

CA

Twp of Mathwah 11-Apr.-1978

Deposition of Malcolm Koster

pgs. 42

CA 002555S

URBAN LEAGUE OF ESSEX COUNTY; :  
NORTH JERSEY COMMUNITY UNION; :  
AMY INGRAM; JOHN LIGON; and :  
JOSE MUNIZ, on behalf of them- :  
selves and all others similarly : DEPOSITION OF:  
situated, :

Plaintiffs, :  
MALCOLM KASLER

-VS-

TOWNSHIP OF MAHWAH; BOROUGH OF :  
RAMSEY, NEW JERSEY; BOROUGH OF :  
SADDLE RIVER, NEW JERSEY; and :  
BOROUGH OF UPPER SADDLE RIVER, :  
NEW JERSEY, :

Defendants. :

April 11, 1978  
Hackensack, New Jersey

B E F O R E:

DIANE KLUCHAR, a Certified Shorthand Reporter and  
Notary Public of the State of New Jersey, at the offices  
of MESSRS. BRESLIN & BRESLIN, 41 Main Street, Hackensack,  
New Jersey, on Tuesday, April 11, 1978, commencing at  
9:30 a.m., pursuant to Notice.

V. A. CALDARELLA & ASSOCIATES  
CERTIFIED SHORTHAND REPORTERS  
50 MAIN STREET  
HACKENSACK, NEW JERSEY 07601  
342-3092

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

MESSRS. EISNER, LEVY, STEEL & BELLMAN  
BY: RICHARD F. BELLMAN, ESQ.  
For the Plaintiffs

MESSRS. BRESLIN & BRESLIN  
BY: BRIAN T. CAMPION, ESQ.  
For the Defendant,  
Township of Mahwah

MESSRS. HANNOCH, WEISMAN, STERN & BESSER  
BY: DEAN A. GAVER, ESQ.  
For the Defendant,  
Borough of Ramsey

MESSRS. STICKEL, KAIN & STICKEL  
BY: FREDERIC G. STICKEL, III, ESQ.  
For the Defendant,  
Borough of Saddle River

MESSRS. SACHAR, BERNSTEIN, ROTHBERG, SIKORA &  
BY: DANIEL S. BERNSTEIN, ESQ. MONGELLO  
For the Defendant,  
Borough of Upper Saddle River

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I N D E X

WITNESS

DIRECT

MALCOLM KASLER

MR. BELLMAN

2

E X H I B I T S

NO.

DESCRIPTION

IDENT.

P-1

Report entitled "Mahwah  
Township Fair Share Housing  
Study," dated July, 1977

25

1 M A L C O L M K A S L E R, 39 Hudson Street, Hackensack,  
2 New Jersey, sworn.

3 DIRECT EXAMINATION BY MR. BELLMAN:

4 Q Mr. Kasler, do you have a resume?

5 A Not with me.

6 Q Could you furnish me with one? That way  
7 I can avoid going through a long examination on your back-  
8 ground.

9 Q Could you tell me how large your planning  
10 and consultant firm is? A Yes.

11 It's myself.

12 Q Just yourself?

13 A Yes.

14 Q Now, you were retained by the Mahwah Town-  
15 ship to do a study in connection with this litigation. Is  
16 that correct? A Initially it was  
17 a retention with regard to the suburban lawsuit and has  
18 carried over into this one.

19 MR. CAMPION: Off the Record.

20

21 (There is a discussion held off the Record.)

22

23 Q Now, when you say the suburban lawsuit,  
24 are you talking about the Ramapo Mountain development pro-  
25 ject? A Yes, sir.

1 Q And you were retained to do work on that?

2 A Yes, sir.

3 Q And could you tell me what you were re-  
4 tained to do? A It was on the basis

5 of having the master plan be adopted and the Zoning Ord-  
6 nance be amended and codified that I was asked to prepare a  
7 fair-share housing study.

8 Q And this was before the adopting of the  
9 new ordinance? A The new ordinance

10 had already been adopted. It was adopted in 1976.

11 Q And tell me what year you were retained to  
12 do any work for Mahwah. A I go  
13 back to 1968.

14 Q Okay. A I wasn't  
15 my firm at that time. I was with the firm of Candeub,  
16 Fleissig & Associates, and we were employed by that town  
17 from that period of time until approximately 1973, at which  
18 time the master plan was to be prepared and another firm  
19 was hired.

20 Q And what firm was that?

21 A That was Herb Smith & Associates.

22 Q When you were with Candeub, Fleissig, did  
23 you do any work on the Mahwah account?

24 A Pardon me?

25 Q Were you responsible for anything being

1 done with respect to Mahwah? A Oh,  
2 yes.

3 Q Okay. That firm prepared a master plan,  
4 did it not, at one time? A Yes.

5 Q Did you work on that?  
6 A Not the plan of 1965.

7 Q Tell me what you did for Candeub, Fleissig,  
8 A With relation to Mahwah?

9 Q Mahwah, yes.

10 A In 1968 the firm had what was called a continuing  
11 services agreement with the community, and we attended meet-  
12 ings on a regular basis, advised the community as to various  
13 applications that came before the Board; various studies  
14 were prepared. There was a point where there was an amend-  
15 ment to the master plan, which the firm did as well, which  
16 was done around 1970 or '71. It was called the Ridge Road  
17 Concept Plan, I believe.

18 Q Was that the so-called CED?

19 A That led to the CED Zone, yes.

20 Q Did you prepare that plan?

21 A Yes, I did.

22 Q Could you tell me whether that plan was  
23 adopted in all detail or was it changed when it was ulti-  
24 mately put into the form of the CED Zone?

25 A I believe the area that was under study went beyond

1 the area that was zoned for the CED at that point in time.  
2 The newly adopted master plan incorporated those areas,  
3 basically, that were included in that that wasn't adopted  
4 by later zoning.

5 Q Do you have access to a copy of that

6 plan? A Probably in my office, but  
7 I'd have to look.

8 Q Could I ask you to furnish a copy of that

9 plan? A If I can find it, yes.

10 Q Aside from the day-to-day studies and re-

11 commendations that you did in conjunction with Candeub,

12 Fleissig and the Ridge Road plan, today can you think of

13 any other major piece of work you did in that period of

14 time for Mahwah?

A There were a  
15 substantial number of things. There was a study with  
16 reference to a tract of land that was owned by a man by the  
17 name of Marks, and it was located across the street from  
18 IBM in Franklin Lakes. It wound up in litigation. We did  
19 a study in that regard.

20 There were certain studies done with I-287 as to  
21 its alignment and the effects of the highway on the commun-  
22 ity.

23 I don't know. It was a six-year period. There  
24 were many things that came along that we were requested to  
25 provide data and information on.



1 Q Do you have a copy of the study you did  
2 on the Marks land? A I really don't  
3 believe so. If I do, it's in a carton somewhere in the  
4 basement, if it exists at all at this point.

5 Q Now, you say Herb Smith's firm represented  
6 Mahwah from what period to what period?

7 A To the best of my recollection, they were retained  
8 in the latter part of '73 and, I believe, worked through  
9 somewhere around 1975.

10 Q And when the contract with Smith's firm  
11 expired, you were retained by Mahwah. Is that correct?

12 A Yes; that is, my firm, Malcolm Kasler & Associates.  
13 At that point I had left Candeub, Fleissig.

14 Q Now, do you know when in 1975 you went to  
15 work for Mahwah? A I believe it was

16 the latter part, the fall or the winter of '75. I should  
17 advise you that there was one part, even when Herb Smith  
18 was retained, that Mahwah continued a technical relationship  
19 with me because of the CED Ordinance and the knowledge I had  
20 with that ordinance, so that my departure from Mahwah was  
21 not totally complete because with reference to that particu-  
22 lar application I did advise them.

23 Q Did you draft the CED Ordinance?

24 A Yes, but technically I did with the attorney.

25 Q Who is that?

1 A He's no longer with the town. He's a Tom Dunn with  
2 the firm of Wittman, Anzalone, Bernstein & Dunn.

3 Q All right. Now, you state that when you  
4 were retained in late 1975, you were asked to do a fair-  
5 share plan in conjunction with the Ramapo Mountain suit.

6 Is that correct? A That came later.  
7 That was either 1976 or '77.

8 Q Did you do a fair-share study?

9 A Yes.

10 Q Do you have a copy of that study?

11 A Yes.

12 Q Now, could I be given a copy of that  
13 study, please? A I think you have

14 it before you.

15 Q Is that the same as the study that was  
16 furnished in conjunction with this case, entitled, "Mahwah  
17 Township Fair-Share Housing Study" and dated July, 1977?

18 A Yes.

19 Q Okay. So it's one and the same study?

20 A That's correct.

21 Q And do you have a copy of that study with  
22 you or that report? A Yes.

23 MR. BELLMAN: Let's have your copy marked.

24

25 (Report dated July, 1977, entitled "Mahwah

1 Township Fair-Share Housing Study" received  
2 and marked P-1 for identification by the  
3 Reporter.)

4  
5 Q Aside from the study now labeled Plain-  
6 tiff's Exhibit One, what other work have you done for Mahwah  
7 since retained by them? A I again  
8 functioned in the same capacity as I did when I was with  
9 Candeub, Fleissig, in that I sit with the Planning Board,  
10 provide technical assistance to that body in various types  
11 of reviews and studies that may arise, and I was also asked  
12 to help redraft, basically codify, the zoning ordinances  
13 now in effect.

14 Q When you were retained by Mahwah, the  
15 most recent phase, the new Zoning Ordinance had already  
16 been adopted? A No, it had not.

17 Q Had it been drafted?

18 A No.

19 Q Had the master plan been adopted?

20 A Yes.

21 Q And the master plan had been drafted by

22 -- A That was Herb Smith.

23 Q Did you draw up the Zoning Ordinance?

24 A Yes, sir.

25 Q And did you draw that Zoning Ordinance to

1 implement the master plan that had been adopted?

2 A That is correct.

3 Q In drafting that Zoning Ordinance, did  
4 you deviate in any material way from the master plan?

5 A I don't believe I did. There may have been certain  
6 adjustments that I felt were necessary for technical reasons,  
7 but I don't believe there was any major deviation.

8 Q So essentially, the Zoning Ordinance fully  
9 implements the land use goals set forth in the master plan.

10 Is that correct? A Yes. I think  
11 that's a fair statement.

12 Q Now, turning to your report on page two,  
13 you define housing region. Is that correct?

14 A Yes.

15 Q Now, could you tell me how you determined  
16 to use a 45-minute radius to define the Mahwah region?

17 A It is, I think, one of the parameters in planning  
18 as to the relative mean time of travel from one home to one  
19 place of business. Obviously, many people will drive fur-  
20 ther time distances or physical distances, and some people  
21 will drive lesser distances. It has been used in a number  
22 of other court cases in which I have been involved, and I  
23 have basically accepted that as a basic tenet. I believe  
24 it was a parameter used in the Mount Laurel case.

25 Q Did you make reference to any planning

1 literature in deriving that 45-minute criteria?

2 A No. I haven't documented that specifically.

3 Q And you made reference to the Mount Laurel  
4 decision. Did you rely on the Mount Laurel decision in  
5 coming up with that 45-minute criteria?

6 A Mount Laurel, Madison and several of the other  
7 cases that have come down.

8 Q So you believe that that 45-minute criter-  
9 ia emerges from those decisions. Is that correct?

10 A I think it is a reasonable time frame within which  
11 to work. I wouldn't say it's exact or that it is profound  
12 in and of its own right. It could be 50 minutes or 40 min-  
13 utes; it probably would be of equal value. But as I say,  
14 it has been accepted in other cases that I have been involv-  
15 ed in. I have accepted it myself professionally.

16 Q So the basic assumption in that criteria,  
17 if I understand you, is that people who may be working in  
18 Mahwah and wanting to reside there may be driving as much  
19 as 45 minutes and you're trying to relate to that class of  
20 persons. Is that correct?

21 A No. What I'm suggesting is that people who live in  
22 Mahwah may travel on the average upwards of 45 minutes to  
23 their place of business and vice versa; that is, somebody  
24 who lives in Bloomfield or Montclair may be willing to  
25 travel up to 45 minutes to work in Mahwah, which is the

1 reverse. And once you describe that type of framework with-  
2 in the transportation network that we live in, we can rough-  
3 ly define what that housing region is.

4 Q If somebody lives in Newark, they would  
5 be outside of your region. Is that correct?

6 A That's generally correct. I don't believe you  
7 could make Newark in 45 minutes from Mahwah.

8 Q But if a person currently living in Newark  
9 and working in Mahwah, say, for example, the Ford assembly  
10 plant, that person would not be envisioned in your region?

11 A I think I indicated earlier that I concede that  
12 there will be people who will travel longer time periods  
13 and distances to go to work. I'm working off of an average.  
14 I have had the ability to do about four or five studies of  
15 this type in various areas. One of the conclusions I've  
16 come to is it almost becomes immaterial once you come into  
17 substantial numbers as to what these regions are, as to  
18 which towns are covered and which are not.

19 Q Now, on page four of your report under  
20 "Future Housing Need in Region," you make reference to the  
21 number 59,306 multi-family dwellings, and you state that  
22 that's derived from the James & Hughes report. Is that  
23 correct?

A That is correct.

24 Q Do you have a copy of the James & Hughes  
25 report with you?

A Yes, I do.

1 Q Could you take it out, please, and show  
2 me where you obtain that figure and what page?

3 A The page is going to take time. I think for the  
4 Record it should be understood that this particular study  
5 projects housing needs by various segments of the state,  
6 and those areas are grouped into what are combined communi-  
7 ties. In other words, they do not make a projection for  
8 each county but rather for a series of counties which are  
9 defined as a "Region." So that some of the breakout of  
10 those statistical numbers had to be done on a pro-rated  
11 basis because the region that was defined in my study did  
12 not include whole counties but was based on municipalities.

13 Q Well, maybe then you could explain how  
14 you calculated the figure 59,306?

15 A I didn't calculate that. Well, perhaps -- the page  
16 number that you made reference to is page 79. The project-  
17 ion --

18 Q That's 79 of the James & Hughes study?

19 A -- is based upon a breakout of the region so affect-  
20 ed, and I would have to go into the appendix to determine  
21 exactly what regions it is because it covers Bergen, Pass-  
22 aic -- I should say parts of Bergen, Passaic, Morris, Essex  
23 and Hudson Counties -- I believe I've covered them all --  
24 which covers at least two so-called regions because region  
25 one is Bergen and Passaic and region two is Hudson, Essex

1 and Union, and Morris is in region three. So that there  
2 would have to be a pro-rata/<sup>share</sup>of the projections being made  
3 for each one of those counties, and I utilized, basically,  
4 population. In other words, if 80 percent of Bergen County  
5 were represented, I would count 80 percent of the project-  
6 ion for Bergen County. Even though it may not be statistic-  
7 ally to the point, it certainly would be reasonably accur-  
8 ate, and then just added up all of those proportions that  
9 were being sub-divided out.

10 Q I see. On page 79, the table gives hous-  
11 ing units required by 1980, number of multi-family units,  
12 and then you did a percentage calculation to conform to  
13 your defined region? A That's cor-

14 rect.

15 Q And that leans to this 59-thousand-plus  
16 figure? A Right.

17 Q Now, you used the term on page four,  
18 "least cost housing." Could you define that for me as you  
19 have used it? A Least cost housing

20 is a phrase that came out of the Madison case. My inter-  
21 pretation of the Madison case, in effect, says that municipi-  
22 palities should provide forms of housing which would still  
23 be consistent with the type of environment of the community  
24 but would produce higher densities or lesser cost for con-  
25 struction for certain types of houses. That does not mean



1 that one would build a high rise, 30-story apartment build-  
2 ing in Mahwah because in my judgment that would probably be  
3 out of character with the community of Mahwah, but rather  
4 forms of housing such as apartment houses and townhouses  
5 would be the types of housing that would be consistent with  
6 the type of community that Mahwah is, the type of community  
7 that Mahwah can service in terms of utilities and still pro-  
8 vide a lesser cost type of housing because of the higher  
9 densities associated with it.

10 Q Well, is that your answer as to your  
11 definition of least cost?

12 A Yes. I believe that would be accurate.

13 Q You use the term "lesser cost." Is that  
14 what you really mean? A Well, it's

15 a relative term. I believe that if you have certain forms  
16 of higher density housing it will reduce the cost, whether  
17 lesser cost or the least cost possible is kind of a subjective  
18 kind of an answer to the question. I believe it's some-  
19 thing that reduces the cost of housing, would fit into the  
20 Madison type of decision would constitute least cost housing.

21 Q I see. Now, in your report you rely on  
22 certain zoning categories and point to those categories as  
23 least cost housing. Is that correct?

24 A You'll have to direct me. I don't understand the  
25 question.

1 Q Well, on page, I guess it's nine, you  
2 talked about least cost housing units permitted in Mahwah  
3 Township under the current Zoning Ordinance. Is that cor-  
4 rect? A Yes.

5 Q And you included as least cost housing  
6 the RM-6 zone, which I take is mobile homes?

7 A That's correct.

8 Q The PRD-4 and the PRD-8 and garden apart-  
9 ment 200, and finally, the CED.

10 A That's correct.

11 Q Okay. Could you tell me how you deter-  
12 mined, for example, that the PRD-4 zone was least cost  
13 housing? A Well, as I indicated

14 earlier, I believe that townhouses constitute one form of  
15 least cost housing. It is a form of higher density houses.  
16 It is cluster housing. Because of the physical character-  
17 istics of the townhouse, it results in a certain type of  
18 cost saving to the developer and ultimately to the consumer;  
19 i.e., in lesser amounts of utility connections, and so  
20 forth, and because of that the densities associated with  
21 it is contrasted to one family, detached acre zoning type  
22 of housing. In my judgment, that would constitute least  
23 cost housing.

24 Q So you view anything other than one  
25 family, single detached as least cost housing. Is that

1 correct? A No. I don't think  
2 that's fair because I think if you even put a one-family  
3 house on a small lot, that that would constitute a type of  
4 least cost housing.

5 Q But aside from that exception, that there  
6 may be some single-family detached homes that could qualify  
7 as least cost housing, beyond that anything that would be  
8 clustered, townhouses, you would categorize as least cost  
9 housing? A In Mahwah or in general?

10 Q Well, you tell me.

11 A Well, the phraseology, if you took a townhouse and  
12 developed them at one unit to the acre, no, I wouldn't con-  
13 sider it least cost housing. We believe that the densities  
14 that were associated with these projects as zoned were  
15 reasonable densities and, therefore, would have the effect  
16 of reducing the cost of housing.

17 Q Did you undertake any study to price out  
18 the ultimate cost of housing under these zones that exist  
19 in the Mahwah plan? A That's im-  
20 possible.

21 Q That's impossible?

22 A I maintain that from a municipal planning point of  
23 view that that would be an impossibility.

24 Q Could you tell me why?

25 A Because there are so many imponderables that are not

1 available to the community or to a consultant, such as my-  
2 self, to determine what that cost might be. That is truly  
3 a market experience; what the land cost, what the improve-  
4 ment costs associated with it, what quality work is going  
5 to go in, how big the units are going to be. All of these  
6 things go well beyond the community to make any determina-  
7 tion of the cost of housing.

8 Q So your answer is you did not undertake  
9 to cost out these zones? A My  
10 answer is that I could not.

11 Q And that you did not. Is that correct?

12 A That's correct.

13 Q So at this moment you have no idea what a  
14 townhouse unit in the PRD-4 zone in Mahwah would ultimately  
15 cost if built within, say, the next few months?

16 A I have an idea.

17 Q You have an idea?

18 A Yes.

19 Q Well, if a townhouse were to be built in  
20 the PRD-4 zone in Mahwah within the next six to eight months  
21 or in that range, what would it cost?

22 MR. CAMPION: I have an objection to the  
23 question, as far as it goes to conjecture.

24 Q Okay. You can answer.

25 A The aspect was not directed to the PRD-4 zone.

1 MR. STICKEL: I don't think he's qualified  
2 to answer.

3 MR. CAMPION: Well, my own comment is that  
4 he's stated he has not undertaken any studies, and  
5 anything he has to do is just a pure assumption.

6 Q You can answer.

7 A The reason I stated that is not from my own know-  
8 ledge but from the fact that there's a project that's in the  
9 ground right now, and while the final prices have not come  
10 out, there is talk of something of the magnitude of seventy  
11 and eighty thousand dollars.

12 Q Per unit? A Per  
13 unit.

14 Q For sale? A For  
15 sale.

16 Q And that was the basis for your idea?

17 A That's why I said I have an idea, that's correct.  
18 It is not based on any study that I did. There will be  
19 other projects. Well, there's at least one more project  
20 that is being processed right now in Mahwah.

21 Q What project is that?

22 A It's called Winton Gait, and that is a PRD-4 project.

23 Q And where is that?

24 A That is before the Planning Board under site plan  
25 review. It has not received approval yet.

1 Q And what part of town is that in?

2 A That is between Franklin Turnpike and Airmount.

3 Q And do you have any idea as to the pro-  
4 jected cost of the units in that PRD zone?

5 A I have not heard them formally yet. That may come  
6 out as part of the testimony, but I don't believe it has  
7 been offered as evidence yet.

8 Q Do you have any idea informally?

9 A I would anticipate that they will be competitive  
10 with the Ramapo Ridge, which I gave to you earlier. It  
11 probably will be in the same price range.

12 Q Seventy to eighty thousand?

13 A Yes.

14 Q And you consider that least cost housing?

15 A I'm telling you that's what the market is building  
16 right now.

17 Q That wasn't my question, Mr. Kasler. My  
18 question is you consider seventy to eighty thousand dollar  
19 townhouse units to be least cost housing?

20 A I said I considered townhouses as we zoned, in other  
21 words, as the town zoned them, to be least cost housing. I  
22 did not say that 70 to 80 was necessarily least cost hous-  
23 ing.

24 Q I can keep asking the same question. Do  
25 you consider the Winton Gait and other one -- I'm sorry.

1 What is the name of the other one?

2 A It's McBride's project. I can't remember.

3 Q We'll call it "McBride."

4 A It's Ramapo Ridge.

5 Q You consider Ramapo Ridge and Winton Gait,  
6 assuming it gets approval, to be least cost housing?

7 A Yes.

8 Q Okay. Now, are there any current develop-  
9 ments under the PRD-8 zone?

10 A No.

11 Q By the way, is there still a PRD-8 zone?

12 A As of today, yes. As of Thursday, it probably will  
13 disappear.

14 Q Explain that to me.

15 A The ordinance is being amended. The area of the  
16 PRD-8 zone literally split a single ownership parcel into  
17 two pieces, part of which was rezoned PRD-4 and part of  
18 which was zoned PRD-8, and a specific requirement of each  
19 zone would have required a great deal of replication on the  
20 part of the applicant and developer to the detriment of a  
21 proper planning layout for the whole project. A petition  
22 was made to the governing body to unify the two zones into  
23 one, which the governing body up to this point has seen fit  
24 to accomplish as the ordinance, amongst other amendments,  
25 has been introduced and is coming up for approval. In

1 effect, it's averaging out two zones into one.

2 Q So there will not be a PRD-8 zone in  
3 Mahwah after Thursday? A If the

4 ordinance is adopted, yes.

5 Q And your assumption is that it will be?

6 A I can't speak for the governing body. I don't know  
7 what they'll do.

8 Q Well, do you have any idea as to what may  
9 happen on Thursday? A No.

10 MR. GAVER: Why don't we wait until  
11 Thursday?

12 Q Have you recalculated your figures on the  
13 number of least cost housing units that will be able to be  
14 provided in Mahwah under the new zoning in light of this  
15 elimination of the PRD-8 zone?

16 A No.

17 Q Do you intend to do that?

18 A If I'm instructed to do so, I will. I don't believe  
19 statistically that will be a great deal of change, as I  
20 indicated earlier, because we're really averaging out two  
21 parcels into one. The numbers may vary by about 20 units,  
22 or something of that magnitude.

23 Q Do you consider reduction of the PRD-8  
24 zone and averaging it out to a PRD-6 zone, or whatever may  
25 be happening under the proposed ordinance, as a step to pro-



1 viding least cost housing?

2 A I don't understand that question.

3 MR. BELLMAN: Can you read it back?

4  
5 (The pending question is read back by the  
6 Reporter.)

7  
8 THE WITNESS: I still didn't understand  
9 the question. I heard it; I don't understand it.

10 Q Let me put it this way. Do you consider  
11 the reduction, the elimination of the PRD-8 zone in Mahwah  
12 as having any relevance to the goal of providing least cost  
13 housing in Mahwah? A I don't

14 A I don't think it has any bearing.

15 Q None whatsoever?

16 A No. I think it will do the same thing as the six  
17 will, as opposed to the four and eight.

18 Q Now, have there been any proposals for  
19 constructing townhouses under the PRD-8, or what will be the  
20 PRD-6 zone? A Yes.

21 Q What project is that?

22 A Doesn't have a name.

23 Q Where is it located?

24 A It's on the east side of Ridge Road.

25 Q Before we go to that one, going back to

1 the Ramapo Ridge project, how many units are involved in  
2 that? A Ramapo Ridge has an approval  
3 on the overall project for 556 units.

4 Q And Winton Gait, how many units involved  
5 in that? A I have to calculate  
6 that one. I don't remember.

7 MR. BELLMAN: Let's take a two-minute  
8 break.

9  
10 (At this point in the proceedings a short  
11 recess is taken.)

12  
13 Q Do you have a figure on Winton Gait?

14 A I believe it's 282 units.

15 Q Now, east side of Ridge Road is the pro-  
16 ject that is under consideration with respect to this zoning  
17 change. Is that correct? A That's  
18 correct.

19 Q How many units involved there?

20 A I honestly don't recall. There is a substantial  
21 land holding in that area.

22 Q How many acres?

23 A I would guess in the magnitude of 90 or 100, some-  
24 thing of that size.

25 Q Ninety to a hundred. And what are they

1 proposing? A Well, in effect,  
2 they're waiting the outcome of the zoning change. Well,  
3 what they're proposing is basically what the ordinance would  
4 permit, which is a mixture of townhouses, garden apartments  
5 and one-family houses.

6 Q Do you have any current estimate or any  
7 idea whatsoever of what townhouses and garden apartments  
8 would sell for in the east side of Ridge Road development,  
9 assuming the ordinance were passed and the developer gets  
10 approval?

11 MR. CAMPION: I have the same objection  
12 that I raised before.

13 THE WITNESS: I have no knowledge of that.

14 Q I didn't ask if you had any knowledge.  
15 Do you have any idea what it would cost?

16 A No.

17 Q Do you think it would be any lower than  
18 the projected cost on the Ramapo Ridge and Winton Gait?

19 A I really can't answer that because I don't know  
20 what's associated with this development. It hasn't even  
21 been submitted yet. What I'm telling you is on the other  
22 projects, it was based upon estimates that would probably be  
23 submitted very soon on sales cost of known projects, I should  
24 point out.

25 Q By the way, you had no real say in the

1 setting of these zones, other than the current rezoning  
2 under consideration on the east side of Ridge Road? You  
3 took what Herb Smith had done in the master plan. Is that  
4 correct? A That's not exactly true.

5 The CED zone was not changed by the master plan. That exist-  
6 ed.

7 Q Excuse me. Aside from the CED zone.

8 A Yes. The garden apartment zones were not specific-  
9 ally identified in the master plan, per se, and it was my  
10 recommendation that the old zones which already exist should  
11 have been continued in the Zoning Ordinance and certain  
12 areas expanded, which was also based upon my knowledge. It  
13 wasn't specifically forthcoming from the master plan itself.

14 Q And was that done?

15 A Yes.

16 Q Now, correct me if I'm wrong, Mr. Kasler.

17 In reviewing your report, I find that you tend to inter-  
18 mingle the concept of low and moderate and mix it with multi-  
19 family housing and deal with these two categories as though  
20 they were synonymous. A Statis-

21 tically, I used the data on the multiple-family housing,  
22 which was the only hard information that was available.

23 That's not to say that all multiple-family housing constitut-  
24 es least cost housing but that certainly it is probably one  
25 of the more significant aspects of least cost housing.

1 Q All right. Now, making reference again  
2 to this table, I take it that's page nine, you have a cate-  
3 gory called "Developable acreage" broken down according to  
4 the various least cost zones that we referred to before.

5 Is that correct? A Yes.

6 Q Would you please tell me how you deter-  
7 mined the amount of developable acreage in each of these  
8 categories? A They were physically  
9 measured.

10 Q By whom? A By my-  
11 self.

12 Q How did you do that?

13 A I either used the tax records; in other words,  
14 superimposed the zone record on the tax record itself, and  
15 the tax record had a specific area. I'm trying to recall  
16 because I don't remember specifically. Or I used an instru-  
17 ment called a planimeter, which is an instrument that mea-  
18 sures areas. And once you know the areas and the conversion  
19 factor, you can then determine various sizes of areas, be  
20 it acres, square feet, that type of thing.

21 Q Do you have any work papers, any backup  
22 data on that process? A I would  
23 have to go back. I'm reasonably sure I do.

24 Q What would you have?

25 A If I used the planimeter, I would probably have the

1 calculation of the areas that were measured. If it were  
2 the tax maps, then I'd have to go to the original tax map  
3 and check it over. I might have been just adding it up and  
4 it might be on a tape. I honestly don't remember, though.

5 Q Let's take the tax maps and tell us the  
6 process you went through.

7 A I don't remember precisely which method was used.  
8 If the information was taken from the tax records --

9 Q Assuming it was.

10 A -- then the tax records would then have all the  
11 areas within the specific zones determined and then speci-  
12 fically added up. If there were 20 parcels with acreage  
13 indicated on the tax maps, I would then specifically note  
14 "parcel such and such contained 20; parcel such and such  
15 contained 30 acres," and added them up.

16 Q And how would you tell from the tax rec-  
17 ords if it was vacant? A Well,

18 I have a record of land use that was done by Herb Smith  
19 when they did the master plan.

20 MR. BELLMAN: Off the Record.

21

22 (There is a discussion held off the Record.)

23

24 Q You just made reference to a study of  
25 vacant acreage by Herb Smith.

1 MR. CAMPION: I don't think he said it was  
2 a study of vacant acreage.

3 THE WITNESS: It was land use.

4 Q Excuse me. Land use. Now, describe what  
5 Mr. Smith prepared and where that physically is.

6 A Mr. Smith's firm. I don't know who in the firm  
7 prepared it. There was a map of the Town of Mahwah or one  
8 composite map. A survey was done as to specific land use  
9 on a parcel by parcel basis. That map subsequently was  
10 colored in to reflect those various land uses, so that we  
11 knew certain areas. If the thing was in yellow, the yellow  
12 key would indicate that it was residentially developed. If  
13 it was white, it would mean that it was undeveloped, and so  
14 on.

15 Q Does that map show tax record parcels?

16 A It did so at the time that it was conducted, which  
17 was back in '74.

18 Q I see. Now, who has that map?

19 A It's either in the office of the Planning Board or  
20 in my office, one or the other. I don't remember where it  
21 is exactly.

22 MR. BELLMAN: Off the Record.

23

24 (There is a discussion held off the Record.)

25

1 MR. BELLMAN: We've just agreed that this  
2 map that Mr. Kasler has made reference to will be  
3 made available for inspection and viewing by repre-  
4 sentatives from the plaintiffs, and we'll work out  
5 an arrangement when that can be done.

6 MR. CAMPION: I'd just like to note that  
7 it's slightly dated, and I'm not vouching for its  
8 current accuracy.

9 MR. BELLMAN: You're not vouching for any-  
10 thing. We're just talking about that document as  
11 to looking at it.

12 Q Now, when you went to the tax records,  
13 you were concerned about the PRD-4 zone, for example, and  
14 you wanted to be able to determine which parcels were in  
15 that zone and make reference to the tax records. Is that  
16 correct? A Yes.

17 Q Now, how did you know that parcels were  
18 in the PRD-4 zone? A It's described  
19 in the zoning map.

20 Q Is that the map we've just talked about?  
21 A No.

22 Q What zoning map makes reference to the --  
23 A It's the Zoning Ordinance, the Zoning Ordinance map,  
24 which is distinguished from a land use survey.

25 Q Okay. Do you have a copy of that with



1 you? A Not the zoning. That also  
2 is a very large map. I have a reduction of it.

3 Q Could I see it? Okay.

4 What I have here is a zoning map, reduct-  
5 ion of the zoning map, with various zoning categories. Is  
6 that correct? A That's correct.

7 Q Now, in looking at this zoning map, how  
8 would I know that tax record parcels are in any given cate-  
9 gory? A You wouldn't. You wouldn't

10 look at this map. You would look at the original, which  
11 has lot lines on it.

12 Q The original has lot lines?

13 A And through the reduction the lot lines were lost.

14 MR. BELLMAN: Now I understand. Can we  
15 agree, also, we'll have access to review of the  
16 original zoning map, which gives the parcel-by-  
17 parcel breakdown?

18 MR. CAMPION: That's available, isn't it?

19 THE WITNESS: The original I can't speak  
20 to because the original has been modified because  
21 of the zoning amendment which is coming up. In  
22 other words, that original map is now adjusted. I  
23 have prints of it, but the prints -- yes. The  
24 prints would still show those lot lines. It is  
25 available.

1 MR. BELLMAN: Off the Record.

2  
3 (There is a discussion held off the Record.)

4  
5 MR. BELLMAN: Mr. Kasler has just indi-  
6 cated that the administrative officer of -- what's  
7 the town?

8 THE WITNESS: Well, under the land use  
9 law, there is a classification called administrative  
10 officer, and she technically worked for the Board of  
11 Adjustment and the Planning Board.

12 Q Who is she?

13 A Grace Kowalski.

14 Q And she has access and physical control  
15 of these maps that would show the breakdown of the lots by  
16 classification?

17 A She has them.  
18 I may have old copies still. I'm not sure that I still  
19 have them, but I know that she does.

20 MR. BELLMAN: And we agree that between  
21 you, Mr. Kasler, and Ms. Kowalski, we'll work out  
22 an arrangement where a representative of the plain-  
23 tiff can have access to those maps in determining  
24 the proper lots in each zone. Is that correct?

24 MR. CAMPION: That's okay.

25 Q Now, have there been any development pro-

1 proposals with respect to the mobile home, the expanded mobile  
2 home classification? A Not that  
3 I'm aware of.

4 Q Have there been any proposals with respect  
5 to the garden apartment 200 zone?

6 A Yes.

7 Q Now, tell me which --

8 A Called Rolling Hills.

9 Q Of course. Where is Rolling Hills?

10 A Franklin Turnpike, 76 units.

11 Q Who's the developer?

12 A It's a corporation. I don't recall, but they re-  
13 ceived approval last night.

14 Q By the way, could I request copies of --  
15 withdrawn.

16 When something like Rolling Hills comes  
17 before the Planning Board, did they have a development pro-  
18 posal which is submitted to the Board?

19 A Yes.

20 MR. BELLMAN: Could we have copies of that,  
21 please?

22 MR. CAMPION: Well, I assume they submit  
23 site plans for preliminary and final approval, and  
24 I think we're talking about a substantial number of  
25 large documents. They're on file with the Planning

1 Board.

2 MR. GAVER: They're public records.

3 MR. BELLMAN: I understand.

4 Q Are there, like, printed descriptions of  
5 the project and what they intend to do?

6 MR. GAVER: You mean a brochure?

7 THE WITNESS: I don't understand that.

8 Q I don't think the question is that diffi-  
9 cult to understand. Is there anything printed that is a  
10 writeup of what the developer intends to do with this land  
11 that is submitted to the Planning Board?

12 A There are a series of maps.

13 Q Is that all?

14 A In this particular case, I think there was an en-  
15 vironmental assessment, and there were various other things,  
16 certain reports that were submitted as a result of them,  
17 but that's all on record.

18 Q I'm sure it's in the record. Let's assume  
19 everything I ask you is in the record, and I'm no idiot  
20 either and I know there are public records and I can go to  
21 them, but I'm asking you: Of your own knowledge, does a  
22 developer submit a document which says, "I intend to build  
23 76 units which will have X number of bedrooms," a descrip-  
24 tion, a written description of what he intends to do?

25 A Not that I know of.

1 Q Now, you say the 76-unit Rolling Hills  
2 project was approved last night?

3 A That's correct.

4 Q And is that the only new development  
5 that's been approved so far under the garden apartment?

6 A That's correct. As an independent garden apartment,  
7 because the other ones contained garden apartments, the  
8 planned developments.

9 Q The ones we've talked about?

10 A Yes.

11 Q How many acres involved in Rolling Hills?

12 A Five, five plus or minus.

13 Q Are these to be rental units?

14 A Yes.

15 Q Do you have any idea what the proposed  
16 rental costs would be?

17 A I have  
no idea.

18 Q Do you have any judgment based on your  
19 knowledge of the development in this area?

20 A I have no idea.

21 Q Maybe you can tell me why you have no  
22 idea.

23 MR. CAMPION: I object to that question.

24 He just has no idea.

25 THE WITNESS: I can't answer that. I

1 don't know.

2 Q You have no idea of what rentals on new  
3 garden apartments in the Mahwah region are going for?

4 A No.

5 Q That's not something you feel warrants,  
6 say, an inquiry by you?

7 MR. CAMPION: I object to that. He  
8 already said he didn't know.

9 MR. BELLMAN: It's a different question.  
10 Do you want to repeat it?

11 MR. STICKEL: It's argumentative.

12

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

15

16 THE WITNESS: I don't know that it would  
17 change any of the work that I would do by knowing  
18 that information.

19 Q So you don't think it warrants your in-  
20 quiry?

21 A If I had that information,  
22 it would be superfluous to whatever I do. So if I know it,  
23 I know it; if I don't, I don't.

24 Q Are there any other garden apartment 200  
25 proposals that have come to the Planning Board?

A Since the ordinance was amended?

1 Q Yes. A No, none.

2 Q Now, turning to the CED zone, has that  
3 progressed, that area progressed any developmental proposals  
4 to the Planning Board? A Progressed?

5 The first stage has been approved.

6 Q Tell me what's been approved.

7 A Either 113 or 119 or 123. One of those three num-  
8 bers has been approved.

9 Q Of what? A Of town-  
10 houses, and some units with apartments contained therein.  
11 It's a predominantly townhouse development, but some units  
12 contain apartments above.

13 Q When you say "townhouses," these are for  
14 sale as opposed to rental, as you understand it?

15 A That is correct. These are condominium sales.

16 Q And with respect to what's been approved  
17 in the CED, whatever the figure may be, do you have any idea  
18 as to the projected sales cost on those townhouses?

19 A I indicated earlier that the general conversation  
20 was of the seventy to eighty thousand dollar range, but  
21 those prices have not been struck yet and they don't consti-  
22 tute a hard and fast number.

23 Q But this is the indication given to you  
24 by the developer? A One of the  
25 representatives of the developer.

1 Q And that same range was provided with re-  
2 spect to the townhouses in the CED zone?

3 A I thought that's what we were talking about.

4 Q Well, you indicated before we talked  
5 about what the CED was. A Well,  
6 this is what the reference to it was.

7 MR. BELLMAN: Off the record.

8

9 (There is a discussion held off the Record.)

10

11 Q I'm confused.

12 A I thought I tried to clarify it at that point.

13 Q At that time we were talking about Ramapo  
14 Ridge. I was proceeding under the assumption that that was  
15 a PRD-4 development, and you stated that there was an  
16 approval for 556 units. A That's  
17 correct.

18 Q Now, is that in the CED zone?

19 A That's the CED.

20 Q And when you say the first phase, involv-  
21 ing one of three figures as high as 123 units, is that for  
22 site plan approval at this point?

23 A They received their approvals.

24 Q Well, they're two different approvals?

25 A There's an overall approval in the CED, and then



1 there are phases that are approved that's final steps. The  
2 final step or the first stage in that complex is something  
3 of a magnitude of 20 percent of the 556, give or take a  
4 couple units. That has received approval. The models are  
5 already in the ground. There are certain technical deficien-  
6 cies still in the ordinance still to be worked out, one of  
7 which is to build a road to Route 17, which is in the pro-  
8 cess right now, and I don't know exactly within that frame-  
9 work where the process is as to whether they can go ahead  
10 and build additional units or they must wait for the road  
11 to be constructed or something in between.

12 Q Now, the Winton Gait is a PRD-4 project?

13 A That's exactly right.

14 Q Is that the only PRD-4 that has come be-  
15 fore the Planning Board? A Yes,

16 as a formal application.

17 Q Now, are there any informal inquiries,  
18 approaches, whatever it may be, by developers for PRD-4  
19 developments, other than Winton Gait?

20 A Yes.

21 MR. CAMPION: Well, I object to that as  
22 to "informal approaches." It's really not eviden-  
23 tial.

24 Q What development?

25 A There is a project across the road from Apple Ridge

1 Country Club, the west side -- I forget the name of the  
2 street -- across the road from Apple Ridge Country Club,  
3 and some initial discussions were held between myself, the  
4 engineer, several members of the Board, the Planning Board,  
5 and the respective applicant as to the development of that  
6 tract of land.

7 Q Do you know who that developer was?

8 A The name was Baker, Firestone. We had some discuss-  
9 ions with them back in December or November of last year.

10 Q How many acres?

11 A I don't recall. It must have been of a magnitude  
12 of 60 to 80 acres.

13 Q And how many units are they talking about?

14 A I don't recall.

15 Q It would be four to the acre. Is that  
16 correct?

A That's correct.

17 Q Or roughly that area?

18 A Yes.

19 Q And was there any discussion as to what  
20 the ultimate cost of those townhouses would be?

21 A No.

22 Q Any other approaches or similar discuss-  
23 ions concerning possible PRD-4 developments?

24 A No. These were the only two at this point.

25 Q Okay. And any other PRD-3 or 6 category,

1 other than the east side of Ridge Road?

2 MR. CAMPION: Just so I understand the  
3 question, we're talking about informal advances?  
4 Same objection.

5 THE WITNESS: The only one that we had  
6 was with that one applicant, prospective applicant.

7 Q What other documents did you bring with  
8 you today? A The state growth  
9 report by James & Hughes, various town ordinances, Zoning  
10 Code.

11 MR. BELLMAN: Maybe I can just look at  
12 what you brought with you, please. Off the Record.

13  
14 (There is a discussion held off the Record.)

15  
16 MR. BELLMAN: I have no further questions.

17 MR. CAMPION: I have no questions.

18 MR. GAVER: Nothing.

19 MR. BERNSTEIN: Pass.

20 MR. STICKEL: Nothing.

21

22

23

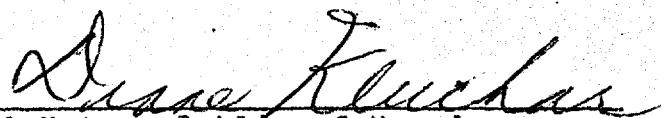
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I, DIANE KLUCHAR, A Certified  
Shorthand Reporter and Notary Public of the  
State of New Jersey, certify that the fore-  
going is a true and accurate transcript of  
the deposition of MALCOLM KASLER, who was  
first duly sworn by me at the place and on  
the date hereinbefore set forth.

I further certify that I am neither  
attorney nor counsel for, nor related to or  
employed by, any of the parties to the action  
in which this deposition was taken, and  
further that I am not a relative or employee  
of any attorney or counsel employed in this  
case, nor am I financially interested in the  
action.

  
A Notary Public of New Jersey