the area from M-1 to

1 R-10, now adjacent to it, what we call the Canterbury,
2 P.R.D.

3 Q. Why don't we, why don't we mark those I. In
4 the answer to your question, as an answer to my
5 question as it was phrased concerning low and moderate
6 income housing, is that there were no others that you
7 can recall at this time. Is that right, as to low and
8 moderate housing?

9 A. I think if we are speaking of intent, the
10 answer would be yes, there were other changes. If we
11 were talking about in fact, then the answer would be
12 no.

13 Q. Now, on steps taken to facilitate
14 development of affordable housing, you were about to
15 identify some sites where there was rezoning from low
16 density to higher density residential. Is that right?

17 A. Yes.

18 Q. Limiting to those actions taken since 1976,
19 could you just identify those tracts with letters?

20 A. What letter are we?

21 Q. I.

22 A. Okay.

23 Q. Actually, why don't we put a number?

24 A. A number?

25 Q. Let's put one.

1 What would it include?

2 A. The R-10 portion, the R-15 portion.

3 Q. What were they rezoned from?

4 A. I believe that entire area was zoned R-20,
5 half acre, so that the R-10 would in effect double for
6 that portion of the site allowable density. The R-15
7 would provide for 15,000 square foot lots.

8 Q. Was any housing developed?

9 A. No. That is an active farm.

10 Q. Okay.

11 Any others? I believe you referred to
12 something near Birch --

13 A. Yeah, that would be the Birch Run property
14 at the time before '78, it was zoned M-1, it was then
15 rezoned to permit R-10, single --

16 Q. Why don't we identify that with a two?

17 This is from AM-1 to an R-10, and housing
18 has been developed as a result of that rezoning?

19 A. Housing has been developed, yes.

20 Q. Do you know what the price -- is this sales
21 housing?

22 A. Yes.

23 Q. Do you know what the price range is for that
24 housing?

25 A. No, I don't.

1 Q. Do you have any in text at this point to
2 secure that information?

3 A. No. There is another tract adjacent to the
4 apartment area we labeled D-2 that had previously been
5 zoned LI-1, which was incorporated into the R-10
6 residential area. I'll approximate it for you.

7 Q. Is that actually part of Birch Run as well?

8 A. No. No, this is what we call the Pasaro
9 property.

10 Q. Why don't we put a three by that?

11 A. That had been, has been zoned R-10 as well.

12 Q. Has housing been developed in that tract
13 since the zoning?

14 A. Yes.

15 Q. Do you know what the price range is?

16 A. I believe it's near \$70,000, although that's
17 a guess, as a matter of fact. I am not sure.

18 Q. Is that sales housing?

19 A. Yes.

20 Q. Do you know roughly the sizes of those units?

21 A. No, I don't.

22 Q. Any other rezonings since 1976?

23 A. I don't recall any properties, although I do
24 recall, I should mention the clustering provisions
25 that we allowed in our, R-20, R-15. There is the

1 clustering allows for the same density for a given
2 piece of property, but the individual lots can be much
3 smaller than would otherwise be permitted, that allows
4 for a decrease in the construction costs of the
5 housing, due in large measure for, to a need for less
6 infrastructure, less expansion of roads and utilities.

7 Q. Does it allow townhouses or houses that are
8 actually joined?

9 A. No.

10 Q. They are just smaller lots?

11 A. Yes.

12 Q. So the savings is in mostly in utilities and
13 ground work?

14 A. Yes.

15 Q. In the current P.R.D. zone, does that permit
16 garden apartments?

17 A. That is not current any more, that is the
18 old P.R.D.

19 Q. I am sorry, you are right, I had the wrong
20 one.

21 MR. GELBER: Off the record.

22 (Discussion off the record.)

23 A. We have recently introduced, "we" meaning
24 the governing body, a proposed amendment to the
25 ordinance which would allow for garden apartments, as

1 we typically know them. They are not called garden
2 apartments, they are called townhouses, but the
3 definition allows, for instance, for the construction
4 of condominiums, three units on top of each other in
5 the same building, same already to what you may know
6 as Hovnanian's condominium apartments.

7 MR. PALEY: For the record, that
8 ordinance was adopted on first reading Thursday, March
9 15, 1984. The second reading will be held subject to
10 public hearing, of course, I believe late April,
11 because there must be a 30 day period between first
12 reading and second reading, presumably.

13 Q. At present, there are currently no zones
14 that permit mobile homes or mobile home parks. Is
15 that correct?

16 A. Correct.

17 Q. Are there any zones that permit manufactured
18 or modular housing?

19 A. All of our residential zones, as I
20 understand our ordinances, permit prefabricated
21 housing. Any single family housing, for instance,
22 that would comply with the BOCA code.

23 MR. GELBER: Off the record.

24 (Discussion off the record.)

25 (Lunch recess.)

1 Q. Are there any other rezonings that have
2 occurred since 1976 that we haven't talked about that
3 would be relevant in terms of development of low
4 moderate housing or have we covered them?

5 A. I think we have covered them all.

6 Q. Now, in the Interrogatories, we asked for,
7 asked the Township to identify all measures or
8 ordinance changes, zoning changes, development
9 proposals that concern low and moderate income housing
10 or high density residential, which were considered but
11 not adopted, and the answer in the Interrogatories
12 throughout was either none or not applicable, but I
13 would like to go back through those and make sure
14 there aren't any that we just missed, so let me ask,
15 were there any requests to change for -- to higher
16 density residential or changes that would permit
17 development of low and moderate income housing that
18 were denied by the Township?

19 A. In what regard? Are you referring to the
20 hearings before the governing body or planning board
21 or specific development applications?

22 Q. All three.

23 A. I don't think there have been any specific
24 development applications filed for multi-family
25 housing, which have been denied.

1 Q. That's since 1976?

2 A. Correct.

3 Q. Okay. What about requests for rezoning?

4 A. Yes. I recall two sites where the property
5 owners requested the planning board to consider multi-
6 family housing for their tracts.

7 Q. Why don't you identify those for me? Let's
8 put, how about a Roman numeral one on the first one?

9 A. Roman numeral one would be an additional 55
10 acre tract, which I refer to as the other Gerickont
11 farm, that lies adjacent to the Gerickont farm which
12 was rezoned.

13 Q. When was that request made to the planning
14 board?

15 A. During the master plan. As a matter of fact,
16 I am not sure if it was made to the planning board. I
17 think it was during the master plan hearings, and I
18 know it was before the governing body, during their
19 hearings on the zoning ordinance.

20 MR. PALEY: When?

21 THE WITNESS: 1983.

22 Q. And who made the request?

23 A. I believe an attorney for the property owner.
24 No, wait a minute. May have been a contract purchaser.
25 I believe it was a contract purchaser of the property.

1 Q. Was the contract purchaser a housing
2 development?

3 A. Yes.

4 Q. Which company?

5 A. K & K Construction, I think it was, was the
6 letter.

7 Q. Are they related to Karnell, the Karnell
8 group?

9 A. Yes, it is, that's correct.

10 Q. And what was the result of the request, what
11 did the Township do?

12 A. The Township denied the request.

13 Q. And on what grounds?

14 A. In view of the planning board and/or the
15 governing body, whichever or both, the objectives of
16 the master plan were implemented by the properties
17 that you now see before you and any additional multi-
18 family housing would be contrary to those goals and
19 objectives and create burdens in terms of traffic
20 situations, drainage and overall density compared to
21 surrounding areas.

22 Q. Were any studies undertaken by the Township
23 concerning the potential impact of developing that
24 site?

25 A. That particular site?

1 Q. Yes.

2 A. At what stage? I can tell you that during
3 the master plan process, all the vacant tracts were
4 studied and that the ones that you see before you are
5 the ones recommended by the planning board as the most
6 suitable for multi-family.

7 Q. Now, the Karnell tract is immediately
8 adjacent to the east of the tract now being developed
9 by Hovnanian. Is that correct?

10 A. Correct.

11 Q. Was it the Township's position that the
12 Hovnanian tract was more suitable for high density
13 residential than the Karnell tract?

14 A. Yes.

15 Q. And on what basis?

16 A. Direct access to what will be Hoes Lane
17 section four, which is the preferred alignment for
18 Route 18.

19 Q. Can you indicate where that is on the map?

20 A. This will be Hoes Lane section four, and I
21 am indicating that in a dashed red line, and when you
22 look at the circulation plan element, the master plan,
23 there is a collector road shown through Gerickont
24 tract, which was rezoned, and that collector road is
25 shown connecting to Hoes Lane section four, and I am

1 designating that collector road in a solid red line.

2 Q. Now, from the Hovnanian tract, there will be
3 access then both to the, what is it, Route 18
4 extension?

5 A. Yes. You can refer to it that way, it's
6 actually referred to as Hoes Lane section four.

7 Q. Okay. There is also access to Morris Avenue.
8 Is that correct?

9 A. Correct.

10 Q. Or there will be access?

11 A. Correct.

12 Q. Couldn't similar access have been provided
13 for the Karnell tract?

14 A. Not without going into adjacent properties.

15 Q. So it would be, although you could have
16 access to the Hoes Lane section four, it would not be
17 direct?

18 A. Correct. In addition, I'll point out for
19 you, the streets shown at the southeast corner are all
20 shown to be unconnected local residential streets, in
21 effect being cul-de-sacs, so that no access would be
22 permitted to or to those streets. The only access
23 available would be to Morris Avenue.

24 Q. Isn't there a more serious drainage problem
25 on the Hovnanian tract identified as F than on the

1 Karnell tract?

2 A. I see no serious drainage problem at all
3 with the Hovnanian tract.

4 Q. What about Karnell?

5 A. If that tract were designed as the Hovnanian
6 tracts were, I don't see serious drainage problems
7 there either because of the ability to provide for
8 detention facilities.

9 Q. Is the Karnell tract suitable for
10 residential development?

11 A. I believe so. It's more suitable for
12 farming, which is what it's being used for now.

13 Q. Is the Hovnanian tract still being used for
14 farming?

15 A. I am not sure that they have continued,
16 continued the farming operation. I believe they have
17 ceased the farming operation very recently.

18 Q. The two tracts were originally part of the
19 same farm. Is that right?

20 A. I don't know.

21 Q. Isn't it true that by allowing higher
22 density P.R.D. development in the Hovnanian tract,
23 that it makes the continued viability of the farming
24 use in the Karnell tract more difficult?

25 A. I don't think so.

1 Q. Why not?

2 A. I don't see any reason why it would.

3 Q. That they are consistent, that would be a
4 consistent use?

5 A. We have four or five active farming uses in
6 close proximity now to residential uses. There is
7 obvious problems associated with the nuisances that
8 could be attached with farming operations, upon
9 residential uses, but obviously that situation has
10 existed for many years. It exists in any growing
11 municipality where farming exists, and I don't see it
12 as prohibiting residential development and I don't see
13 the residential development prohibiting farming.

14 Q. Do you have an opinion about the amount of
15 acres that would be necessary for a viable farm, of
16 the type that now is in existence in the Karnell tract?

17 A. No.

18 Q. Assuming that the traffic situation could be
19 corrected, is there any other reason why the Karnell
20 tract could not be developed as P.R.D. residential?

21 A. Well, taken by itself, many of the vacant
22 properties in Piscataway could be developed
23 residentially in P.R.D., but I think the proper
24 planning dictates that you look at the whole picture
25 and there would come a point where the character of

1 the municipality drastically changes, and I believe
2 that's one reason why there is such a thing as a
3 master plan process, so in and of itself, which -- the
4 tract could be developed. I think when you look at
5 the cumulative effects, there has got to be a point at
6 which there starts to become some detrimental impacts
7 associated with increased density, especially when
8 it's located adjacent to very different densities.

9 Q. Is there any other reason other than the
10 access to the Hoes Lane extension that led the
11 Township to rezone the Hovnanian tract and not rezone
12 the Karnell tract?

13 A. I don't recall if there were any other
14 reasons expressed.

15 Q. Now, there is at the south west corner of,
16 what is that, Morris Avenue and is that --

17 A. South Randolphville Road.

18 Q. That is currently being developed. Is that
19 correct?

20 A. That's correct.

21 Q. What is being developed there?

22 A. Single family homes and a clustered
23 subdivision.

24 Q. Will that be the low and moderate income
25 housing?

1 A. No.

2 Q. Do you know what the density is, roughly?

3 A. Roughly two units per acre, two point or one
4 point 96.

5 Q. There is a tract identified as it's zoned
6 for R-20, due north of Morris, it's actually the
7 northwest corner of Morris and South Randolphville
8 Road. Was a request ever made, either informal or
9 formal, to rezone that to P.R.D.?

10 A. I don't recall any requests.

11 Q. Do you know if the Karnell group had an
12 option to purchase that tract as well?

13 A. No, I don't.

14 Q. Is that tract suitable for residential
15 development?

16 A. I think so.

17 Q. Is it suitable for P.R.D. residential
18 development, higher density development?

19 A. In and of itself, yes. But again, when you
20 look at the whole picture, there has to come a point
21 where the answer would be no, and I think given all
22 the other areas zoned for multi-family, my answer
23 would have to be no.

24 MR. PALEY: Off the record.

25 (Discussion off the record.)

1 Q. We were talking about the tract that is
2 northwest side of the corner of Morris and South
3 Randolphville Road. I believe half of that,
4 approximately half of that is already developed. Is
5 that right?

6 A. Correct.

7 Q. And that's the eastern half. Is that right?

8 A. Correct.

9 Q. And it's developed as single family
10 residential?

11 A. Correct.

12 Q. The western half of that tract though is
13 currently vacant?

14 A. I believe it's an active farm.

15 Q. And is that portion, it is your testimony
16 that portion is suitable for high density residential
17 development, in and of itself?

18 A. Yes.

19 Q. And your opinion as to the unsuitability of
20 that tract and of the Karnell tract is based on the
21 overall density that would result from developing the
22 Hovnanian piece and some other ones in the area. Is
23 that correct?

24 A. That's basically a rephrasing of what I have
25 said, yes.

1 Q. Is there anything else on which you rely for
2 that conclusion other than I believe you referred to
3 the master plan, other than that, is there any study,
4 report, data on which you relied in that conclusion?

5 A. I rely on the entire process that was
6 undertaken by the planning board in accordance with
7 state statute and the governing body in rezoning in
8 1983.

9 Q. Is there any study or data specific to this
10 area that we are talking about, on which you relied
11 for that conclusion?

12 A. What type of data are you speaking? We did
13 a complete study, a housing allocation study, various
14 studies, reexamination of report, all the data
15 contained in those reports, comprise our master plan.

16 Q. Is there a rule of thumb that you as a
17 planner use to determine sort of maximum suitable
18 density for areas such as that?

19 A. No.

20 Q. I believe there is a Roman numeral two, a
21 second tract that was involved in a rezoning request.
22 Up here, that is north of the railroad?

23 A. Okay.

24 Q. Could you tell me about that site? When was
25 the request made?

1 A. It was a request before both the planning
2 board during master plan hearings and before the
3 governing body during zoning hearings, in 1983.

4 Q. 1983?

5 A. Right.

6 Q. Who owns that tract?

7 A. It's referred to as the Lange Westergard
8 property.

9 Q. And the owner made a request to rezone that
10 to P.R.D. Is that correct?

11 A. I believe the request was for specifically
12 senior citizen multi-family housing construction, if I
13 recall.

14 Q. Did the --

15 A. At a similar density.

16 Q. Similar to --

17 A. P.R.D.

18 Q. Did the request involve any proposals to
19 build low and moderate income housing?

20 A. I don't recall. I don't think so.

21 Q. And what happened to that request?

22 A. It was considered and denied.

23 Q. And on what basis was it denied?

24 A. On the same basis as the other requests,
25 that the Township had provided for its fair share

1 already and that the goals and objectives of the
2 master plan were being met based on what have been --
3 there is one portion of our study showed existing high
4 density housing, including our garden apartments. One
5 of the goals and objectives of the element was to
6 distribute that density along with other high traffic
7 generating uses. Rezoning of that tract would be in
8 contravention of that specific --

9 Q. And by -- you referred to that study. Is
10 that your reexamination report?

11 A. That's --

12 Q. Or is that the 1983 master plan?

13 A. Revision of the master plan.

14 Q. Do you have copies of that?

15 A. Yes, we made you a copy.

16 Q. Thank you.

17 A. Of the text, the maps and the graphics are
18 not yet available.

19 Q. Okay. Is the tract in and of itself
20 suitable for residential development?

21 A. I think so.

22 Q. Was there a request, either informal or
23 formal request, to rezone a 40 acre shopping center
24 tract near Washington Avenue?

25 A. Yes, there was.

1 Q. Can we identify that on the map?

2 A. With a Roman numeral three.

3 Q. Yes.

4 When was that request made?

5 A. I believe that was made before the planning
6 board during public hearings, of the master plan
7 revision.

8 Q. So again that was in --

9 A. 1983.

10 Q. Fall of '83?

11 A. Right.

12 Q. And was that request denied?

13 A. Yes.

14 Q. On what basis?

15 A. Same basis as I mentioned for the other two.

16 Q. That the Township had provided for its fair
17 share?

18 A. And contravention of specific goals
19 contained within the land use plan.

20 Q. Is it your opinion that that tract in and of
21 itself is suitable for residential development?

22 A. Yes.

23 Q. Was there ever a request made, either formal
24 or informal, concerning rezoning of a 120 acre tract
25 off of River Road, I think north of 287?

1 A. 120 acres?

2 Q. Yes, or thereabouts?

3 A. I wouldn't be -- not during the 1983 or '84
4 master plan, not to residential uses. It was a
5 request that a portion of that tract be rezoned for
6 business professional use, office park. There is a
7 request that a tract immediately adjacent to Route 287,
8 66 acre tract, also be rezoned from residential to
9 business professional use, both of those requests were
10 denied.

11 Q. Have there been any requests concerning
12 either of those tracts, to rezone to higher density
13 residential since 1976?

14 A. Yes, and they were complied with and the
15 rezoning is noted.

16 Q. I see. How about any further requests to
17 rezone to higher density than it currently exists?

18 A. Not to my knowledge.

19 Q. Okay. Other than the ones we have talked
20 about, can you recall if there were any other requests
21 for a higher density residential?

22 A. I don't think --

23 Q. Ever considered but not adopted?

24 A. I don't think there were any.

25 Q. Do you know approximately how much money the

1 Township receives in block grant funding, roughly?

2 A. Yeah.

3 Q. How much is that?

4 A. This year's allocation is projected at
5 \$120,000, but the last three years prior to this
6 year's allocation, we received in the neighborhood of
7 520.

8 Q. A year?

9 A. No, for the three year period.

10 Q. Okay.

11 A. And that allocation has been ear marked for
12 construction of a storm sewer project in what was then
13 an area depicted by housing and urban development as
14 an eligible income area, meaning that the project
15 would benefit those of low and moderate income.

16 Q. In particular, what area is that?

17 A. That would be the Arbor area of Piscataway.

18 Q. How long has the Township been receiving
19 block grant monies, has it participated since the
20 inception of the program?

21 A. I assume so. I think that started before my
22 presence.

23 Q. But it has been receiving block grant monies
24 since you have been Township Planner?

25 A. Yes.

1 Q. Has any of the block grant money been
2 expended on site assemblage, land clearance, on or off
3 site improvements relating to the construction of
4 specific low and moderate income housing projects?

5 A. No.

6 Q. Going back to the Interrogatories, your
7 chart, just so I understand, we don't need to go
8 through this, it is pretty comprehensive but I just
9 want to make sure I understand what is covered. It is
10 my understanding that if you took the vacant land
11 identified in answer to 27D, so it's on your chart,
12 27D and you add the vacant land that is identified on
13 33 in answer to Interrogatory 33A, B and C, you will
14 have a complete list of all vacant land in the
15 Township?

16 A. Correct.

17 Q. Turning to 27E and F, you have identified
18 vacant lots that are now subject to an approved site
19 plan. If you could just identify for me the location
20 of the one identified as BP-1, BP-1 zone, where that
21 is on the map and what Roman numeral are we up to?
22 Four.

23 Actually let me withdraw the question for a
24 second and maybe we'll save some time.

25 The two block and lot numbers in answer to

1 27E and F, is that one tract, in one project? They
2 seem to be --

3 A. I believe it is. I would have to check it
4 though, to make sure.

5 Q. Do you know approximately when it was
6 approved, what year?

7 A. 1983, I believe.

8 Q. Do you know if that site, is there any
9 reason why that site could not have been developed for
10 P.R.D. residential?

11 A. Well, I am not sure I understand the
12 question. It was zoned for business profession. The
13 property owner is a rather large developer of
14 commercial and industrial real estate and he requested
15 the Township planning board a site plan approval for
16 the use for which it was zoned. I don't know if that
17 answers the question.

18 Q. You are still trying to locate where that is.

19 A. Yeah, that is the lots across the street.

20 Q. If we could just roughly identify?

21 A. What number are we?

22 Q. Let's call it four.

23 A. There is two specific lots.

24 Q. Okay.

25 A. One is on the eastern, easterly side of Hoes

1 Lane. Where are we, what letter?

2 Q. Four.

3 A. And the other large lot is across the street,
4 somewhere to the south.

5 Q. Okay. Are they adjacent to residential?

6 A. Residential use or residential --

7 Q. Current residential use?

8 A. I believe the large lot, which we have shown
9 as lot five is not. I believe it's surrounded by
10 existing business professional use, the AT&T Long
11 Lines complex.

12 Q. Is behind it?

13 A. Yes.

14 Q. Okay.

15 A. I think that lot looks like this, something
16 like that.

17 Q. Okay.

18 A. And the lot across the street is bordered by
19 the high school on the north, on the east by park
20 lands.

21 Q. Is the land itself, in your opinion, the
22 land itself suitable for residential development?

23 MR. PALEY: When you ask that question,
24 Mr. Gelber, do you mean from a topographic point of
25 view?

1 MR. GELBER: Yes, environmental,
2 physical, topographical point of view.

3 A. Well, I would suggest to you that if the
4 land is capable of handling office use, that it's
5 certainly capable of handling residential use.

6 Q. Okay.

7 A. In terms of its environmental --

8 Q. Okay. Now, in answer to 27E and F, you have
9 a second project identified. What is the nature of
10 that project?

11 A. That is one of the lots in the midst of an
12 industrial park, which has been under construction for
13 approximately 10 years.

14 Q. Have there been any, since 1976 -- strike
15 that.

16 Since January of 1983, have there been any
17 rezonings from residential to non-residential use?

18 A. Since January of '83? One comes to mind,
19 the Miele farm.

20 Q. Why don't we identify that with a Roman
21 numeral six?

22 A. Something like that.

23 Q. How large a tract is that?

24 A. Approximately 50 acres.

25 Q. Is it still being used as a farm?

1 A. To this day, I think it is, although
2 applications were filed in our offices last week.

3 Q. What is the status of the application?

4 A. I have yet to review it for determination as
5 to completeness. Application has been made for
6 preliminary -- classification and preliminary
7 subdivision approval.

8 Q. When do you anticipate that that, the
9 application will go before the planning board?

10 A. April or May of this year.

11 Q. And what does the application call for, just
12 general --

13 A. I haven't reviewed it yet. I have only seen --

14 Q. Just --

15 A. The cover form itself. I haven't even
16 looked at the map. I am sure it's going to encompass
17 lots for the construction of large office --
18 industrial park type of atmosphere.

19 Q. When was the rezoning approved, roughly
20 speaking?

21 A. 1984. Along with the other --

22 Q. Was that part of the December '83 --

23 A. I am sorry, December '83, along with the
24 other zoning.

25 Q. Was consideration given to developing this

1 site for higher density residential?

2 A. I don't believe serious consideration was
3 given to that. There was a request by the contract
4 purchaser for rezoning to what it is now zoned.

5 Q. And who is the contract purchaser?

6 A. Sudler Construction.

7 Q. From a physical, environmental and
8 topographical standpoint, is that tract suitable for
9 high density residential?

10 A. Yes.

11 Q. What about from a planning standpoint?

12 A. Could be done.

13 Q. Any other rezonings from residential to non-
14 residential use since January of '83?

15 A. Residential to -- none come to mind.

16 Q. Are there any other rezonings from
17 residential use to non-residential use involving a
18 vacant parcel since 1976, that you can recall?

19 A. Residential to non -- I don't recall of any.

20 Q. How about any down zonings, by that I mean
21 rezoning from a higher density residential to a lower
22 density residential on a vacant parcel, since 1976?

23 A. I think I referred to that previously. From
24 a what to what? You are using the reverse -- reverse
25 term is residence in an area where --

1 Q. That's right.

2 A. From a higher to a lower density?

3 Q. That's right.

4 A. None, none that I can --

5 Q. Okay. Again going back to the answers to
6 Interrogatories, if you look at the answers to 27I and
7 J, the answers to 27A and L and the answer to 33A, B
8 and C, would that give us all the vacant parcels that
9 are subject to environmental or physical constraints?

10 A. Yes.

11 Q. Are there any other vacant parcels that
12 aren't identified in those three Answers to
13 Interrogatories, that you'll be testifying about at
14 trial, that are subject to environmental or physical
15 constraints that would make it difficult to build
16 residential development?

17 A. Other than those listed?

18 Q. That's right.

19 A. I don't think so.

20 Q. If you look at 33, answer to 33, it's a long
21 list of municipally owned vacant land. Do you know,
22 other than the tract that is identified as, I guess
23 that's C, in the southeast corner of the Township.

24 A. Right.

25 Q. Other than that tract, are there any other

1 contiguous tracts that comprise let's say five or more
2 acres that are on the list? What I am trying to get
3 at his some sizable tract, rather than parcels or
4 easements or rights of way?

5 A. What was the question?

6 MR. PALEY: Off the record.

7 (Discussion off the record.)

8 A. Block 352, I am sorry, block 358.

9 Q. Okay.

10 A. Lots 49 and 53 comprise 6.33 acres. That
11 land was dedicated to the municipality as open space
12 pursuant to the approval of the subdivision and our
13 custom provisions, so I don't feel that it's feasible
14 that that land can be developed.

15 Q. Okay. Let me ask you, which subdivision was
16 that, do you recall?

17 A. I don't recall.

18 Q. Let's go on.

19 A. I see the same situation for block 502K, lot
20 eight, 5.48 acres.

21 Q. Now, would that be -- that's the same
22 situation, that it's dedicated to open land in
23 connection with a subdivision approval?

24 A. Right. I see the same with block 655G, lot
25 eight, 8.8 acres. Typically those lands will have

1 some environmental constraints as well.

2 Q. Okay.

3 A. Block 655B, lot 10, as a five acre parcel.

4 It is noted that it's in the flood plain.

5 Q. I am sorry, which one? Got it, okay.

6 A. Block 710, various lots 35, 46, 40, 42, 44,
7 45, 48 and 50. I think --

8 Q. Is that the Ethel Road?

9 A. Yeah, that's a portion of Ethel Road.

10 Q. Okay.

11 A. Similarly with 735A, lot 24.

12 Q. I am sorry, what is the story with 735A?

13 A. Dedicated open space, as part of a clustered
14 development again. Similarly with block 736, lot 49,
15 again with block seven -- I am sorry, 776, three, four
16 and five.

17 (Discussion off the record.)

18 Q. What I am trying to do is identify any
19 sizable portions zoned by the Township, and you are
20 answering the question I have next which is whether or
21 not they'd be suitable and available for residential
22 development.

23 A. If out parcels were purchased and if streets
24 were vacated, it seems that blocks 766, lot three,
25 four and five --

1 MR. PALEY: 776.

2 A. That block 777, lot one combined can, in
3 addition to block 778, lots nine and eleven, could
4 feasibly form a seven or eight acre piece of property
5 where residential development could occur.

6 Q. Would the lots indicated on block 780, 81,
7 83, 84, 85, all be in the same general vicinity and
8 possibly available if out parcels were purchased or is
9 that going too far afield?

10 A. I think you are going --

11 MR. PALEY: Off the record.

12 (Discussion off the record.)

13 Q. So for the blocks, I think 776, 777, 778,
14 779, you thought it is possible to combine that but --

15 A. What about 779? Yes, for other than 779.

16 Q. Okay. But the subsequent ones on your chart,
17 for your chart 33A, B and C, they really aren't
18 sufficiently large or contiguous to provide --

19 A. Correct.

20 Q. Okay. If you could, just locate for me the
21 general area of that, those parcels, just roughly, on
22 the deposition exhibit two, what portion of town are
23 we looking in. Just give me the right side of town.

24 A. It is in here somewhere.

25 Q. Why don't we put a Roman numeral seven.

1 Are there any other sizable parcels owned by
2 the Township other than the ones you have talked about
3 that in your opinion would be available for
4 residential development?

5 A. None come to mind.

6 Q. Referring to your Answers to Interrogatories
7 41A and 42A, do you have a list in your possession of
8 all the units that are contained on the first half of
9 that, in that answer, the ones listed under single
10 family detached multi-family and student family
11 apartments?

12 MR. PALEY: Are you asking, Mr. Gelber,
13 how Mr. Nebenzahl arrived at the numbers and what his,
14 what data he has at his disposal to reach a number of
15 435 for low income single family detached townhouse?

16 MR. GELBER: Not precisely, but yeah,
17 let's have him answer that.

18 A. My answer to your question is yes, there is
19 one list.

20 Q. Okay.

21 A. And the answer to the next question is as
22 follows. For single family detached dwellings and
23 townhouses, we requested and received from the office
24 of our tax assessor, through that office, a computer
25 listing of all of those individual lots assessed at

1 \$37,500 and less, and that magic number comes about by
2 applying the state equalization ratio for Piscataway
3 Township, which is point 5767 -- 57.67 percent. When
4 we applied that equalization ratio, we arrived at a
5 figure of \$65,000 as a market value for the land and
6 the dwelling. We then counted all of those lots and
7 came up with a combined total of 3,371 low and
8 moderate. The items considered low for that range was
9 all those items assessed at \$23,600 and less.

10 MR. PALEY: Off the record.

11 (Discussion off the record.)

12 A. We then made a separate count --

13 Q. Before you go on, what you have from the
14 computer list are the assessed valuations?

15 A. That's correct.

16 Q. And by applying the equalization ratio, you
17 bring them up to an estimate of current market value?

18 A. We only have on our list those single family
19 residential properties assessed at less than \$37,501.

20 Q. Now, why did you select the 375 hundred as a
21 cutoff?

22 A. As we illustrated in our fair share report
23 and in answer to question number 10A, the way we
24 derived a value of a single family dwelling fitting
25 into low and moderate income categories, we assumed

1 that single family dwellings would all have a minimum
2 of two or three bedrooms so that the assumption is
3 that there is a family size of four, and based on the
4 information we derived in four, and using a gross
5 annual income figure for that family, multiplying that
6 by two and one-half times, we established what the
7 market value of the house could be. We also ran,
8 assuming that the affordable housing price was only
9 two times annual income as well, and the figure is
10 reduced to 1,022 total, \$900 would fit at moderate,
11 meaning the market value would be \$52,000, in 122
12 would fit within low, 327, \$32,700, so we have in
13 effect looked at the range of two and two and a half
14 times the family income for four sales units. That
15 range is very consistent with the literature and is
16 consistent with an analysis which we asked to have
17 done for us by the Middlesex County Planning Board
18 staff, which shows that based on certain assumptions
19 as to interest rates, given the family size that I
20 mentioned previously, based on assumptions for
21 insurance payments and downpayment availability, that
22 the income figures we utilized were very much in the
23 ballpark, so to speak, in terms of analysis.

24 Q. Do you have a copy of that analysis?

25 A. Yes.

1 Q. Could I have that?

2 A. Certainly, if I can find it.

3 Q. If you are going to rely on it at trial, I
4 do need a copy.

5 Does that analysis that was performed by the
6 county -- which county department was that?

7 A. Middlesex County Planning Board.

8 Q. Does that analysis conclude that -- does
9 that analysis provide you with the figures of 52,327?

10 A. No, that analysis, in and of itself, does
11 not. What is prevalent in the literature, I know it's
12 available in the Mount Laurel study, prepared by
13 Rutgers, for instance, is the suggestion that for --
14 for sales units, the rule of thumb is between two and
15 two and a half times family income, can be spent for
16 housing costs, meaning principal, interest, mortgage,
17 taxes. The range meaning that the two times is at the
18 low end of the scale and the two and a half times
19 would be at the upper end of the scale.

20 Q. You say it is supported in the literature.
21 You referred to the Stern report?

22 A. Yes.

23 Q. Are there any others that you are relying on,
24 for --

25 A. Not at the moment, I think it's a general

1 rule of thumb, I don't think anyone would argue with
2 it.

3 Q. Now, getting back to the computer list --
4 well, rather than have me explain it, let you complete
5 your explanation as to how you derived the numbers
6 listed under single family --

7 A. I thought I just did explain it.

8 Q. I am sorry, if I didn't understand it. Let
9 me see if I do understand it. What you have is in the
10 computer list, is a list of all single family detached
11 homes and townhouses. Is that correct?

12 A. Yes, because the existing townhouses are fee
13 simple and they are assessed the same way as a single
14 family detached home.

15 Q. And this list includes all existing property
16 as of the date that the computer --

17 A. That's correct.

18 Q. -- was run, which was what date?

19 A. January 18, 1984.

20 Q. So it includes properties built prior to
21 1980 as well as those built since 1980?

22 A. That's correct.

23 Q. From the list, can you distinguish between
24 those properties built before and after 1980?

25 A. No.

1 Q. And what the list provides is a list of all
2 properties that have the assessed value at 375 or less?

3 A. Correct.

4 Q. Now, I am sorry if I am repeating, but tell
5 me once again how you picked the 375 as the cut off?

6 A. Okay. We started with the income guidelines,
7 based on the median family income, established for
8 Middlesex County by the Department of Housing and
9 Urban Development, and that income figure at the time
10 was for a family of four -- what we have to do is go
11 to question 10A.

12 Q. Okay.

13 A. 10B.

14 Q. Well, 80 percent of that figure would be
15 26,000. Is that right?

16 A. That's correct.

17 Q. Okay.

18 A. For -- we used \$26,000, I believe, for the
19 cut off as the 80 percent figure.

20 Q. Okay. Now, how did you get from the 26,000
21 to the cut off --

22 A. Two and one-half times 26,000 is 65,000.

23 Q. Got it. Okay.

24 A. Two times equals 52,000.

25 Q. And how do you get from the 60,000 and

1 52,000 to the cut off applied to the list?

2 A. Okay. It goes back to the rule of thumb I
3 mentioned, that two, between two and two and one-half
4 times a family income can be spent for principal,
5 interest, mortgage, and taxes. I am sorry, that
6 should be the value -- there is two rules of thumb.
7 One deals with rental, one deals with --

8 Q. Let's just stick with for sales for a second.

9 A. Okay. The rule of thumb is that two times
10 family income, between two and two and a half times of
11 family income represents the purchase price or the
12 market value of the home, which a family can afford.

13 Q. Got it.

14 A. And if you go through the analysis, such as
15 the county planning board did, it falls in line with
16 banking institutions and mortgage lending institutions
17 and whether or not they would qualify that income for
18 a mortgage.

19 Q. Okay.

20 A. Because when you break down the costs for
21 principal, interest, mortgage, that's what the
22 financial institutions -- that's what their cut offs
23 are.

24 Q. If you come up with what you consider to be
25 the upper limit of median income could afford a house

1 today at \$60,000?

2 A. The very utmost figure we used was \$65,000
3 as the upper limit for the moderate.

4 Q. Now, once you have that upper limit, what
5 you are trying to determine is in this list, or in the
6 entire list for the entire Township, how many of those
7 houses, if they were put on the market today, and sold
8 at current market value, would be under the 65,000 and
9 then you divide again to see how many of those would
10 be under the low income limit, whatever that is. Is
11 that correct?

12 A. Yes.

13 Q. And to get that figure, you take the
14 assessed valuation and multiply it by the equalization
15 rate?

16 A. Correct.

17 Q. Does that mean someone went through there
18 and multiplied every one of those by --

19 A. No.

20 Q. -- 57.6?

21 A. No, all of the assessments, line items, are
22 on a computer.

23 Q. Right.

24 A. And all we asked for was a printout that
25 showed those line items for residential properties

1 assessed at 375 or below. We went through the list
2 and counted up those that were less than 236, in the
3 one case and 327, just to differentiate between low
4 and moderate.

5 Q. And the same process was, and you came up
6 with a total of 3,000 and how many units?

7 A. 3,371 single family and townhouse units fall
8 below the 375 figure. 1,022 units fall below the
9 \$52,000 figure.

10 Q. And the 435 that you show under low income?

11 A. Yes.

12 Q. On the chart, obviously that's not
13 duplicated in the items under moderate income?

14 A. No.

15 Q. What you did is factored out those that
16 would be even lower?

17 A. Right.

18 Q. Based on a two to two and a half times,
19 actually a two and a half times the low income, 50
20 percent of the median income. Did you do the same
21 process for those?

22 A. At two and a half, at two and a half, the
23 total number is 3371. Of that 3371, 435 would fall
24 within the low range. 2,936 or the remainder, would
25 fall within the moderate.

1 Q. Okay.

2 A. If you use the other end of the range, the
3 two times income figure, those numbers change
4 significantly. They would total, total low and
5 moderate would be 1,022, with the low being 122, and
6 the moderate at 900.

7 Q. Now, how did you determine the figure with
8 respect to garden apartments?

9 A. We conducted a survey and determined what
10 the contract rents were for the existing garden
11 apartments within the Township.

12 Q. Is that the paper you were referring to
13 earlier?

14 A. Yes.

15 Q. So I could look at that and add it up and
16 come up with the figure that you have given?

17 A. Yes.

18 Q. And the income criteria that you used to
19 determine moderate income?

20 A. Yes.

21 Q. Is contained in answer to question 10?

22 A. Yes.

23 Q. Okay. If I can just get a copy of that.
24 I do have it.

25 What about student family apartments?

1 A. Okay. They are a separate item of -- there
2 are 348 of those. That information was obtained by a
3 phone call to Rutgers University, Division of Housing.

4 Q. They are not included then in the survey of
5 the rental apartments?

6 A. No, they would fall within low income
7 guidelines. I believe the rentals are all below \$300,
8 and all the units I believe are a minimum of two
9 bedrooms.

10 Q. Do you have any information on the number of
11 people occupying any of these units identified on the
12 first half of this chart as to their income level, in
13 other words, whether or not they are in fact low or
14 moderate income?

15 A. What we have is the latest areas marked by
16 HUD which show those areas consensus block group or
17 neighborhood statistic data published by the census,
18 which show where more than 50 percent of the
19 households earn less than the median income.

20 Q. Do you actually have that calculated?

21 A. That's been prepared by the Middlesex County
22 Housing and Community Development Office. It is
23 prepared to show the municipalities which are members
24 of the committee, which areas in their municipalities --
25 which areas in the municipality are eligible now for

1 funding, which projects in those particular areas.

2 Q. And these are areas where more than 50
3 percent?

4 A. More than 50 percent of the households.

5 Q. Are below 50 percent of median income?

6 A. Correct.

7 Q. Do you know if that's a family figure or a
8 household figure, more than 50 percent of households
9 or more than 50 percent of families?

10 A. If you wait one minute, I am going to give
11 you that for sure.

12 (Discussion off the record.)

13 (Recess taken.)

14 Q. On the garden apartment list, do you know
15 which of these projects went into occupancy after 1980,
16 do you have --

17 MR. PALEY: Mr. Gelber, might I request
18 that if you are going to refer to that list, that we
19 mark it?

20 MR. GELBER: Let's mark this deposition
21 exhibit three.

22 (Exhibit D-3 marked for identification.)

23 Q. Do you need the question repeated?

24 A. No. That section of Birchview Gardens, 170
25 units, would have been occupied after 1980 and

1 Ridgedale Gardens, portion of that development, I am
2 sure was occupied after 1980.

3 Q. Do you know approximately how many?

4 A. No.

5 Q. When you have monthly rental costs, do you
6 know if those include or exclude utilities?

7 A. In most cases, they include all utilities,
8 they include, include all utilities, except electric.

9 Q. You said in most cases?

10 A. Yeah, we don't have the information for two
11 of the complexes, Birchview and Ridgedale.

12 Q. So for all those except Birchview and
13 Ridgedale, those prices include all utilities but
14 electric?

15 A. Yes.

16 Q. And on Birchview and Ridgedale, you just
17 don't know?

18 A. Correct. By the way, I started to answer a
19 question before we took a break, and I would like to
20 give you that information. We were talking about
21 whether or not I knew the income of the residents of
22 any of the garden apartments. You'll see on two maps,
23 areas that are outlined on my copy in red and in your
24 copy in heavy black lines. You'll see the titling on
25 the top of those maps block groups with greater than

1 50 percent low to moderate income, and you'll see that
2 for instance on the second sheet, it is noted as
3 exhibit three, neighborhood labeled as east, part of
4 census tract zero or neighborhood 003, the entire
5 Pleasant View Gardens complex is incorporated within
6 that. Similarly, Busch Campus, census block group
7 number one and census tract number 5.02, and what
8 amounts to all of Rutgers University.

9 Q. None of the apartment complexes identified
10 on deposition exhibit three though are contained in
11 the Busch Campus area?

12 A. No, but within the list that we were
13 referring to previously.

14 Q. Are these student family apartments?

15 A. Student family apartments.

16 Q. Do you know the exact number of the units
17 identified other than the census data you have now
18 given me, do you know the exact number or proportion
19 of the people occupying the apartment complexes on
20 deposition, listed on deposition exhibit three, do you
21 know their incomes, what proportion of low or moderate?

22 A. No.

23 Q. Do you have any intention of securing that
24 information from the managers of these apartments?

25 A. I am not sure at this point.

1 MR. GELBER: Let's have that exhibit
2 that you were just referring to marked as deposition
3 exhibit four.

4 (Exhibit D-4 marked for identification.)

5 Q. In Piscataway's pre-trial statement, there
6 is a claim that 50 percent of the housing stock is low
7 moderate income. Did you derive that figure by taking
8 the information that's listed at the top of 41A and
9 42A and determining what percentage that is of the
10 total housing stock?

11 A. Yes.

12 Q. There is also a statement in the pre-trial
13 statement to the effect that the overwhelming majority
14 of students on the Livingston and Busch campuses of
15 Rutgers University fall into the categories of low and
16 moderate income?

17 A. Correct.

18 Q. On what do you base that statement?

19 A. The document that we just marked as --

20 Q. Deposition exhibit four?

21 A. Four, as well as common knowledge that full
22 time university students usually don't earn anywhere
23 near median income of that area.

24 Q. Do you know what proportion of those
25 students contained on those campuses continue to be

1 dependent on their parents?

2 A. No.

3 Q. Do you know -- do you have any information
4 on the income of the families of students who are
5 continued, who continue to be claimed as dependants by
6 their parents?

7 A. No.

8 Q. Do you know if dormitories or group quarters
9 are considered in the determination of present need in
10 the consensus report?

11 A. I don't believe they are.

12 Q. But I think it was your testimony earlier
13 that it is considered in the models used in
14 determining prospective --

15 A. In population projections.

16 Q. What about the employment model?

17 A. Which model?

18 Q. Well, there was an O.D.E.A. model one, I
19 think was based on population projections based on
20 employment data and then O.D.E.A. model two, I believe
21 was based on population projections based on
22 demographic information?

23 A. I don't know. I really don't know the
24 answer to that.

25 Q. Now, all the information contained at the

1 bottom of your answers to 41A and 42A is contained in
2 the deposition exhibit that we have just indicated.

3 Is that correct?

4 A. Correct.

5 Q. Do you have, in the Answers to
6 Interrogatories, question 43, we asked for a list of
7 all publicly assisted housing. Now, we got that
8 earlier in the deposition. Right? Is there any other
9 information that you have?

10 A. No.

11 Q. In answer to that?

12 Let me mark this as deposition exhibit five.
13 It is an index for aerial photographs.

14 (Exhibits D-5 and D-6 marked for
15 identification).

16 Q. Now, Plaintiff's Exhibit six is a series of
17 photocopies of aerial photographs of Piscataway that I
18 believe are taken in 1980 and 1981 by the county
19 planning department or they were available from the
20 county planning department, and the page numbers to
21 the aerials are identified in the upper left corner
22 and I'll be referring to those page numbers. What I
23 would like to do is run through each one as quickly as
24 possible and identify those tracts that were vacant at
25 that point and to determine if they have now been

1 developed or subject to approved plans.

2 Now, the tracts are limited to only sizable
3 tracts.

4 Let me show you deposition exhibit six, page
5 2E. Is there anything --

6 A. That's --

7 Q. Forgetting 2E, going to 2F --

8 MR. PALEY: Off the record.

9 (Discussion off the record.)

10 (Deposition adjourned)

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C E R T I F I C A T I O N

1
2
3
4 I, MARY LUKENSOW, a Certified Shorthand
5 Reporter, and Notary Public of New Jersey, do hereby
6 certify that the foregoing is a true and accurate
7 transcript of the deposition of LESTER NEBENZAHL, who
8 was first duly sworn by me, at the place and on the
9 date hereinbefore set forth.

10
11 I further certify that I am neither attorney
12 or counsel for, nor related to nor employed by any of
13 the parties to the action in which this deposition was
14 taken, and further that I am not a relative or
15 employee of any attorney or counsel employed in this
16 case, nor am I financially interested in the action.

17
18
19 Mary Lukensow
20 A Notary Public of New Jersey

21
22 Commission Expires:

23 October 30, 1984
24
25