

Urban League of Greater New Brunswick

Borough of Carteret CA

Carteret 02-23-1976
Filed in
New Brunswick
General

Transcript of Proceedings: Testimony of Allen
Mallard - re: documents admitted
to evidence

Pages 339

~~335 Pages of transcription
4 pages of exhibit descriptions and
indexes)~~

~~Very thin, the four pages of
exhibit descriptions and indexes are
right.~~

Post-It Note : yellow, marking
page 48, says:
"Dunellen ordinance
not facially racially
discriminatory."

CA002613S

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

URBAN LEAGUE OF GREATER :
NEW BRUNSWICK, et al., :
Plaintiffs, :
-vs- :
BOROUGH OF CARTERET, et al., :
Defendants. :
----- :

TRANSCRIPT
OF
PROCEEDINGS

76 MAY 14 AM 3
3011 FRANKS CHATMAN
CLERK

New Brunswick, New Jersey
February 23, 1976

B E F O R E:

HONORABLE DAVID D. FURMAN, JSC

314

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

DANIEL SEARING, ESQ., and
MARTIN SLOANE, ESQ.,
Attorneys for the Plaintiffs.

PETER J. SELESKY, ESQ.,
Attorney for Carteret.

WILLIAM MORAN, ESQ.,
Attorney for Cranbury.

DANIEL CUMMINS, ESQ.,
Attorney for Dunnellen.

BERTRAM BUSCH, ESQ.,
Attorney for East Brunswick.

A P P E A R A N C E S (CONTINUED):

1
2 ROLAND WINTER, ESQ.,
Attorney for Edison.

3 RICHARD PLECHNER, ESQ.,
4 Attorney for Helmetta.

5 LAWRENCE LERNER, ESQ.,
Attorney for Highland Park.

6 GUIDO BRIGIANI, ESQ.,
7 Attorney for Jamesburg.

8 LOUIS ALFONSO, ESQ.,
Attorney for Old Bridge.

9 EDWARD JOHNSON, ESQ.,
10 Attorney for Middlesex.

11 THOMAS FARINO, ESQ.,
Attorney for Monroe.

12 LESLIE LEFKOWITZ, ESQ.,
13 Attorney for North Brunswick.

14 DANIEL BERNSTEIN, ESQ.,
Attorney for Piscataway.

15 JOSEPH STONAKER, ESQ.,
16 Attorney for Plainsboro

17 ALAN KARCHER, ESQ., and
JOSEPH BAKER, ESQ.,
18 Attorneys for Sayreville.

19 JOHN VAIL, ESQ.,
Attorney for South Amboy.

20 Andre Gruber, Esq.,
21 Attorney for South Brunswick.

22

23

24

25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

A P P E A R A N C E S (CONTINUED):

SANFORD CHERNIN, ESQ.,
Attorney for South Plainfield.

ROBERT RAFANO, ESQ.,
Attorney for South River.

GUIDO BRIGIANI, ESQ.,
Attorney for Spotswood.

ARTHUR BURGESS, ESQ.,
Attorney for Woodbridge.

1 THE COURT: Mr. Mallach, will you be kind
2 enough to come up, please.

3
4 A L L A N M A L L A C H, previously sworn.

5 CONTINUED DIRECT EXAMINATION BY MR. SEARING:

6 MR. SEARING: Your Honor, I have two documents
7 to be marked for identification.

8 THE COURT: Can we have the spelling of your
9 name again?

10 THE WITNESS: A-l-a-n, M-a-l-l-a-c-h.

11 (Documents received and marked P-112 and P-113
12 for identification.)

13 Q Mr. Mallach, I show you P-112 and ask you to
14 identify it.

15 A This is a document entitled the Zoning Ordinance of the
16 Borough of Carteret.

17 Q I show you P-113 and ask you to identify it.

18 A This is a summary of Zoning Ordinance provisions for
19 the Borough of Carteret prepared by me.

20 MR. SEARING: Your Honor I would move that
21 these, P-112 and P-113 be entered into evidence.

22 MR. SELESKY: Might I have a peek at them?

23 THE COURT: Would you show them to Mr. Selesky.

24 MR. SEARING: I'm sorry.

25 MR. BUSCH: Your Honor, excuse me while

1 Mr. Selesky is looking at the two exhibits, I had
2 indicated at the last court day at the end of the
3 day that I had completed my cross-examination of
4 Mr. Mallach, we now have had P-104 marked in
5 evidence and it was based on P-104 that
6 Mr. Mallach prepared P-105. I wonder if it would be
7 possible to just have a few questions based on 105
8 now that 104 is in.

9 THE COURT: All right, but we'll have Carteret
10 first.

11 MR. BUSCH: I see.

12 Q Mr. Mallach, could you describe the principal
13 features of this ordinance?

14 A Yes, sir. The Borough of Carteret contains 7 zones.

15 Q Mr. Mallach, pardon me.

16 MR. SEARING: I had asked that these be
17 marked into evidence and we were then, then I showed
18 Mr. Selesky and I just lost my train, I now, I would
19 like to move these into evidence at this time.

20 MR. SELESKY: I object, of course, to P113
21 without restating every objection you've heard with
22 regard to these.

23 As to P-112 I do not object.

24 THE COURT: Well, you are in a somewhat different
25 category because Carteret did not supply the data, is

1 that true as to vacant land?

2 MR. SEARING: That is correct.

3 THE COURT: Was an interrogatory served upon
4 the Borough of Carteret?

5 MR. SEARING: Yes, they were, your Honor.

6 THE COURT: And there was no response?

7 MR. SEARING: Not to that particular question.
8 I believe the response gave a total figure of, but
9 did not request, did not break down by zone which in
10 the interrogatory was phrased to obtain a figure of
11 vacant developable land by zoning category.

12 THE COURT: So you're relying upon P-104; is
13 that correct?

14 MR. SEARING: For the vacant land area data,
15 yes, sir.

16 THE COURT: All right.

17 The objections are overruled. P-112 and P-113
18 will be marked in evidence.

19 (Documents P-112 and P-113 heretofore marked
20 for identification now marked in evidence.)

21 Q Now Mr. Mallach, could you please describe the
22 principal features of this ordinance for us?

23 A Yes, sir. There are 7 zones specified in the Carteret
24 zoning ordinance of which 2 are residential, 2 are business and
25 3 are industrial.

1 The residential zones are an RA and RB Zone.

2 The RA Zone permits single family units, requires
3 minimum lots of 5000 square feet, lot frontage of 50 feet
4 and minimum floor area of each unit of 650 feet.

5 The RB Zone permits single family units, two family
6 units and multi-family units.

7 A lot size of 5000 square feet is required for the two
8 family units, 3750 square feet for the single family units,
9 frontage is 37.5 feet and the minimum floor area of the unit
10 is 650 feet.

11 In the two general business, excuse me, in the two
12 business zones, general business and highway business, multi
13 family uses and one and two family uses, as per the RB Zone,
14 are permitted.

15 In the 3 industrial zones residential uses are not
16 permitted.

17 The multi family units are governed by a series of
18 provisions which specify that approval must be obtained
19 from the planning board for developments. The minimum lot
20 size is 4 acres, the density is 2000 square feet per unit,
21 no more than 4 rooms may be contained within any dwelling
22 unit and only 10 percent of the dwelling units in any
23 development may contain as many as 4 rooms.

24 In addition approval of a multi family development is
25 dependent on findings by the planning board that the

1 development will exert no detrimental effect on surrounding
2 areas and that it's capacity to pay for its share of those
3 services through taxation or other means, it's capacity to
4 construct and maintain in part or whole the utilities and
5 facilities which it will need.

6 With regard to vacant land acreage, the township pro-
7 vided a total figure of 467 acres, specifying that some of
8 this land was in a flood plain but not providing the number.

9 The DCA Study of vacant and developable land provided
10 a total figure of 204 acres of vacant and developable land
11 in the Borough of Carteret, of which 108 acres was in the 3
12 industrial zones, 13 acres in the 2 business zones and 83
13 acres in the 2 residential zones. The characteristics on
14 the DCA Chart do not make possible to distinguish.

15 Q Thank you, Mr. Mallach.

16 Now what if any of the features you have described in
17 this ordinance have an effect on the provision of housing for
18 low and moderate income persons?

19 A There are a number of specific features in the ordinance
20 that have an effect on the provision of housing for low and
21 moderate income persons.

22 The principal features have to do with the manner in
23 which multi family housing is provided in the ordinance.

24 First the requirement that, of a finding that the multi
25 family housing will pay for its share of services as quoted

1 previously, is potentially harmful since it puts a premium
2 on more expensive housing and housing likely to yield greater
3 tax revenues and require fewer services.

4 Secondly, the provision that no unit may have more than
5 four rooms, which is equivalent to a two bedroom apartment and
6 only 10 percent of the units may have 4 rooms, i.e. 2 bedroom
7 apartments also severely restricts the supply of housing
8 constructed for families with children and particularly large
9 families.

10 The requirement that there be a 4 acre lot for any multi
11 family development is limiting, particularly in a relatively
12 more developed municipality such as Carteret which may not
13 have all or the greater part of its vacant land in large
14 tracts, this may remove the possibility of developing multi
15 family housing on smaller tracts, which may exist and may be
16 available.

17 In addition to these features the distribution of
18 vacant land by use category provides for over half of the
19 vacant land in the borough in the industrial zone. This could
20 well limit the availability and the feasibility of developing
21 housing of any kind and low and moderate income housing in
22 particular in the Borough of Carteret.

23 Q Does this municipality have a public housing
24 authority?

25 A Yes, it does.

1 Q Have they built public housing?

2 A Yes, they have.

3 Q Do you know when? A Not specifically,
4 I believe it's provided in the chart.

5 Q In plaintiff's, in Exhibit 106?

6 A The status report on lower and public housing programs.

7 Q I would refer you to Page 3 of that chart, is
8 Carteret mentioned on that page?

9 A Yes, it is.

10 Q Can you tell us what that document reflects as
11 to the public housing in Carteret?

12 A Yes, sir.

13 There are 5 public housing developments in the
14 Borough of Carteret which contain a total of 150, sorry,
15 252 dwelling units of which 150 are for senior citizens and
16 102 for low income, nonsenior citizen families. The units,
17 this includes one development of 40 units for senior citizens
18 under construction at the present and 4 developments that have
19 been occupied, first in 1961, 1963, 1970 and 1974.

20 Q Is there any other state or federally subsidized
21 housing in Carteret?

22 A There are 2 developments constructed under the section 221
23 D3, moderate income housing program for a total of I believe
24 176 units.

25 THE COURT: How many dwelling units?

1 THE WITNESS: 176 sir.

2 Q For whom are those designated?

3 A I'm not certain.

4 THE COURT: And what governmental agency?

5 THE WITNESS: Federal Department of Housing and
6 Urban Development.

7 MR. SEARING: Your Honor, we have no further
8 questions.

9 THE COURT: Cross-examine, Mr. Selesky.

10

11 CROSS-EXAMINATION BY MR. SELESKY:

12 Q You have sufficient expertise in your role as a
13 consultant to recognize an aerial photograph of Carteret?

14 A I'm not sure I would specifically recognize a photograph
15 of Carteret as being a photograph of Carteret.

16 Q All right.

17 In other words, you wouldn't even recognize the general
18 configuration of Carteret?

19 A I might but I wouldn't be certain.

20 MR. SELESKY: I'd like to offer for identi-
21 fication an aerial map of Carteret and have it marked.

22 THE COURT: DC-1, for identification.

23 (Map, in 4 parts, received and marked DC-1

24 A, B, C, D, for identification.)

25 THE COURT: Those are 4, total?

1 MR. SELESKY: Total of 4 individual photo-
2 graphs of portions of Carteret.

3 THE COURT: All right.

4 Q Do you have sufficient expertise to tell the Judge
5 from looking at these documents their origin or what they

6 are? A Well, they are aerial photographs.

7 Q And that's--can you tell by the designation
8 numbers when the photographs were taken? Do you know enough
9 about this to know when they were taken?

10 A To the best of my knowledge these photographs were
11 taken on July 22, 1972.

12 Q OK.

13 MR. SELESKY: Is there any objection to
14 admitting these photographs as aerial photographs of
15 Carteret as of July 22nd of '72?

16 MR. SEARING: Yes.

17 THE COURT: We have been holding off on
18 defendant's exhibits until the close of the plaintiff's
19 case, Mr. Selesky.

20 MR. SELESKY: I'd like to elicit testimony with
21 regard to this, your Honor, that's why I made the
22 offer, the proffer at this time.

23 THE COURT: You may ask questions about them.

24 MR. SELESKY: All right.

25 THE COURT: We'll recess now until 1:30 for

1 lunch. You want to just show him what you are
2 getting at.

3 (After the luncheon recess the trial
4 continued.)

5 THE COURT: All right, Mr. Selesky.

6 Q During the lunch break you looked at maps of
7 Carteret. Are you able to identify that as an aerial photo-
8 graph of Carteret? A I believe this is an
9 aerial photograph of Carteret.

10 Q Now, could you identify the long roadway that
11 runs in up and down direction?

12 A I believe that's the New Jersey Turnpike.

13 Q That runs from the bottom of the exhibit to the
14 top of it over on the left-hand side,

15 Is that correct?

16 A Left to center, right.

17 Q Right. Now the upper portion of the photograph
18 shows a winding river. Can you identify that?

19 A That I believe is the Rahway River.

20 Q Now, the portion to the right of the photograph
21 which shows a body of water, could you identify that body of
22 water?

23 A I believe that is the Arthur Kill.

24 Q Now, could you identify that portion, can you,
25 directing your attention to that portion of land in Rahway that

1 is bounded approximately by the--

2 A Carteret.

3 Q I'm sorry, Carteret, that is bounded approxi-
4 mately by the Rahway River and the Arthur Kill, in the most
5 northerly portion of Carteret. Would you call your attention
6 to that area? A Yes.

7 Q What's there? A Well, there
8 appears to be a great deal of vacant land, some
9 meandering streams and some, I guess they're tank farm
10 uses.

11 Q Are you able to tell what the land is like by
12 looking at the photograph?

13 A I would guess that a good deal of this land is low lying,
14 some of it may be marshland or flood land, flood plain land,
15 rather.

16 THE COURT: You're just guessing?

17 THE WITNESS: I'm just, this is just most
18 superficial guess.

19 Q All right.

20 In the event I showed a document, prepared by
21 the United States Corps of Engineers, District of New York,
22 indicating the flood plains of Carteret, would you be able
23 to further identify that?

24 A Possibly.

25 MR. SELESKY: Like this marked, please.

1 (Document received and marked DC-2 for
2 identification.)

3 MR. SELESKY: Your Honor, there are two
4 items, one is the item entitled flood insurance
5 study and the second is a map, it's part of the
6 study.

7 Shall we introduce one piece or two pieces?

8 THE COURT: The map can be 2A.

9 (Map received and marked DC-2A, for
10 identification.)

11 Q I show you the map that's been marked DC-2A and
12 ask you if that would assist you in determining whether that
13 northern portion of Carteret is in the flood plain?

14 A It appears from this map that a good deal of its northeast
15 portion of the map is in a flood plain.

16 Q Now in relying on, you relied on P-105 which
17 was information brought out by the Department of Community
18 Affairs in making your analysis; is that correct?

19 A In the analysis--

20 THE COURT: P-104 or 105?

21 MR. SELESKY: P-104, I'm sorry, your Honor.

22 A With regard to the distribution of vacant land by zone,
23 yes.

24 Q Now are you aware of the fact that flood plain was
25 not taken into consideration in the drawing up of that

1 document?

2 A I, I'm aware that the technical term of flood plain
3 as defined in the 72 Act was not taken into consideration,
4 I believe however, that with regard to much of this land the
5 terms that they used, the categories they used with regard
6 with wetlands, marshes, so on, so forth, covered a great deal
7 what is the flood plain area.

8 Q So you would know more about it than the gentleman
9 from the Department of Community Affairs?

10 A No.

11 THE COURT: The only thing is Mr. Mallach,
12 flood plain is not swampy within the definition of
13 Mr. Sullivan.

14 THE WITNESS: That would probably not be included.

15 THE COURT: Not be included, all right.

16 Q Now, in, were you aware--strike that--are you
17 aware that the northern, northeast portion that you indicated
18 is zoned industrially in Carteret?

19 A Was not aware of the zoning in the specific area, no.

20 Q Could you refer to your notes when you were seated
21 at the table that showed the zoning map of the Borough of
22 Carteret.

23 A I have never studied a zoning map of
the Borough of Carteret.

24 Q Did you just look at it about 10 minutes ago?

25 A No.

1 Q What was the map? A I believe it is
2 a community facilities map or some other master plan map that
3 was included in the interrogatories.

4 Q Now you're testifying as an expert in zoning,
5 planning and housing in the County of Middlesex, I believe,
6 correct?

7 A Yes.

8 Q Now if you were given land of the size included
9 as you've been shown on the aerial map, of the flood plain map,
10 what would be appropriate zoning uses for that land?

11 A You mean as a flood plain or--

12 Q As it exists with the information that you've
13 been given. A I would not--

14 MR. SEARING: Your Honor I think this is going
15 beyond the scope of the direct examination.

16 THE COURT: I'll allow this question.

17 A I would not determine the specific use of a piece of land
18 without more information about that land, specifically.

19 Q Would you say in light of the maps that you've
20 seen and photographs, that this land is developable land?

21 A It may be in part.

22 Q Is it developable for residential use?

23 A It may be.

24 Q Is it developable, is it more likely that it is
25 developable for industrial use?

1 A That I do not know.

2 Q Now, with regard to the construction of low and
3 moderate cost housing, economics enters into it in the nature
4 of the structure, isn't that true?

5 A Correct.

6 Q Given land, a flood plain, residential, low and
7 moderate cost housing would be exceedingly expensive to build,
8 isn't that true?

A Not necessarily.

9 Q Would it be more expensive then if it were in,
10 not in a flood plain?

11 A There are certain
12 added construction costs, direct construction costs resulting
13 from the, what you have to do to make adequate provision for
14 the flood plain but there are many things that could either
15 minimize those construction costs per unit or trade off against
16 other costs.

17 Q Now in the event that the area that flooded,
18 let's say to the extent of 9 feet, twice the last 20 years and
19 in the event it would bear the designation that is borne on that
20 flood plain map, what kind of a building would you have to
21 do to protect it from that kind of flooding?

22 A Well, in an area that had those flood characteristics
23 one might, well, if one were building in an area that had
24 those specific characteristics one would have to make very
25 substantial provision in the ways of aisles and runways for
the water between, between and through the foundations of the

1 building.

2 Q Would this make it economic to use for low and
3 moderate cost housing? A That could not be
4 determined in and of itself, it might, it might not.

5 Q If you didn't have to use it of course it would
6 be more economical--

7 A To build with all other things being equal and not have
8 to provide the particular kind of foundation structures would
9 be less expensive.

10 Q Now on P-113 you show a 108 acres of land
11 available to industry; is that correct?

12 A That's correct.

13 Q Now any of those 108 acres that are available for
14 industry, do you know whether they're in the flood plain or
15 not.

16 A I do not.

17 Q Now you are, it would be relatively simple to
18 make the determination by making a study of the master plan,
19 isn't that true? A It might be.

20 THE COURT: As to whether it's in the flood
21 plain?

22 MR. SELESKY: That's correct your Honor.

23 A That I do not know whether it would be or not.

24 Q If the master plan contained information indicating
25 the zoning and what the flood plains were, you would be able

1 to determine whether or not there was industry in the flood
2 plain? A Well, it would be possible to
3 determine whether the industrial zone overlapped or the flood
4 zone, the master plan would also have to include information
5 on the vacant land.

6 Q And you didn't study the master plan of Carteret;
7 is that right? A No I did not.

8 Q Can you tell from the aerial photograph what types
9 of industry are located mainly in Carteret?

10 A There seems to be quite a mixture.

11 Q What is most apparent, as far as you can see?

12 A Well, the type of industry that makes the most dramatic
13 appearance on an aerial photograph are the tank farms, there
14 seems to be a great deal of other industry that's not quite
15 as visually dramatic.

16 Q Do you have sufficient expertise to tell this
17 court what kind of land tank farms can be built on?

18 A No, I do not.

19 Q Do you know whether or not tank farms can be
20 built on land susceptible to flood?

21 A I do not know.

22 Q Now are you able to examine from the photograph,
23 observe that Carteret has a great deal of waterfront?

24 A So it would appear.

25 Q Most entirely bounded by water; is that correct?

1 A I wouldn't say almost entirely but--

2 Q Now in the methodology used in preparing your
3 report you indicated on direct examination that you had
4 examined answers to interrogatories from various communities;
5 is that correct? A That's correct.

6 Q Did you physically examine the answers to
7 interrogatories in the body or were you given a statistical
8 table?

9 A I examined a great deal of the actual interrogatories.

10 Q Did you examine the actual interrogatories of
11 the Borough of Carteret?

12 A I believe I did.

13 Q As part of examining that, did you observe a
14 document attached to those items labeled A-8, plate of
15 existing land used areas in the Borough of Carteret?

16 A I'm not sure I did, I may have.

17 Q But they were available to you?

18 A If it was an exhibit to interrogatories, yes.

19 Q And you do up your report based on the
20 interrogatories and things that were given to you, correct?

21 A That's correct.

22 Q So you had it if it was attached to the
23 interrogatories, you had it in your hand?

24 A Yes.

25 MR. SELESKY: Your Honor I'd like this

1 marked for identification. It's plate No. 1, it's
2 marked A-8 in answers provided to interrogatories
3 for the plaintiff.

4 (Document received and marked DC-3 for
5 identification.)

6 Q Now does looking at this document refresh your
7 recollection in any fashion?

8 A Yes, it does.

9 Q Does that document indicate the percentage of
10 land developed for one and two family residential?

11 A Yes, it does.

12 Q What percentage is that?

13 A Percent of total or percent of developed area.

14 Q Both--

15 A Both are given. One and two family residential represents
16 26.2 percent of developed land in the borough and 20.6 percent
17 according to this plate.

18 Q Now you chose--

19 THE COURT: You mean of total land?

20 THE WITNESS: Yes, that's correct.

21 Q Now you have chosen though, this document
22 was provided to you, you chose not to utilize this but instead
23 chose to utilize P-104 to develop your statistics with regard
24 to availability of vacant land.

25 Isn't that true?

1 A No, that's not so, counselor, you'll see on my chart
2 that I refer to the figure of total vacant land in Carteret
3 from this plate in the note, on the lower right hand--

4 Q That note is response to interrogatories, gives
5 total figure of 467.3 acres, does not break down by zone.

6 A That's correct.

7 Q That response means that you referred to this
8 plate in developing of your chart with regard to Carteret?

9 A It, what that means is that I obtained that data
10 from this plate, however since there was no information from
11 this or other plates breaking down the 467.3 acres by zone
12 I was forced to rely on the other data for that particular
13 purpose.

14 Q Now, so since you had this particular document and
15 did rely on it you relied on it in part for that one figure.
16 Did you rely on it for anything else?

17 A That was the only figure dealing with vacant land on that
18 document.

19 Q Were you aware that the gentleman who testified
20 to my recollection, who prepared 104 indicated that he did not
21 take into account or could not recall whether or not deducted
22 from land available for residential use was streets and right
23 of way, railroad rights of way, public service rights of way.
24 Were you aware of that? A I remember his

25 testimony, yes.

1 Q Could you tell us from that document what
2 percentage of developed land or streets in Carteret--

3 A According to this document streets, right of way
4 represent 24.9 percent of the developed area.

5 Q And what's the statistic?

6 A Carteret--

7 Q I'm sorry. What's the statistic for undeveloped
8 or total of Carteret, total Carteret--

9 A Street rights of way are 19.6 percent of the total land
10 area of Carteret.

11 Q There's a 20 percent factor, correct?

12 A Roughly.

13 Q Now is it good planning practice to make
14 statistical determinations that could have a factor of error
15 as high as 20 percent?

16 A That's certainly not desirable.

17 Q And you had this document in your hand when you
18 drew up the report, correct?

19 A Yes.

20 Q Now you indicated that you thought that there
21 might be some problem in that planning board approval was
22 required with regard to erection of a multi family garden apart-
23 ment or whatever complex; is that correct?

24 A A problem with certain specific findings of the
25 planning board is instructed to make under the ordinance as

1 a condition of approval.

2 Q That it was not and one of those is that it would
3 not be detrimental to neighboring areas; is that correct?

4 A That was one.

5 Q Were you aware that, I would say virtually
6 throughout the State of New Jersey every garden apartment
7 complex requires site plan approval, at least by the planning
8 board?

9 A Certainly.

10 Q And the criteria for site plan approval that's
11 set forth usually involves, it should not be detrimental to
12 adjacent properties, isn't that true?

13 A There are, the issue here is not--

14 THE COURT: I think you should answer the
15 question.

16 A Many do, yes.

17 Q Now to your personal knowledge has the Borough of
18 Carteret Planning Board ever turned down a garden apartment
19 complex that came in? A I do not know.

20 Q Now, with regard to your indication of lot sizes
21 in Carteret, do you contend that the lot sizes of Carteret are
22 exclusionary zoning?

23 A You mean the lot sizes for single and two family
24 houses?

25 Q Correct? A I have not so contended.

1 Q OK. With regard to the requirement of floor area
2 of 650 square feet, do you contend that that requirement is
3 exclusionary as far as the Borough of Carteret is concerned?

4 A As applied to one and two family houses?

5 Q Correct. A I have not so con-
6 tended.

7 Q Do you contend that that's exclusionary as applied
8 to multi family, more than one and two family?

9 A I think it is absolutely higher than what may be
10 necessary for smaller multi family units.

11 Q Are you aware that the Borough of Carteret from the
12 master plan in the Borough of Carteret, that Carteret has an
13 average family of 3.3?

14 A That doesn't surprise me.

15 Q Are you aware of the fact that 30 percent of the
16 residential housing of Carteret is multi family?

17 A I believe I was.

18 Q Do you know what the area of Carteret is?

19 A I have it in front of me, it's 2880 acres.

20 Q That's 4.5 square miles?

21 A Roughly.

22 Q Do you know what the population of Carteret is?

23 A I think it's in the area of 15,000.

24 Q Are you aware of the fact that the zoning ordinance
25 of the Borough of Carteret allows a density in multi families

1 of 20 units to the acre?

2 A Yes, I was.

3 Q Are you aware of the fact that as far as useable
4 land, 64 percent of the land that is useable for construction
5 one way or another is available for residential use in
6 Carteret that's remaining? A I was not

7 provided with any information from the borough, distinguished
8 between the total vacant and useable land.

9 Q So what's the answer to the question?

10 A I was not aware of that.

11 MR. SELESKY: I have no further questions.

12 THE COURT: All right. Further cross-examination,
13 Mr. Busch on the Township of East Brunswick?

14 MR. BUSCH: Yes.

15

16 CROSS-EXAMINATION BY MR. BUSCH:

17 Q Mr. Mallach, I draw your attention to P-105
18 which I believe was prepared by you in February, 1976.

19 Do you have a copy handy?

20 If not let me give you-- A Yes, I have
21 one.

22 MR. BUSCH: I'm sorry, this document is not in
23 evidence yet.

24 Your Honor, until it's moved in evidence may I
25 reserve my right to cross on this document? I was under

1 the impression it had been moved into evidence.

2 THE COURT: 104 has been admitted in
3 evidence. Are you moving 105?

4 MR. SEARING: Yes, I am, I would have done so
5 immediately following Mr. Selesky's finishing.

6 I would now offer 105 to be marked in
7 evidence.

8 MR. BUSCH: May I make my objection on the
9 record to the offer?

10 THE COURT: Your objection to its introduction in
11 evidence?

12 MR. BUSCH: Yes, sir.

13 THE COURT: To 105?

14 MR. BUSCH: Yes, sir.

15 THE COURT: All right.

16 MR. BUSCH: Your Honor, it appears that as to those
17 numbers which have a double asterisk says locally
18 provided information not available, DCA data used.
19 I'm aware that your Honor has admitted P-104 in evidence,
20 for all of the reasons that P-104 has infirmities
21 I think when they have been utilized by another party
22 and used as the basis of 105 I think that it's all
23 the more inadmissible and I would request that 105 be
24 withheld from evidence for that reason.

25 THE COURT: Having admitted P-104, P-105 will also

1 be marked in evidence. I know that that is based on
2 P-104 and also on the County Master Plan.

3 (Document received and marked P-105 in
4 evidence.)

5 Q Do you have P-105 in front of you, Mr. Mallach?

6 A Yes, I do.

7 Q With regard to the source material you have a
8 single asterisk opposite the columns and use, 1967, in-
9 dustrial and related uses, 1967, residential added to 2000
10 and industrial and related added to 2000. Is that right?

11 A That's correct.

12 Q And on the bottom that refers to data from
13 Middlesex County Planning Board Master Plan Reports, correct?

14 A Correct.

15 Q Now, as, if you would look across the column for
16 East Brunswick, can you tell me where those numbers come from
17 specifically with regard to the single asterisk, documents and
18 with specific reference to County Master Plans?

19 A They come from, I can't remember the number of the
20 report, it's the data that's provided at the end of the interim
21 master plan report.

22 Q No. 20? A That's correct.

23 Q Specifically, you show there 5853.9 acres in
24 1967 as total land in use for East Brunswick; is that right?

25 A That's correct.

1 Q OK. And do you do that by subtracting the 19,
2 I'm sorry--tell me how you got that figure?

3 A That was obtained by subtracting the agricultural land
4 from the total provided in the far right hand column.

5 Q Now is one of the objects of P-105 to indicate
6 that the various municipalities have excessively zoned land
7 for industry, based upon the amount of industry that can be
8 anticipated?

9 A That would appear to be, yes.

10 Q And is the, one of the other purposes of P-105
11 to show that the over percentage of, or the excess of land
12 zoned for residential does not equal the excess of land zoned
13 for industrial? Do you understand what I mean?

14 A I think that's a conclusion that could easily be drawn
15 from the table.

16 Q Well, if you look across, counting the columns,
17 if you look across to the percentages under 8 and 9 that is,
18 under percentage of demand, residential percentage of demand,
19 industrial and related for East Brunswick, would it indicate
20 that there is 122.7 percent of zoning for the anticipated
21 residential requirements in the year 2000?

22 A That's correct.

23 Q And that there's 253.8 acres of the land necessary
24 for the industrial and related uses anticipated by 2000?

25 A That's correct.

1 Q When you prepared P-105 did you first review a
2 document prepared by the Middlesex County Planning Board in
3 January, 1976 entitled estimates and preliminary projections
4 of population and employment, Middlesex County, New Jersey?

5 A Yes, I did.

6 Q Did you take into account anywhere on this
7 document the projections for the year 2000 based upon the 1976
8 document of the planningboard?

9 A No, I did not.

10 THE COURT: Is that document you refer to in
11 evidence?

12 MR. BUSCH: Your Honor, I'd like to mark it
13 for identification, it is not in evidence, I don't
14 believe I've marked it previously but perhaps I
15 can be advised. It would be a DEB.

16 (Document received and marked DEB-5 for
17 identification.)

18 Q You have reviewed DEB-5 for identification, is
19 that right, Mr. Mallach?

20 A That's correct.

21 Q Is it fair to say that the 1967 master plan
22 Volume 20 which you are looking at projected the county
23 population, the year 2000 to be a million three hundred eighty-
24 two thousand?

25 A I believe that was the case.

1 Q But in fact the 1976 projection by the County
2 Planning Board reduces that from 1,382,000 to 937,000; is
3 that right?

4 A That's correct.

5 Q And if we take those numbers and consider them
6 an increase over the existing 1970 population, would it sound
7 right that the '70 population for Middlesex County was
8 583,000?

A That's correct.

9 Q And I'm going to ask you to do a little
10 arithmetic, if you can, with me, Mr. Mallach, that the difference
11 in projections between the 1967 increase by subtracting
12 583,800 from 1,382,000 would be 798,200 and you're welcome
13 to try to do the subtraction now if you'd like.

14 A That appears to be accurate.

15 Q The projection forward from 1970 to 2000, look at
16 it, in DEB-5 would only be 353,200 additional, would that
17 sound right?

18 A That's right.

19 Q And if we made a fraction, using as a numerator,
20 the present projected increase, 353,200 as a denominator what
21 the county said would be the increase back in 1967 or 798,200
22 and if you'd like you can use my calculator or would it sound
23 like the projection now is only about 44 percent of the
24 projection they anticipated back in 1967.

25 A To be reached by the year 2000.

1 Q Yes. A Yes.

2 Q Wouldn't it be reasonable then to speak in terms
3 of residential need, in terms of new figures which are now
4 only 44 percent of what they were in 1967?

5 A That depends on the time frame you're interested in
6 using.

7 Q Mr. Mallach, wouldn't it be reasonable to
8 anticipate residential acreage by also figuring out how many
9 people are going to be in the county?

10 A Yes, by whatever time frame you're planning for.

11 Q And if both the 1967 report, volume 20 which we've
12 looked at and the 1966 report, DEB-5 for identification re-
13 ferred to the exact time frame, wouldn't you then want to come
14 up with a new set of figures to determine the number of acres
15 in which to put these people?

16 A That would be highly speculative.

17 Q You're saying that you couldn't use any relation-
18 ship between the new population projections and the amount of
19 land needed for residential dwellings?

20 A One could do, one could hypothesize such a relationship.

21 Q Do you concede that there's any relationship at
22 all between the population which is projected and the acreage
23 needed to house it?

24 A Certainly.

25 Q And we've just established that the present 1976

1 projections are only 44 percent of the 1967 projections; is
2 that correct? A That's correct.

3 Q Will you agree that some percentage of discount
4 should be allocated to the 1967 figures which are the basis
5 of what you say residential added to 2000 would be?

6 A I believe that the, the reassessment and I should
7 emphasize these are preliminary but the reassessment
8 in this '76 report should be used by the Middlesex County
9 Planning Board to rethink some of these statistics but that's
10 a straight line dividing everything by .4425, would not be an
11 appropriate way to deal with.

12 Q But by multiplying it by 44.25 percent wouldn't
13 you come closer to the correct answer than to the answer that
14 is set forth on P-105?

15 A Possibly.

16 Q You are here to try to give the best answers to the
17 best of your ability; is that right?

18 A That's correct.

19 Q You are conceding then that perhaps the numbers
20 on P=105 as to residential acreage needed may be high because
21 they are based upon high numbers from 1967; is that correct?

22 A I'm certainly conceding that possibility.

23 Q If as an arithmetic exercise we multiplied the
24 number of units that you say--I'm sorry--the number of acres
25 that you say East Brunswick should have by the year 2000 which

1 is the fourth column and the number is 3848, if we multiplied
2 that by 44.25 percent which is the ratio established between
3 present projections and the old projections, we would then come
4 up with approximately 1703 acres. Without asking you to
5 multiply it now does it sound that 44 percent of 3848 would
6 be approximately 1700 acres?

7 A That appears correct.

8 Q If in fact the demand for residential acreage in
9 East Brunswick went down from 3848, which exists on your
10 exhibit to 1703 acres, wouldn't that make the excess of vacant
11 land zoned for residential greater than the excess of vacant
12 land zoned for industrial under Paragraphs 8 and 9 or
13 Columns 8 and 9?

14 A The demand would be going down at the same time?

15 Q Would it necessarily go down at the same rate?

16 A Most probably.

17 Q Wouldn't it go down rather in relation to jobs
18 anticipated rather than persons expected to live here?

19 A The job, the relation, there's a constant relationship
20 between the persons expected to live in an area and the jobs
21 expected to come to that area, they're very close related.

22 Q And whether or not it went down faster than,
23 slower than, or at the same pace as the percentage of land zoned
24 for industrial, if we had 54 people projected here and the exact
25 same number of acres zoned for residential, then the number

1 would go up as to the available land for the people expected?

2 A The number would go up, yes.

3 Q Wouldn't it be better planning at this point to
4 take into account the population projections that we now have
5 rather than 10 year old figures or 9 year old figures in order
6 to come up with a final bottom line as to how much excess land
7 we have for residential?

8 A I think this report stresses these are very rough, very
9 preliminary figures, they're not yet at the stage and I don't
10 believe the County Planning Board considers them the stage where
11 they can start using them for purposes of making detailed
12 projections. I believe I mentioned earlier, certainly the
13 planning board should rethink their projections based on this,
14 these apparent trends but they're not at that stage yet.

15 Q OK. And are you aware of the factors that are
16 contained in DEB-5 which are the underpinnings of the planning
17 board projections? A To some degree, yes.

18 Q Such factors as a regional trend to the south and
19 the west of manufacturing jobs?

20 A I've heard of that.

21 Q Such factors as a slow down in migration to the
22 Middlesex County area?

23 A Not specifically familiar with that.

24 Q Such factors as a decline in the birth rate in
25 Middlesex County, vis-a-vis the rate from 1940 to 1970?

1 A There's been a decline in the birth rate almost every-
2 where.

3 Q OK. But this would be information to your
4 knowledge that's contained in the DEB-5?

5 A Yes.

6 Q Is that right? Yet although you say you reviewed
7 DEB-5 which came out January, 1976 you didnot include it in
8 any way as a basis for P-105? A That's correct.

9 Q With regard to the fifth column, if you would look
10 at P-105 under industrial and related you have 998.3 acres for
11 East Brunswick as to the year 2000. Could you tell me where
12 that comes from?

13 A Yes, sir. The industrial and related, the figure under
14 the column industrial and related added, year 2000 is the sum
15 total of the three columns manufacturing, wholesale, PCU and
16 construction for the year 2000.

17 Q Could you refer to the table you're looking at
18 so the record-- A Yes, on Table C3 of Report
19 20.

20 Subtracted from the sum of those three columns on Table
21 C1 dealing with 1967.

22 Q In other words, you take the projected needs for
23 the year 2000, you subtract from those projected needs the
24 existing uses in 1967 and you come up with a difference; is
25 that right? A Precisely.

1 Q And it would be more accurate if instead of looking
2 at C1 you looked at the 1976 reality rather than 1967 reality?

3 THE COURT: Almost asked him that about five
4 times, Mr. Busch.

5 MR. BUSCH: I don't believe I asked him that with
6 regard to manufacturing your Honor.

7 THE COURT: You've asked him about everything
8 ebe.

9 Q Would it not be more accurate to show the
10 difference, if you used the 1976 figures ?

11 THE COURT: You don't need to answer that.
12 All right, Mr. Searing.

13 MR. SEARING: Your Honor on Thursday afternoon
14 I indicated in moving P=103 for identification that we
15 had provided notice to the defendants and in reviewing
16 our records over the weekend we determined that this
17 particular publication was mentioned in the response
18 to interrogatories served by East Brunswick which were
19 answered on March 19, 1975. So I would submit that there
20 has been amply notice of this publication and I would
21 offer P-103 in evidence at this time.

22 MR. BUSCH: Your Honor I'm not prepared to
23 dispute the question of notice at this point. I would
24 say that the introduction of the booklet in evidence is
25 neither desirable nor legally proper. We have a

1 witness here who can testify from his expertise as to
2 anything in that book, it would be much more difficult
3 at this point in the trial for him to read, for us to
4 read the book than cross-examine the witness. I see
5 no real need for it, I don't think it's legally proper.

6 THE COURT: That objection is sustained.

7 MR. SEARING: Your Honor, I have two items I would
8 like marked for identification.

9 (Documents received and marked P-114 and P-115
10 for identification.)

11 THE COURT: Will you show those to Mr. Cummins.

12 MR. SEARING: Yes, I will.

13 MR. CUMMINS: Your Honor I have a question.

14 I have no objection to 114, I have a question on 115
15 to ask the witness.

16 THE COURT: All right.

17 BY MR. CUMMINS:

18 Q Mr. Mallach-- A Yes, sir.

19 Q --you've got, do you have a copy?

20 A Yes.

21 Q You've got a footnote or is that--what's the
22 significance of these footnotes? A The footnotes is
23 to amplify on the information of the column. In other words,
24 that in addition to just the information on vacant acreages that
25 the information provided by you amplified and in terms of

1 information about the type of land it was. There's a brief,
2 in the brief that you filed to dismiss the complaint it
3 specified that the, 18 of the 27 residential--et cetera,
4 et cetera.

5 Q No, what I meant was, under minimum floor area
6 you have S-2, is that--

7 A Oh, I'm sorry, that's square feet.

8 Q Pardon me? A Square feet.

9 Q Is that what that means?

10 A Yes.

11 MR. CUMMINS: OK. I have no objection.

12 MR. SEARING: Your Honor I would move them.

13 THE COURT: P-114 and 115 will be marked in
14 evidence.

15 (Documents heretofore marked for identification
16 now marked in evidence.)

17 DIRECT EXAMINATION BY MR. SEARING:

18 Q Mr. Mallach, did you review the principal features
19 of this zoning ordinance? A Yes, sir.

20 The Borough of Dunellen is divided into four zones,
21 two residential, one business and one industrial.

22 The A residential zone provides for single and multi
23 family dwelling units up to a maximum density of 9 units per
24 acre. Should note that the ordinance itself specifies 48.4
25 but I believe that was corrected in--

1 MR. CUMMINS: Typographical.

2 A In the memo. The zone further specifies minimum floor
3 area of 500 square feet per unit.

4 The B residential zone provides for single or multi
5 family housing density of 18 units an acre and again with
6 a minimum floor area requirement of 500 square feet.

7 B residential uses are permitted in the business and in
8 the industrial zones.

9 There are a number of specific features in the ordinance
10 as well. Trailers are not mentioned in the ordinance or
11 mobile homes but are apparently, are not permitted on the basis
12 of administrative interpretation of the ordinance. Nonresident-
13 ial uses that are nonconforming by their location in the
14 residential zone may not be converted to residential uses.

15 In addition as I read the ordinance the ordinance
16 specifies that only that part of the acreage that's within
17 100 feet of the frontage line is to be calculated as acreage
18 for purposes of determining the density of a, the permissible
19 number of units on a parcel of land. This of course would
20 result in substantially lower effective densities per acre
21 on larger parcels.

22 With regard to vacant land, according to information
23 provided by the Borough of Dunellen, there are 32 acres of
24 vacant land of which about 27 are in the residential zones,
25 of which in turn 18 have been indicated by the borough as

1 being either contained in undersized lots or have a brook
2 running through them or are subject to flooding, leaving 9
3 buildable acres in the residential zone and 5 buildable acres
4 in the industrial zone.

5 THE COURT: What would be the measure of
6 an undersized lot?

7 THE WITNESS: I had no basis to determine.

8 THE COURT: You haven't shown a minimum lot
9 size in your table?

10 THE WITNESS: There is no minimum lot size
11 specified.

12 THE COURT: What is your understanding of what
13 is meant by undersized?

14 THE WITNESS: There are certain provisions re-
15 garding yards and the like and I assume that it would be
16 a provision that could not meet those requirements.
17 However since there is a provision in the ordinance
18 which says the limitations imposed by this section,
19 however shall not prohibit the erection of a one family
20 house on any plot containing at the time of the passage
21 of this chapter, an area smaller than that is required
22 for a one family house, so under the circumstances it's
23 hard to understand how there could be an undersized
24 lot in the borough.

25 Q Mr. Mallach, what if any of the features you have

1 described have an effect on the provision of houses for low and
2 moderate income persons? A Some of the features
3 have an effect, the nonpermissible for mobile homes and trailers
4 does not enable people to utilize that mode of housing within
5 the borough.

6 The ban on conversion of nonresidential properties to
7 residential uses, can, under some circumstances restrict
8 housing opportunity.

9 There are a number of cases on record around New Jersey
10 whereby industrial and commercial buildings have been
11 effectively converted into multi family housing, included some
12 subsidized housing developments.

13 Thirdly, if I'm interpreting the provision incorrectly
14 that specifies that only the acreage within 100 feet of the
15 front is calculated for purposes of determining permissible
16 unit, this would, could substantially reduce the feasibility
17 of constructing multi family houses.

18 MR. CUMMINS: Your Honor please, I would object
19 to this on the ground of surprise. I was furnished at
20 depositions with an analysis of the zoning ordinance
21 and I personally examined Mr. Mallach at depositions and
22 at neither place was this set forth, the, namely the
23 conversion from nonresidential to residential nor the
24 100 foot limitation. So, I am, I am surprised by this
25 testimony that this effects low and moderate priced

1 housing and I would ask that it be stricken.

2 MR. SEARING: Your Honor, the contents of the
3 zoning ordinance can hardly be a surprise to the
4 counsel from Dunellen.

5 MR. CUMMINS: We have here an expert--

6 THE COURT: How about this interpretation of the
7 limitation to a 100-foot frontage or a 100-foot depth?

8 MR. SEARING: Well that, I do not specifically
9 recall whether that, that was not mentioned at the
10 deposition, I'm not, I'm not sure that there was a
11 question asked or would have elicited, elucidated that
12 information.

13 THE COURT: Perhaps you'd better read,
14 Mr. Mallach, what provision in the zoning ordinance
15 you're referring to.

16 THE WITNESS: OK. This is Section 115-10,
17 families per acre and it says, "No dwelling or tenement
18 house shall hereafter be so erected or altered as to
19 accommodate or make provision for more families per
20 acre than the number indicated in the schedule
21 limiting height and bulk of buildings for the zone in
22 which such dwelling or development house may be located."

23 Then the last sentence is, "For the purpose of
24 this section the area of no plot shall be deemed to
25 extend more than 100 feet back from its street front."

1 Q And the effect of that is as you've described
2 earlier? A I understand it, the effect of it
3 is to create a cutoff for purposes of calculating permissible
4 number of units.

5 THE COURT: You're pressing your objection?

6 MR. CUMMINS: Yes, I am because, it, certainly I
7 can read the zoning ordinance so that that language is
8 not a surprise but the interpretation your Honor please,
9 interpretation of this provision affects low and
10 moderate priced income, comes as a surprise.

11 THE COURT: And you have another interpretation
12 of it?

13 MR. CUMMINS: No, no, it's not that I have
14 another interpretation, it's the fact that his
15 interpretation which he is here as an expert and he is
16 specifically interpreting, called upon to aid the court
17 and counsel in an interpretation of this zoning
18 ordinance as it affects low and moderate priced housing,
19 that's what I'm objecting to.

20 MR. SEARING: Your Honor I--

21 THE COURT: In view of the inclusion of the
22 zoning ordinance of these provisions, the objection is
23 overruled and that will stand.

24 Q Mr. Mallach, does this municipality have a public
25 housing authority?

1 A No, it does not.

2 Q Is there anything in the ordinance which
3 encourages the provision of low and moderate income housing?

4 MR. CUMMINS: Object, your Honor, I don't
5 think, I believe your Honor ruled already that that was
6 not an issue.

7 THE COURT: Well, I don't think I made that
8 ruling but I think I ruled in effect then that the
9 ordinance was, stands or speaks for itself and obviously
10 some provisions would tend to be favorable to low and
11 moderate income housing and could be so construed on
12 their face.

13 MR. CUMMINS: I believe the court has already
14 ruled that the only issue here, that the issues of
15 the affirmative and such as public housing, what have
16 you, insofar as they relate to a zoning ordinance with
17 no issues in this case, I believe that the court
18 ruled on that, at least a week or ten days ago, that
19 it would not be considered in its exclusionary factor.

20 In other words, the mere fact that a zoning
21 ordinance did not call for public housing or something
22 along those lines, would not be considered in exclusionary
23 character.

24 MR. SEARING: My memory is just the opposite,
25 your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Well I have allowed testimony as to public housing authorities, Mr. Cummins.

MR. CUMMINS: Yes, sir.

THE COURT: And as to other--

MR. CUMMINS: I didn't object then, your Honor.

THE COURT: --other programs involving subsidies. I will however sustain the objection to the general question whether there is anything in the ordinance that encourages low and moderate income housing.

MR. SEARING: Your Honor we have no further questions.

CROSS-EXAMINATION BY MR. CUMMINS:

Q Mr. Mallach, I believe that you've already gone on record as saying that Dunellen is a balanced community?

A I don't recall that specifically but I may have.

MR. CUMMINS: If I may have a minute, your Honor.

THE COURT: All right.

Q 46, do you recall your testimony--

MR. CUMMINS: Do you have the date counsel? I think that was the 28th.

MR. SEARING: Yes.

Q You were asked this question, do you recall, from

1 the facts as presented to you that Dunnellen is a balanced
2 community and your answer is, "I think it may be."

3 Q Do you recall that?

4 A Yes.

5 Q Do you still stand by that?

6 A Well, since it was a, I put it rather tentatively, I
7 stand by that, yes.

8 Q Now, the zoning ordinance of Dunellen in and of
9 itself does not discriminate against person or discriminate
10 against race, color or creed; is that correct?

11 A To the best of my knowledge, that's correct.

12 Q I believe that you have already gone on record as
13 saying that the ordinance of the Borough of Dunellen on its
14 face is not exclusionary; is that correct?

15 A Is not seriously so.

16 Q Well-- A I wouldn't say
17 there are no exclusionary features.

18 Q 58, on that same day were you asked, "Looking at
19 Dunellen's ordinance you didn't see anything?"

20 Your answer, "Look at Dunellen's ordinance, assuming
21 there was a vacant tract so zoned in the manner in which
22 residential land, generally in Dunellen is zoned, I would not--
23 that would not be exclusionary because the provisions, the
24 density provisions, the floor area provisions are on balance,
25 reasonable and certainly fall within the scope of the

1 government housing program, the low income housing program."

2 Is that correct?

3 A I stated a--

4 Q Is that your testimony?

5 A That was my testimony.

6 Q OK. You also said here, "The ordinance on the
7 face of it would not in and of itself preclude the housing
8 developments."

9 Is that correct?
10 testimony.

A That was my

11 MR. SEARING: I would ask that the paragraph,
12 that was deleted from that reading, be entered into
13 the record. You skipped a paragraph.

14 Q One would argue however, again that issue came
15 up if it was a low and moderate income housing development that
16 the municipality of Dunellen was operating in an exclusionary
17 fashion, if it did not--if it was unwilling to pass the
18 resolution of need that I mentioned or if it was unwilling to
19 provide the tax abatement that was called for, so it's in that
20 sense that you say that the Dunellen zoning ordinance may be
21 exclusionary?

22 A No, we're, at the time
23 of the depositions I had only gone through the zoning ordinance
24 once and at that time I had, was not aware of the significance
25 of the paragraph that I referred to earlier on direct
testimony. So I would have to modify my statement at

1 depositions to that effect.

2 MR. CUMMINS: Well there, insofar as that is
3 concerned that's then a surprise to me, your Honor
4 please.

5 THE COURT: Well, moving to strike it?

6 MR. CUMMINS: Yes, sir.

7 THE COURT: I'll reserve on that, Mr. Cummins.
8 You may press that again.

9 Q Now you said before that mobile homes were not
10 mentioned in the zoning ordinance. Now is it your under-
11 standing of a zoning ordinance that if something is not
12 mentioned that it's prohibited?

13 A That is frequently my understanding of zoning
14 ordinances, in some cases there's explicit language one way
15 or the other.

16 MR. CUMMINS: Your Honor please, I would ask
17 very respectfully that that answer be stricken because
18 I think the court, I'm asking the court to take
19 judicial notice of the fact that that is not the
20 law in the State of New Jersey.

21 THE COURT: You seem to ask him a question
22 with the law, you asked him an interpretation of the
23 law, didn't you?

24 MR. CUMMINS: Well, I'm now appealing to the
25 court as the final arbitrator of the law and asking

1 that for, that interpretation be stricken because it
2 is not the law.

3 THE COURT: I would deny that at this time,
4 I only take his answer to be that he understands
5 it, mobile homes, trailers and so forth not mentioned
6 in the zoning ordinance at all. Is that right?

7 THE WITNESS: That's correct.

8 THE COURT: And you're saying that there is some
9 administrative practice as to excluding them or denying
10 permits or whatever it may be.

11 Is that right?

12 THE WITNESS: That was the statement in the
13 response to the interrogatories.

14 THE COURT: All right, I'll let that stand.

15 Q Can you tell me the source of your testimony that
16 it is done administratively?

17 A Could I perhaps--do you have a copy of the interrogatories,
18 the materials on Dunellen?

19 MR. SEARING: Yes, I do. If I may have just
20 a second please, your Honor.

21 THE COURT: All right.

22 A Yes, here it is.

23 MR. SEARING: Would you identify the document.

24 THE WITNESS: OK, this is response B to question 7,
25 request for admission 7 as interpreted by the local

1 building inspector from his interpretation of the
2 building code, trailers are not permitted.

3 Q May I see that one?

4 The full text of that I guess reads as interpreted,
5 let's see, No. 7 would be a--

6 MR. CUMMINS: If I may your Honor please, so
7 that the full answer may go in.

8 "There is a separate ordinance that was
9 enacted in 1941 to cover specifically trailers because
10 at that time there was a particular problem due to the
11 proximity of Camp Kilmer.

12 "B, as interpreted by the local building
13 inspector from his interpretation of the building code,
14 trailers are not permitted. This might be subject
15 to change if there is a federal or state code on either
16 trailers or that type of pre-fab house."

17 Q Trailers then or mobile homes are not excluded
18 by the zoning ordinance but may be by a building code; is that
19 correct?

20 THE COURT: Again you're asking him a
21 question that really calls for a legal conclusion.

22 Q Well, are you familiar--I'll withdraw that
23 question--are you familiar with building codes that prescribe a
24 certain type of fire-resistant material?

25 A I'm aware that building codes do so.

1 Q Up until June of this year when there will be
2 a state wide building code you're familiar with that, aren't
3 you? A Yes.

4 MR. SEARING: Your Honor I don't see the
5 relevance.

6 THE COURT: Let him pursue it to the end of the
7 question anyway.

8 Q Some building codes maintain that there must be
9 fire resistant material used in building; is that correct?

10 A That's correct.

11 Q So that what is contained in a building code does
12 not necessarily limit a zoning ordinance?

13 A The two separate documents, they don't, they shouldn't
14 limit one another.

15 Q Well, after June of 1975 Dunellen, 1976,
16 Dunellen's ordinance as it's presently written will not exclude
17 mobile homes; is that correct?

18 MR. SEARING: Your Honor that's a legal
19 conclusion again.

20 THE COURT: Again I'd have to sustain that
21 objection, Mr. Cummins.

22 MR. CUMMINS: He said he was familiar with the
23 new state wide building code, your Honor please.

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

25 MR. CUMMINS: Yes, sir.

1 Q In any event, you have already stated,
2 Mr. Mallach, that you do not favor mobile homes in every
3 community; is that correct?

4 A Well, I think I stated the gist of what I stated at
5 depositions was that first I didn't feel that there, every
6 location was suitable for mobile homes and that they were
7 inherently necessary in every community. I don't have any
8 objections to their being in every community.

9 Q So there should be some adequate screening?

10 A Particularly for mobile home parks and large clusters
11 or complexes of mobile homes, yes, sir.

12 Q I believe you also stated that put out at random
13 they might have a tendency to break up a set neighborhood?

14 A I think I said that was possible, yes.

15 Q And where you have a community that has its
16 vacant land sprinkled throughout the community with vacant
17 100 by 100 lot here or 50 by 100 lot there, then are you
18 saying that would be where there is an established residential
19 or established character to the neighborhood mobile homes
20 necessarily might not be most advantageous in that?

21 A Might not, I think you'd have to look closely at the
22 situation.

23 Q Now are you aware of the population of Dunellen?

24 A In rough terms, yes.

25 Q About 7000 people? A That's

1 correct.

2 Q It's approximately one square mile in
3 geographic area? A That's correct.

4 Q I believe you said you were on record as not
5 favoring the increasing of any town?

6 A Beg your pardon?

7 Q I believe that you said in depositions that you
8 were not on record as favoring increasing the density of
9 any town, I think the question was asked of you more
10 particularly with regard to Perth Amboy but you did say that
11 you were not on record as favoring the increasing of density
12 of Perth Amboy or any such other similarly situated town?

13 A I think what I stated is that I didn't consider in-
14 creasing the density of the community a goal that I was
15 arguing in favor of, I did not say that it was, was an objection-
16 able means to more important ends.

17 Q Now sire are you aware, I'm referring to
18 comprehensive master plan--

19 MR. CUMMINS: I believe that's already marked
20 in evidence your Honor, I don't know its number.

21 THE COURT: P-40.

22 MR. CUMMINS: Volume 20, P-40, thank you.

23 Q Referring you to Table I4 on the public open
24 space requirement, I guess I3 here, I3 and I4.

25 Now there is a demand for Dunellen for 40 acres for

1 the municipality and they supply 35.2, so that that would leave
2 a need of 4.8 by 1980, apparently, in 1967 there was a 4.1
3 need.

4 Is that correct? A That's correct.

5 Q Now look at the county, now are those open space
6 requirements of the county met or can they be met in Dunnellen?

7 A Most probably not.

8 Q So that the county demand would be 91.2 acres
9 in 1967 and by 1980 it would be 96 acres and both, in both
10 areas they're unmet, the need continues; is that correct?

11 A That's correct.

12 Q The reason for that being is just not available
13 land to fulfill this need?

14 A Well, I notice the, I'm not sure that would be the
15 reason given there, that would be a reason.

16 Q All right. But it certainly is a consideration
17 for looking at a community and its built up factors; is that
18 correct? A Not really, I think a point that the

19 county park an open space demand, they're talking about is a
20 regional open space demand and they're merely breaking it up
21 arbitrarily by municipalities for their projection purposes.

22 There's no real reason why the 91.2 acres that's
23 referred to in that chart could not be met in other
24 municipalities, within reasonable access to the citizens of
25 Dunellen.

1 Q OK. But its own needs are unmet?

2 A There is a 4.8 acre gap there but that could be met
3 most probably within the borough.

4 Q But there is at present an unfulfilled need for
5 more park spaces; is that correct?

6 A That's correct.

7 Q According to the county planning board?

8 A That's correct.

9 Q Now, 105 I believe that you have that in front
10 of you, do you not, sir? A The industrial and
11 residential land projection?

12 Q That's correct. A Yes.

13 Q Now with regard to 105, I'm not sure I under-
14 stand the percentage of demand here, residential and
15 industrial and-- A OK.

16 Q --related? A The percentage of
17 demand figure is calculated by comparing the amount of
18 vacant land zoned for the use by the number of acres that the
19 county master plan indicates will be required for that use by
20 the year 2000. So for example if you look at the industrial
21 and related, according to the borough data indicates that
22 there's 5 acres zoned industrial and related use, at present
23 in Dunellen. The county master plan indicates that a demand
24 will be 2.7 acres so that the figure then, the percentage of
25 demand is basically 5 over 2.7.

1 Q And then how did you, how did you arrive at
2 this?

3 A This is 185.2 percent is basically
4 5 over 2.7.

5 Q What you are saying is that according to the, the
6 projection from the county in 1967--

7 A That's correct.

8 Q --and based upon the job need at that time--

9 A Their projection of job--

10 Q Projection. A From that point,
11 yes.

12 Q OK. Now would you say because of what Mr. Busch
13 asked you a couple of minutes ago that the, as a rule of
14 thumb that those projections now could be cut in half?

15 A Well, I suspect there's some ground for reducing them
16 perhaps half, perhaps, more or less, I don't know how
17 much.

18 Q And if they are reduced in half then how would
19 affect the analysis there for Dunellen?

20 A Well, I mean the numbers we're talking about here are
21 relatively small numbers but if for example I believe I
22 mentioned to Mr. Busch the demand for land and the demand for
23 industrial lands would probably change by roughly the same
24 proportions which would mean that the 5 acres that is presently
25 zoned industrial in Dunellen would be substantially more
excessive, relative to the need and the 27 acres that are

1 zoned residential would probably be reasonably in proportion
2 to the need. I say the numbers are small so that it's rather
3 hard to relate them to these grand projections.

4 Q Now sir referring to P-45 and referring in
5 P-45 to appendix C, C-1, and this was I guess, low income
6 households by municipality, 1967 and we have central region,
7 Dunellen, and we have total household 2300 and then we have the
8 first category, zero to I guess 4000, then four to seven, then
9 seven to ten, then above ten and those figures across there
10 for Dunellen are fairly balanced, are they not?

11 A Well, they're more in the, more affluent, the upper
12 group than in the lower.

13 Q But they are not out of proportion if you
14 will?

15 A They're reasonably in proportion as to what I roughly
16 would say is a county average.

17 Q OK. And not out of proportion. In other words,
18 in keeping with the factor of Dunellen being a balanced
19 community--

20 A Well again I don't know what
21 the right proportion would necessarily be, I'm saying they're
22 reasonably similar to the county average.

23 Q And the county average, would you say the county
24 average which includes both New Brunswick and Perth Amboy is
25 about right?

MR. SEARING: Your Honor I fail to see the

1 relevance of this line of questioning, goes beyond
2 the scope of the direct examination, for one thing.

3 MR. CUMMINS: Your Honor please, I think one
4 of the factors here is a balanced community that is
5 supplying low and moderate priced housing for its
6 inhabitants.

7 THE COURT: Of course he hasn't offered any
8 testimony as to the income breakdown of the
9 population, I would assume you shift over to a
10 matter of defense so, for instance, Dunellen is already
11 doing its fair share.

12 Q Now assume--

13 THE COURT: You're withdrawing that line of
14 inquiry?

15 MR. CUMMINS: Well, am I precluded from it, your
16 Honor please?

17 THE COURT: Not by way of defense, when the time
18 comes but what's the point here when he hasn't offered
19 any direct testimony on it?

20 MR. CUMMINS: Well am I, I wanted to bring it
21 out, now your Honor please, from this witness.

22 THE COURT: I'll sustain the objection.

23 MR. CUMMINS: If I were to go into the same area
24 from Volume 16 of the Master Plan P-45 relating to
25 rents would I be precluded as well, your Honor?

1 THE COURT: Amount of rents.

2 MR. CUMMINS: Yes.

3 THE COURT: I would think the same ruling would
4 apply, yes.

5 Q Referring to P-104, Mr. Mallach, the analysis
6 shows that Dunellen has 640 acres of land unsuitable for
7 development? A Yes, that's what it says.

8 Q And I believe that I asked the witness whether
9 or not that was pretty much all of Dunellen, he said yes.
10 Would you concur?

11 A 640 acres is pretty much all Dunellen, yes.

12 Q So that if the only available land is let's say
13 100, 100 by 100 and 50 lot here and a 98 by 169 lot there,
14 sprinkled throughout the town, would you suggest that that is,
15 that town then is not available for a development under the
16 principles of Mount Laurel?

17 A Well, I think there are a couple of issues there, I mean
18 certainly the town is available for development, I mean those,
19 those parcels can be used for development and--

20 THE COURT: That would be literal answer to
21 your question. I think you're getting at something
22 a little different.

23 Q I said larger scale development, I don't mean, I
24 didn't mean now piecemeal development because obviously you
25 understand what I mean by development as opposed to putting up

1 a house here or house there.

2 THE COURT: Well, that isn't what is meant by
3 development, I don't think.

4 Q What is your understanding of development?

5 A Development is building things, any kind of--

6 THE COURT: You can ask a question on the
7 subject but word it in an understandable way.

8 MR. CUMMINS: OK, surely, OK.

9 Q Would you say under the Mt. Laurel decision that
10 the term development has a particular meaning?

11 MR. SEARING: I think that calls for a
12 legal conclusion.

13 THE COURT: He doesn't know that Mr. Cummins,
14 I think what you are getting at is the use of a word
15 developing municipalities, development by itself could
16 be one house on one floor lot, that's a development.
17 You're framing the question or attempting to frame a
18 question as to whether that is a developed municipality
19 or a developing municipality. Isn't that the gist of
20 your questions?

21 MR. CUMMINS: Yes, sir.

22 Q Is this a developed municipality?

23 A I do not believe that there's really any such thing as a
24 developed municipality, in the literal sense.

25 THE COURT: Would it be so under P-104 if land

1 unsuitable for development is 640 acres and there are
2 only 640 acres in the municipality?

3 THE WITNESS: It's hard to say, the borough's
4 data is somewhat more flexible than P-104 and even so I
5 think there are a lot of towns which are largely covered
6 but where continuing kind of redevelopment and reuse
7 takes place so that they never quite stop developing.

8 Q Well, when you say redevelopment takes place,
9 what do you mean? A Well, for example when there
10 are a number of kinds of things, there can be, you know,
11 conversion, both from you know one to two or three family
12 houses from commercial and industrial uses to residential
13 uses. There can be filling in the bits and pieces that remain
14 vacant. There can be many, many cases and I think towns
15 like Fort Lee is an example of this where you have people
16 aggregating smaller parcels, engaging in some demolition to
17 construct higher density housing. So there are a lot of
18 different ways in which development can take place.

19 Q Well, but in Dunellen where you have an established
20 residential character, it is legitimate within the goals of that
21 community to keep that residential character, is it not?

22 A I think so, as long as it can be done without seriously
23 discriminating against other's rights.

24 Q Now you said already that the ordinance on its
25 face is not exclusionary?

1 A With the qualification.

2 Q With that one qualification about that 100 feet;
3 is that correct?

4 A That's correct.

5 Q So that where a municipality has an ordinance and
6 has had an ordinance for a number of years that it is non-
7 exclusionary, would the community have the right to keep as
8 its goals its residential character?

9 MR. SEARING: I think that's a legal con-
10 clusion, your Honor.

11 MR. CUMMINS: This is a planning question, your
12 Honor, please.

13 THE COURT: Well, you can ask him if it's a
14 legitimate planning objective I suppose.

15 Q Is that a legitimate planning objective?

16 A Again with the qualification to the degree that it can be
17 done without impairing the rights of others, yes.

18 Q OK. And where it has a modest commercial
19 district and a modest industrial district is it a legitimate
20 planning goal to keep both those districts?

21 A Well, I'd say it's a legitimate planning goal to allow
22 them to remain in existence, I don't think it's a, it will
23 depend on how viable those districts are from an economic
24 standpoint. I'm not sure it's a legitimate planning goal to
25 use artificial means to prop them up, if they're not capable

1 of sustaining themselves economically but assuming they are
2 viable there should be no problem with trying to maintain
3 them.

4 Q Well, you're familiar with Dunellen in that
5 it's an older community with a downtown hub that used to be
6 a hub of a larger area, does have a viable downtown area; is
7 that correct?

8 A I don't really have any information on the economic
9 situation of its downtown, generally familiar with it but I
10 don't know whether it's viable or not.

11 Q OK. But it is a legitimate planning goal to keep
12 a modest commercial district?

13 A To maintain an economically viable modest commercial
14 district.

15 Q And it is a legitimate planning goal to keep a
16 modest industrial district?

17 A Again with the same qualification, yes.

18 Q That would be in keeping with your desire for
19 balanced community?

20 A I guess you could say so.

21 Q OK.

22 MR. CUMMINS: Your Honor, would the court
23 consider it a legal question if I were to ask this
24 witness whether or not applying Mt. Laurel standards
25 this witness has a judgment as to whether or not

1 Dunnellen is a developed or a developing community?

2 MR. SEARING: Whether or not the court would
3 consider it your Honor plaintiffs would object as
4 being a legal conclusion.

5 THE COURT: Well, it seems as though you're
6 asking him to construe wording in a Supreme Court
7 opinion. I understood him to say that he doesn't
8 recognize even the possibility of a developed municipality.

9 Is that what you were saying?

10 THE WITNESS: That's correct, sir.

11 THE COURT: Now do you recognize the distinction
12 between a developing municipality and a substantially
13 developed municipality?

14 THE WITNESS: I think there can be substantial
15 distinction and degree, yes.

16 THE COURT: You can ask him on that then, if you
17 wish, Mr. Cummins.

18 Q Would you suggest that Dunellen is a substantially
19 developed community?

20 A I suspect that on some kind of continuum of that source
21 it would be pretty far over on the substantially developed
22 side.

23 Q Especially in view of the figures contained
24 in 104?

25 A Yes.

1 Q And I believe that you've already--

2 MR. CUMMINS: Can I have this marked your
3 Honor please.

4 THE COURT: DD-1, for identification.

5 (Document received and marked DD-1 for
6 identification.)

7 Q You wrote this article? A Yes, I did.

8 Q OK. And in this article sir, did you establish any
9 definitions as to developing, developed or substantially
10 developing?

11 A I remember I discussed the issue, I don't remember off-
12 hand whether I ventured a definition.

13 Q I believe that you mentioned that the Township of
14 Cinnaminson was substantially developed?

15 A I don't know. Could I see the--

16 Q Yes.

17 MR. SEARING: Your Honor, this goes beyond
18 the scope of direct.

19 THE COURT: Apparently he's asking him, following
20 up the question as to whether it was developed or sub-
21 stantially developed. I'll allow it.

22 A Specifically sir, I quoted from the trial opinion that
23 the judge found that Cinnaminson was "substantially developed."

24 Q And do you adopt that language?

25 A In the case of Cinnaminson specifically I do not

1 believe that I would.

2 Q Because there was 17 percent of the township
3 land area or 856 acres still remaining vacant; is that
4 correct?

5 A Those were the facts in the situation, yes.

6 Q Would you tell me, going through here and looking
7 at this, each page, would you say if you remember, did you
8 define developed in this article?

9 A I don't believe I defined it, no. Again I was not
10 interested in so much in defining the, you know, the end
11 point of the continuum as suggesting that there had to be,
12 there was an issue of degree rather than either, or matter.

13 MR. CUMMINS: Judge, I think I'm finished,
14 just want to review something.

15 Q Yes, one thing.

16 Mr. Mallach, if you were to divide, I have, I have done
17 it but I don't have it here with me, if you were to divide 18
18 units on an acre into the land acreage, land acreage, would
19 you come up with approximately 4850 square feet?

20 A I don't, I don't follow.

21 Q Yes, OK.

22 Dunellen's ordinance says--

23 THE COURT: Well, he's dividing 18 into an
24 acre. Does that come out to a 4850 square feet.

25 Is that what you are asking?

1 MR. CUMMINS: 400--

2 THE COURT: I think that would be 9.

3 THE WITNESS: 9 in the acre is in that area,
4 4850.

5 Q 4850; is that correct?

6 A Yeah.

7 Q So that that would be then the average lot in
8 Dunellen, 48 by 100?

9 A In that area, yes.

10 Q So that if a lot were, let's say, 30 by 100 that
11 would be undersized?

12 A Yes.

13 Q Now, you of-- A In the RA Zone.

14 Q Right, OK.

15 Now, you have an understanding of what was meant by
16 undersized before, I believe on your direct you had a question
17 about that?

18 A I guess that would apply if it came into being to
19 subdivision, after the ordinance was passed.

20 Q OK. And one other thing, my last question,
21 48 by 100 is a modest size for a single family lot, is it
22 not? A I think that's a modest lot,

23 yes.

24 Q As a matter of fact you've already said that you'd
25 even go 65 by 100? A Conceivably, yes.

1 Q OK. And the 500 feet that I have down in your
2 analysis for square foot average, that's within reasonable
3 limits? A That is a modest limit as
4 well.

5 Q OK, thank you very kindly.

6 MR. CUMMINS: Your Honor I have a motion,
7 I can make it either now or at a break.

8 THE COURT: Break for a few minutes, then.

9 (After a brief recess the trial continued.)

10 MR. CUMMINS: Your Honor I would like at this
11 time to move for summary judgment on behalf of
12 Dunellen, dismissing as much of the complaint against
13 it as it is possible, based upon the following grounds.
14 Number one--

15 THE COURT: You're moving for dismissal, not
16 summary judgment.

17 MR. CUMMINS: Pardon me?

18 THE COURT: You're moving for dismissal on the
19 proofs, not for summary judgment.

20 MR. CUMMINS: Yes, sir.

21 THE COURT: All right.

22 MR. CUMMINS: On the following grounds, number
23 one, the witness said that the ordinance does not
24 discriminate against race, color or creed. Number two,
25 that the ordinance on its face, except for that one

1 little provision which, let me renew my objection
2 your Honor please and ask that be stricken on the
3 ground of surprise. If your Honor does grant that
4 then the ordinance is in no way exclusionary.

5 The witness said that it is certainly modest in its
6 demand and it does not discriminate against low and
7 moderate priced housing and I--

8 THE COURT: What is it you are asking to
9 strike, his interpretation of the calculation based
10 on 100 foot depth?

11 MR. CUMMINS: That's right.

12 MR. SEARING: I'd like to respond to that, if
13 the court please, if you are going to rule on that
14 now.

15 Plaintiff, your Honor, I think it best that a
16 continuance for the study of that proposal would be,
17 might be proper and in any case, Mr. Cummins will have
18 a right in the presentation of his own case to show
19 evidence as to a contrary interpretation.

20 THE COURT: I would prefer that you continue
21 with your full argument then, Mr. Cummins.

22 MR. CUMMINS: Yes, sir.

23 Your Honor please, I think under the rationale
24 of a previously existing ruling of this court and under
25 the Mt. Laurel decision this court has said that, and

1 Mt. Laurel has said that where a community has at
2 present a, is a developed community and has non-
3 exclusionary zoning that community would be obliged
4 to provide a share of the county's share of low and
5 moderate income housing. I think that's a fair
6 characterization of Mt. Laurel and I think--

7 THE COURT: You mean an additional share.

8 MR. CUMMINS: That's correct. I think that this
9 zoning ordinance, your Honor please, has been in existence,
10 the witness said certainly since '62 and I can represent
11 to the court that it's in evidence, it's been largely
12 unchanged since 1923 and so that it's certainly very
13 modest, perhaps Dunellen didn't get caught up with the
14 building boom as everybody else did and changing
15 their ordinances and it's, it has served it well now
16 because it has a zoning ordinance that hasn't excluded
17 any type of house. It can, you can build on a very
18 modest lot and the people over there have modest
19 houses and as this witness, this witness has just said it
20 does not exclude low and moderate priced houses. So,
21 I say that it has satisfied its requirement and therefore
22 both from its nonexclusionary zoning ordinance and from
23 the fact that it's fully developed, I think it should be
24 excluded at this juncture from further participation
25 in the case.

1 MR. SEARING: Does the court desire a response
2 from the plaintiffs?

3 THE COURT: All right.

4 MR. SEARING: As we stated in our brief on this
5 subject, several months ago, we believe that the issue
6 or the, a decision on the motion to dismiss at this time
7 would be premature, as we understand the Mt. Laurel
8 opinion it is that even conceding the existence of
9 exclusionary practices, a community is simply pleading
10 no additional room and I think that we have testimony
11 as to certain areas of land within the community that
12 could be utilized for the purpose of providing housing
13 for low and moderate income families.

14 In addition we've had testimony that there may be
15 methods of assemblage of such properties coming up.

16 I would also remind the court that there is no
17 public housing authority in Dundlen and that there is a
18 question as to whether the community has provided
19 for, not only its existing population but also its
20 population that may want to reside there.

21 Now as to the racial nature of the ordinance,
22 while on its face it may be neutral, the claim of
23 plaintiffs is that it is the effect of the ordinance
24 that is discriminatory, not whether it discriminates
25 on its face.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. CUMMINS: Your Honor there can be--

THE COURT: Wait a minute, let's have Mr. Searing continue.

MR. SEARING: I would just request that this motion be denied, at this time.

MR. CUMMINS: Your Honor please--

THE COURT: Let me ask Mr. Searing a couple of questions.

You seem to have accepted, at least part of your exhibit P-115, as the representation in the brief of the Borough of Dunellen that 18 of the 27 residential vacant areas are undersized, have brooks running through them, are subject to flooding, leaving only 9 acres.

MR. SEARING: Yes, sir, this response, although it was not furnished in responses to interrogatories it was furnished in the brief that Mr. Cummins filed and we accept that .

THE COURT: You seem to have accepted it. Is that right?

MR. SEARING: Yes.

THE COURT: So that if there are a total of 9 acres buildable for residential and 5 acres buildable for industrial and at least vacant and zoned for industrial, residential uses are permitted in the industrial zone.

1 THE WITNESS: Yes, sir.

2 THE COURT: All right. So there seems to be a
3 potential of say 14 acres. Now we have at present a
4 population, while we don't have any breakdown on their
5 income if they're 7000 within one square mile, that's
6 over 10 per acre.

7 MR. SEARING: Yes, sir.

8 THE COURT: It's a high density population.
9 It would seem probable, although there are no
10 proofs on it, that there is present low and moderate
11 income housing opportunity, at least, at least high
12 density, single and multi family housing. There's no
13 restriction against multi family housing. There may be
14 a special problem about trailer parks and possibly that
15 could be the subject of other litigation to challenge
16 the administrator's interpretation but what would be,
17 the realistic possibility of a contribution to low and
18 moderate income housing needs from the Borough of
19 Dunellen based upon the proofs at this point?

20 MR. SEARING: Well, a final answer to that would
21 depend upon the study of Dunellen, Dunellen in its
22 situation as it relates to all the other municipalities
23 in the county, I, I would urge before the court that
24 Dunellen is capable, even at its present density
25 because of its location of making a contribution.

1 I think there are, there are substandard units that could
2 be rehabilitated, there are, the acreage available for
3 building--

4 THE COURT: Excuse me, on that, do you con-
5 template as, well, just as a matter of the jurisdiction
6 of this court at this time that I can order the
7 demolition or the raising of present structures in
8 order that say low income, moderate income multi
9 family housing be constructed there?

10 MR. SEARING: No, that is not our contention but
11 it is one of our contentions that a plan can be
12 developed for the ordinary rehabilitation of housing, that
13 does not meet the standards of--

14 THE COURT: Well, that might be but is that
15 something that is sought as a remedy in this case?

16 MR. SEARING: Yes, it is.

17 THE COURT: A plan for demolition of present--

18 MR. SEARING: No your Honor, just for often times
19 rehabilitation does not necessitate demolition and I
20 wouldn't want the court to equate the two. We are not
21 arguing for the raising or demolition of blocks or for
22 wholesale urban renewal, especially in a, in here but we
23 are indicating that there are opportunities for re-
24 habilitation of existing units, without demolition.
25 There is also the opportunity for the municipality to

1 participate in the section 8 program and relieve
2 its present residents and residents who may wish to
3 live there of the housing income imbalance upon which
4 we have received quite a bit of testimony, people who
5 are paying more than 25 percent of their income. So
6 there are a variety of factors in the plaintiff's
7 view, in which Dunellen of and by itself can participate
8 in the relief and should be so and should be held so
9 accountable.

10 THE COURT: Well, let me, let me try to
11 summarize as I understand it now you're challenging
12 the zoning ordinances of 23 municipalities, one of which
13 is Dunellen. You're saying as to all of those ordinances
14 and the subject matter of the cases has to be the
15 ordinances themselves, at this point that's what we're
16 dealing with, you're saying that the ordinance is un-
17 constitutional, invalid, unconstitutional and it may be
18 statutory grounds because it prevents or blocks,
19 excludes low and moderate income housing opportunity
20 and diversified housing opportunity, despite needs for
21 low and moderate income housing, multi family and maybe
22 mobile home and other diversified housing opportunity.

23 Now, just in that simply framework you would
24 agree with that, would you?

25 MR. SEARING: Yes, your Honor.

1 THE COURT: All right, just in that simple
2 framework how has a case been made out against the
3 Borough of Dunellen?

4 MR. SEARING: Well, are we including the item
5 about, if we include the item about the trailer parks
6 I think the material that Mr. Mallach mentioned regarding
7 the nonability to convert industrial or business uses
8 to residences and then the contention that your Honor
9 reserved a ruling on that regard in the first 100
10 feet of density.

11 THE COURT: I--

12 MR. SEARING: And the public housing authority.

13 THE COURT: Of course another part of the
14 calculation has to be I suppose the Mt. Laurel case,
15 the developed municipality against a developing
16 municipality.

17 You're seeking here to impose a fair share
18 allocation against a municipality that is substantially
19 developed.

20 MR. SEARING: Yes, your Honor.

21 THE COURT: It would seem to have no more than
22 14 acres available for residence, that ~~acres~~ scattered
23 and five of it zoned for industry and a relatively
24 modest allocation of vacant land for industry, it would
25 be difficult to find that that 5 acres was overzoning

1 for industry.

2 MR. SEARING: Your Honor in the plaintiff's
3 viewpoint the size of the community and the amount
4 of vacant acreage is not, is not relevant and under
5 the principles of Mt. Laurel. I think that's a legal
6 point, that it can be argued adequately after trial but
7 the contention of Dunellen here in that aspect is pre-
8 mature, we are, we are so contending and we do so
9 contend.

10 THE COURT: Would you have any other proofs
11 to offer with respect to the Borough of Dunellen?

12 MR. SEARING: Not as to the zoning ordinance
13 your Honor but there will be some additional testimony
14 as to what the municipality of the size of Dunellen
15 can do by way of remedy.

16 THE COURT: The municipality of the size of
17 Dunellen, are you referring to the physical size?

18 MR. SEARING: And the, and the amount of land
19 and, we the plaintiffs recognize that some communities
20 are smaller than others and some have a great deal
21 less land than others but plaintiffs, from the beginning,
22 have viewed this litigation as one against the 23
23 municipalities making up the bulk of the Middlesex
24 County area and as such the remedy requested in the
25 framework, in the complaint was framed with this in mind.

1 THE COURT: Is there anything in particular to
2 suggest that Dunellen is in any different situation from
3 Perth Amboy?

4 MR. SEARING: The establishment of a public
5 housing authority and any interest or evidence of con-
6 cern by participating in available programs to relieve
7 their, to relieve its inhabitants of overpayment for
8 housing.

9 I just, I, that whether or not they have done
10 anything like that must await the presentation of
11 Dunellen's case.

12 Plaintiffs have seen no evidence of that.
13 The CD application itself has admitted to some housing
14 need and does, does show some evidence of a recognition
15 of having powers within Dunellen.

16 THE COURT: Of course as I think was brought out
17 before you're not, you're not bringing an action, for
18 instance in the nature of a prerogative writ to challenge
19 the nonestablishment of public housing authority, for
20 instance.

21 MR. SEARING: No, we are advocating that, that
22 the nonestablishment is an item of evidence that needs
23 to be considered in whether or not these municipalities
24 have met their housing needs. We would not like to
25 preclude that as being a possible remedy. We have not

1 specifically requested that public housing authorities
2 be established, only that that opposition be explored.

3 THE COURT: Since we are dealing within the con-
4 fines of a lawsuit you would agree that as of now this
5 is a challenge to the zoning ordinances of the 23
6 municipalities and not a challenge to the failure, for
7 example, to provide public housing authorities.

8 MR. SEARING: Yes, your Honor.

9 (Whereupon the court rendered its decision.)

10 THE COURT: I think we might start the next
11 municipality.

12 MR. SEARING: Yes, your Honor, just going to do
13 that.

14 I would like to mark a series of documents for
15 identification, there are three documents, your Honor.

16 THE COURT: 116, 117, 118.

17 (Documents received and marked Exhibits P-116,
18 117 and 118, for identification.)

19
20 A L L A N

M A L L A C H, continued.

21 DIRECT EXAMINATION BY MR. SEARING:

22 Q Mr. Mallach, I show you P-116 and ask you to
23 identify it, please.

A This is the document
24 entitled Zoning Ordinance of the Township of Edison.

25 Q I show you P-117 and ask you to identify it.

1 A It's a document entitled Edison Township Zoning Map.

2 Q Show you P-118 and ask you to identify it.

3 A This is a summary of Zoning Ordinance Provisions,
4 Township of Edison, prepared by me.

5 MR. SEARING: Your Honor if I may have a few
6 minutes to show these to Mr. Winter.

7 THE COURT: All right.

8 I don't see Mr. Ferino here, has he left for the
9 day?

10 Monroe Township is the limit of what may be
11 reached tomorrow.

12 MR. WINTER: No objection, no objection, partial
13 objection.

14 MR. SEARING: Your Honor we have no objection
15 to P-116, 117 and therefore I move them in evidence.

16 THE COURT: All right, they will be marked
17 in evidence.

18 (Documents heretofore marked for identification
19 are marked in evidence, P-116 and P-117.)

20 MR. SEARING: We have a partial objection to
21 P-118 and I would there also move that into evidence
22 too.

23 MR. WINTER: The partial objection your Honor
24 goes to the very last column and where reference is made
25 to vacant land area. The information utilized comes

1 from our answers to the plaintiff's interrogatories,
2 however they were served almost a year ago and the
3 information as disclosed in our answers to
4 interrogatories was as of November 1974, since that
5 time there have been very substantial and significant
6 additional development.

7 THE COURT: Wasn't it your obligation then to
8 supplement?

9 MR. WINTER: I beg your pardon, sir?

10 THE COURT: Wasn't it your obligation to
11 revise your answer or supplement your answer?

12 MR. WINTER: I view that as a continuing
13 obligation and I'm in the process of doing that right
14 now which will precede the township's evidence on
15 defense but I think it's necessary to point out to the
16 court that these figures are quite stale and will have
17 undoubtedly an affect on the final information that's
18 in the case.

19 THE COURT: I'd have to admit them, subject of
20 course to my understanding based on November '74 figures.

21 MR. WINTER: What, sir?

22 THE COURT: I would have to admit them and that
23 is subject to my understanding that they are based upon
24 figures of more than a year old.

25 MR. WINTER: I anticipated that ruling your

1 Honor, I don't quarrel with it.

2 THE COURT: P-118 in evidence.

3 (Document heretofore marked P-118 for
4 identification now marked in evidence.)

5 (Whereupon the court continued remarks
6 in the decision regarding Dunellen.)

7 MR. WINTER: Your Honor, may I make a remark
8 appropriate to your last remarks?

9 THE COURT: All right.

10 MR. WINTER: There is also a line of
11 decisions which as I understand them the most famous of
12 which is the Reinhour case, I forget the municipality
13 in which, in which that litigation arose but it's
14 the Reinhour Oil Company where the rationale of the
15 courts below and in the Supreme Court was that it's
16 within the legitimate parameters of the zoning powers
17 to utilize the doctrine of thus far and no further and
18 that is to say, if you have nonconforming uses or even
19 a prior zoning ordinance law that permitted a use that
20 happened to relate to tanks and tank farms that it's
21 legitimate to say when you have enough of something
22 in a fair context that you can be exclusionary from
23 that point on and--

24 THE COURT: I wouldn't make that ruling now,
25 Mr. Winter but I would keep that in mind.

1 MR. WINTER: I'm not asking you to rule on it but
2 I think for the purpose when we talk about trailer courts
3 peculiar to my, to the situation in the township that
4 I represent we're silent on trailer courts but we have
5 five of them. Would it be invalid in the context of
6 having 5 trailer courts, that's--

7 THE COURT: All right, we'll keep that in
8 mind.

9 There will be a recess until 9 o'clock tomorrow
10 morning.

11 (Whereupon court adjourned the matter
12 for the day.)
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

URBAN LEAGUE OF GREATER NEW BRUNSWICK, :
 :
 Plaintiffs, :
 :
 -vs- :
 :
 BOROUGH OF CARTERET,et al., :
 :
 Defendants. :

TRANSCRIPT
OF
PROCEEDINGS

New Brunswick, New Jersey
February 24, 1976

B E F O R E:

HONORABLE DAVID D. FURMAN, JSC.

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

(Same as February 23, 1976.)

Daye F. Fenton,
Official Court Reporter.

1 THE COURT: All right, you may proceed then
2 with Edison Township.

3 MR. SEARING: Thank you, your Honor. If I may
4 say I believe that we, yesterday we had introduced the
5 ordinance, the supporting map and the accompanying
6 chart prepared by our expert.

7 We were at the point of asking questions about
8 that chart.

9
10 DIRECT EXAMINATION BY MR. SEARING:

11 Q Mr. Mallach, could you describe the principal
12 features of the Edison Ordinance for us, please?

13 A Excuse me, could I have the copy of the ordinance?

14 Q I'm sorry, certainly.

15 A The zoning ordinance of the Borough of Edison contains
16 four single family residential zones, two multi family
17 residential zones and four, sorry, one public institutional
18 zone, three business zones and three industrial zones.

19 In the four residential zones for single family, the
20 provisions are as follows.

21 The three RAA Zone requires 40,000 square foot lots,
22 a minimum frontage of 150 feet, a minimum floor area for each
23 unit of 1400 square feet.

24 In addition an enclosed garage is required with each
25 unit.

1 There is a cluster of option available in this zone
2 which allows lots of 30,000 square feet and frontages of
3 127.5 feet, subject to the dedication of at least 15 acres
4 of open space, subject to the discretion of the municipality.

5 The RA Zone requires lots of 20,000 square feet or
6 approximately half an acre, frontage of 100 feet, minimum
7 floor area of 1400 square feet.

8 There's a cluster option available in this zone
9 as well which provides for 15,000 square foot lots with 85 foot
10 frontages, again subject to the discretion of the
11 municipality and the dedication of at least 15 acres of
12 open space.

13 The RBB Zone distinguishes between whether or not
14 sewer is available on the site. If there's no sewer the
15 provisions are as in the RA Zone, 20,000 square feet at
16 100 foot frontage with sewer, the provisions are 10,000 square
17 feet and 85 foot frontage.

18 Cluster option under similar conditions 15 acres
19 dedication, et cetera, provides for 8500 square foot lots and
20 72.25 foot frontages. The minimum floor area in the RBB Zone
21 is 1200 square feet and a garage is required.

22 There is finally the RB Zone, if there is no sewer the
23 requirements are 20,000 square feet and 100 foot frontage.
24 If there is sewer the requirements are 7500 square feet,
25 75 foot frontage. The minimum floor space required is 960 square

1 feet, a garage is required. There's no cluster option in the
2 RB Zone.

3 There are two multi family zones, one provides for low
4 rise apartments in the low rise zone subject to a lot size,
5 3 acres, a frontage of 200 feet, garden type apartments can
6 be built up to a density of 15 units an acre and 3 story
7 height.

8 1.5 parking spaces per unit is required.

9 In addition, there's a high rise zone which is I believe
10 what is referred to as a floating zone in that the ordinance
11 provides that like to refer to the provision, that the
12 municipal council, may following review and recommendation by
13 the planning board, authorize as an amendment to the zoning
14 map designation of an area as a high rise apartment zone in
15 any case where the council shall determine that such classi-
16 fication is consistent with the plan for future land use.
17 There is apparently one site that has been designated on the
18 map for this purpose, the ordinance provides that council can
19 designate others. The density may be up to 25 units an acre
20 and the height may be up to 5 stories.

21 Finally, there are the, there are the institutional,
22 business and industrial zones in which residential uses
23 are not permitted.

24 The mobile homes are nonconforming use of which there are
25 some in the township at present.

1 With regard to the vacant land area, according to the
2 township's figures which I believe they indicated were
3 as of November, 1974 there 5,756 acres of vacant land in the
4 township. Of those acres 3,469 were located in the 3
5 industrial zones, approximately 60 percent of the total 1,181
6 or approximately a third were in the single family residential
7 zones and 210 in the multi family residential zones.

8 The bulk of the single family land was in the RA and
9 the RBB Zones, with the exception of one 10-acre parcel
10 all of the multi family zoning was for the low rise
11 housing.

12 In addition there was 127 acres of institutional land
13 and approximately 70 acres of business zoning.

14 THE COURT: Could the high rise be in any
15 residential, that is on application, approval by the
16 planning board or the council?

17 THE WITNESS: Yes.

18 THE COURT: In other words, an application could
19 be made say in the RBB for high rise?

20 THE WITNESS: That's my understanding.
21 That's my understanding.

22 THE COURT: Are there any limitations on the
23 number of high rise or the distance they may be apart
24 from each other?

25 THE WITNESS: No, there isn't, they have, there

1 are certain specific buffer and area requirements.

2 THE COURT: That's what I meant by the
3 distance apart, what are the buffer requirements?

4 THE WITNESS: Well, the buildings must not
5 be within 75 feet of a streetline and the distance
6 between each building must be over 40 feet and there
7 must be a buffer zone of 50 feet on side and rear
8 property lines, between the, any part of the lot to the
9 sidewalk or service or building purposes in adjacent
10 lots.

11 MR. SEARING: Thank you Mr. Mallach.

12 Q Now Mr. Mallach, what if any of the features
13 you have described have an effect on the provision of housing
14 for low and moderate persons?

15 A Quite a number of these features have such an effect.
16 The, the provisions under which single family units may be
17 constructed in the RAA Zone are extremely restrictive, the lot
18 size of one acre approximately 150 foot frontage, floor
19 area, 1400 square feet are all far in excess of minimum
20 planning requirements.

21 The same is true of the RA Zone which is half acre,
22 100 foot frontage, the RBB Zone which requires either half acre
23 or quarter acre depending upon whether or not sewer exists,
24 100 or 85 foot frontages and 1200 square foot floor areas.
25 The only residential zone which approximates minus requirements

1 for housing is the RB Zone, in most parts the zone which have
2 sewer connections and that represents a relatively small part
3 of the residential zoning.

4 The provisions for the apartments, the provision with
5 particular regard to the high rise apartment is very broadly
6 discretionary. In other words there's no clear standards pro-
7 vided in the ordinance as to when the council should authorize
8 use of this zoning provision and the language is very
9 general and this can be so used to limit and select the type
10 of housing that would be approved under this provision.

11 In addition the distribution of vacant land by zone
12 appears to be, to have a potentially significant effect on the
13 housing of low and moderate income people.

14 As I mentioned it before, approximately 60
15 percent of the land area that's vacant in the township is
16 zoned for industrial uses, less than 5 percent is so zoned
17 for multi family uses and of the roughly 1/3rd that's zoned
18 for single family only a very small amount, approximately
19 5 percent of the total vacant land is in the only single
20 family zone that meets the requirements of modest dwelling
21 units.

22 Q Mr. Mallach, I'd like to draw your attention
23 to P-105, if I might and ask you to explain how the figures
24 you just related relate to that exhibit?

25 A A comparison between the amount of land zoned for

1 residential purposes in the Township of Edison and the amount
2 of land zoned for industrial purposes by, compared to the land
3 designated as being required by the Middlesex County Master
4 Plan show that that Township of Edison zoned more than twice
5 as much land, there's 209.7 percent of land for industrial
6 purposes as is projected to be needed by the Middlesex
7 County Planning Board and has zoned only 84.9 percent of the
8 land that is projected to be needed by the Middlesex County
9 Planning Board for residential purposes.

10 Q Does this municipality have a public housing
11 authority?

12 A Yes, sir.

13 Q Have they built public housing?

14 A They have been some public housing.

15 Q I would like to draw your attention to
16 plaintiff's exhibit P-106.

17 How many units of public housing are shown in that
18 exhibit?

19 A There are a total of 160 units of public housing in the
20 Township of Edison.

21 Q When were they built?

22 A 60 units were built in 1959 or occupied in 1959
23 and 100 units were occupied in 1963.

24 Q And for whom are those units designated?

25 A OK, the 60 units from 1959 are designated for families

1 of low income of the 100 units in 1963, 52 are designated
2 for families of low income and 48 are designated for senior
3 citizens of low income.

4 Q Is there any other state or federal subsidized
5 housing?

6 A I believe there are two developments in the township under
7 the Section 236 program involve rental housing for moderate
8 income families and senior citizens.

9 MR. SEARING: Your Honor we have no further
10 questions of Mr. Mallach regarding this township.

11 THE COURT: Mr. Winter, cross-examine.

12 MR. WINTER: Yes, sir.

13
14 CROSS-EXAMINATION BY MR. WINTER:

15 Q Mr. Mallach, when you were retained by the
16 plaintiffs were you asked to limit your expertise in the
17 study of the zoning ordinances of the municipalities of
18 Middlesex County, restricted to the perspective of the
19 effect of those ordinances on housing only?

20 A I wouldn't say exclusively that was certainly the
21 principal purpose but not, one can't analyze a zoning ordinance
22 without looking at the other provisions as well.

23 Q As an expert admitted to testify on this subject
24 before this court, do you feel that it would be fair and
25 proper to so orient your analysis of the zoning ordinance from

1 the point of view of low and moderate housing that all other
2 legitimate criteria should be cast aside?

3 A I don't believe I've engaged in the practice of that
4 nature, sir.

5 Q I didn't accuse you of doing that, my question
6 was do you think it would be fair and proper to do so?

7 A No.

8 Q In your analysis of the Edison Zoning Ordinance
9 did you place the objectives of making opportunity for low and
10 moderate income housing in a perspective and in relationship
11 to the other poor zoning criteria?

12 A To some degree.

13 Q Only to some degree?

14 A Yes, to some degree.

15 Q Was it a small degree sir?

16 A I'm not sure quite how one would distinguish.

17 Q Well, would you describe the degree or
18 relationship between your orientation toward housing as a
19 major purpose and the rest of the legitimate zoning criteria?

20 MR. SEARING: Your Honor I object to
21 this line of questioning, the purpose and object
22 of the litigation is quite clear and I think the
23 import, impact of Mr. Mallach's testimony is also
24 quite clear.

25 THE COURT: I think it's difficult to ask him to

1 evaluate between what he calls proper zoning objectives
2 Mr. Winter. And if they're proper and fair and taken
3 into account by him, it's difficult to say that one is
4 more proper or more fair. I don't think your question
5 is understandable.

6 Q Without, Mr. Mallach, without ascribing a relative
7 importance to the criteria what I'm getting at is did you pay
8 attention to the other criteria when you were arriving at your
9 conclusions about the restrictiveness of the various
10 regulations in the ordinance as they, in the context of
11 applying to other legitimate ends--

12 MR. SEARING: Your Honor I'm going to have to
13 ask Mr. Winter to be more specific in terms of--

14 THE COURT: I think the question is understandable,
15 you may answer the question.

16 A To the degree that I consider it necessary for the
17 type of analysis that I'm conducting, yes.

18 Q Did you say under direct examination when you
19 were talking about all of the ordinances in general and none
20 of them in specific that most ordinances have a negative
21 effect on housing without the best and neutral effect?

22 A Something to that effect.

23 Q Well, is the way I stated it the essence of what
24 you said?

25 A Yes.

1 Q Would you please define a neutral effect?

2 A The neutral effect that I referred to was where the
3 provisions of the ordinance, the lot sizes, frontages and
4 so on and so forth were such that they did not restrict the
5 provision of a wide variety of housing type and did not sub-
6 stantially limit the feasibility of constructing all of the
7 different types of housing that the market place in the
8 population demands.

9 Q I'm not sure that I understand what you meant by
10 that any more now than before you answered that question.
11 Let me put it another way, Mr. Mallach.

12 Were you trying to say that from the point of view of
13 housing no ordinance had a beneficial effect?

14 A The conventional provisions I wouldn't argue that it's
15 impossible to write provisions into a zoning ordinance that
16 would have a beneficial effect, what I am saying is, what one
17 might call the conventional provisions in a zoning ordinance
18 lot sizes, frontages and so forth do not have a beneficial
19 effect on housing provision.

20 Q Now I enlarge that question to include the broader
21 aspect of honest appraisal of a zoning regulation to include
22 the other legitimate zoning criteria and objectives, the goals
23 of a good zoning regulation.

24 Is health one of them?

25 A To the degree that it can be effectively defined and

1 connected to land use characteristics.

2 Q Only to a degree, sir?

3 THE COURT: He didn't say that.

4 A I said, I said to the, I'm sorry, I said to the degree
5 that health concerns can be reasonably defined and reasonably
6 connected to land use considerations.

7 Q Then let me be more specific for the purpose of
8 this question. To the degree that cesspools need a minimum
9 area offield of filtration so that you don't disease your
10 neighborhood, is that a legitimate reason to have a lot size
11 of sufficient area so that the ceptic system works?

12 MR. SEARING: Your Honor I would have to
13 object, I think Mr. Winter is bringing forward,
14 line of questioning relating to his defenses rather
15 than to the scope of direct examination.

16 THE COURT: I don't necessarily agree with that,
17 the proofs have gone insofar about distinctions between
18 properties or lots with sewer and without sewer so you
19 may answer that.

20 A Yes.

21 Q Do you remember the question sir?

22 THE COURT: The answer was yes.

23 MR. WINTER: OK.

24 THE COURT: That is a proper consideration.

25 Q Then I would be interested in you explaining your

1 conclusion that in the two zones in Edison, excuse me, in the
2 RBB Zone in Edison where if there is no sewer the lot size
3 must be 20000 square feet, why do you feel notwithstanding--
4 strike that--withdraw that question.

5 Do you have expertise to know given a soil condition
6 in which water will percolate, what a minimum field or area
7 for a septic tank to work safely, what is the minimum area
8 required? Do you know that?

9 A I have a general understanding of that area.

10 Q I didn't ask whether you had a general idea in
11 your area of expertise, are you qualified to say under oath
12 what a minimum area is?

13 A In a general sense, specifically I'm not a soils
14 engineer and cannot state with specificity the conditions for
15 specific types of soils but I'm familiar with the literature
16 in a general way.

17 Q Mr. Mallach prior to arriving at your conclusion
18 that in an RBB Zone, where there is no sewer, that it is
19 unreasonable to require a 20,000 foot lot in order to
20 accommodate a workable safe septic system, did you confer
21 with such an expert?

22 A I did not arrive at such a conclusion, sir.

23 Q My question is, before you arrived at a con-
24 clusion that the RBB Zone, where there is no sewer is unduly
25 restrictive, did you confer with a soils expert or a sanitary

1 engineer to determinewhat the minimum size of a septic field
2 should be?

3 A I repeat Mr. Winter, I did not arrive at such a
4 conclusion, my reference was to the RBB Zone with sewer.

5 Q I see. But you have no quarrel with it where
6 there is no sewer?

7 A Inasmuch as the amount of land required to serve a
8 septic system does vary and that there are soil conditions in
9 which 20,000 square feet may berequired, I cannot, on the basis
10 of my information, deal with that directly, it may or may not
11 be a reasonable requirement, in view of the septicsystems.

12 Q Mr. Mallach if I understood your general testimony
13 you said that there were 5 categories of areas where zoning
14 ordinances lent themselves to abuse by unnecessarily
15 restricting housing for low and moderate incomefamilies, 5
16 categories in the zoning area; is that correct sir?

17 A I believe so.

18 Q And then you had a 6th category thatlent itself
19 to abuse but something other than a zoning ordinance. I
20 believe you said the lack of housing authorities, the lack of
21 pursuing federal fund applications and in, and over zealous
22 subdivision requirements were the 6th category.

23 Is that what you said?

24 A Yes, generally speaking.

25 Q Now for the purpose of this question let's go

1 to the last category which you divided into two parts. Is it
2 your opinion that Edison is guilty of any of those practices?

3 A Well, it depends, leaving aside the question of the
4 subdivision ordinances which I believe were determined to be
5 not at issue here--

6 Q Would you keep your voice up, Mr. Mallach.

7 A Leaving aside the question of the subdivision ordinances,
8 which I believe were determined to be not at issue here.

9 Q You believe what sir?

10 A Were determined to be not at issue here.

11 Q OK.

12 A The township of Edison has certainly done certain
13 activities in the area of providing housing for low and
14 moderate income families but I'm not certain that it has done
15 all of the activities that may be feasible or reasonable.

16 Q If you were to be told that right now the
17 housing authority of Edison is before the planning board of
18 Township of Edison with an application to build 864 units of
19 low cost subsidized housing, including but not limited to
20 224 single family homes, 240 apartments for senior citizens
21 and 400 town house apartments for low and moderate income
22 families, would you say that that was pretty well approaching
23 the specific responsibility of the, that Edison should?

24 A Under which program, sir?

25 Q Well, is there such a thing as a, I'm not

1 familiar with the application it has federal numbers to it,
2 maybe you can refresh my recollection.

3 A 235? 236?

4 Q I'm not really sure, I don't, I don't know the
5 federal program nomenclature.

6 THE COURT: Assuming that there is such an
7 application, what would you say?

8 THE WITNESS: I would say it would be worth
9 considering seriously, I would say to determine whether
10 this was, you know, the degree of responsibility or need
11 or whatever would require more detailed study but it
12 would certainly be worth taking into consideration.

13 Q I'm asking this question in context with your
14 6th category which has nothing to do with zoning, would, and
15 what I'm really asking is, is it your opinion, if this be true
16 what you found and what I've told you, if this be true that
17 Edison is not guilty of unduly restricting moderate and low
18 cost housing in the 6th category?

19 A Possibly.

20 Q Let's go to your first category, you said that
21 first category was the prohibition of uses or no provisions for
22 a use.

23 Is it your opinion that the Edison zoning ordinance that
24 you testified about is offensive to legitimate objectives in
25 your category one?

1 A The area in which uses are prohibited, in other words,
2 they're nonconforming, that of mobile home and mobile home
3 parks.

4 Q OK, sir, let's stop there for a moment.

5 You manifested an awareness that Edison does have some mobile
6 homes?

7 A That's correct.

8 Q Is it fair to say that you, your information with
9 regard to them is not precise?

10 A It is not precise.

11 Q Will you assume for the purpose of this question
12 that the Township of Edison presently has within its boundaries
13 5 trailer courts, mobile home parks, call them what you will,
14 containing a total of 285 trailer pads or spaces. Assume
15 further that of the available 285 trailer pads or spaces
16 there are 29 vacancies as of last week. Sir, given this
17 set of facts would you say that Edison has failed to meet its
18 obligation in the accommodation of mobile homes?

19 A I'd say the facts were, lend themselves to a number of
20 interpretations. First, in the Township of Edison, in the
21 Township of Edison there are approximately 20,000 dwelling
22 units.

23 Q 20,000 what sir?

24 A Dwelling units, according to, there were 19,000 and
25 something according to the 1970 census so it's certainly

1 over 20,000 today. So that mobile homes make up slightly more
2 than 1 percent of the number of dwelling units in the Township
3 of Edison.

4 So on this basis one could not argue necessarily the
5 Township of Edison was overwhelmed with mobile homes, leaving
6 aside the issue as to whether the Township of Edison should
7 have additional ones or if so, how many, the first point
8 I'm making is that there is certainly no case here over-
9 whelming case on the basis of this data that the Township of
10 Edison has, is overwhelmed by mobile homes or has as many or
11 more mobile homes than it may need.

12 The second point with regard to the 29 vacant mobile
13 home pads.

14 Now, that is roughly 10 percent of the total number of
15 pads available and it's certainly a high percentage. The
16 question is why and this is the real issue for which you would
17 have to look at the pads themselves and the parks and the
18 condition of the parks and the mobile, the pads may be vacant
19 because the quality, the size, the level of maintenance and
20 the features of the mobile home parks in which they're located
21 is substandard. If that's the case and I don't know whether
22 it is or not, it's strictly hypothetical, then the large
23 number of vacancies in the mobile home parks would not be
24 indicative of a demand or an absence of demand. So that in
25 other words,--

1 Q Excuse me, without adding the facts of the
2 hypothetical that you added, would you concede that given a
3 reasonable operation for the 10 percent vacancy factor
4 you've got a superabundance of mobile home pads, don't you?

5 A Not necessarily.

6 Q Still not necessarily?

7 A No.

8 There are many reasons why you could have a large
9 number of vacancies in a mobile home park and, without
10 adding anything to the original hypothetical I would have to
11 state the vacancy rate in it would not be meaningful.

12 Q And Mr. Mallach, against the possibility that
13 there is no extraneous fact to add to the hypothetical
14 would you still argue that a 10 percent vacancy factor is a
15 large vacancy factor which would indicate that there's
16 plenty of mobile home space in the Township of Edison?

17 A No.

18 Q You still wouldn't concede that.

19 OK, let's not belabor it.

20 Now, you've already testified on your point two that
21 you feel that the standards of development in the Township of
22 Edison are too high and that they exceed the plausible and
23 justifiable reasons for health and safety, with the possible
24 exception of the nonsewered lots.

25 Do we agree on that?

1 A And with the possible exception of the RB Zone.

2 Q OK. Thank you sir.

3 So let's go on to your third classification, you said
4 that the third classification with restrictions such as
5 limiting the number of bedrooms--does the Edison zoning ordinance
6 limit the number of bedrooms?

7 A It does not limit the number of bedrooms.

8 Q So Edison is not guilty of your area three
9 objections?

10 A Well, to a minor degree.

11 Q Does it pain you to concede -- let me finish
12 my question--

13 THE COURT: You don't need to answer that.

14 THE WITNESS: No, the--

15 THE COURT: There are other restrictions--
16 excuse me -- there are other restrictions on multi
17 family housing which you think tend to inhibit low and
18 moderate income?

19 THE WITNESS: Again, even though it's a minor
20 feature as I've argued in other cases that I've used
21 examples, the, their restrictions of multi family house
22 too, in this case 3 acre lots and 200 foot frontages
23 is a restriction.

24 THE COURT: Do you have any quarrel with the
25 density limitations?

1 THE WITNESS: The density limitations are
2 adequate.

3 THE COURT: How about the parking unit
4 limitations?

5 THE WITNESS: I would say as a general rule
6 the parking is adequate.

7 THE COURT: So the only, the only question
8 would be as to the minimum lot size and the minimum
9 frontage?

10 THE WITNESS: In the low rise apartments,
11 yes, sir.

12 THE COURT: All right.

13 Q Lastly then I'll be through.

14 You said that, I don't know how to characterize this
15 in one word but you seem to have an objection to fit within
16 your 5th category that there were zones throughout Edison that
17 were too scattered, in your opinion, to make it conducive
18 to development for low and moderate income housing.

19 Did you say that, sir? If you didn't I'll just--

20 A I don't believe I said that, no.

21 Q I think what you said, I want to clear this up that
22 the distribution of vacant land had an adverse effect on, I
23 can't face it as well as you did--

24 A The point was not that zones were scattered in terms of
25 the distribution was with regard to the, what appears to be

1 a disproportion in the amount of land zoned for, well for
2 industrial uses, you know, on the one hand and for more
3 expensive and more restrictive residential use on the other,
4 versus those uses that are relevant to low and moderate
5 income housing leads.

6 Q I'm glad that I cleared that up. You are not
7 saying that Edison did something with regard to design, to the
8 design of its zoning map which splits up vacant lands?

9 A No.

10 Q So that it would--

11 A I was referring to strictly questions of quantity rather
12 than location.

13 Q OK, I'll be through in a minute.

14 Do you allow that there are certain physical features,
15 geographical features and improvement in an area that would
16 lend special reasons for certain types of zoning?

17 A Yes.

18 Q Are you aware that the Raritan River, as it
19 courses along one of Edison's boundaries is channelized
20 and is being deepened and qualifies as a deep water port in
21 the vicinity of the Raritan Arsenal?

22 A I'm familiar with that.

23 Q What used to be the Raritan Arsenal?

24 A Yeah.

25 Q Would that in your opinion, Mr. Mallach, be a

1 special reason to zone what's now known as the Raritan
2 Center and the lands along the Raritan, along the deep water
3 channel to take advantage of the industrial, the
4 industrialization and the availability of shipping to come right
5 up to the area?

6 A To a degree it would be one factor.

7 THE COURT: It is a factor?

8 THE WITNESS: It is a factor.

9 Q Is it an important factor, sir?

10 A That would depend on the other factors, it--

11 Q What other factors?

12 A It, the amount of, the amount of land zoned for
13 industrial use been based on, not only on the factors that are
14 conducive to industrial use but on the demand for other kinds
15 of land uses as well, housing, particularly.

16 Q You need a deep water port for housing,
17 Mr. Mallach?

18 A Well, you don't need a deep water port for housing as a
19 general rule, Mr. Winter, for example one issue that, the question
20 is, how much land around and beyond and behind the deep water
21 port one zones for industry would be the issue.

22 Q Well, I would agree that that's a question but
23 I don't think that that's what you said initially.

24 A I'm saying--

25 THE COURT: Excuse me but without going at

1 length you're admitting that this is a factor?

2 THE WITNESS: Certainly.

3 THE COURT: Which, by itself favors zoning for
4 industry?

5 THE WITNESS: Yes.

6 THE COURT: All right.

7 Q Thank you.

8 I would put the same question to you with regard to
9 railroads. Are you aware that Edison Township is criss-crossed
10 by three major railroads?

11 A I didn't know it was three but I knew there was quite a
12 few.

13 Q Yes, there are three. Is the fact that Edison
14 is served by three major railroads a factor, an important
15 factor that would justify an unusually large allocation of
16 land to industry?

17 A I doubt it.

18 Q You don't believe so?

19 A Not unusually large, no.

20 Q Are you aware of the highway network that
21 courses through the Township of Edison as well as the
22 Garden State Parkway which misses it by just a couple of
23 feet?

24 A Yes, I am.

25 Q Are you aware that it's served by more than

1 7 miles of the New Jersey Turnpike?

2 A Again, I'm not aware of the quantities but I'm aware that
3 it's served by the New Jersey Turnpike.

4 Q Almost 9 miles of U.S. Route 1, that these two
5 major roads are joined with 287 and 440?

6 A Yes.

7 Q Do you agree that these major highway arteries?

8 A They are major highway arteries.

9 Q In your opinion, is this a factor that would justify
10 a larger than normal allocation of land in the industrial
11 zones?

12 A In and of themselves I would say they would justify it,
13 I think certainly these are all factors that would be taken
14 into consideration in zoning.

15 Q Lastly, Mr. Mallach, when were you retained
16 by the plaintiffs?

17 A I believe I--

18 MR. SEARING: I object your Honor, that question
19 has been covered on cross-examination during voir
20 dire.

21 THE COURT: I think it was on voir dire,
22 Mr. Winter.

23 MR. WINTER: I don't recollect, I don't know how it
24 could be harmful, why the plaintiffs would be sensitive
25 about the date of his hiring.

1 THE COURT: All right.

2 A Early in December.

3 Q Of what year, sir? A 1975.

4 Q Notwithstanding that Mr. Mallach, your, the
5 exhibit that you testified to on direct examination, P-105
6 in evidence is based upon work that's done by the Middlesex
7 County Planning Board and also based on information contained
8 in your exhibit 104, I believe it is--yes--and 104 tells us
9 that all of the information and data that these people used
10 and presumably yourself, was based on an Edison Township
11 zoning ordinance dated March 30, 1970. Now you have Exhibit
12 P-116 in front of you, would you be good enough to turn to the
13 last page, please.

14 Do you see under the word attest, Arthur J. Tucker, would
15 you read that sentence?

16 A "Adopted by the municipal council on December 27th, 1972
17 and approved by the mayor on December 28th, 1972."

18 Q Notwithstanding that, Mr. Mallach--strike that--
19 did you know that the ordinance which was recently placed in
20 evidence this morning or excuse me yesterday was the result of
21 a master plan, a major review of the zoning of the
22 municipality?

23 A I would like to think so.

24 Q You wouldn't be surprised if I told you that
25 were the fact?

1 A No.

2 Q But when all the studies were made nobody, nobody
3 looked at Edison's '72 ordinance, did they?

4 A I looked at the Edison '72 ordinance, all of my
5 analysis of Edison is based on the '72 ordinance.

6 MR. WINTER: I have no further questions.

7 THE COURT: All right, Mr. Searing.

8 MR. SEARING: Your Honor, I have a series of,
9 I have a, two series of documents to introduce or--

10 THE COURT: P-119 and P-120 for identification.

11 (Documents received and marked P-119 and
12 P-120 for identification.)

13

14 A L A N M A L L A C H continued.

15 DIRECT EXAMINATION BY MR. SEARING:

16 Q Mr. Mallach, I show you P-119 and ask you to
17 identify it, please.

18 A It's a document entitled zoning ordinance of the Borough
19 of Hemetta.

20 Q I ask you to identify P-120 please.

21 A P-120 is a summary of zoning ordinance provisions of
22 the Borough of Helmetta prepared by me.

23 MR. SEARING: Your Honor I would like to move
24 these into evidence at this time.

25 (Whereupon legal argument was heard by the court.)

1 (Whereupon documents P-119 and P-120 heretofore
2 marked for identification now marked in evidence.)

3 Q Mr. Mallach, would you describe for us please the
4 principal features of this zoning ordinance?

5 A The Borough of Helmetta zoning ordinance contains 3
6 zones, single family residential zone, a business zone and an
7 industrial zone.

8 In the single family residential zone the minimal
9 frontage is 150 feet and the minimum lot depth is 150 feet,
10 resulting in a minimum lot size of 22,500 feet or slightly
11 over half an acre. Even though it's not specified as such in
12 the body of the ordinance, the minimum floor area for dwelling
13 units is 1000 square feet.

14 The business zoning includes general language permitting
15 residential uses of single family homes in this case on lots
16 of 100 by 100, I believe, 10,000 square.

17 The language in the industrial zone is unclear and it, I
18 suspect it could be read either to include or exclude
19 residential uses. Apartments and mobile homes are not, are
20 not provided for in the ordinance. According to the data
21 provided by the department of community affairs on vacant
22 and developable land there are 32 acres available in the
23 single family zone and there are 26 acres available in the
24 industrial zone for a total of 58 vacant and available
25 acres.

1 Q Thank you Mr. Mallach.

2 Now what if any of the features you have described have
3 an effect on the provision of housing for low and moderate
4 income persons?

5 MR. PLACHNER: Your Honor, I would object to
6 the question, what would have an effect, I think the
7 question here and at issue is would it have an adverse
8 effect, anything will have an effect I suppose.

9 THE COURT: You have framed the question with
10 reference to other municipalities in terms of an un-
11 favorable or adversely affecting.

12 MR. SEARING: All right.

13 THE COURT: Is that the question you wish to
14 ask?

15 MR. SEARING: Yes, it is, yes, it is.

16 THE COURT: All right, do you understand
17 that?

18 THE WITNESS: Yes, sir.

19 THE COURT: All right.

20 A There are a number of features in this ordinance,
21 one, the ordinance prohibits multi family dwellings and mobile
22 homes. These are both housing types of some importance in
23 meeting low and moderate income housing needs.

24 Secondly, in the residential zone of the Township the
25 lot size requirement, the frontage requirements and the floor

1 area requirements are all greater than are reasonable
2 minimums for these characteristics. There are no residential
3 zones in the borough which provide for modest lots, floor areas
4 or frontages.

5 Finally, roughly half of the land in the area of the
6 borough is zoned for industrial purposes which is most likely
7 an excessive amount of zoning for industrial purposes and the
8 limitation on the amount of residential development that's
9 possible.

10 Q Does this municipality have a public housing
11 authority?

12 A No, it does not.

13 MR. SEARING: Your Honor if I may have one
14 minute.

15 Your Honor we have no further questions.

16 THE COURT: Cross-examine, Mr. Plechner.

17
18 CROSS-EXAMINATION BY MR. PLECHNER:

19 Q Mr. Mallack, have you ever been in Helmetta?

20 A Yes.

21 Q Have you driven around the town and seen the town?

22 A Yes.

23 Q Kind of a small town, isn't it?

24 A Yes.

25 Q And in your general testimony you listed the various

1 criterias that you thought had negative impact, prohibition
2 of certain types of housing items raising costs, bedroom
3 restrictions, now distribution of vacant land and extremely
4 broad discretionary provisions.

5 Don't you think there are times, necessities for some
6 of these items?

7 A There may be necessities from time for certain of these
8 items, I doubt very much that there are situations where there's
9 necessity for an ordinance which is devoted largely to such
10 provisions and makes no parallel provision for housing
11 needs.

12 Q Now, let's go into Helmetta. What do you con-
13 sider, you said that you feel that the lot sizes in Helmetta,
14 I think the smallest residential lot size you were able to
15 find in the ordinance, 100 by 100. Is that correct?

16 A In the business zone, that's correct.

17 Q Yes, business zone incidentally consists of
18 most of Main Street, doesn't it?

19 A Not to the best of my knowledge, I have not seen a
20 zoning map.

21 Q And--

22 A Not provided to us.

23 Q I see. You have been in Helmetta, haven't
24 you?

25 A Yes.

1 Q You're familiar with Main Street?

2 A I'm familiar with Main Street.

3 Q It's a business zone, right?

4 A Well, I do not know to my knowledge that it's a business
5 zone.

6 Q Well, let's assume for the moment it's a
7 business zone, how much business is on Main Street in
8 Helmetta?

9 A Relatively little.

10 Q There's one store, isn't there?

11 A A general store, I don't remember any other stores.

12 Q I think that's the business, there's a gas
13 station down one end of town too; is that correct?

14 A I'll take your word for it, I don't remember the gas
15 station specifically.

16 Q And most of Main Street is residences, isn't it,
17 at least on the one side of the street, the other side you've
18 got a factor, is that correct?

19 A That's correct.

20 Q And you've got some churches, you've got a
21 school, you've got a municipal building and a post office, isn't
22 that correct?

23 A That's correct.

24 Q We even have a phone booth on Main Street, is that
25 right, only phone booth in town?

1 THE COURT: Well, if you know, say if you
2 don't.

3 A I do not have personal knowledge of the phone booth.

4 Q Now Mr. Mallach, that's suitable for residences,
5 isn't it, Main Street in Helmetta, nothing wrong with
6 zoning that for residences?

7 A By and large, yes.

8 Q Now, what size lot do you consider to be an
9 appropriate size lot for Helmetta?

10 A I wouldn't venture to suggest a specific appropriate
11 size lot for Helmetta.

12 Q Well you feel that the lot size in the ordinance
13 are inappropriate; is that correct?

14 A It suggests, yes, that's correct.

15 Q So you must have in mind something that would be
16 appropriate don't you?

17 A In relative terms, yes.

18 Q OK, in realtive terms, what would be appropriate?

19 A Well, what I stated specifically was that the lot
20 size in the residential zone is not appropriate, is excessive.
21 I would say as a general statement I believe that for the
22 production of modest housing, while maintaining reasonable
23 standards, lot sizes between 5 and 10,000 square feet are
24 reasonable, ball park area if you will.

25 Q For Helmetta? A I believe the

1 specific size for Helmetta was, should involve somewhat
2 more scrutiny that I've done up to this point but I would
3 say most probably, yes.

4 Q But you don't know?

5 A Not specifically.

6 Q Do you know that there is no sewer and no
7 water in the Borough of Helmetta?

8 A I'm aware of that.

9 Q And do you know that Helmetta is a, basically on
10 low swampy land?

11 A I do not know that the entire borough is.

12 Q Well, the one side of the borough is bordered
13 by Manalapan Creek, is it not?

14 A Yes.

15 Q And the other side has what, before it was
16 drained was Helmetta Pond, does it not?

17 A I do not know.

18 Q As a matter of fact a large portion of the borough
19 is an important aquifer, isn't it?

20 A That was asserted by the borough, I do not know that to
21 my knowledge.

22 Q Did you study the master plan of the borough?

23 A No.

24 Q You study any maps on the borough in the county
25 planning board?

A No, I did not.

1 Q Study of any of the applications for grants of
2 money to purchase 170 some acres from the Borough of
3 Helmetta for a park in Middlesex County?

4 A I'm familiar with the application but I did not study
5 it specifically.

6 Q Wasn't part of the basis of that acquisition to
7 protect the wetlands that were being taken?

8 A I do not know.

9 Q Now if all of what I said is true and, do you
10 still think that 60 by 100 or 5000 square foot lots would be
11 appropriate in the Borough of Helmetta?

12 A I believe perhaps one consideration should be the
13 provision of a sewer system to facilitate those lots.

14 Q And without sewer and without water it would
15 present a health hazard to build on small lots, wouldn't it?

16 A It may.

17 Q And in fact isn't that a problem in the only
18 development in Helmetta, Bakerville, are you familiar
19 with Bakerville?

20 A I know vaguely what it is, I'm not familiar with the
21 specific circumstances of that development.

22 Q And those are 75 by 100 foot lots, aren't
23 they?

24 A I do not know.

25 Q Now sir, you say Helmetta does not have

1 a housing authority, think Helmetta can afford a housing
2 authority? A I don't see why not.

3 Q Well, let's look into it. Incidentally,
4 you are the author of this paper that's marked DD-1 for
5 identification, are you not, sir?

6 A That's correct.

7 Q I wonder if you could tell us where it was published
8 then?

9 A It hasn't been published yet, it's the text of, it's
10 the text of remarks given at a program at the Rutgers Newark
11 Law School which is scheduled to be published later this
12 year.

13 Q I see. Now Page 5 of that in discussing the
14 case of a corporation, the Township of Montgomery you state
15 in part, the tract in question is located in Somerset County
16 and then you go, go on to say, to believe that low and
17 moderate income housing will come into being in large numbers
18 in such an area and there you're talking about the wealth
19 of the area, without explicit provision for housing by the
20 municipality is to believe in fairies; is that correct?

21 A That's correct.

22 Q Now in Helmetta, I don't know as we believe in
23 fairies, we don't exclude them but don't think the same
24 thing could be said of Helmetta that, to believe that low and
25 income housing could come into being in large numbers without

1 help from somewhere outside of the municipality would be to
2 believe in fairies?

3 A Yes and no. I think that's a more complicated question
4 than can be answered straightforwardly. In the article with
5 particular reference to the Taberna vs. Montgomery case, we
6 are dealing with a tract which was of an unusual demand
7 qualities and the issue in question was that because of the
8 nature of the characteristics of this tract, this location in
9 this community that the zoning was not, could not be the
10 entire means of providing low and moderate income housing needs.
11 In the case of Helmetta there is a possibility, there may be
12 possibilities that if the zoning were appropriate, more
13 modest housing, single or multi family could be constructed
14 in the Borough of Helmetta, certainly there's no question that
15 the availability of outside subsidiaries would increase the
16 feasibility of that, would make that kind of housing
17 accessible to more people and so on. But it would not
18 necessarily be a sinequanon.

19 Q Do you think that the Borough of Helmetta could
20 afford to creat a housing authority?

21 A I've said that I know of no reason why not.

22 Q How about financially, money?

23 A The cost, the direct costs to the Borough of Helmetta
24 in creating a housing authority would not be great.

25 Q Let's take a look at the Borough of Helmetta. Are

1 you familiar with the exhibit that was marked in evidence as
2 P-50A?

3 A I'm generally familiar with it.

4 Q Could you turn to Page 1 of that exhibit.

5 Now calling your attention to the population figures for the
6 Borough of Helmetta, it shows the Borough of Helmetta with a
7 population of 955; is that correct?

8 A That's correct.

9 Q OK then. Can we turn to Page 17 of that
10 document.

11 Now on Page 17 it shows that the Borough of Helmetta
12 has a total of 301 housing units of which 276 are single
13 family and 25 are multi families; is that correct?

14 A By the definition multi family is 2 or more units.

15 Q That's your definition, is it not?

16 A I believe it was Mr. Sullivan's definition.

17 THE COURT: It's the definition you're
18 accepting too, isn't it?

19 THE WITNESS: I think it is, yes.

20 THE COURT: All right.

21 Q It's 276, one, 25 multi, right?

22 A Yes.

23 Q I then call your attention to Page 18 and that
24 shows for the Borough of Helmetta that 193 units are owner-
25 occupied and 101 units are renter-occupied; is that correct?

1 A Correct.

2 Q That's a rather substantial percentage of renter-
3 occupied in a small town, isn't it?

4 A No, it's about average.

5 Q About average. We turn to Page 26 and that
6 gives the value of housing and it shows 180 homes in the
7 Borough of Helmetta.

8 Now if you would calculate sir, I wonder if you could
9 tell us how many homes at a value of under \$25,000 in the
10 Borough of Helmetta?

11 A I think it's about, it's 155.

12 Q That's correct, 155.

13 Now how many homes had a value of over \$25,000 in the
14 Borough of Helmetta?

15 A 25.

16 Q So the vast majority were in the lower priced
17 category; is that correct?

18 A That's correct.

19 Q I would also call your attention now to Page 32
20 of this document and gives an average value for a home in the
21 Borough of Helmetta of \$19,443; is that correct?

22 A That's correct.

23 Q That is the lowest average home value in the entire
24 County of Middlesex, is that correct?

25 A That's correct.

1 Q That is substantially below the home average, home
2 value in the City of New Brunswick or the City of Perth Amboy;
3 is that correct?

4 A Not substantially below, slightly below.

5 Q Well, what's the City of New Brunswick average?

6 A \$21,331.

7 Q And the City of Perth Amboy?

8 A \$20,590.

9 Q And the Borough of Helmetta?

10 A \$19,443.

11 Q Quite a bit below for an average, isn't it?

12 A No, slightly below for an average.

13 Q I call your attention to Page 27 and this renter-
14 occupied housing and the the rents charged, does it not?

15 A That's correct.

16 Q Could you tell us and, that lists a total of
17 99 units, I'll give you some time if you want to do the
18 arithmetic.

19 A That's correct.

20 Q Now of those 99 units how many of them were rented
21 for under \$100 a month?

22 A 79.

23 Q Pretty substantial number, isn't it?

24 A It's a large proportion, yes.

25 Q And to continue, 11 rented between 100 and 149;

1 is that correct? A Correct.

2 Q And only 6 out of the 99 rented at over \$150?

3 A That's correct.

4 Q And 3, there was no cash value as to rented out;

5 is that correct?

6 A That's correct.

7 Q Would you turn to Page 33 now, that page gives
8 you the average monthly rent of renter-occupied housing, 1970,
9 does it not? A That's correct.

10 Q What was the average for the Borough of Helmetta?

11 A \$69 a month.

12 Q That's by far the lowest in the entire county,
13 isn't it?

14 A Yes, it is.

15 In this case the distinction is substantial.

16 Q The next lowest is what town? Call your attention
17 to Carteret.

18 A Carteret.

19 Q OK. And what is the figure there?

20 A \$93.

21 Q And could you give us the figure for New Brunswick
22 and Perth Amboy?

23 A New Brunswick is \$119 and Perth Amboy is \$100.

24 Q So Helmetta is not much more than half of New
25 Brunswick, for instance; is that correct?

1 A Roughly, yes.

2 Q Oh, incidentally, I don't think I asked you,
3 on Page 1, though, where it gave the total population of
4 Helmetta that makes Helmetta the smallest in the county, does
5 it not?

6 A That's correct.

7 Q So we know from these figures that Helmetta is
8 the smallest town in the county, is that correct and you know
9 of your own knowledge that land area, it's the smallest as
10 well, am I correct?

11 A Believe so, yes.

12 Q It has the lowest value per home of any town in the
13 county on single family homes owner-occupied; is that correct?

14 A That's correct.

15 Q It has by far the lowest rental on any rental
16 unit in the county; is that correct?

17 A Lowest average rental, yes.

18 Q Now, incidentally, I'd like then like you to turn
19 to Page 38 and give us the average, the mean and the median
20 per family income for families in the Borough of Helmetta.

21 A Borough of Helmetta, the mean income is \$10,365,
22 this is 1970 and the median was \$10,168.

23 Q Now the mean income for the Borough of Helmetta is
24 the lowest in the county, is it not?

25 A That's correct.

1 Q And the median income is the third lowest in the
2 county, is that correct, for families?

3 A That's correct.

4 Q And for unrelated persons, could you give us the
5 figures there, there are 66 unrelated individuals; is that
6 correct?

7 A The mean is \$2,436 and the median is \$2,260.

8 Q Again the mean is the lowest in the county; is
9 that correct? A That's correct.

10 Q And is substantially lower than any other mean
11 income in the county; is that correct?

12 A With the exception of New Brunswick.

13 Q OK. What's New Brunswick?

14 A \$2,807.

15 Q So that's even \$400 a year more, is it not?

16 A Roughly.

17 Q And the median income is the third lowest; is
18 that correct?

19 A That's correct.

20 Q And is in fact lower than the City of Perth
21 Amboy; is that correct? A That's correct.

22 Q Now sir, taking into consideration all these
23 facts that we now know about the Borough of Helmetta,
24 do you still think the Borough of Helmetta could afford to
25 build housing, substantial housing and create a public housing

1 authority? A Certainly or certainly no more or
2 less reason than prior to the presentation of these
3 statistics.

4 Q In other words, you don't think that the financial
5 capacity of a town has anything to do with its ability to
6 create housing?

7 A I think there's a factor, I don't think the cost involved
8 in creating a public housing authority are such that they really
9 have a bearing on the financial capacity of the town.

10 Q What did you think the costs are for building
11 that housing authority?

12 A The costs associated with creating a public housing
13 authority are generally nominal ones, the cost of the housing
14 is covered entirely by the federal government.

15 Q What about the cost of the employees?

16 A The cost of operation, the employees are the people
17 involved in operating and maintaining the housing and those
18 costs can be generally absorbed from the rental of the
19 housing units.

20 Q What about the cost of the land and the tax
21 abatements?

22 A The cost of the land is an illegible cost for the
23 federal assistance, the cost, the tax abatements as such have
24 no cost, they don't represent a direct payment by the
25 municipality.

1 Q They represent a reduction in income in the
2 municipality, do they not?

3 A They represent a reduction from what the hypothetical
4 income would be, if there were no tax abatements.

5 Q In other words, if they are taken off, the town's
6 getting less income than it did before?

7 A No, it's not less income because the point is that this
8 development that we're, the hypothetical public housing
9 development would, did not, would not exist, except for the
10 tax abatement so there would be no income in the alternative.

11 Q I don't think I understand that.

12 A If you build a public housing development, granting
13 partial tax abatements is a condition of getting the federal
14 funds that those units would not exist if the municipality had
15 not granted the partial tax abatement.

16 Q But the land would exist and would pay taxes,
17 right?

18 A Yes, the order are that the amount, the municipality
19 would receive under tax abatements would still be considerably
20 greater than the amount the municipality receives previously
21 from the raw land.

22 THE COURT: Court will recess at this
23 time.

24 (After a brief recess the trial continued.)

25 THE COURT: Yes, you have anything further on

1 cross?

2 MR. PLECHNER: Quite a bit, your Honor,
3 yes.

4 (Whereupon a legal argument was heard by
5 the court.)

6 Q Mr. Mallach, how many units would you place in
7 the Borough of Helmetta?

8 MR. SEARING: Your Honor, he did not testify
9 as to any fair share plans.

10 THE COURT: The objection is sustained.

11 Q Mr. Mallach, is there a need for a public housing
12 authority in every municipality?

13 A I think, without going so far as to say there is need
14 I would argue that there should be a presumption that it would
15 be needed unless the municipality can demonstrate that the
16 needs, that it would meet can be adequately met through other
17 means.

18 Q Are there funds available to place a public
19 housing authority with low cost housing in every town, hamlet
20 in the state?

21 MR. SEARING: Your Honor--

22 THE COURT: That's the same question. The
23 objection is sustained.

24 MR. PLECHNER: No, it's not your honor, I asked
25 him are there funds available for it.

1 THE COURT: Objection is sustained.

2 MR. PLECHNER: Your Honor then I ask that
3 Mr. Mallach's testimony concerning public housing
4 authorities in Helmetta be stricken.

5 THE COURT: That is denied.

6 Q Mr. Mallach, are there funds available for every
7 municipality in Middlesex County to construct--

8 THE COURT: You don't need to answer that,
9 that's on the same point where the objection has
10 been sustained, Mr. Plechner.

11 MR. PLECHNER: Your Honor, I must object,
12 I am attempting to cross-examine to indicate why
13 the Borough of Helmetta cannot construct low cost
14 housing and cannot have--

15 THE COURT: I've already indicated that I think
16 that would be part of your affirmative case.

17 MR. PLECHNER: Your Honor, I think also is
18 very valid cross-examination.

19 Q Now Mr. Mallach, if you were to locate low cost
20 public housing and you couldn't locate it in every municipality,
21 what factors would you consider in locating the same?

22 A I think there are a large number of factors to be con-
23 sidered in terms of principally, I think the availability of
24 land, the cost of land, the location of the people who may need
25 the housing, the convenience to employment, those are some of

1 the--

2 Q Transportation, would that be a factor?

3 A Well, access, generally.

4 Q Do you know of any public transportation to and
5 from the Borough of Helmetta?

6 MR. SEARING: This is clearly beyond the
7 scope of direct.

8 THE COURT: Objection sustained.

9 Q Mr. Mallach, you indicated that you felt there was
10 an adverse effect because there was a prohibition on multi
11 family housing in the Borough of Helmetta; is that correct?

12 A That's correct.

13 Q Do you know of any areas in the Borough of
14 Helmetta sufficient to support apartment housing, multi
15 family housing?

16 MR. SEARING: Your Honor, I have to object.

17 THE COURT: I can allow that question, you
18 may answer that.

19 A I have not done a site study but I note that under the
20 DCA data there are 32 acres in, of land that's been designated
21 residential and by and large the conditions required to support,
22 as you put it, multi family housing are not substantially
23 different than the conditions that are required to support
24 single family housing.

25 Q Aren't there differences in conditions in sewer

1 water?

2 A Well, one of the things that you can do with multi
3 family housing development is to provide a package plan.

4 Q Does the environmental protection agency permit
5 such package plans for single, multi family developments?

6 A Under appropriate conditions, yes.

7 Q What are the conditions?

8 A Well, basically the principal issue then is to evaluate
9 where the effluent will be drained and its effect on the
10 quantity and quality of the water, in whatever stream or
11 river the effluent drains into.

12 Q Now, considering the location of Helmetta on top
13 of an important aquifer, did you think they would permit it?

14 A Quite possibly.

15 Q Do you have any information to lead you to believe
16 they would?

17 A I have no specific information on this point.

18 Q And doesn't the creation of a, or the necessity for
19 a package plan increase the cost of housing?

20 MR. SEARING: Your Honor, this is again part
21 of an affirmative case and it's repetitious.

22 THE COURT: Sustained.

23 MR. PLECHNER: Your Honor, I'd like to be heard
24 on that, if I may.

25 (Whereupon argument was heard.)

1 Q Incidentally, Mr. Mallach, do you know of anyone
2 who has attempted to build multi family housing in the Borough
3 of Helmetta?

4 A I have no specific information on that.

5 Q Now, you also indicated that the Borough of
6 Helmetta prohibits mobile homes; is that correct?

7 A Yes.

8 Q Now, is it not true that mobile homes are an
9 extremely expensive way to have low and moderate income
10 families?

11 A I believe this issue came up sometime before. I, the
12 argument to that effect is that the nature of mobile home
13 financing is of a short term nature and that there's some
14 argument that they have a long, they're more expensive in the
15 longrun. This is really not relevant to the immediate
16 consumer of cost, short run consumer cost for mobile homes in
17 which case they are not an expensive form of housing in the
18 short run.

19 Q But it is relevant to planning, isn't it?

20 A It's a relevant consideration in a sense.

21 Q And isn't it true that it is very expensive
22 to heat and to cool mobile homes?

23 A I do not know.

24 Q And isn't it a fact that mobile homes become
25 obsolete in a relatively short period of time?

1 MR. SEARING: Your Honor, I object, again part
2 of the defendant's case.

3 THE COURT: No, provision for mobile homes is
4 part of your direct in this matter so I will listen.

5 A Think there's been some history in that regard, I think
6 the quality of mobile homes is being upgraded so that it's
7 not necessarily will not necessarily be true in the future.

8 Q But it is true now?

9 A It's changing, at present.

10 Q Now sir you also indicated that one half of the
11 land in the Borough of Helmetta is zoned for industrial
12 purposes; is that correct?

13 A One half of the land indicated by the state as being
14 vacant and available, roughly, yes.

15 Q Yes. You're talking then in terms of the 32
16 acres and 26 acres?

17 A That's correct, slightly under one half.

18 Q Now, there is one industry in the Borough of
19 Helmetta; is that correct?

20 A One major industry.

21 Q And that is the Helm Company?

22 A That's correct.

23 Q And isn't also a fact that the only land in the
24 entire borough that is zoned industrial belongs to the Helm
25 Company? A That I have no

1 information on.

2 Q Well, again if it were true that all of the
3 land in the borough that was zoned industrial belonged to the
4 Helm Company and the Helm Company was industry, sought to use
5 it for those purposes, wouldn't that be a valid zoning use?

6 A I think that's a series of assumptions, it's my
7 impression that a great deal of the residential land in the
8 borough is also owned by the Helm Company.

9 THE COURT: You're not answering the question.

10 THE WITNESS: I'm sorry, it may be, I think
11 there are a lot of other factors involved.

12 Q Now sir, isn't it also a fact that most of the
13 vacant developable land in the Borough of Helmetta is in small
14 unrelated parcels?

15 A Apparently not, since the criteria used by the DCA study
16 tends to exclude that land.

17 Q Well, have you read the 1975 master plan of the
18 Borough of Helmetta? A I believe I stated
19 earlier that I had not.

20 Q Well, are you familiar with an underdeveloped
21 24 acre present master subdivision in the southwest corner of
22 the borough?

23 A No.

24 Q Would it surprise you if a master plan in-
25 dicated that most of this land was other than company held land,

1 was scattered in small parcels and diverse ownership, would
2 that surprise you?

3 A I'm not familiar with the source so I guess it would
4 surprise me.

5 Q The source being the master plan.

6 A I can't judge it.

7 Q I see. So you don't really know whether there are
8 any large lots other than the company owned land or if it's
9 diverse small lots?

10 A I have no first hand knowledge of that.

11 Q Now sir are you familiar with the plans for
12 Jamesburg Park?

13 A No, not in detail, I'm aware
14 that there are such but I'm not familiar with them.

15 Q Well can I show you a map of the County of
16 Middlesex that contains on it a portion depicting the Borough of
17 Helmetta. Can you locate the Borough of Helmetta on the
18 map?

19 A Yes.

20 Q Now the map indicates Jamesburg Park, does it
21 not?

22 A That's correct.

23 MR. SEARING: Your Honor, I object.

24 THE COURT: This appears to bear upon available
25 land, Mr. Searing.

I'll allow it.

26 Q Now, visually examining the Borough of Helmetta
27 and the portion in green that is labeled Jamesburg Park,

1 approximately what proportion of the borough seems to be
2 involved in the taking for the park?

3 A This would have to be a very, very rough guess but
4 roughly up, a third or somewhat less of the borough appears
5 to be in the proposed of Jamesburg Park.

6 Q And if I were to tell you that the borough
7 contains 512 acres and that the taking of the, for the borough,
8 for the Jamesburg Park is approximately 172 to 176 acres, would
9 that sound reasonable to you?

10 A That seems reasonable from this map.

11 Q And from looking at the map doesn't that appear
12 to be mostly vacant land?

13 A Well, actually not, judging from the map, there seems
14 to be three sections in--

15 Q I mean the part in Helmetta, I'm sorry.

16 A No, I mean the part in Helmetta, the area, this would be
17 south of Washington Avenue, appears to be--is this an
18 actual subdivision?

19 Q These are paper streets.

20 A There's no actual development, then?

21 Q Right and they don't lead to anything. See, there's
22 no road leading into them.

23 A Then the second section seems to be about half in
24 Helmetta Pond, and then the third section is probably vacant,
25 yes.

1 Q So basically looking at it would it be fair to
2 say that the entire parcel is vacant?

3 A Largely, yes.

4 Q And Jamesburg Park is more recent than the
5 figures you have in the column entitled DCA, is it not?

6 A That's correct.

7 THE COURT: Do you have any idea, for instance
8 where the 32 acres, vacant in the P-104, fit into the
9 proposed taking?

10 THE WITNESS: I really don't.

11 THE COURT: I see.

12 Q For that matter the 26, do you have any idea where
13 they would fit in?

14 A No, except to the degree that I assume it's much, largely
15 what you mentioned earlier as being owned by the Helm Company.

16 Q Would you agree then that about 156 of the 176
17 acres are owned by the Helm Company?

18 A I don't have any information on that.

19 Q Now, sir, you indicated before, did you not, that
20 housing could be built, single family housing in the business
21 zone; is that correct?

22 A That's correct.

23 Q What about the industrial zone?

24 A As I mentioned the industrial zone, the language in the
25 industrial zone does not specify residential uses but there

1 is language which suggests it might include residential uses.

2 Q And sir, you have been through the Borough of
3 Helmetta, you've been down Main Street?

4 A Yes.

5 Q Are you familiar with the so-called company
6 housing on--

7 A On the south side of the plant?

8 Q Right. A Yes.

9 Q Now that's in an industrial zone, is it not?

10 A I have no idea, we weren't provided a zoning map.

11 Q If I were to represent to you that that was an
12 industrial zone, that would indicate to you that there is
13 single family houses, substantial single family houses in
14 industrial zones? A Well, existing single family
15 housing, I, there may well be.

16 Q Now sir you indicated that you felt various,
17 I think it was three items you found in the zoning ordinance
18 had an adverse effect on low and moderate income housing, I
19 presume families; is that correct?

20 A Yes.

21 Q Wouldn't you say that a substantial proportion of
22 the population of the Borough of Helmetta are in fact low and
23 moderate income families?

24 A I suspect so, yes.

25 Q So the Borough of Helmetta is in fact today

1 housing a substantial portion of low and moderate income
2 families; is that correct?

3 A Yes.

4 Q Don't you think it's handling its share or perhaps
5 more than its share?

6 A I don't know, I'm not entirely sure what the share would
7 be but I think given, if there is a reasonable amount of vacant
8 land in Helmetta I would think that its fair share should in-
9 clude at least some provision for future low and moderate
10 income housing as well as the existing stock.

11 Q Well, economically it's in about the same
12 category as New Brunswick and Perth Amboy, isn't it?

13 A Well, the average family income is not, is not very
14 much greater, no, in that sense.

15 Q And the average housing cost is lower, isn't it?

16 A Yes.

17 Q Incidentally, if a trailer park were permitted in
18 an area where there is no sewer and now water they would create
19 the same, they would have the same problems with sewer and water
20 as one family houses, wouldn't they?

21 A That's possible, yes.

22 Q So that even if they were permitted you would need
23 a sufficiently sized lot to install septic systems and wells;
24 is that correct?

25 A Or a package plan or extension of the existing, of existing

1 sewer lines.

2 Q Is there sufficient vacant land in the Borough of
3 Helmetta to make it economically feasible to put in trailers
4 and install a package plan?

5 A There may be.

6 Q And wouldn't the addition of, digging wells which
7 would be necessary to obtain water, wouldn't that raise the
8 cost of housing beyond the means--

9 MR. SEARING: I have to object to this, I'm
10 sorry, Mr. Plechner for interrupting.

11 THE COURT: We're not getting into costs,
12 Mr. Plechner.

13 (Whereupon legal argument was heard by
14 the court.)

15 THE COURT: All right, Thursday morning,
16 February 26, 1976, 9 o'clock.

17 MR. SEARING: Your Honor, the next municipality
18 in order is I believe Highland Park.

19 I have two documents that I would like to mark
20 for identification.

21 THE COURT: P-121 and 122.

22 (Documents received and marked P-121 and P-122
23 for identification.)

24

25

1 A L A N M A L L A C H continued.

2 DIRECT EXAMINATION BY MR. SEARING:

3 Q Mr. Mallach I show you a document marked P-121,
4 ask you to identify it?

5 A This document is known as the zoning ordinance of 1970
6 of Highland Park.

7 Q And would you identify P-122?

8 A This is a summary of zoning ordinance provisions of the
9 Borough of Highland Park prepared by me.

10 MR. SEARING: Your Honor if I may have a few
11 minutes to show these to Mr. Lerner.

12 THE COURT: All right.

13 MR. SEARING: Your Honor at this time I would move
14 P-121 and P-122 into evidence.

15 MR. LERNER: I only have one objection to P-122,
16 I'm sorry I didn't tell Mr. Searing. It's a statement
17 on the bottom of P-122 that says, data on vacant land
18 not available and I believe that the figures were provided
19 to the plaintiffs in our answers to interrogatories.

20 MR. SEARING: There was a figure of 19.5 acres.

21 MR. LERNER: That's it. I mean, you chose the
22 figures that we gave you, each, you asked the question in
23 the interrogatory was give the land area in each zone by
24 acres and indicate what is vacant. We indicated all the
25 land zones and the only vacant land was 19.5 and you

1 chose to use all our acreage figures which Mr. Mallach
2 lists as the land but you did not use the 195?

3 MR. SEARING: All right, as now understood that
4 figure would be accepted by the plaintiffs.

5 MR. LERNER: Thank you.

6 THE COURT: All right, recognizing that P-121
7 and 122 will be marked into evidence.

8 (Documents P-121 and 122 now marked in
9 evidence.)

10 Q Mr. Mallach, could you describe the principal
11 features of this zoning ordinance please.

12 A Yes, sir. The Highland Park Zoning Ordinance provides
13 for 8 zones, these include two residential zones, an office
14 zone, two commercial zones, an industrial zone and two zones
15 designated as special economic development districts.

16 The two residential zones, the first is a single family
17 zone, RA. Single family units are permitted in this zone,
18 with no minimum lot frontage or floor area requirements.
19 There's a front yard requirement and a requirement that there
20 be two off street parking spaces per dwelling unit.

21 Multi family units are not permitted in this zone.

22 The RB Zone provides for single and multi family units.
23 With the regard to the single family units there's a provision
24 for conversion of existing single family units, two family units,
25 there's also a requirement that single family units in this zone

1 contain no more than 3 bedrooms. The zone provides for garden
2 apartments at a density of 16 units in an acre, 2½ stories
3 height. The garden apartments are subject are as the high
4 rise apartments which I'll get to, to a bedroom requirement
5 of 80 percent minimum percentage of one bedroom unit, 5 percent
6 maximum percentage of 3 bedroom units.

7 In addition the garden apartment provision specifies
8 that no development of under 40 dwelling units can be permitted.

9 Also in this zone high rise apartments are permitted to
10 a maximum density of 35 units per acre and a maximum height
11 of 56 feet. They're subject to the bedroom requirements as
12 the garden apartments. This zone requires 1.5 parking spaces
13 per dwelling unit. High rise housing under these provisions
14 is also permitted in the office zone, the C-1 commercial zone
15 and the SED2, special economic development district. Mixed
16 residential and commercial uses, that is commercial on the
17 first floor and residential on other floors is also permitted
18 in the commercial zone.

19 With regard to the availability and distribution of
20 vacant land in the municipality. We now have information,
21 unfortunately the syntax in the statement was not clear as
22 to whether the 19.5 acres was all or merely some of the vacant
23 land. According to the information provided by the borough
24 19.5 acres in the borough are vacant, these acres are owned by
25 the municipality and are located in the RA Zone.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: RA?

THE WITNESS: RA.

THE COURT: All right, we'll recess for lunch at this time.

(After the luncheon recess the trial continued.)

MR. SEARING: May I have the question read back.

(Question read back.)

Q Mr. Mallach, had you completed your response?

A Yes.

Q Now Mr. Mallach what if any of the features you have described have an adverse effect on the provisions of housing for low and moderate income persons?

A There are a number of features in this ordinance which have a potentially adverse effect on provision of housing for low and moderate income families.

In the RB, single and multi family zone there are the features are as follows.

First, the 3 bedroom maximum on single family dwellings, certainly restricts the provision of larger units than that which may be significant.

Secondly, in the multi family section having to do with garden apartments and high rise, the provision that limits approval of garden apartment projects to 40 units or larger

1 apartments has a restrictive effect, particularly in a relatively
2 more developed unit where the available parcels for development
3 may be on the small side and where 40 units may be difficult
4 to accommodate in available parcels.

5 Secondly, the bedroom ratio, the 80 percent one bedroom
6 minimum and no more than 5 percent 3 bedroom maximum is a
7 restrictive provision in that it largely precludes larger
8 units. The provisions of the nonresidential zone provide
9 only for high rise as a permitted residential use rather than
10 single family housing or garden apartments which are more
11 relevant to most people's needs, high rise apartments tend to
12 be suitable only for senior citizens and childless couples,
13 as a general rule or for luxury housing so that the garden
14 apartments, town houses, single family units would be wider
15 needs are not permitted in these zones.

16 Q In which zones? A Those non-
17 residential zones that do permit high rise, principally the
18 commercial zones, so these are restrictive provisions tending
19 to effect the housing of low and moderate income families in
20 the ordinance.

21 Q Does this municipality have a public housing
22 authority?

23 A Yes, they have.

24 Q Can you tell me when--

25 A According to the report, the 106, the Highland Park

1 Housing Authority built 24 units of housing which was
2 occupied in 1961.

3 In addition they have received funding approval.

4 I don't know whether the construction has actually begun or
5 not, on 100 units for senior citizens.

6 Q OK, thank you.

7 Is there any other state or federal subsidized housing
8 in Highland Park?

9 A Not to my knowledge.

10 Q What are the rental ranges for the multi family
11 units in Highland Park?

12 A Could I refer to the responses to interrogatories?

13 Q Yes, of course.

14 Would you read both the question and the reasons
15 please.

16 A The question on the interrogatories
17 is, "Provide the multi family units in each of the following
18 rental categories and ranges. In the category of efficiency
19 units, 28 units were available or existed between 100 and
20 \$149 a month.

21 "102 units between \$150 and \$199 a month.

22 "In the one bedroom category, 276 units existed in the
23 152 dollar figure, 199 dollar month range, 83 in the \$250 and
24 over range.

25 "In the two bedroom category there are 27 units in the
150 to 199 range, 375 in the over 250 range.

1 "In the 3 or more bedroom category, there were no
2 units under 250 and 21 units in the 250 and 21 units in the
3 250 and over range."

4 Q Now, Mr. Mallach, in a community such as Highland
5 Park what programs if any are available to expand opportunity
6 to low and moderate income housing?

7 MR. LERNER: Objection, if it please the
8 court, I don't believe that's the test for that
9 issue in this case.

10 MR. SEARING: On the contrary your Honor, expending
11 housing opportunities for low and moderate income
12 housing is the issue in this case. We are--

13 THE COURT: What programs are available?

14 MR. SEARING: Yes, sir.

15 THE COURT: All right, go ahead, you may answer
16 it.

17 A Yes, sir.

18 There are a number of programs that are available in
19 Highland Park and similar municipalities the, that had, through
20 public housing authority which as I mentioned already exists
21 in Highland Park, there are programs through the State
22 Department of Community Affairs, as well as through community
23 development funds for assisting low and moderate income
24 families in home improvement and rehabilitation in order to
25 maintain the quality of the housing stock generally and of

1 the housing of low and moderate income family specifically.
2 In addition, through the federal section 8 existing housing
3 program which has largely replaced the old section 23 living
4 program, the municipality can obtain federal funds to make up
5 the difference in existing dwelling units, between what lower
6 income families can afford to pay for shelter, rent and what
7 the actual cost of those units are. Thereby, removing the
8 financial burden on lower income families living in adequate
9 housing.

10 Q Thank you.

11 Are you, when you mentioned community development funds,
12 what program were you referring to?

13 A This is through the community development revenue
14 sharing program.

15 Q Is Highland Park a participant in that program?

16 A To the best of my knowledge, yes.

17 MR. SEARING: Your Honor, if I may have just
18 one moment.

19 THE COURT: All right.

20 Q Mr. Mallach, I'd like to draw your attention to
21 Plaintiff's Exhibit 53, on Page 68.

22 Would you identify that table for us?

23 A This is entitled summary for urban county municipalities
24 of estimation on table one, survey of housing conditions 1970
25 and table two, housing assistance needs of lower income

1 households, 1970.

2 Q Is there an entry for the Borough of Highland
3 Park?

4 A Yes, sir.

5 Q Could you tell us what those are, please?

6 A OK. The, there are three columns here, the first is
7 entitled survey of housing conditions--number of substandard
8 dwelling units and the entry for Highland Park is 155.

9 The second is housing assistance needs of lower income
10 households, elderly and nonelderly and the entry for Highland
11 Park is 1,362.

12 The third column is the summary of the two, which is
13 1,517.

14 Q Thank you, Mr. Mallach.

15 MR. SEARING: Your Honor, we have no
16 further questions of Mr. Mallach.

17 THE COURT: Mr. Lerner.

18
19 CROSS-EXAMINATION BY MR. LERNER:

20 Q Mr. Mallach, with regard to the public housing--

21 MR. LERNER: Your Honor, is it all right if

22 I sit here, I have my papers--

23 THE COURT: Yes, quite all right.

24 Q The, with regard to the public housing, the fact
25 that Highland Park is in fact constructing the 100 unit

1 structure that you referred to and in fact it's up but not
2 yet occupied, I guess within the next couple of months, would
3 that be a significant factor?

4 A Well--

5 Q That's the figure you referred to in the federal
6 program, isn't that correct?

7 A That's correct.

8 Q And your exhibit 106 was that?

9 A I stand corrected, in that regard.

10 Q And in fact on Page 7 of 106 it says ACC executed,
11 doesn't it?

12 A That's correct.

13 Q And that means that the agreement had been
14 signed?

15 A Yes, or that it received approval.

16 Q Right. A I believe I indicated
17 that.

18 Q Yes, and that Highland Park, you don't know,
19 occupancy is expected by the summer of this year?

20 A I did not know that, no.

21 Q The fact that Highland Park, you refer to the
22 home improvement factor under DCA and the community development
23 act; is that correct?

24 A That's correct.

25 Q Do you know that in fact Highland Park applied

1 for monies for home improvement under the DCA grant?

2 A I do not know that.

3 Q And that Highland Park executed certificates
4 of need? A I did not know that.

5 Q And that the money is expected, is it not, under
6 the DCA, under the Urban County Grants?

7 A Yes.

8 Q But none of the money has ever been received?

9 A Actually, I believed that some of the money under the
10 urban county had been received already but I wasn't certain.

11 Q OK. Is there anything that a municipality can
12 do to secure Section 8 funds?

13 A Can make application, either through the housing
14 authority or through another agency designated by counsel to
15 the area office of HUD.

16 Q And if in fact the housing authority does in fact
17 exist that would be the authority which would make the necessary
18 request, isn't that correct?

19 A It can be, the borough council can designate another body
20 to do so.

21 Q Now you indicated that Highland Park has land in a
22 R-1 Zone, RA Zone, RA single family, there's no minimum lot
23 size there?

24 A No, there is not.

25 Q No minimum lot with? A No.

1 Q And the total land resource and response to the
2 question from Highland Park is 19.5 acres, the entire land
3 resources of the borough, isn't that correct?

4 A That's what was indicated by the defendant, yes.

5 Q Do you know what portion of that land is in the
6 flood plain?

7 A I believe that some of it is.

8 Q And what portion of that land is in fact the
9 sanitary land fill for the borough?

10 A I believe that some of it may be.

11 Q Now, do you know what portion of Highland Park
12 is represented by rental structures?

13 A I don't have that information, I have a figure on multi
14 family structures.

15 Q Well--

A Not on rental.

16 MR. LERNER: May I have P-50A.

17 Q If you'll turn to, please, to Page 17, I think the
18 chart indicates total housing units for Highland Park, 5,293?

19 A That's correct.

20 Q Of which 2,253 are single family and 3,031 are
21 in their definition--

22 A Two or more.

23 Q Two or more unit structure?

24 A That's correct.

25 Q Do you know the ages of some of these structures?

1 A Well, I gather that, it's my impression that most of
2 these structures, they're structures and Highland Park are
3 divided between structures built largely between the turn of
4 the century and the late 1920's on the one hand and in the
5 1950's on the other.

6 Q Would you, your general knowledge of older built
7 up, would you classify Highland Park as an older built up
8 community?

9 A I think it's, relatively speaking, yes.

10 Q And in fact at times of when they were building
11 homes in the beginning of the 20th century the homes were
12 large and they were two family and three family and four family
13 homes?

14 A There are some of those, yes.

15 Q Do you know how many of those are two, three and
16 four bedroom homes and apartments?

17 A Well, there are approximately, of the three thousand or
18 so two or more unit structures that you cited earlier, about half
19 of those are two, three and four family houses and about half
20 of them are in larger apartment structures.

21 Q So that half of the old, half of the building
22 stock of a multi family is older type units?

23 A Well, actually it's hard to say, according to the
24 census records slightly over 40 percent of the housing stock
25 in Highland Park was constructed prior to World War II so, well

1 over 50 percent of the total housing stock has been constructed
2 since World War II.

3 Q Now Page 18 of 50A, can you give us the figure
4 of owner-occupied structures and the figure for renter-occupied
5 structures? A Yes, the total number of owner-
6 occupied structures is 2,388 and renter-occupied structures
7 is 2,811.

8 Q And I wonder if by the same book again, Page 16
9 you can give me the density for Highland Park for the year
10 1970? A The density for Highland Park

11 in the year 1970 measured in people per acre, no, sorry, people
12 per square mile is 7,571.

13 Q What is the most densely populated municipality
14 in Middlesex County?

15 A Perth Amboy.

16 Q And the second most dense?

17 A Highland Park.

18 Q I show you P-28, I think I can just show you my
19 copy of P-28 and the court can look at the exhibit marked P-28
20 and I ask you if you can give me the total family number in the
21 first category of \$1 to \$3,999?

22 A For Highland Park?

23 Q For Highland Park. My understanding is P-28 is
24 correct, the middle figure between the two typed figures is
25 the total for those two figures. A That's right.

1 In the category of \$1 or zero to \$3,999, it's 342 households
2 or families.

3 Q And for the next category please, 4000 to 5999?

4 A 268 families.

5 Q From 6000 to 9999?

6 A 824 families.

7 Q 10,000 to 14,999?

8 A 1236 families.

9 Q And 19,000 to 24,999?

10 A 833 families.

11 Q And 25,000 and over? A 343
12 families.

13 Q So the last category of 25,000 and over is one
14 number different than the first category of 1,000 to 4,000?

15 A Or zero to 4,000.

16 Q Zero to 4,000. And up until 10,000 doesn't it
17 divide even the whole town in each category?

18 A Up until--I'm not entirely clear, you mean up until
19 10--

20 Q Up until 10,000 if you take the total up to
21 10,000 and you take the total, I'm sorry, you take the total
22 to 10,000 it's the same as from 14,000 and over?

23 A Roughly, yes.

24 Q And then there's almost that same amount again of
25 people in the 10,000 to 14,999? A Yes.

1 Q Do you happen to have P-105 in front of you?

2 A That's the table of industrial and residential land?

3 Q That's correct. A Yes, I do.

4 Q What is the total vacant industrial land of

5 Highland Park? A Zero acres.

6 Q And the total commercial land of Highland Park

7 vacant? A That's not indicated on this

8 chart.

9 Q In fact, the column industrial and relative
10 percent and all vacant land is zero; is that correct?

11 A That's correct.

12 Q And the only other category was residential,
13 but the figure for _105 was the DCA figure; is that correct?

14 A That's correct.

15 Q And the zero figure, the figure for Highland Park
16 then should be vacant zoned residential will be 19.5?

17 A If we substitute the figures, yes.

18 Q That's correct. Where you indicated in the chart
19 locally provided information was not available?

20 A That's correct.

21 Q So then that the double star would come down and
22 the 19.5 would go there and then all the figures would change as
23 to the relative percentages of availability?

24 A That's correct.

25 THE COURT: You're accepting the 1945 figure?

1 THE WITNESS: Well, for purposes of the
2 chart we, I more or less automatically accepted
3 local information whenever it was available, now that
4 Mr. Lerner's cleared up the confusion there I'd accept
5 it, yes.

6 MR. LERNER: I have no further questions.

7 THE COURT: All right.

8 MR. LERNER: If it please the court, I'd like to
9 make a motion.

10 (Whereupon the court heard legal argument.)

11 THE COURT: All right, we will take
12 Jamesburg.

13 MR. SEARING: Your Honor I have two items to
14 be marked for identification.

15 THE COURT: P-123 and 124.

16 (Documents received and marked P-123 and 124
17 for identification.)

18
19 A L A N M A L L A C H, continued.

20 DIRECT EXAMINATION BY MR. SEARING:

21 Q Mr. Mallach, I show you P-123 for identification.
22 Could you identify it for us, please.

23 A This is a document entitled Zoning Ordinance of the
24 Borough of Jamesburg.

25 Q Does that contain a zoning map?

1 A Yes, it does.

2 Q Could you identify P-124 for us please?

3 A This is a summary of Zoning Ordinance Provisions of the
4 Borough of Jamesburg, prepared by me.

5 MR. SEARING: Your Honor I have shown these
6 to counsel, I would move these into evidence.

7 MR. BRIGIANI: May I just ask the date of
8 adoption of that so it appears in the record, the
9 Jamesburg Ordinance.

10 MR. SEARING: The notice of publication, after
11 adopting of first reading is stated as the 23rd day of
12 July, 1974.

13 Is that sufficient?

14 MR. BRIGIANI: Sufficient.

15 THE COURT: P-123 and 124 in evidence.

16 (Documents received and marked in evidence
17 as P-123 and P-124.)

18 Q Mr. Mallach, would you describe principal features
19 of this zoning ordinance for us, please?

20 A Yes, sir. There are 7 zones in the Borough of Jamesburg.
21 There are 3 single family residential zones, 2 business zones
22 and 2 industrial zones. The first single family zone is
23 RA, requires minimum lots of 10,000 square feet, minimum
24 frontage of 65 feet, the minimum floor area on a one story
25 building is 1,000 square feet and on a two story building its

1 1300 square feet of which 950 feet must be on the first floor.
2 The second zone is RB single family or two family. Lots are
3 7500 square feet, frontage 60 feet. The minimum floor area is
4 1000 square feet for one story building, 1300 feet for two
5 story, again of which 950 feet must be on the first floor.

6 Multi family is permitted by a special exception variance
7 action of the board of adjustment.

8 THE COURT: What do you mean by that, more
9 than two family?

10 THE WITNESS: Yes.

11 THE COURT: You mean two family does not require
12 a special--

13 THE WITNESS: No, two family is by right, multi
14 family is defined in this ordinance as 3 or more
15 families.

16 THE COURT: All right.

17 A The third residential zone is entitled residential
18 transitional, requires minimum lots of 5000 square feet, 50 foot
19 frontage, a minimum floor area of 2000 square feet for either
20 one or two story buildings.

21 Commercial or three or more family units are also
22 permitted in this zone by special variance.

23 Residential uses are not permitted in the business and
24 industrial zones. Mobile homes are not permitted, the provisions
25 for multi family by special exception are as follows.

1 The lot must be at least 6500 square feet, efficiency
2 apartments must have between no less than 550 and no more
3 650 square feet floor area. One bedroom apartments must have
4 no less than 700, no more than 800 square feet of floor area.
5 There's no provision in the ordinance for more than one bedroom
6 apartments in this section.

7 THE COURT: You take it they're prohibited?

8 THE WITNESS: Not necessarily but there's another
9 provision which, which gets at that in a roundabout
10 manner.

11 A The maximum average unit floor area or the total floor
12 area interior floor area of the area divided by the number of
13 units may not exceed 600 square feet. So since an efficiency
14 may be no smaller than 550 units in practice this can discourage
15 larger apartment units.

16 THE COURT: 550 square feet?

17 THE WITNESS: Yes. The average has to be no more
18 than 600.

19 A There is, the parking requirement is 1.75 parking spaces
20 per unit.

21 With regard to the vacant land--

22 THE COURT: Do you regard that as excessive?

23 THE WITNESS: If in the context of having a
24 development which is, I believe almost exclusively
25 efficiency and one bedroom units, I believe it is.

1 A The borough's information provided the plaintiffs stated
2 that there were 122 acres of vacant land of which 50 acres
3 were located in the RA Zone, 42 in the RB Zone, 3 in the
4 RT Zone so that's 95 acres in the residential zones,
5 8 acres in the business zones and 19 acres in the industrial
6 zones.

7 Q Thank you, Mr. Mallach.

8 Now what if any of the features you have described have
9 an adverse effect on the provision of housing for low and
10 moderate income persons?

11 A There are a number of such features, the lot size
12 requirement in the RA Zone is higher than is necessary for,
13 to meet modest reasonable standards. The lot sizes in the
14 other two zones are not necessarily such. The minimum floor
15 area requirements in the 3 residential zones are higher
16 than is necessary for reasonable modest standards.

17 In the RT Zone this is exceptionally so, though I believe
18 there were certain rather special objectives in mind from the
19 framers in the ordinance in the RT Zone.

20 The fact that multi family units can only be provided
21 through special exception variance is a restrictive provision
22 since these units are not available by right and are subject
23 to discretionary and potentially arbitrary action.

24 The provision in the ordinance that requires that the
25 maximum average unit floor area or the average square footage

1 per unit in the development of the whole be no greater than
2 600 feet, square feet is restrictive in the extreme since its,
3 for all practical purposes precludes anything but efficiency
4 and one bedroom units. If I might demonstrate that, in order
5 to, if you have say, a 15 dwelling unit development and you
6 have 14, 14 efficiency units and 55, 14 efficient units con-
7 tain 7,700 square feet, 15 times 6 is 9,000 square feet so in
8 15 units at 600 square feet per unit if 14 of the 15 were
9 efficiency units, you'd have room for one large dwelling unit.
10 So in practice this requires, let's say at least 90 percent
11 of the dwelling units in any multi family development to be
12 efficiency or one bedroom units.

13 Finally as I mentioned in this context 1.75 parking spaces
14 per unit is I believe excessive.

15 The prohibition on mobile homes finally is also restrictive
16 of this housing type.

17 Q Thank you, Mr. Mallach.

18 Mr. Mallach, I would like to draw your attention to
19 Question 3 in the request for admissions submitted to the
20 defendant.

21 Would you read Question 3 and the answer please.

22 A Yes. The question is, "Does defendant admit that its
23 municipal zoning ordinance states, 'recognizing that the borough
24 is an urban community situated in a rural setting, the existing
25 housing resources of this community do provide ample

1 opportunity for residents of family raising households but
2 limited supply of units are available to the shelter needs
3 of young and old couples, single individuals.' For this
4 reason, based upon the comprehensive plan of borough
5 provision or apartment dwelling unit for young and old couples
6 and individuals are made here and after."

7 The answer to the question is, "Yes."

8 Q Thank you, Mr. Mallach.

9 Does this municipality have a public housing authority?

10 A No, it does not.

11 Q Do you know if there are state or federally
12 subsidized housing in, within the boundaries of this
13 municipality?

14 A Not to the best of my knowledge.

15 MR. SEARING: Your Honor, we have no further
16 questions.

17 THE COURT: Mr. Brigiani.

18
19 CROSS-EXAMINATION BY MR. BRIGIANI:

20 Q Mr. Mallach, are you aware that the Borough of
21 Jamesburg has an ongoing continuous planning study for the
22 last 5 years by Boris & Sons, Boris & Company?

23 A I was, generally.

24 Q Licensed planners?

25 A Yes, I am.

1 Q You are aware.

2 Are you familiar with the Borough of Jamesburg itself?

3 A Not in detail but in a general sense.

4 Q Well, do you know the size of the town?

5 A Perhaps two square miles, in that area.

6 Q If I told you that the exact measurement, all the
7 records indicate was .9 square miles, would you accept that?

8 A Yes.

9 Q Would you also tell me what you state that the
10 present population figure is in the Borough of Jamesburg?

11 A I don't know the present population offhand, but I would
12 gladly look it up very quickly.

13 MR. SEARING: I would refer you to Exhibit P-50A.

14 A I believe I have a copy of this.

15 Q That's dated 1970?

16 A This is 1970.

17 The population of Jamesburg at thattime was 4,584.

18 Q And what was the progression to this day,
19 isn't there a progression there?

20 A No, the most recent figure in this report is 4-19-70.
21 I wouldn't guess at what it is today.

22 Q Would you accept a figure of today of between
23 58 and 6000 persons?

24 A Assuming that this is the true figure for 1970 I would
25 find that figure quite high.

1 Q Would you look at the exhibit that you have in-
2 dicating populations as to density.

3 What does it show Jamesburg?

4 A The density of population of Jamesburg again in 1970 is
5 given at 5,093 persons per square mile.

6 Q That's in 1970?

7 A That's correct.

8 Q Now would you say that that ranges about the 4th or
9 5th highest in the whole county?

10 A No--let me see, it is I believe it is either the 8th
11 or the 9th highest in the county.

12 Q Now, there was a figure that there was 122 acres
13 of land, vacant land?

14 A That's right.

15 Q Do you know whether or not that covers specific
16 vacant land or is it a general figure that covers everything?

17 A Well, I don't know in detail the prominence of it, it was
18 provided in a chart, in the material supplied by the defendants
19 to plaintiffs broken down by zone in the manner that I read it
20 off.

21 Q All right, let's start with the A Zone where it
22 says you state there were 50 acres that were vacant. Am I
23 correct?

24 A That's the information that I was provided with.

25 Q Now are you familiar with that particular zone, if

1 you've studied the zoning map--haven't you?

2 A I've looked at the zoning map.

3 Q Yes. Now, that particular zone, do you know where
4 there is any vacant land of your own knowledge?

5 A I do not have any knowledge of my own on this subject.

6 Q Do you know whether or not the vacant land in that
7 area is available?

8 A I have no specific knowledge, first hand knowledge of
9 the vacant land in that zone.

10 Q Do you know whether or not the available land
11 area on Half Acre Road which is in the eastern extremity of
12 A-1 is vacant at present but there is a large baptist church
13 going up there and also that there is a permitted subdivision
14 which was permitted a couple of years ago, are you familiar
15 with that, providing for one family houses?

16 A I'm only familiar with the information that was provided
17 by defendants.

18 THE COURT: Specifically are you familiar with
19 those two?

20 THE WITNESS: No, I'm not specifically
21 familiar with that.

22 THE COURT: All right.

23 Q Do you know if any of the park lands are included
24 in that--

25 A No.

1 Q General figure of 221 or 121, I'm sorry?

2 A No, I do not.

3 Q That specifically your knowledge is that you were
4 given a figure of 121 vacant acres, what they consist of, where
5 they're located and whether or not they are available or
6 developable you do not know?

7 A I do not have first hand knowledge of that.

8 Q You don't have any knowledge of it, do you?

9 A Not, except the information that was provided by the
10 defendants.

11 Q Well, the only information provided you was there
12 was 121 vacant acres, period?

13 MR. SEARING: Your Honor this is being
14 repetitious, it's been asked about three times.

15 MR. BRIGIANI: Well, Mr. Mallach--

16 THE COURT: Excuse me, Mr. Brigiani.

17 MR. BRIGIANI: Beg your pardon.

18 THE COURT: Excuse me.

19 Also he had information as to breakdown into
20 these area zones of that vacant acreage, isn't that
21 so?

22 THE WITNESS: That's correct.

23 MR. BRIGIANI: But, I, my statements still apply
24 that he still does not know what they consist of, just a
25 vacant land, supposedly in these various zones, period.

1 THE COURT: Apparently he doesn't know
2 the location of the vacant land or any special factors
3 attaching to the vacant land such as building projects
4 of the baptist church or soil conditions. Is that
5 right, Mr. Mallach?

6 THE WITNESS: Or soil conditions, that's right.

7 THE COURT: All right.

8 Q Are you familiar with the low and medium income
9 of the residents of the Borough of Jamesburg?

10 A I, I have here this chart which was marked P-28 which
11 has that information on it.

12 Q What does it show? A It shows in the
13 category from zero to 3999 there are 81 families, from four
14 to 5999 there are 90 families. From 6 to 9999 there are 395
15 families. From 10 to 15,000 there are 379 families. From
16 15 to 25,000 there are 202 families over 25,000 there are 16
17 families.

18 Q Did you consider that a wealthy community?

19 A No, I do not consider it a wealthy community.

20 Q Do you know what the borough, what particular
21 industrial development the borough of Jamesburg has, what jobs
22 are available? A I'm not specifically familiar
23 with that, no.

24 Q Do you know of any industry in the Borough of

25 Jamesburg? A I believe there is some industry in the

1 Borough of Jamesburg, yes.

2 Q Well, do you know what it is and how many people
3 they employ? A No, I don't know how many

4 people they employ, I believe the information may be in the
5 interrogatories.

6 Q Do you know what the transportation, what mass
7 transportation is available to the Borough of Jamesburg?

8 A I'm not familiar specifically with mass transportation
9 in the Borough of Jamesburg.

10 Q Well, do you know whether or not there is a
11 train that can be obtained at Jamesburg?

12 MR. SEARING: I object, your Honor, this is
13 going beyond the scope of direct, under the rulings
14 this morning.

15 THE COURT: It's the simple question whether
16 there's a train, I suppose he can answer.

17 A I'm not familiar with any trains one can take from the
18 Borough of Jamesburg.

19 Q How about buses?

20 A I'm not familiar with any.

21 Q Do you know the extent of rental units in the
22 Borough of Jamesburg? A There were 566 rental

23 units in the Borough of Jamesburg, according to the 1970
24 census.

25 Q And weren't these one, two and three family, one

1 and two and three bedroom units? A I don't
2 have specific information on how the rental units in the
3 borough break down by the number of bedrooms.

4 Q Well you mentioned that there were only one
5 bedroom units allowed, I'm asking you specifically if there are
6 not one, two and three bedroom units in that whole complex.

7 A I stated that under the present ordinance future
8 construction of such units would not be allowed or would be
9 discouraged, if not forbidden. I do not have specific infor-
10 mation as to the composition of the present rental housing
11 stock.

12 Q Do you know what the average rent would be?

13 A I think that may be available here.

14 Again according to the 1970 census the average rental in
15 the Borough of Jamesburg was \$115 a month.

16 Q Would you consider that a group that could be
17 used, obtained by either low or moderate income?

18 A Well, certainly some that would suggest that some of the
19 units could be obtained by low and moderate income people.

20 Q What is the going rent that's acceptable, for
21 example, for low today?

22 A Today or 1970?

23 Q Today. A Well, a low income
24 family might be earning, it would depend on the actual family's
25 income, a low income family might be earning today, something

1 between say, oh, 4 and 7 or 7500 dollars. So that the
2 acceptable rental range for low income families today would
3 probably be in the area of say 80 to \$160 a month.

4 Q Well, isn't it 25 percent of the--

5 A Yes.

6 Q --of the weekly pay and you say that the average
7 of those two figures, what does that average to?

8 A I'm saying the, well the range, the income range?

9 Q Yes. A Is between four and \$8,000
10 which would result, using the 25 percent figure, in a typical
11 rent range of 80 to \$160 a month.

12 The average of that would be about 120.

13 THE COURT: For low income?

14 THE WITNESS: As a representative of low income
15 rentals.

16 Q How about for moderate income?

17 A The moderate income we're talking about the families
18 earning say well, 8 to perhaps 12 or \$13,000, we're talking
19 about an average, a rough average in the area of \$200 a
20 month.

21 Q Between 8 and 12, which is an average of
22 \$10,000 a year which is almost \$200 a week. So the rental
23 would be--

24 A In the area of \$200 a month, precisely.

25 Q Are you aware of the sewer situation in the

1 Borough of Jamesburg?

2 A No.

3 Q Are you aware that the Borough of Jamesburg has
4 been under a sewer ban imposed by the New Jersey Department
5 of Environmental Protection since 1972?

6 A I was not aware of that.

7 Q Prohibiting the construction of any homes.
8 And you're not aware of that?

9 A No.

10 Q Would that change your opinion in any way as to
11 the availability of land in the Borough of Jamesburg for the
12 purposes you mentioned? A Well, it would
13 strongly suggest that the, whatever steps are necessary to
14 have the ban removed should be undertaken before major housing
15 development takes place.

16 Q Are you aware also that the Borough, that the
17 State has prohibited the Borough of Jamesburg from improving
18 its plan? A No doubt they have their reasons.

19 Q Are you aware of that?

20 A No, I wasn't.

21 Q With reference to code enforcement, which I
22 believe is one of your objectives, am I correct?

23 A No.

24 Q No. You are familiar for example, the City of
25 Perth Amboy is one instance, have a code enforcement ordinance

1 which provides, among other things that any time a person
2 either wants to rent, re-rent or sell an existing house that
3 it must be complete inspection by every facility of the town
4 and that every facility must be, come up to the standards that
5 they have established in the city before a CO is obtained.
6 Are you familiar with that kind of ordinance?

7 A Generally speaking.

8 Q Are you familiar with that type of ordinance?

9 A Yes.

10 THE COURT: Is there an objection here, Mr. Searing?

11 MR. SEARING: Yes, sir, this is beyond the scope
12 of direct, certainly.

13 THE COURT: It would be so Mr. Brigiani.

14 (Whereupon the court heard legal argument.)

15 MR. SEARING: Your Honor, if I could offer the,
16 at least the chart of Madison Township and then I will
17 make a motion that judicial notice be taken of your
18 decision.

19 THE COURT: All right, the chart, Old Bridge,
20 Madison Township is P-125 in evidence and judicial
21 notice will be taken of the record and facts found
22 and the two Oak Wood at Madison vs. Madison Township
23 cases, in particular the second case, since the amendment
24 was on notice.

25 There will be a short recess at this time.

1 (Document received and marked P-125 in
2 evidence.)

3 (After a brief recess the trial continued.)

4 THE COURT: The Borough of Metuchen.

5 MR. SEARING: Yes, your Honor.

6 I have two documents to mark for identification.

7 MR. SPRITZER: Your Honor, to make it easier
8 for the court and for counsel and the witness, the
9 zoning ordinance, which is being presented now,
10 was presented in request for interrogatories, subse-
11 quent to that time it's been newly bound and will be
12 much more easily to handle than this new book and I
13 suggest that this be the ordinance used. In fact I
14 may have another copy. It will really be easier for
15 you and for everyone.

16 It has the entire ordinance--

17 THE COURT: Except that?

18 MR. SPRITZER: 1974 change and 1975
19 change.

20 MR. SEARING: Yes, I will accept that as a
21 substitute so, we can mark this P-126 for
22 identification.

23 THE COURT: All right, P-126 in evidence.

24 (P-126 marked in evidence.)

25 (P-127 marked for identification.)

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

2 DIRECT EXAMINATION BY MR. SEARING:

3 Q Mr. Mallach, I would ask you to identify P-127
4 please.

5 A P-127 is the summary of Zoning
6 Ordinance Provisions, the Borough of Metuchen, prepared by
7 me.

8 MR. SEARING: Thank you.

9 Your Honor I move P-127 into evidence.

10 THE COURT: P-127 in evidence.

11 (Document received and marked P127 in evidence.)

12 Q Mr. Mallach, would you described for us the
13 principal features of this zoning ordinance?

14 A Yes, sir.

15 The Borough of Metuchen has six residential zones,
16 two are single family, one is a one and two family, one is a
17 town house and two are multi family garden apartment and
18 senior citizen housing zones.

19 There are three business zones and one manufacturing
20 zone.

21 The R-1 single family zone requires minimum lot size
22 of 10,000 square feet, minimum frontage of 60 feet at the
23 street line, 75 feet at the setback line and 1400 square feet
24 of floor area.

25 The R-2 Zone requires 7500 square feet lots, 50 foot
frontage at the street line, 62.5 at the setback line, 1000

1 square foot floor area.

2 The R-3 Zone provides for 5000 lots, 45 and 50 foot
3 frontage and 800 square feet floor area for single family,
4 7500 foot lots, 52 to 55 frontage and 800 square feet per
5 unit for 2 family.

6 The R-2A Zone provides for town houses of a minimum of
7 1000 square feet floor space, maximum density of 8 units to
8 the acre.

9 Town house parcels must have a minimum size of one
10 acre and 150 foot frontage.

11 The R-2 garden apartment zone provides for two
12 story garden apartments, density is set on the basis of
13 available density per bedroom, it's one bedroom units are
14 allowed up to approximately 17 units an acre, two bedroom to
15 12 units an acre, 3 bedroom to 9 units an acre.

16 Let's see, two parking spaces are required per
17 dwelling.

18 Each garden apartment parcel must contain two acres and
19 have 150 feet frontage.

20 The R-5 Zone provides for alternatively modern income
21 senior citizen housing or garden apartment. The moderate
22 income senior citizens housing program requires a lot of
23 two acres and frontage of 200 feet, parking of .5 cars per
24 unit.

25 The garden apartments require one acre and 100 foot

1 frontage maybe up to three stories, 1.75 parking spaces per
2 unit.

3 The bedroom provisions are or rather the bedroom and
4 density provisions are similar to those in the R-4 Zone
5 except that there may be higher density for the same bedroom
6 type on the 3 story building that is on a 2 story building.
7 So for example, one bedroom unit can be up to 17 units an
8 acre in a 2 story building and up to just short of 22 unit
9 an acre in a 3 story building and so on.

10 There's no reference in this section to units larger
11 than 2 bedrooms but it's, I guess one can assume that it would
12 follow the same density provisions as in the R-4 Zone since
13 they're not specifically prohibited.

14 Residences are permitted generally in the business
15 zones, subject to either garden apartments or the R-3 one and
16 two family single units, except in the D-1A business zone
17 which provides only for garden apartments under the R-5
18 provisions.

19 Residences are not permitted in the manufacturing
20 zone.

21 According to the information provided by the Borough of
22 Metuchen there are a total of 38.5 acres vacant, this includes
23 5 acres in the single family zones, R-1 and R-2, 7.5 acres in
24 the apartment zones, R-4 and R-5, two acres in the business
25 zones, 24 acres in the manufacturing zone and the borough

1 appended a notation to that that much of this is undevelopable
2 for reasons including being an old railroad right of way,
3 marshy, hilly, in flood plain or lacking access from within
4 the Borough of Metuchen.

5 THE COURT: Was that a footnote to the entire
6 38.5 or only 24 manufacturing?

7 THE WITNESS: To the 24 for manufacturing.

8 THE COURT: Do you accept that?

9 THE WITNESS: I don't really know, I'm willing,
10 for purposes of the chart I do, but I don't have real
11 knowledge of it.

12 Q Mr. Mallach, what if any of the features that
13 you have described have an adverse effect on the provision
14 of housing for low and moderate income purposes?

15 A There are certain numbers of features which has a
16 potentially adverse effect on housing opportunity in the
17 provisions of the R-1 Zone are excessive with regard to both lot
18 size and the minimum floor area required for dwelling
19 units.

20 MR. SPRITZER: I object.

21 (Whereupon the court heard legal argument.)

22 Q Would you continue, Mr. Mallach.

23 A Yes, sir.

24 The other feature, I don't know if I mentioned it or
25 not was the minimum floor area.

1 Q You did mention it.

2 A OK.

3 The minimum floor area in the R-2 single family zone is
4 also higher than what I believe is necessary for reasonable
5 modest accommodation.

6 I do not take issue with the provisions of the R-3 Zone,
7 the minimum floor area for the town houses of 1000 square feet
8 in the R-2 Zone is also excessive.

9 MR. SPRITZER: I rise to the same
10 objection, your Honor, absolutely no mention of
11 the town house zone or the R-2A Zone in the answer
12 to interrogatories.

13 MR. SEARING: Your Honor, I think that what
14 the--

15 THE COURT: You mean the 1000 square foot
16 minimum square floor area is excessive?

17 THE WITNESS: For town houses, yes, sir.

18 THE COURT: Again I'll reserve on that.

19 You're not foreclosed from making that point if --

20 MR. SPRITZER: Thank you, your Honor.

21 THE COURT: --if it appears to be critical or
22 timely.

23 A With reference to the garden apartment zone, there are
24 a number of features which I'd like to cite, I don't know whether
25 or not these features are listed in the responses to

1 interrogatoris, specifically--

2 (Whereupon the court heard legal argument.)

3 THE COURT: All right, you may proceed with
4 your answer and this will be subject to motion to strike
5 or motion to strike would be made and the court may
6 reserve on it.

7 A Yes, sir.

8 With regard to the R-4 garden apartment zone, there are a
9 number of features, first, the minimum lot and frontage re-
10 quirements specifically two acres and 150 square feet, 150 feet
11 frontage again restricts the flexibility and feasibility of
12 constructing in a community where smaller parcels may exist
13 and may be suitable for multi family developments and would
14 not be available under this provision.

15 Secondly, the density provisions that I mentioned
16 which provide for substantially different density standards
17 for 1, 2 and 3 bedroom units tend, other things being equal,
18 to discourage the provision of larger units because from a
19 straight economic standpoint if there's a market for both
20 small and large units the small units can be constructed
21 and more land costs can be assigned against small units by
22 the builder and more, it becomes more economically feasible
23 and profitable to construct smaller units because you can put
24 more, substantially more of them in to a given piece of
25 ground.

1 Thirdly, the provision of 2 parking spaces per dwelling
2 unit is high.

3 The similar provisions--

4 (Whereupon the court heard legal argument.)

5 Q Mr. Mallach, do you recall what you were
6 commenting on or would you like the last--

7 THE COURT: He's finished R-4.

8 THE WITNESS: Oh, yes.

9 THE COURT: Anything else?

10 A With regard to the R-5, the same comments as the R-4
11 apply to the minimum lot and frontage requirement in those,
12 that zone as well as to the similar density provisions for
13 garden apartments under R-5 as under R-4 which have the
14 same discouraging effect on larger units. Again, I think it
15 stated these provisions for exemption from the restrictions of
16 the ordinance for purposes of senior citizens housing and not
17 for purposes of housing for low and moderate income, nonelderly
18 families is a restraint.

19 In view of the apparently substantial amount of un-
20 developable or difficult to develop land in the manufacturing
21 zone there's nothing of particular significance about the dis-
22 tribution of vacant land in the town, that would have a direct
23 effect on the exclusionary features.

24 Q Thank you, Mr. Mallach.

25 Does this municipality have a public housing authority?

1 A No.

2 Q Is there any state or federal subsidized housing
3 within the confines of the borough?

4 A It's my understanding that there is a senior citizen
5 project at some stage of the development for, under the New
6 Jersey Housing Finance Agency Program.

7 Q Mr. Mallach, I would like to draw your attention
8 to Page 68 of Exhibit P-53, could you tell us what this is
9 please?

10 A Yes, sir. This is the summary table from the community
11 development revenue sharing application dealing with survey of
12 housing conditions, 1970 and housing assistance needs of lower
13 income households, 1970.

14 (Whereupon the court heard legal argument.)

15 Q Is there an entry on that document for Metuchen?

16 A Yes, sir.

17 Q Would you read it to us, please.

18 A Yes, in column one which refers to the number of sub-
19 standard units in 1970 figure for Metuchen is 166, in
20 column two which refers to the elderly and nonelderly low
21 income households in need of housing assistance I assume
22 financial assistance, the number is 723, the total in column
23 three is 889.

24 Q Thank you Mr. Mallach.

25 I will draw your attention to request for admissions

1 submitted to Metuchen and responded to dated June 9th, 1975
2 signed by Harold M. Klein, the borough administrator, it
3 specifically, Mr. Mallach, to question 8, would you read the
4 question and the response, please.

5 A Does, the question is, "Does defendant admit that the
6 number of building permits it issued between 1965 and 1973
7 was as follows: specifically, 1965, single family, 36,
8 multi family, zero.

9 1966, single family, 21, multi family, zero.

10 1967, single family, 17, multi family, zero.

11 1968, single family, 31, multi family, zero.

12 1969, single family, 18, multi family, zero.

13 1970, single family, 30, multi family, zero.

14 1971, single family, 29, multi family, zero.

15 1972, single family, 29, multi family, zero.

16 1973, single family, 16, multi family, zero."

17 The answer to the question was, "Yes."

18 Q Thank you, Mr. Mallach.

19 MR. SEARING: Your Honor, we have no further
20 questions.

21 THE COURT: Do you wish to wait until tomorrow
22 morning to cross-examine?

23 MR. SPRITZER: Yes, your Honor.

24 (Whereupon the court heard legal argument.)

25 THE COURT: I didn't hear any testimony as to

1 exclusion of trailer parks.

2 MR. SEARING: That's in the admission, your
3 Honor.

4 THE COURT: All right.

5 THE WITNESS: Forgot that.

6 MR. SPRITZER: That's not testimony though, your
7 Honor.

8 THE COURT: Well--

9 MR. SPRITZER: We haven't--

10 THE COURT: I'd allow him to reopen his direct
11 to inquire as to that, I suppose.

12
13 BY MR. SEARING:

14 Q Mr. Mallach, I draw your attention to the question,
15 or does the municipality, in its zoning ordinance provide
16 for mobile homes?

17 Could you read the question one, please?

18 A Yes, sir, "Does defendant admit that its municipal
19 zoning ordinance does not provide for mobile homes? Admit."

20 THE COURT: All right.

21 MR. SEARING: I beg your pardon, your Honor, if
22 I could strike that whole entry I was using the wrong
23 admissions from my desk. The proper one is up here at
24 the witness stand, the one identified before as being
25 signed on June 9th, 1975 by Mr. Klein.

1 Q Mr. Mallach, could you now read question one,
2 please.

A I'm sorry.

3 MR. SPRITZER: Your Honor, of course, I object
4 to reopening on this, he was closed and he didn't state
5 anything about mobile homes while it's admitted, his
6 testimony in regard to exclusionary facts--

7 THE COURT: That objection is overruled.

8 A "Does Defendant Metuchen admit that its municipal zoning
9 ordinance specifically prohibits trailer coach parks?"

10 A Yes.

11 Q Thank you, Mr. Mallach.

12 (Whereupon the court heard legal
13 argument.)

14 THE COURT: All right, court will recess
15 until 9 o'clock tomorrow.
16
17
18
19
20
21
22
23
24
25

1 THE COURT: Mr. Spritzer.

2
3 A L A N M A L L A C H, continued.

4 CROSS-EXAMINATION BY MR. SPRITZER:

5 Q Mr. Mallach, so we'll be able to go through this
6 in a way that will be helpful to the court, I'm just telling
7 you in advance that I've prepared my cross-examination basically
8 on five points.

9 One, your methodology, the general questions, then I
10 will cover mobile homes, I will cover minimum floor areas,
11 I will then cover the senior citizen exception and fifthly,
12 I will then try to cover factually in respect to vacant land
13 a profile of the community, I will touch it, in respect to your
14 general comments and the way you prepared, the way you testify
15 in respect to the special consumption.

16 I'd like to show you, it's a street and road map of
17 Middlesex County. Is that correct?

18 A Yes.

19 MR. SPRITZER: Your Honor, could I just have
20 this marked for identification.

21 THE COURT: Yes.

22 DME-3.

23 (Document received and marked DME-3 for
24 identification.)

25 MR. SPRITZER: Since it's a rather large map would

1 your Honor have any objection if I posted it there?

2 THE COURT: No.

3 Q Now, as you can--can you identify this
4 Mr. Mallach? In red is the Township of Edison.

5 A Yes.

6 Q And do you know what that blue part is in the
7 middle of that Township of Edison?

8 A That is the Borough of Metuchen.

9 Q Now, how many municipalities are there in the
10 borough, I mean, in Middlesex County?

11 A There are 25, I believe.

12 Q All right. And would it be fair to say that
13 each municipality differs to some extent in respect to various
14 factors which I'll get into, no 20, no one of the 25
15 municipalities is exactly the same; is that correct?

16 A That's correct.

17 Q All right. And would it be proper to say that the
18 municipalities differ in respect to their location in the
19 county?

20 A Yes.

21 Q All right. And they differ in respect to the
22 road networks in the county?

23 A Yes.

24 Q Is that correct? They differ in respect to where
25 any rivers or other streams in the county?

1 A Yes.

2 Q And these municipalities differ in respect to the
3 location of railroads in the county?

4 A Yes.

5 Q And these municipalities in respect to the
6 location of railroads in the county?

7 A Yes.

8 Q All right. And some of them, the railroads
9 go right through the municipalities?

10 A That's true.

11 Q In fact, yesterday we had testimony that 3 railroads
12 passed through Edison; is that correct?

13 A That was the testimony.

14 Q And are you aware that those same 3 railroads
15 pass through Metuchen?

16 A I didn't know that all three of them do, but I'm aware
17 that a good deal of railroads--

18 Q If I told you that you would accept that,
19 wouldn't you?

20 A Seems--

21 Q That the Pennsylvania-Lehigh Valley railroad and
22 Reading also go through Metuchen?

23 A Seems reasonable.

24 Q All right. And these municipalities differ in
25 size, isn't that correct?

1 A Yes.

2 Q There are some as small as Dunellen, one point
3 less than a square mile, correct?

4 A Correct.

5 Q And there are some that are perhaps 30 or 40
6 miles square?

7 A Yes.

8 Q All right. And they differ in respect to
9 density; is that correct?

10 A Yes.

11 Q In fact we just went through a chart with
12 Mr. Lerner showing the various densities of each municipality;
13 is that correct?

14 A Yes.

15 Q And they may differ as to job, employment; is
16 that right?

17 A The--

18 Q As to availability of jobs?

19 A The amount of jobs, yes.

20 Q Right. And they may differ as to the location of
21 industry and the types of industry?

22 A Yes.

23 Q Is that correct? They would differ also as to
24 particular land uses, right?

25 A Well, they all have--

1 Q The distribution of land uses in the town?

2 A Yes.

3 Q Would probably be different in every single
4 municipality; is that correct?

5 A Yes.

6 Q All right. And each municipality probably has,
7 wouldn't you say, a peculiar history that affected its
8 development?

9 A I don't, peculiar
may not be the right term.

10 Q You don't like the word peculiar. Well, how about
11 the word distinct?

12 A OK, distinct.

13 Q Would you accept the word distinct?

14 A Yes.

15 Q All right, for example, in respect to Metuchen,
16 if I were to read this to you, this is from Metuchen's master
17 plan, Metuchen's development pattern was shaped many years
18 ago by the location of the Pennsylvania and Lehigh Valley
19 Railroads and even earlier by the crossing of two major roads,
20 Middlesex Avenue, Route 27 and Main Street, at this important
21 intersection and leading down to the commuter's station, the
22 core of the downtown was developed. Here is the focus of the
23 borough's radial system of roads, all of which lead into the
24 central business district. These roads have divided the borough
25 into the well defined neighborhoods, a small but growing

1 industrial area is in the western portion of the community, the
2 residential areas are self contained and for the most part
3 separated from nonresidential uses, retention of the historic
4 pattern of land use is implicit in plans for Metuchen's
5 future development.

6 Now I'm not asking you whether you know that but
7 wouldn't it be fair to say that as to each of these 25
8 municipalities there could be a statement in respect to planning
9 for that municipality similar to Metuchen in describing what
10 has happened and what should happen in the future?

11 A Well, certainly with regard what has happened, drawing
12 the conclusion as to what should happen in the future.

13 Q Well, merely as a basis, not saying that you
14 would follow it as a complete rigid guide line but the past
15 would have some effect on how you would want to develop the
16 future; is that right?

17 THE COURT: Think you interrupted his answer,

18 Mr. Spritzer.

19 Q I'm sorry.

20 A I was saying is that one can draw a wide, in any given
21 community one can draw many different conclusions about the
22 future from the past. Certainly in each case you are relating
23 to some degree to the past of the community.

24 Q Now, relating to all various criteria that I
25 mentioned in respect to the 25 municipalities, would you say

1 that some might be characterized as more urban than others?

2 A Yes.

3 Q And some could be described as compact
4 municipalities? A Relative to--

5 Q Yes, relative and could be classified as such?

6 A Yes, relative to the others.

7 Q Right, exactly, exactly and some could be
8 classified as sprawling municipalities?

9 A Yes.

10 Q All right. And some might be classified as rural
11 municipalities?

12 A Yes.

13 Q Now, when you determined your five criteria in
14 testifying in this court as to presumptive facial exclusion,
15 did you take into consideration classifying any of these 23
16 municipalities before you applied your exclusionary
17 opinion?

18 A No, sir.

19 Q What? A No.

20 Q In other words, you applied uniformly throughout,
21 for example mobile homes or the lack of mobile homes was
22 exclusionary, irrespective of any of the classifications; isn't
23 that correct? A No, I believe then

24 specifically the case of mobile homes in general testimony I
25 drew a distinction and said that the, there were factors that

1 affected the appropriateness of locating mobile homes, still
2 the prohibition of mobile homes or provision dealing with
3 mobile homes is one thing, the choice of a remedy with regard
4 to that is another matter.

5 Q You admitted that there could be, there could be
6 communities where trailer coach parks or mobile homes were
7 inappropriate, is that correct?

8 A I don't believe I said community but specific
9 locations.

10 Q Could be specific locations?

11 A Yes.

12 Q But as far as every community goes, as far as
13 you're concerned, every community, regardless of any of the
14 classifications which I set forth, which you stated you didn't
15 use, would be, their ordinance would be presumptively facially
16 exclusionary, if they prohibited mobile homes, isn't that
17 what you testified to?

18 A Yes.

19 Q Now, I'll go on to Part 2, Mr. Mallach.

20 We're on mobile homes now.

21 In respect to mobile homes or in respect to any expertise
22 you have, are you familiar with the urban land institute?

23 A Yes, I am.

24 Q All right. And do they provide what is called a
25 community builder's handbook? A Yes, they do.

1 Q That's used by people interested in the field for
2 building; is that correct?

3 A Yes, it is.

4 Q And it could be used by planners?

5 A Could be, yes.

6 Q All right. And it could be used for people
7 interested in developing property; is that right?

8 A Yes, it could be.

9 Q And it's sort of considered an authority in the
10 field to an extent, isn't it or as a guide?

11 A A guide perhaps, an authority may be strong.

12 Q Now, respecting mobile homes, would it be fair
13 to say--how long are mobile homes, by the way?

14 A Mobile homes, well, they vary of course but they run up
15 to, usually a maximum of 60 feet.

16 Q And it's very common to have it between 50 and
17 60 feet, that's not uncommon?

18 A Those are the largest type mobile homes, yes.

19 Q All right. And in planning for mobile homes, is
20 there a reason for them to be near highway locations?

21 A There is a minor convenience factor involved since the
22 delivery is somewhat facilitated if they're near highway
23 locations.

24 Q Well, is there any problem in backing up mobile
25 homes on nonhighway locations like average streets, 50 feet

1 wide? A Well, it would depend on the specific
2 circumstances, there may be but there wouldn't necessarily be,
3 it would depend on the type of access to the lot you were
4 putting the mobile home on, a number of other factors.

5 Q Well, if I told you that according to this guide
6 it states considering mobile homes, movement where permitted
7 is largely restricted to dual lane highways for the 12 foot
8 model. Would you disagree with that?

9 A I think that's certainly generally the case.

10 Q Now in respect to a trailer coach park to which
11 you objected, Metuchen doesn't have any. Would there be a
12 need in such a park for space for interior circulation of
13 these mobile homes?

14 A Well, each of the mobile homes should have some kind of
15 a frontage on the circulation system, some kind.

16 Q They need space for, generally if you are
17 going to move the homes around you need, you need space inside
18 the park to move them; isn't that correct?

19 A To the degree you're going to move them, yes.

20 Q Right, well, they have to get in and they have
21 to get out, isn't that correct?

22 MR. SEARING: Your Honor, I'm going to object
23 to this line of questioning. Many of Mr. Spritzer's
24 questions, the answers to many of Mr. Spritzer's
25 questions speak for themselves. If his entire cross-

1 examination is based on such material I suggest that
2 we make an effort in a few minutes to get a
3 stipulation as to these things so that we can move
4 along.

5 THE COURT: Would you concede Mr. Mallach that
6 there is some difficulty of access through narrow
7 streets by mobile homes. Is that not so?

8 THE WITNESS: Yes.

9 Q And you would, would you concede the following,
10 Mr. Mallach, I'll make it short on behalf of counsel, all
11 right?

12 That in respect to trailer coach parks it would have to
13 be space in such a park for interior circulation or movement
14 of the mobile home, that there would have to be space for
15 recreation areas or low and moderate income families living in
16 the park, that there would be good practice to have a
17 community building and that it would be good practice to have
18 other landscaped open space to enjoy the environment. Would
19 you agree to that? A I think they are all reasonable
20 goals, yes.

21 Q Now do you have an opinion as to what would be
22 either a maximum or acceptable density for trailers and
23 trailer coach parks?

24 A Well, I'm not sure what the absolute maximum would be,
25 I think typical densities for trailers, trailer coach

1 parks would range from about certainly no less than six units
2 an acre and possibly up to about 10 units an acre. Units I
3 mean mobile homes.

4 Q Right.

5 In respect to, not cost of mobile homes but would it be
6 fair to say then to build and maintain a, what you would
7 consider a good or adequate mobile park for low and moderate
8 income people to give them the necessities to which you
9 agreed to and some of the amenities along with the densities,
10 would it be fair to say that a reasonable minimum acreage would
11 be perhaps 5?

12 A Well, I suspect it could be done in 4, I think there
13 are certain, there are economies that you would get when you
14 get up to ~~or~~ 5 or larger that would probably be advantageous.

15 Q All right, we'll start on minimum flooring, all
16 right?

17 That's the third thing you objected to or the second
18 thing, I'm sorry. You object to the 1000 square feet minimum
19 in the R-2 Zone and the 1400 square feet minimum in the R-1
20 Zone?

21 A Yes, sir.

22 Q Correct? All right. Now, you have the exhibits?

23 A No, unfortunately I don't have the Metuchen, I have the
24 ordinance, I don't have any sheet here, seems to have
25 disappeared.

1 Q It's P-127, Mr. Mallach. Would you note in the
2 R-1 Zone the amount of vacant acreage?

3 A According to P-127 the vacant acreage in the R-1 Zone
4 is approximately 2 acres.

5 Q Would you note in the R-2 Zone--

6 A Again the vacant acreage designated in the R-2 Zone is
7 approximately 3 acres.

8 Q I call your attention to P-126 which is the
9 zoning ordinance and the map. Could you just remove the map?

10 A This is a map--

11 Q I'm sorry, he has the wrong map here, an election
12 district map.

13 All right, so, would it be fair to say the R-1 and the
14 R-2 Zone comprise a major part of the residential zones in the
15 community?

16 A That's correct.

17 Q And you would not be surprised to learn that the
18 acreage and I think it is supplied in answers to interrogatories
19 that is contained there are scattered throughout these zones
20 and made up into various lots?

21 A I would not be surprised, no.

22 Q All right. And then when they all add up it's
23 estimated, the two acres in one zone and three acres in the
24 other.

25 Now, assuming Mr. Mallach, that there's an empty lot in

1 the R-1 Zone and all the houses there because of the lack of
2 vacant area it is built up, conform this 1400 minimum floor
3 area and suppose that low and moderate income person buys the
4 lot, at, let's say \$10,000 and it would cost his next door
5 neighbor to put this house up about \$40,000.

6 So he has the next door neighbor has a \$50,000 house and
7 all the other houses are approximately the same because of
8 this 400 minimum floor area.

9 Now assume that the low and moderate income person wants
10 to build our standards, he wants to build an 800 minimum floor
11 area house. All right? Can you assume that?

12 In other words, the restriction is no longer valid and he
13 wants to build this house and as a result his house would cost
14 him \$25,000. That's--do you see any disadvantageous in this
15 to the low and moderate income person who can now build an
16 800 minimum floor area house surrounded by houses of 1400
17 minimum floor area?

18 A I don't think any particular disadvantages to the low
19 or moderate income person in the hypothetical, no.

20 Q Do you think he could get bank financing for
21 this house?

22 A Most probably.

23 Q All right. Do you think that if he went to
24 resell the house he would be at any financial or equity
25 disadvantage?

A On the contrary I suspect the

1 proximity to the \$50,000 houses might help him.

2 Q And you think this house would have a saleability
3 then?

4 A Yes.

5 Q And the ratio to, of land cost to house in this
6 area as compared to the others would not affect whether he
7 could get financing from a bank, is that what you are
8 saying?

9 A If, if the end total cost was reasonable and was such
10 that it was within people's means and it represented a
11 reasonable house value then the ratio in itself would not
12 necessarily be a problem.

13 Q Mr. Mallach, in respect to your complaint regarding
14 senior citizens housing--

15 THE COURT: Do you have any direct examination
16 on that?

17 I don't think so.

18 MR. SPRITZER: No direct? I'm sorry.

19 THE COURT: I don't believe so.

20 MR. SEARING: It wasn't the complaint against
21 senior citizen housing exactly, as I believe, I believe
22 that the material read by Mr. Spritzer into the record
23 yesterday indicated that the complaint was against an
24 exemption, certain exemptions being given to housing
25 for senior citizens while no exemption was given to

1 similar housing for low and moderate income families
2 and there may, I believe there was some testimony to
3 this in terms of what those restrictions, what the
4 waiver of those restrictions were but in any case
5 Mr. Spritzer did read that particular provision from
6 the interrogatories.

7 MR. SPRITZER: Well, is that--

8 THE COURT: That didn't put it into the testimony
9 that he read it.

10 MR. SPRITZER: All right, if that's it then I
11 will have no comment on that, your Honor, if that's
12 not part of the case and I will go to my last, last
13 matter, and then my cross-examination.

14 Q Could you just take P-50A and as I call them you
15 just read them off and I think that's how we will conclude.

16 Mr. Mallach, will you look at Page 17 of 50A and could
17 you determine the number of total housing units for Metuchen?

18 A 4912 housing units in Metuchen.

19 Q And the one family, well, they call one unit but
20 one family units? A The one unit structures were

21 detached single families are 3676 of--

22 Q And what we now term multi family?

23 A 1234.

24 Q That would be approximately 1/4th of the housing
25 in Metuchen; is that correct?

1 A That is correct.

2 Q All right.

3 THE COURT: Are you including two family
4 houses in that?

5 THE WITNESS: Yes.

6 THE COURT: All right.

7 Q Could you turn to Page 16 and could you read the
8 density for the Borough of Metuchen?

9 A The density in the Borough of Metuchen, 1970?

10 Q That's correct. A Was 5725
11 persons per square mile.

12 Q And just running down the other communities,
13 could you state how it ranks in Metuchen with the other
14 communities in respect to the number. In other words, I'll
15 help you out, if you give--Perth Amboy would be first; is that
16 correct? A Perth Amboy is first.

17 Q Dundlen second?

18 A No, Highland Park is second.

19 Q Highland Park? A New Brunswick is
20 third, Dunellen is fourth, I believe South Amboy is fifth
21 and I believe Metuchen is sixth.

22 Q All right, thank you.

23 Now in respect to population, would you turn to Page,
24 I believe it's 15.

25 A Yes.

1 Q What is the population of Metuchen?

2 A The population of Metuchen in 1970 was 16,031.

3 Q In respect to--

4 MR. SPRITZER: This NP-1, your Honor--

5 Q For a moment we'll go to the CDRS.

6 I show you the CDRS application, which is marked as
7 P-53 and I show you Page 61 and does that indicate the number
8 of low and moderate income families in accordance to the
9 census tract?

10 A That's correct.

11 Q And if I advise you that Metuchen was census
12 tract 20, 21.01, 21.02 and 22, you could agree to that, couldn't
13 you? A Well, I have no knowledge of it but I'll

14 take your word for it.

15 MR. SPRITZER: Can we stipulate to that
16 Mr. Searing?

17 MR. SEARING: Yes.

18 Q I'll show you another part just to make sure,
19 show you another part of the application. Now could you read
20 the number of low and moderate income families for those four
21 tracts?

22 A In census tract 20 there are 369 low and moderate income
23 families, in census tract 21.01 there are 132, in census tract
24 21.02 there are 687 and in census tract 22 there are 404.

25 Q Could you--

1 MR. SPRITZER: Would your Honor mind if he
2 added those up?

3 THE COURT: All right.

4 A It's a total of 1,592.

5 Q All right. And that would be about one third
6 of the community; is that correct?

7 A I can tell you exactly. About one third, yes.

8 Q Looking at these zoning maps, can you state the
9 multi family zone locations, the number of locations of multi
10 family zones in Metuchen?

11 A Go to the R-4 and the R-5 zones.

12 Q Right. And they're also allowed in the--

13 A B-1.

14 Q B-1 zone too. A OK. There is
15 an R-5 zone along Durham Avenue, there is an R-4 zone along the
16 borough line near Amboy Avenue.

17 Q Would be two? A There is an
18 R-5 zone along the railroad in the, end of Amboy Avenue.

19 Q That would be 3. A There's an R-5
20 zone on Lincoln Avenue.

21 Q 4. A There's an R-4 zone straddling
22 Prospect Street and the railroad tracks.

23 Q That's 5. A There's an R-4 zone
24 along Newman Street.

25 Q And is there also a B-1A zone?

1 A That's true and there's a B-1A zone bounded by Main and
2 Amboy.

3 Q That would be 7, correct?

4 A 7.

5 Q And in addition to that would it be fair to say
6 that there are three 2 family zones?

7 A That's correct.

8 Q That makes a total of 10, correct, and then if
9 you want to consider it multi family there's a town house,
10 is that right, R-2A?

11 A There's a single town house.

12 Q Among these zones there are 11 different
13 locations in town; is that correct?

14 A That's correct.

15 Q And if I told you that the size of Metuchen is
16 2.9 square miles.

17 A That would not surprise me.

18 Q That would not surprise you, all right.

19 MR. SPRITZER: I have no further questions.

20 THE COURT: All right.

21 MR. SPRITZER: I'd like to make a motion at
22 this time.

23 (Whereupon the court heard legal argument.)

24 THE COURT: All right, Middlesex.

25 MR. SEARING: Your Honor, I have three items

1 to be marked for identification.

2 THE COURT: All right, P-128, 129 and 130.

3 (Documents received and marked P-128, 129 and
4 130, for identification.)

5
6 A L L A N M A L L A C H, continued.

7 DIRECT EXAMINATION BY MR. SEARING:

8 Q Mr. Mallach, I show you P-128 for identification.
9 Could you identify it for us, please?

10 A P-128 is a document entitled the zoning ordinance of the
11 Borough of Middlesex which includes one separately bounded
12 amendment.

13 Q Could you identify P-129, please?

14 A P-129 is entitled the zoning map of the Borough of
15 Middlesex.

16 Q Could you identify P-130, please?

17 A P-130 is the summary of zoning or provisions of the
18 Borough of Middlesex prepared by me.

19 MR. SEARING: Your Honor, having shown these
20 to counsel from Middlesex I would now move their
21 entry into evidence.

22 MR. JOHNSON: I have no objection, your
23 Honor.

24 (P-128, 129 and 130, heretofore marked for
25 identification now marked in evidence.)

1 Q Mr. Mallach, could you identify the principal
2 features of this zoning ordinance, please?

3 A Yes, sir. There are 7 zones specified by the Borough of
4 Middlesex zoning ordinance of these 5 residential zones,
5 2 are nonresidential, one entitled general business and one
6 industrial.

7 The residential are, includes 3 zones which permit
8 single family only, one zone which permits single family and
9 duplex, two family development and one zone which permits
10 high rise apartments.

11 In the single family zones the R-100 zone requires a
12 minimum lot of 200, 20,000 square feet, approximately half an
13 acre, minimum frontage of 100 feet and the minimum floor area
14 of 1500 square and 1000 square feet on the first floor.

15 The R-75 zone specifies a lot size of 7500 square feet,
16 75 foot frontage, 900 square floor area.

17 The R-60A zone specifies 6000 square feet lots, 60 foot
18 frontage and 750 square foot interior floor space.

19 The R-60B zone contains the same standards as the R-60A
20 for single family and requires 7500 square feet lots, 75 foot
21 frontage and total of 1500 square feet for both units, for
22 duplex houses.

23 The R-4 zone is designated as a high rise apartment
24 zone.

25 The R-4 zone requires a lot minimum, lot size of

1 4 acres for construction.

2 The density may not exceed 16, 16 units. One bedroom
3 apartments must contain 550 square feet, 2 bedroom apartments
4 must contain 750 square feet. The ordinance prohibits units
5 in excess of 2 bedrooms and requires that 85 percent of the
6 units be one bedroom or no bedrooms. 15 percent maximum,
7 two bedroom, that's the--excuse me--the general business zone
8 provides for business and certain residential uses.

9 The residential uses permitted in the business zone in-
10 clude R-60B, which is the single family and the two family
11 duplex and garden apartments developments. The garden apart-
12 ments, the standards for the garden apartments are similar to
13 the standards for the high rise in the R-4 zone and again the
14 same density standard and the same requirements of 85 percent
15 one bedroom and only 15 percent two bedroom. The same lot
16 size, same unit size, et cetera.

17 The industrial zone does not permit residential uses.
18 Units constructed under the high rise provisions in the R-4
19 zone as well as garden apartments require the approval of
20 mayor and council as well as a positive recommendation by the
21 planning board.

22 In addition, the ordinance specifies that the combined
23 total of garden apartments and high rise units may not exceed
24 20 percent of the number of single family units in the borough
25 and the combined total of 2 through 7 dwelling units, may not

1 exceed 10 percent of the detached single family dwellings in
2 the borough. I assume that even though it's not absolutely
3 clear that the two categories are considered mutually
4 exclusive.

5 Finally with regard to vacant land availability,
6 according to information provided by the defendant's attorney
7 at the time of the depositions, there are 130 acres plus or
8 minus of vacant and useable land within the borough. This in-
9 cludes a, subtracts for flood plain lands. Of this land
10 approximately 40 acres is located within the single family
11 zones, approximately 5 acres in the one and two family zone,
12 approximately 16 acres in the high rise zone, eight acres in the
13 business zone which garden apartments are permitted and 58
14 acres slightly less than one half the total in the industrial
15 zone.

16 In addition the information provided specifies
17 approximately 50 acres in nursery use which, a report from the
18 borough's planner states are being replaced by more intensive
19 land use activities.

20 THE COURT: Where did the 50 acres fit into
21 the 130?

22 THE WITNESS: It's not clear, sir. That's over
23 and above the 130 but what zone--

24 THE COURT: I see.

25 THE WITNESS: But what zone they are in is not

1 clear.

2 THE COURT: What's that nursery, tree nursery?

3 THE WITNESS: I assume tree nursery, plant
4 nursery.

5 Q Thank you, Mr. Mallach.

6 What if any of the features you have described have an
7 adverse effect on the provision of housing for low and
8 moderate income persons?

9 A There are a number of features with regard to the re-
10 quirement in the single family zones, the requirement in the
11 R-100 zone.

12 (Whereupon the court heard legal
13 argument.)

14 THE COURT: All right, proceed with your
15 answer then.

16 THE WITNESS: Yes, sir.

17 THE COURT: Really just started, R-100
18 single--

19 Q Mr. Mallach, I had just asked you what--

20 THE COURT: He knows what it is. Go
21 ahead.

22 A In the R-100 single family zones, the provisions for
23 lot size of 20,000 square feet, frontage of 100 feet and floor
24 area of 1500 feet are all substantially in excess of reasonable
25 and modest requirements.

1 The requirement of 1000 square feet on the first floor
2 is equally so and can lead to construction of substantially
3 larger than 1500 square foot, two story houses.

4 I'm not taking issue with the provisions of, that
5 are of that nature in the other single family zones.

6 The provisions in the high rise apartment zone are
7 restrictive. First, in a municipality with relatively small
8 vacant lots and relatively scattered vacant acreage the
9 provision that requires four acres for development of a multi
10 family complex is extremely restrictive and tends to severely
11 limit the available lands for the purpose. The requirement
12 that is 85 percent of the units be one bedroom and the
13 prohibition of units over two bedrooms is again extremely
14 restrictive and prohibitive of an important type of housing
15 opportunity.

16 That applies both to the R-4 high rise provisions and
17 to the provisions for garden apartments in the general business
18 zone.

19 The requirement that multi family housing receive approval
20 of mayor and council as well as a positive recommendation from
21 the planning board is illustrative of the kind of broadly
22 discretionary provision which places hurdles in front of multi
23 family housing which does not exist for other housing types and
24 can be used arbitrarily to limit housing opportunity.

25 Thirdly or the provision that garden apartments may not

1 exceed the percentages specified and multi family housing
2 generally may not exceed the specified percentages of single
3 family house is restrictive in that it puts an arbitrary and
4 fairly limiting ceiling on the approval of multi family
5 housing being of any kind, which is, especially the case
6 since the number of single family units permitted in recent
7 years in the borough has been relatively small.

8 Finally the vacant land, the land specified as vacant
9 and useable rather, it, nearly half of the land is within
10 industrial zones and this zoning is substantially in excess of
11 the Middlesex County Planning Board's projection of the demand
12 for industrial lands. At the same time the amount of land
13 in residential zones represents only the very small percentage
14 of the county planning board's projection of the need for
15 residential land.

16 So these are the features of the Middlesex ordinance that
17 are relevant to this question.

18 THE COURT: You're referring to P-105?

19 THE WITNESS: That's correct, sir.

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

22 A No, sir.

23 Q Mr. Mallach, I would like to draw your attention
24 to the question in response to interrogatories served by
25 plaintiff on defendant, this question number four, would you

1 read it and the answers provided by the defendant?

2 A Yes, the question is, "Provide the number of multi
3 family units in each of the following rental categories and
4 ranges."

5 The answer specifies 8 efficiency units between 150 and
6 \$199 a month.

7 101 bedroom units between 150 and 199 and 345 one bed-
8 room units between 200 and 249 a month.

9 One two bedroom apartment between 150 and 199. 98 two
10 bedroom units and 249 and 77 two bedroom units over 250.

11 No three or more bedroom units under 200. 14 between
12 200 and 249 and one over 250.

13 Q Thank you.

14 MR. SEARING: Now, your Honor, if I may have the
15 court's indulgence I am going to draw Mr. Mallach's
16 attention to P-28 to provide some figures in which the
17 court has shown an interest and I believe can be
18 extracted from P-28.

19 Q Mr. Mallach, can you, from this exhibit, determine
20 the total number of families as of 1970 within the Borough of
21 Middlesex?

22 A This exhibit indicates that there were a total of
23 3,483 families in the Borough of Middlesex.

24 Q Can you determine how many families were in the
25 income range of zero to 5999?

1 A There ^{were} 76 families in that incomerange.

2 Q And that would be, what percentage of the
3 total number?

4 A 10.8 percent.

5 Q Can you determine how many families were in the
6 6000 to 9999 income range?

7 A There were 813 families then in that income range.

8 Q And what percentage is that of the total number
9 of families?

10 A 23.3 percent, sir.

11 THE COURT: I think your total number of families
12 is wrong. I'm just looking at it--

13 THE WITNESS: There's sometimes a variation from
14 one table.

15 THE COURT: Better add up the number of families
16 there,

17 THE WITNESS: Let me try that again. You are
18 right.

19 Q Could you give us the correct--

20 THE COURT: Thatknocks it out so far, doesn't
21 it?

22 THE WITNESS: No.

23 THE COURT: Well, your percentages are wrong,
24 if the total number of families is wrong.

25 THE WITNESS: Right, I'll recalculate the

1 percentages.

2 THE COURT: Why don't we take a recess at
3 this time, work it out.

4 What is the total number of families?

5 THE WITNESS: 2883.

6 THE COURT: All right.

7 (After a brief recess the trial
8 continued.)

9 Q Mr. Mallach, I'd like to draw your attention to
10 Page 68 of plaintiff's exhibit 53 which you have identified
11 previously as summary table of the community development
12 application.

13 Is there an entry for Middlesex on that table?

14 A Yes, there is.

15 Q Would you read it for us, please?

16 A Yes.

17 In the first column the number of substandard dwelling
18 units for the Borough of Middlesex numbers 187, in the second
19 column, referring to the number of lower income households
20 in need of financial assistance is 433, total of 620.

21 Q Thank you.

22 Are there any federally or state subsidized housing
23 units in Middlesex?

24 A Not to my knowledge.

25 MR. SEARING: Your Honor we have no further

1 questions.

2 THE COURT: Mr. Johnson.

3

4 CROSS-EXAMINATION BY MR. JOHNSON:

5 Q Mr. Mallach, I call your attention to P-130
6 in evidence, your analysis chart specifically to the R-4
7 high rise apartment zone under that particular section you
8 indicate two specific problem areas, one the bedroom
9 prohibitions and two, a 20 percent coverage. Is that
10 correct?

11 A Well, I didn't refer specifically to 20 percent coverage.
12 I referred to the feature of the 20, they shall not exceed the
13 20 percent of the single family dwellings.

14 Q Well, let me, your chart says here coverage,
15 20 percent, does it not?

16 A That refers, we--

17 Q Just answer my question please.

18 A The chart does say that, yes.

19 Q Now in your referring, that is listed under the
20 R-4 high rise apartment zone, is it not?

21 A Yes, it is.

22 Q Now I call your attention to Section 82-50.4
23 of the Middlesex Zoning Ordinance and under that particular
24 section which is in the high rise apartment zone, would you
25 read that section please?

1 A 50.4A to B to?

2 Q B2, I'm sorry.

3 A Lot coverage by all buildings of any nature shall not
4 exceed 20 percent of total area.

5 Q So you're talking there in that ordinance of
6 lot coverage not exceeding 20 percent of total area, correct?

7 A That's correct.

8 Q Now when you prepared that chart, isn't it true
9 that that was the 20 percent coverage that you were referring
10 to?

11 A That's correct.

12 Q You were not referring to any second, you were
13 not referring to Section 82-76.1 of the Middlesex Zoning
14 Ordinance, is that correct?

15 A In terms of that
16 particular reference on the chart?

17 Q Yes, sir. A No, sir.

18 Q So in this particular reference on the chart where
19 you say coverage, 20 percent, you're talking about lot
20 coverage by all buildings of any nature, shall not exceed
21 20 percent of the total area?

22 A That's the reference.

23 (Whereupon the court heard legal
24 argument.)

25 Q Mr. Mallach, have you ever visited the Borough of
Middlesex?

1 A No, sir.

2 Q Never at any time? A I may but I can't
3 remember specifically.

4 Q And therefore you've never made a thorough
5 inspection of the Borough of Middlesex to ascertain existing
6 land uses in the borough, have you?

7 A I've not done so.

8 Q Are you aware from studying any documentation which
9 has been furnished to you of the existing land uses in the
10 Borough of Middlesex?

11 A I have reviewed the document entitled land use and
12 development trends analysis prepared for the Borough of
13 Middlesex by the Orose Report, which has substantial information
14 on land use in the Borough of Middlesex.

15 Q Did you personally review the zoning ordinance of
16 the Borough of Middlesex?

17 A Yes, I did.

18 Q When did you personally conduct that review?

19 A Oh, I'm not sure when the first time I conducted it was,
20 I've reviewed the ordinance carefully prior to this testimony
21 as well as having reviewed it previously.

22 Q It was after January 28th of 1976, was it not?

23 A It may have been, as I say I don't recall specifically
24 whether I reviewed the ordinance personally prior to that
25 deposition date or not.

1 Q Do you recall at the time that depositions were
2 taken on January 28th indicating to me that the zoning ordinance
3 of the Borough of Middlesex had been reviewed by your
4 associate at that point? A I may have had.

5 Q So that it was after January 28th then of this
6 year that you personally reviewed the Middlesex Zoning
7 Ordinance?

8 MR. SEARING: Your Honor I object to this line
9 of questioning, the date that he reviewed it is really
10 immaterial here, I think.

11 MR. JOHNSON: I think it's--

12 THE COURT: I would tend to think that that was
13 so at this time, Mr. Johnson. I'll sustain that
14 objection.

15 Q How long did it take you Mr. Mallach to review
16 the Middlesex Zoning Ordinance?

17 A To read the ordinance itself?

18 Q To read and review it and analyze it.

19 A Well, it's, there's a distinction to reading it, to read
20 and review it, may have taken half an hour to an hour to analyze
21 it in context with the other materials, considerably longer.

22 Q Did you read through the entire ordinance?

23 A Yes.

24 Q And you also read the report prepared by the
25 borough planner, Eugene R. Orose Associates, entitle Report

1 No. 2 on master plan basic study?

2 A Yes.

3 Q Did you obtain figures from the Orose Report
4 giving you available information concerning the amount of
5 vacant developable land in the Borough of Middlesex and
6 breaking down this available land by zone?

7 A The information on available useable and other vacant
8 land was provided separately from that report.

9 Q Was that the information that was furnished by
10 the Middlesex Borough Tax Assessor?

11 A I believe it was from the Middlesex Borough Tax Assessor
12 was furnished to me by the attorney .

13 Q That's a list of all of the different parcels of
14 land locating exactly what zones they are in; is that
15 correct?

16 A That's correct.

17 Q And you have a complete breakdown there of all of
18 that information?

19 A Yes, sir.

20 Q Do you know the total number of acres of land in
21 the Borough of Middlesex? Not vacant land now, total number of
22 acres of land?

23 A No, sir, I believe it's in the land use report and I
24 could--

25 Q Allright, would you refer to that report at

1 Page 4 and-- A Yes. There are approximately
2 2240 acres of land, altogether in the Borough of Middlesex.

3 Q This then is approximately 3½ miles of land;
4 is that correct? A That's correct.

5 Q And again are you aware that 82.7 percent of the
6 total land in the borough is actually developed at the present
7 time? A That is what is given on this

8 table, yes.

9 Q And do you accept that figure?

10 A It appears reasonable.

11 Q Do you know also that 17.3 percent of the total
12 land in the borough is vacant at the present time?

13 A That follows.

14 Q Now of this 17.3 percent which is vacant and I
15 believe it is indicated on that report is 386.02 acres, isn't
16 it true that only 130 acres or .058 percent is actually
17 vacant and developable?

18 A That is the information provided by the borough, yes.

19 Q All right. This is slightly more than one half
20 of one percent of the total land area in the Borough of
21 Middlesex, is it not?

22 A Oh, no, no, it's approximately 6 percent.

23 Q 130 acres is 6 percent?

24 A Is 6 percent of the land area of the Borough of
25 Middlesex.

1 Q All right. A You missed your
2 decimal point.

3 Q I'm sorry. How much of the total land in the
4 Borough of Middlesex is zoned for industry?

5 A Well, I have no idea of what the zoning is, there is
6 249.67 acres are in industrial use and an additional approxi-
7 mately 115 acres are vacant and industrially so zoned so that's
8 altogether approximatey 360 some.

9 Q Does this represent 11.1 percent of the total
10 land in the Borough of Middlesex zoned for industry?

11 A I would say it's closer to about, oh, 16 or 17 percent.

12 Q Again I call your attention to the report that
13 was furnished to you by the borough planner, on Page 4 on the
14 table--

15 A 11.1 percent is zoned for industry and used by
16 industry, then an additional few percent are zoned industrially
17 and are vacant.

18 That was the different--

19 Q Do you know how the percent of land zoned for
20 industry by the Borough of Middlesex and used for industry
21 that 11.1 percent figure compares with other municipalities in
22 Middlesex County?

23 A I believe I have some statistics to that effect. It's
24 my impression that it's less than some and more than others.

25 Q You feel that it is an unreasonable amount of land

1 to be used for business, for industry?

2 A Well, the amount of land that is used for industry is
3 neither reasonable or unreasonable, it's a reality, the
4 amount of vacant land that is zoned industrially and is not
5 used for industry, is most probably unreasonable in that it's
6 too high.

7 Q Can you tell me how Middlesex Borough ranks
8 with the county as far as actual amounts or percentages
9 of land being currently devoted to industrial use?

10 A Yes, it's based on the Middlesex County Planning Board's
11 information which does, this is from P-105, there are of the,
12 of the 23 municipalities leaving out New Brunswick and Perth
13 Amboy that don't have data on this chart, 11 of the
14 municipalities have a smaller percentage of land area zoned
15 for industry, 11 of the municipalities have larger percentage
16 land area zoned for industry, Middlesex appears to be, this is
17 not zoned for industry, I'm sorry, actually used for
18 industrial purposes.

19 Middlesex is apparently in the middle.

20 Q That's using the 1970 figures of the county
21 planning board; is that correct?

22 A Well, it's the data from their interim master plan
23 report, it's either 70 or 67 data.

24 Q Now again I call your attention to the Orose
25 Report, Mr. Mallach and ask you, is it true that

1 approximately 1/4th or to be exact 23.2 percent of the land
2 in the Borough of Middlesex is used for public streets or
3 railroad right of ways? A And water.

4 Q And water right of ways?

5 A 23.2 percent, yes, sir.

6 Q And 4.9 percent of the total land in the borough
7 is zoned for commercial use; is that correct?

8 A Yes, sir.

9 Q In commercial use. Do you feel, Mr. Mallach,
10 that a town with these percentages, 11.1 percent of the total
11 land actually being used for industry, 4.9 percent being
12 used for commercial, 23.2 percent for streets and rights
13 of ways, 36.3 percent for residences and 6.4 percent for
14 recreation and other public uses.

15 Do you feel that's a balanced community as far as mix
16 of uses?

17 A I think it's a representative community.

18 THE COURT: I don't think you're answering
19 the question.

20 THE WITNESS: Well, I don't know quite how to
21 define balanced community in terms of the mix of
22 residential and nonresidential uses.

23 Q You feel it's a representative community?

24 A Yes.

25 Q I refer you, Mr. Mallach, to P-50 in evidence

1 which is the Middlesex County Planning Board 1970 census
2 selected population and housing statistics and I'd like to
3 ask you certain questions concerning that.

4 A P-50A.

5 Q P-50A, I'm sorry. As of 1970 on Page 1, would
6 you indicate what the population of the Borough of Middlesex
7 was?

8 A The population of the Borough of Middlesex as of 1970
9 was 15,038.

10 Q And I call your attention to Page 17 of that
11 same report and ask you if you can tell me the number of
12 housing units in the Borough of Middlesex, total number of
13 housing units?

14 A 4,349.

15 Q And how many of those were one family?

16 A 3,327.

17 Q And how many were two or more family, two or more
18 family dwellings?

19 A 1,021.

20 Q So approximately 27 percent would be two or more
21 family units and 75 percent would be one family; is that
22 correct?

23 A About 22 and 178.

24 Q All right. On density, on Page 16, Mr. Mallach,
25 would you indicate what the population per square mile is for

1 the Borough of Middlesex? A The population
2 per square mile in 1970 was 4,297 persons per square mile.

3 Q Would you say that ranks approximately ninth in
4 the county on that particular chart?

5 A It seems about right, I could check that.

6 THE COURT: You don't need to.

7 Q No, that's approximately correct, isn't it?

8 A Yes.

9 Q All right. On Page 18 of the same exhibit,
10 Mr. Mallach, would you indicate the number of owner occupied
11 dwellings in the Borough of Middlesex as of 1970?

12 A 3,076 owner occupied dwellings.

13 Q And how about renter occupied?

14 A 1,022.

15 Q Would you say that this was approximately just
16 slightly less than one third of the housing units were renter
17 occupied, then?

18 A No, no, sir, less than
19 a quarter, about 22 percent.

20 Q And on Page 26 of that same exhibit, value of
21 housing under \$25,000, there's a total of 3,111 units shown
22 for the Borough of Middlesex, correct?

23 A That's correct.

24 Q And for those under \$25,000 would the total be
25 790?

THE COURT: Excuse me a minute. Go ahead.

1 Q The total under \$25,000 would be 1794?

2 A That appears to be reasonable, correct.

3 Q All right. And under \$35,000 would be 2,813?

4 A Yes.

5 Q And over 35,000 would be only 298; is that
6 correct? A That's right.

7 Q And on Page 26 of that exhibit, I'm sorry,
8 Page 32 of that exhibit the average value of a home in
9 Middlesex Borough as of 1970 is listed at \$25,443; is that
10 correct? A That's correct.

11 Q And Middlesex ranks 15th in Middlesex County in
12 that category; is that correct? A Counting from
13 the top or from the bottom?

14 Q Counting from the top down.

15 A I'm not sure.

16 Q Does it look approximately correct?

17 A It looks a little low.

18 Q But the average value is \$25,443, correct?

19 A According to my calculations I think it's No. 11 or
20 No. 12, I'm not absolutely sure.

21 Q There's no question as far as the average value,
22 though?

23 A No, sir.

24 Q Mr. Mallach, does the Middlesex Zoning Ordinance
25 in and of itself have any provision which discriminates against

1 persons on the basis of race, color or creed?

2 A Not to the best of my knowledge.

3 Q Now I'd like to go over with you the areas where
4 you feel Middlesex has engaged in exclusionary zoning
5 practices. I believe on your direct testimony you've listed
6 5 specific areas where certain municipalities may be guilty
7 of exclusionary zoning practices; is that correct?

8 A Yes, sir.

9 Q The first--

10 THE COURT: However his proofs in the case of
11 Middlesex are limited to what he said on his direct,
12 Mr. Johnson.

13 MR. JOHNSON: All right, your Honor.

14 Q One of the areas that you've attacked in Middlesex
15 zoning ordinance would be the excessive standards, is that
16 correct, you feel that certain, there are certain lot sizes
17 and floor area sizes which are excessive?

18 A That's correct.

19 Q Now the lot sizes that you feel are excessive
20 exist only in one zone, the R-100 zone, is that correct,
21 as far as one family residences are concerned?

22 A That's correct.

23 Q And can you give me any information as far as the
24 percentage of land which is located in the R-100 zone in the
25 Borough of Middlesex? A Percent of total land

1 or--

2 Q Percent of total land, yes, sir.

3 A Well, I have no idea how much of the developed land is
4 in the R-100 zone but--

5 Q How about the vacant land then?

6 A Approximately 5 percent of the vacant and useable land
7 specified by the borough is in the R-100 zone.

8 Q All right. So that that's a rather negligible
9 proportion compared to the balance of the vacant land in the
10 municipality, is that not?

11 A Negligible maybe a little small but small, certainly.

12 Q Specifically 5.5 acres total of 130 acres; is
13 that correct?

14 A That's correct.

15 Q And with respect on the other zones, resident
16 zones in the Borough of Middlesex would it be your opinion that
17 the lot sizes since they are all less than 7,500 square feet
18 and the floor area requirement, since they are all less than
19 900 square feet, would they be, do you consider modest and
20 fair standards?

21 A I think they're reasonable, yes.

22 Q And would those standards be conducive for the
23 development of low and moderate priced housing in those
24 particular areas?

25 A To the degree that single, modestly priced single family

1 housing can be built, I believe certainly in the R-60A and B
2 zones and most probably in the R-75 zones, these provisions
3 are adequate for that purpose.

4 Q Would it be your conclusion therefore that on the
5 whole the lot sizes for single family homes provided by the
6 Middlesex zoning ordinance are not in themselves exclusionary?

7 A With the exception that I mentioned earlier regarding
8 the R-100 zone, yes.

9 Q Now I believe you testified yesterday in a
10 question that Mr. Plechner asked of you that lot sizes
11 between 5 and 10,000 feet would be appropriate to the pro-
12 duction of moderate priced housing; is that correct?

13 A I believe so, yes.

14 Q So that a lot size of 10,000 square feet, you do
15 not feel that that is an excessive lot size, do you?

16 A Well, I think a lot size of 10,000 feet may be excessive.
17 I think within an ordinance to provide a reasonable balance there
18 should be a substantial provision of smaller lots than that.

19 Q All right, within an ordinance--

20 THE COURT: You mean it would be excessive if
21 applied to an entire municipality.

22 Is that what you are saying?

23 THE WITNESS: If it were the smallest lot
24 available, it would certainly be excessive, yes.

25 Q But if it were the largest lot size and if it were

1 only limited to a small portion of the municipality, would you
2 feel that this would be an unreasonable size?

3 A And there was substantial provision in smaller--

4 Q Yes. A In that situation I think it
5 could argue that it was not unreasonable.

6 Q That is a situation which exists in the Borough
7 of Middlesex, is it not?

8 A Well, some question I believe you were referring just
9 now to 10,000 square foot lots in your question.

10 Q Yes, all right. Well, how about 100 foot
11 frontage?

12 A I think 100 foot frontage is a generally an excessive
13 provision.

14 Q Again don't you have to look at your entire
15 ordinance to see how much the land within the municipality is
16 zoned with 100 foot frontage, how much is zoned with lesser
17 frontage?

18 A Well, I think there's a distinction here, I'm not, the
19 provision is one thing, the degree to which the ordinance
20 as a whole, the municipality has a liability in terms of
21 the ordinance as a whole and have drastic surgery should perhaps
22 be done is another matter.

23 Q Well, the provision--

24 A I mean, certainly, certainly in terms of looking at the
25 ordinance as a whole and looking at the liability of the

1 municipality as a whole, yes, they should, the other factors
2 should be taken into consideration.

3 Q And so you just can't arbitrarily say that 100 foot
4 frontage is arbitrary or an exclusionary provision without
5 taking into consideration the entire zoning ordinance, can you?

6 A No, you may have--let me explain the distinction, the
7 100 front frontage is an exclusionary provision, its effect
8 in the context of the total ordinance may vary, depending upon
9 what the other provisions are.

10 THE COURT: You mean it's exclusionary by
11 itself but in dealing with one ordinance, its total
12 effect, it might not be an unreasonable requirement?

13 THE WITNESS: Yes.

14 THE COURT: All right.

15 Q With respect to excess floor area requirements,
16 Mr. Mallach, the Borough of Middlesex, the R-75, R-60A and
17 R-60B zones, those requirements in those zones are not in
18 themselves exclusionary provisions, are they?

19 A No, sir.

20 Q In fact, in those areas Middlesex has what you
21 would consider to be modest floor area requirements?

22 A Yes, sir.

23 Q Do you feel that 1500 square foot of floor area
24 for a 2 family dwelling in the R-60B zone would be excessive?

25 A No, sir.

1 Q You indicated also I believe in your testimony,
2 Mr. Mallach that the, one of the problems with the Middlesex
3 zoning ordinance is the prohibition with respect to bedrooms
4 and the limitation with respect to bedrooms; is that correct?

5 A That's correct.

6 Q And you feel that the 85 percent for one bedroom
7 and 15 percent for two bedroom and prohibiting over two
8 bedrooms is an exclusionary device?

9 A Yes, sir.

10 Q And would you also feel that if the Borough of
11 Middlesex took action to delete that section that that would
12 cure that defect? A It would then cure
13 that defect, certainly.

14 Q I believe another one of your provisions that you
15 indicate is a problem with the Middlesex zoning ordinance is
16 what you had referred to initially in your testimony as the
17 arbitrary provisions giving broadly discretionary powers to
18 either the governing body or a section of the governing body
19 such as the planning board and zoning board, correct?

20 A Yes, sir.

21 Q Now that is only a problem, Mr. Mallach, isn't it
22 if there are no specific standards which are set forth in the
23 ordinance to control the discretionary power?

24 A If the standard, if the ordinance is clear that the
25 discretion is limited to a series of precisely defined

1 standards and may not be exercised beyond those standards is
2 onething if the standards exist but yet discretion can go
3 beyond those standards then that's a different matter.

4 Q Now you studied Middlesex zoning ordinance with
5 respect to discretionary powers in order to come to your
6 conclusion that the Middlesex ordinance is faulty and to say,
7 give discretionary powers, is that correct?

8 A That's correct.

9 Q Mr. Mallach, again I would call your attention
10 to Section 82-76C of the Middlesex Zoning Ordinance, in that
11 section it does indicate thatthe planning board of the Borough
12 of Middlesex shall review the application and exhibits, does
13 it not? A That's in 82-75?

14 A 82, I'm sorry.

15 Q 82-75.

16 A Yes.

17 Q All right. And it gives to the planning board
18 that, pursuant to the statute which is referred to in the
19 ordinance, does it not? A Yes, sir.

20 Q And the planning board must render a report to
21 themayor and council as to its findings, respecting suitability
22 of a siteplan and compliance with provisions and requirements
23 of the ordinance, does it not?

24 A Yes.

25 Q And in the next section, 82-76 it sets forth what

1 the requirement of this ordinance are for the issuance of a
2 permit, does it not?

3 A Yes, it does.

4 Q And it lists a total of 34 different requirements
5 which must be met in order to have the planning board make a
6 determination as to whether or not those requirements have
7 been met, does it not? A Put that way, yes.

8 Q So there are standards set forth within this
9 ordinance which govern the action of the planning board in
10 making a decision, are there not?

11 A There are standards set forth in the ordinance which
12 provide the basis for the review by the planning board. The
13 ordinance does not limit the discretion of the planning board
14 or certainly the discretion of the mayor and council to the
15 standards set forth in this ordinance.

16 Q Well, if the planning board or the mayor and council
17 went beyond the standards which are set forth in the ordinance
18 that would be an arbitrary action that could be set aside by
19 an appeal to a court, could it not?

20 What I'm trying to indicate to you, Mr. Mallach is that
21 you've said that you object to broadly discretionary powers
22 being given to either area of governing body or a planning
23 board and I'm pointing out to you that that would be correct
24 and by your own testimony that's correct, if there are no
25 specific standards to control the discretion but in this

1 ordinance there are specific standards which are set forth
2 at length which could control the discretion of the planning
3 board and the mayor and council, correct?

4 A That there are a series of standards set forth which,
5 which must be met by the garden apartment developments in order
6 to receive approval. The ordinance does not specify that
7 any development meeting these explicit standards shall be
8 approved. The ordinance does not specify the limits of
9 discretion of those bodies. Now certainly a developer who
10 meets all of these standards and is denied approval has recourse
11 to the court but the point about the discretionary provisions
12 is that in the meantime this provides for a series of hurdles
13 that the developer must meet for this type of housing which
14 need not be met. For example, for single family housing and
15 although in the end the developer may be vindicated by the
16 courts if the action is arbitrary, the same time he's gone
17 through the process which is extremely slow and extremely
18 expensive.

19 Q Mr. Mallach, as I, my notes indicate that your
20 original testimony complains of arbitrary provisions, giving
21 broadly discretionary powers when there were no specific
22 standards to control the discretion; is that correct?

23 A I don't recall the exact wording.

24 Q There's a distinction, is there not, there can
25 be instances in certain zoning ordinances where there are

1 discretionary powers without standards set forth in the
2 ordinance? A Yes.

3 Q And we do not have that situation in Middlesex,
4 do we?

5 A There are standards in the ordinance, yes.

6 Q Now that section that I referred to you, 82-75
7 is the garden apartment ordinance in Middlesex, correct?
8 That's the garden apartment zone?

9 A Yes.

10 Q Now I would also call your attention to Section
11 82-50.2 at the top of the page in the right hand side where
12 it says that the board of adjustment in this case shall
13 specifically find, after a hearing held upon the application
14 of the owner or his authorized agent, that the requirements
15 mentioned here in are satisfied, correct?

16 A I'm sorry, which section is this?

17 Q 82-50.2 under the high rise zone.

18 A I don't, I don't see any reference to the board of
19 adjustment in this section.

20 Q You don't have this?

21 A I don't have that.

22 MR. JOHNSON: All right, apparently your Honor
23 this amendment that I'm reading from was adopted on
24 March 11, 1975 and the copy of the zoning book which
25 the witness has does not have, does not contain that

amendment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: All right, thank you.

Q If I may, Mr. Mallach--

A Yes, sir.

Q --the amendment which was adopted by ordinance No. 661 on March 11th, 1975 does refer to the board of adjustment making a finding and limiting the finding to the requirement mentioned in the ordinance, does it not?

A Yes, sir.

Q And then again and I believe your copy which contains the same information, the general requirements are set forth in Section 82-50.4 and incorporate a total of 15 general requirements under Section A and several lot requirements?

A Six.

Q Six lot requirements under Section B and 10 building requirements under Section C and two parking requirements under Section D, correct?

A That's correct.

Q Again we have standards to refer to in the high rise zone, correct?

A Yes.

Q So there is no unbridled discretion given to the board of adjustment under this particular section?

A I believe the amendment narrowed the discretion from the provisions that were in the ordinance that I reviewed.

1 Q All right. Now if we may proceed, Mr. Mallach,
2 to the other that you have cited with respect to the Borough
3 of Middlesex and I, this would be the, I guess what you
4 would characterize the distribution of vacant land by zone,
5 your contention being that too much of the vacant developable
6 land is zoned for industry; is that correct?

7 A That's correct.

8 Q Now we have in the Borough of Middlesex as you've
9 indicated, 130 acres of vacant land which is developable
10 vacant land, correct?

11 A That's correct.

12 Q Which is approximately 5 percent of the total
13 land in the borough?

14 A That's correct, more like 6, actually.

15 Q In the residential zone or zones running from
16 R-100 to the R-4 high rise apartment we have a total of
17 63.9 acres out of 130 vacant and developable acres in the
18 borough; is that correct?

19 A Yes, sir.

20 Q And would that represent approximately 49 percent
21 of the vacant developable land in the borough?

22 A Yes.

23 Q And of this vacant developable land there's only
24 5.5 acres in the R-100 zone?

25 A That's correct.

1 Q And that would mean that is 58.4 acres or 44.9
2 percent of the available vacant developable land is in areas
3 which are zoned for what you would consider moderately priced
4 housing, correct, the R-60A, B and R-75 zones?

5 A You didn't refer to the R--

6 Q And the high rise, I'm sorry.

7 A I think there's some question about the zoning provisions
8 of the high rise zones, I believe I mentioned--

9 THE COURT: In other words, you would not
10 concede the answer to that should be yes?

11 THE WITNESS: No, sir.

12 Q So you would delete the 16.4 acres that are
13 in the high rise zone?

14 A Yes.

15 Q Which would leave 42 acres?

16 A That's correct.

17 Q There are also 7.9 acres of vacant developable
18 land in the general business zone; is that correct?

19 A Yes.

20 Q And in the general business zone it does permit
21 the construction of one or two family dwellings in accordance
22 with the very relaxed standards of the R-60B zone, correct?

23 A That's correct.

24 Q Does also permit the construction of garden
25 apartments and high rise apartments, correct?

1 A Well, garden apartments, I'm sorry, I don't think high
2 rise apartments.

3 Q All right, garden apartments.

4 A Yes.

5 Q We could include then the 7.9 acres of vacant
6 developable land from the general business zone with the
7 63.9 acres which are located in the different residential
8 zones, come up with a total of 71.8 acres, correct?

9 A Correct. That is the total of land in which
10 residential uses of one kind or another are permitted,
11 yes, and this represents 55.2 percent total vacant
12 developable land which would be available for residential
13 development.

14 Q That's correct, all right.

15 Now if we can turn to the industrial land, the
16 industrial zoned land, Mr. Mallach, according to the Orose
17 Report there are at the present time 249, again I call your
18 attention to that report on Page 4 of the chart there are
19 249.7 acres of land in the Borough of Middlesex which are
20 actually in use for industrial purposes; correct?

21 A That's correct.

22 Q And there are only 58.2 acres of vacant
23 developable land which are zoned for industry; is that
24 correct?

25 A That's correct.

1 Q And that would represent approximately 44.7
2 percent of the total available developable vacant land,
3 correct?

4 A That's correct.

5 Q Now would you say that 44.7 percent seems
6 facially excessive?

7 A Yes.

8 Q What do you mean by facially excessive?
9 Do you mean that on its face this would seem to be an
10 excessive amount of land zoned for industry, correct?

11 A Yes.

12 Q Now to really determine whether the, this
13 amount of land, this 58.2 acres is really an excessive
14 amount of land to be zoned for industry rather than whether
15 it appears facially to be so, wouldn't it be necessary for
16 you to know other information which you presently have not
17 referred to and as examples I cite to you existing uses
18 of industrially zoned land in the Borough of Middlesex, for
19 instance how much of the land zoned for industry is actually
20 now used for industry. How much is used for heavy industry,
21 for light industry. Wouldn't you need to know the location
22 of existing vacant land zoned for industry and wouldn't you
23 need to know the characteristics of the land itself to make
24 this distinction, to go beyond what facially appears to
25 find out whether or not the zoning of 58.2 acres is

1 excessive.

2 MR. SEARING: Your Honor, I'm going to have
3 to object to this entire line of questioning as
4 shading greatly into the presentation of an
5 affirmative defense rather than proper cross-
6 examination.

7 MR. JOHNSON: Your Honor if I may be heard
8 on that.

9 THE COURT: I'd overrule that objection. You
10 may answer that.

11 A To make a final and unequivocal determination of the
12 exact amount you would have to go into more detail, yes.

13 THE COURT: But you're just saing on its
14 face this amount is excessive?

15 THE WITNESS: That's correct.

16 Q The other detail that you are referring to
17 and that I refer to in my hypothetical question has been
18 furnished to you in the Orose Report, has it not?

19 A Some of the information has, the information in the
20 Orose Report does not contradict the finding of facial
21 excessiveness, if you will.

22 Q Are you aware Mr. Mallach, never having visited
23 the Borough of Middlesex, that there are two railroads which
24 run through the southern portion of Middlesex and that
25 almost all of the industrially zoned land in the borough lie

1 directly north and south and adjacent to these two
2 railroads?

3 A I was not aware of that specific fact.

4 Q All right. Wouldn't you say that it generally
5 makes good planning sense to locate industrial land adjacent
6 to a railroad, if you have a town with a railroad running
7 through the town?

8 A To the degree that there's a demand for industrial
9 land if you can locate that amount of land near a railroad it
10 makes sense, it does not make sense to zone land near a
11 railroad industrially if the demand for industrial land is
12 not justify it.

13 Q If the demand is there it makes good sense,
14 correct?

15 A To choose those locations, rather than other
16 locations, yes.

17 Q We will get to that as we go along.

18 Wouldn't you also say that it really doesn't make good
19 planning sense to zone an area immediately adjacent to
20 a railroad for residential purposes?_____

21 A That's more speculative, there can be reasons for
22 doing so, it would depend on the specific character of the
23 land and other regards.

24 Q Wouldn't you feel that there should be at least
25 a buffer area between the railroad and the residential

1 zone?

2 A Some degree of buffer, yes.

3 Q Would you feel--how much buffer do you think
4 would be a reasonable buffer to have between a railroad and a
5 residential zone? At least 200 feet, shouldn't there be?

6 A No, I don't think it's necessary .

7 Q Do you have any estimate as to what you feel
8 would be a sufficient buffer zone?

9 A Well, I think you'd have to look at the specific
10 circumstances but I suspect something between, something in
11 the area of 50 feet would be more likely to be necessary .

12 Q Do you know Mr. Mallach, what type of development,
13 industrial development already exists in the area which is
14 zoned for industry in the Borough of Middlesex?

15 A I'm not familiar with the specific types of
16 industry.

17 Q Don't you feel that this is a vital piece of
18 information which you should have in order to make a
19 determination as to whether or not Middlesex is zoning too
20 much of its vacant land for industry?

21 A I believe I mentioned earlier that certainly in terms
22 of making the final and definitive determination that should
23 be looked at but that not, not in terms of the facial--

24 Q Mr. Mallach, I call your attention to P-105
25 which is the chart that I believe you prepared, entitled

1 industrial, residential demand and zoning provisions,
2 Middlesex County municipalities.

3 According to that chart as of 1967 for the Borough of
4 Middlesex there are 201.2 acres of land in Middlesex Borough
5 devoted to industrial use; is that correct?

6 A Yes.

7 Q This particular information that you've incor-
8 porated into this chart you obtained from the Middlesex
9 County Planning Board Master Plan; is that correct?

10 A That's correct.

11 Q Again referring to the same exhibit, the master
12 plan for the county projected that an additional 24.3
13 acres would be developed and used for industry in the Borough
14 of Middlesex by the year 2000; is that correct?

15 A That's correct.

16 Q So according to these projections there would be
17 a total of 201.2 which is existing in 1967 plus 24.3 acres
18 which is projected through the year 2000 or a total 225.5
19 acres of land in the Borough of Middlesex actually used for
20 industry by the year 2000, is that correct, according to
21 these projections?

22 A That's what would follow from these projections, yes.

23 Q Now these projections were made by the county
24 planning board back in 1970, were they not?

25 A Sometime between '67 and '70.

1 Q For the Borough of Middlesex, was this
2 projection correct?

3 A Well, I--there's no way of knowing whether the projections
4 of the additional demand was correct, I mean the information
5 in the Orosé's report suggestions that there was a
6 discrepancy between their original inventory finding and a
7 correct total.

8 Q The Orose Report indicates, does it not,
9 Mr. Mallach, that the projection made here was much too
10 low an estimate because according to that chart by 1975
11 which was last year, there were 249.7 acres actually in use
12 in Middlesex Borough for industrial purposes; is that
13 correct?

14 A It was not the projection that was in error, it was
15 the original inventory figure.

16 Q How do you know that's so, this is an
17 inventory figure of 1967 if it's, if that figure is in error,
18 why did you use that figure?

19 A Because it was, the available, figure that was
20 available and consistent with the other figures.

21 Q How do you know that that figure was in error?

22 A Well, this is because the material in Mr. Orose's
23 report suggests that, well, either, either that figure is in
24 error or the figure in the Orose report is in error and--

25 Q There's nothing in the Orose report, Mr. Mallach,

1 is there that indicates the amount of land in the Borough of
2 Middlesex that was actually used for industrial purposes in
3 1967?

4 A No.

5 Q So that they are not mutually exclusive, are
6 they?

7 A Well, Mr. Orose's analysis considers them to be mutually
8 exclusive.

9 Q He considers the conclusions or the projections
10 to be incorrect, does he not, he doesn't say that the starting
11 figure of land in use in 1967 which was used by the county
12 is incorrect?

13 A He suggests at it, strongly--can I, from the, in the
14 Orose report it states, "It is interesting to note that the
15 combined industrial and commercial acreage currently existing
16 in the borough is roughly equivalent to the amount of
17 commercial and industrial development estimated by the
18 Middlesex County Planning Board for 1967."

19 So that the inference that Mr. Orose is making in this
20 report is that the county, in doing their land inventory,
21 apparently substituted some part of the commercial land for
22 industrial land in their land use categories.

23 Q Mr. Mallach, again calling your attention to
24 P-105, P-105 indicates that by the year 2000 there should be
25 225.5 acres of land in the Borough of Middlesex for

1 industrial use, actually being used for industry; is that
2 correct? A Yes, that's

3 what P-105 indicates.

4 Q All right. And the Orose report indicates that
5 as of 1975 there was already 249.67 acres of land being
6 used for industrial purposes; is that correct?

7 A That's correct.

8 Q So the county's projection of an increase on
9 P-105, 24.3 acres between 1967 and 2000 is grossly in-
10 adequate?

11 A Not necessarily, either it is or as I indicated it
12 much more likely the original inventory figure is in-
13 accurate.

14 Q All right. If we use the figures on P-105 and
15 if we use the figures that are contained in the Orosereport
16 there has been an increase in land actually used for industry
17 in the Borough of Middlesex between 1967 and 1975 of 48.47
18 acres or approximately 19.4 percent; is that correct?

19 A That conclusion is subject to the accuracy of the
20 original inventory figure which is in question.

21 THE COURT: Assuming that accuracy of that,
22 that would be the right figure; is that right?

23 THE WITNESS: Assuming that, yes.

24 Q Again, assuming the same fact situation, this would
25 be an increase of 6.08 acres per year during this period

1 of land being devoted to industrial use in the Borough of
2 Middlesex. Is that correct? A That
3 follows from that assumption.

4 Q Now if we project that figure which has been
5 established using that assumption over the next 25 years to,
6 from--

7 THE COURT: Well, you don't need to go into
8 that, Mr. Johnson, that can be worked out.

9 MR. JOHNSON: All right, your Honor.

10 Q In view of the fact that there has been,
11 according to those figures, Mr. Mallach, an increase during
12 the last eight years of 48.47 acres of land actually being
13 used for industry in the Borough of Middlesex, is it un-
14 reasonable under those circumstances for the Borough to
15 zone 58.2 acres of vacant land for industrial purposes?

16 A If that were a fact then it would not be even
17 reasonable, it might not be unreasonable.

18 Q Is it, isn't it also important, Mr. Mallach,
19 for you to know if the vacant developable industrially zoned
20 land in the Borough of Middlesex is interspered with heavy
21 industrial uses to determine if such land is suitable for
22 development for residential purposes?

23 A Again that would be a factor to take into consideration
24 between the point of facial finding and the final
25 determination.

1 Q If I were to tell you that most of the available
2 58.2 acres of industrially zoned land in the Borough of
3 Middlesex was interspersed with existing heavy industrial
4 uses, will you say that it was unreasonable for the borough to
5 zone this 58.2 acres for industry rather than for residence?

6 A It would depend on the specific sites and how their
7 being so interspersed would affect them.

8 Q If we take all of those conclusions, together,
9 Mr. Mallach, number one, the increase in use and land for
10 industry in Middlesex Borough, which has been demonstrated
11 over the last eight years, 48.47 acres or in, 19.4
12 percent increase, the fact that Middlesex Borough was in
13 1975 using more land for industrial purposes than the
14 county had projected would be needed by the year 2000 and
15 the fact that the existing industrial acreage of 58.2 acres
16 as interspersed heavy industrial uses and the fact that
17 existing 58.2 acres is in close proximity to 2 railroad,
18 wouldn't you agree that under those circumstances it would not
19 be unreasonable for the Borough of Middlesex to zone this
20 58.2 acres for industry?

21 A Those are not circumstances that can be accepted,
22 particularly the first two, they're merely suppositions.

23 MR. JOHNSON: Your Honor, the witness is
24 not being responsive to the question.

25 I posed a hypothetical question and I'd like

1 an answer to the question.

2 THE COURT: You mean conceding your hypothesis?

3 MR. JOHNSON: Yes, your Honor.

4 THE COURT: Are you able to do that?

5 THE WITNESS: If I were--

6 THE COURT: I don't mean, are you able to
7 understand the question?

8 THE WITNESS: I think I know the question.

9 A Allright, conceding his hypothesis, conceding the
10 hypothesis it may be, it may be desirable, that is to reassess
11 that again one would have to look much more closely at the
12 specific circumstances.

13 MR. JOHNSON: I have no further questions,
14 your Honor.

15 THE COURT: All right, that appears to conclude
16 the case against the Borough of Middlesex. The
17 Borough of Miltown is next.

18 (Whereupon the court heard legal argument.)

19 MR. SEARING: Good afternoon, your Honor.

20 I believe that we were on the verge of
21 discussing Miltown as the next defendant.

22 For that purpose I have three items to be
23 marked for identification.

24 THE COURT: P=131, 132, 133.

25 (Documents received and marked P-131,132,133,

1 identification.

2
3 A L L A N M A L L A C H, continued.

4 DIRECT EXAMINATION BY MR. SEARING:

5 Q Mr. Mallach, I show you P-131 for
6 identification and ask you to identify it, please.

7 A This is the planned subdivision of Zoning Ordinance of
8 the Borough of Milltown.

9 Q I show you P-132.
10 Could you identify that please?

11 A This is the revised zoning map of the Borough of
12 Milltown.

13 Q I show you P-133.
14 Could you identify that please?

15 A This is a summary of zoning ordinance provisions of
16 the Borough of Milltown prepared by me.

17 MR. SEARING: Your Honor having shown these
18 to counsel I would move their introduction in evidence

19 MR. BOOREAM: I have no objection, your
20 Honor.

21 THE COURT: All right.

22 (Documents received and marked P-131, 132
23 and 133 marked in evidence.)

24 Q Mr. Mallach, could you describe the principal
25 features of this zoning ordinance please.

1 A Yes, sir. The Borough of Milltown has 10 zones, 5
2 single family residential, 3 commercial and 2 industrial.
3 The single family residential zones include an R-18 zone,
4 minimum lot of 18,000 square feet, 120 foot frontage and
5 1300 square floor area.

6 The AR-10 zone, 10,000 square foot lots, 90 foot frontage,
7 1300 square foot floor area.

8 AR-8 zone, 8,000 square foot lots, 80 foot frontage,
9 1200 square foot floor area.

10 AR-6 zone, 6,000 square foot lots, 60 foot frontage and
11 1100 square foot floor area.

12 AR-4 zone, 4,000 square foot lots, 40 foot frontage and
13 1000 square foot floor area.

14 Within the 3 commercial zones, residential uses are
15 permitted under the R-6 provisions and there is a provision
16 for multi family by 39B, special exception variance.

17 Residential uses are not permitted in the industrial
18 zones.

19 The multi family provisions governing special exception
20 use are that the lot must contain at least 2 acres and 200 foot
21 frontage. The density may not exceed 10 units an acre.
22 There are 2 parking spaces per unit and the room, the unit
23 sizes are 750 square feet of floor area for an efficiency or
24 one bedroom unit, 900 square feet for 2 bedroom and an
25 additional 300 square feet for every additional bedroom.

1 Finally with regard to vacant land, the borough has
2 indicated--

3 THE COURT: You want to refer to the coverage
4 provision.

5 A The coverage, yes, sir, the coverage provision is 20 per-
6 cent of the lot, the borough has indicated that they have an
7 estimate total of 100 acres of vacant land of which 40 acres
8 is in the industrial zones, 10 acres in the commercial zones
9 and 50 acres in the residential zones.

10 We have no information on how that was broken down by
11 the different residential zones.

12 Q Now Mr. Mallach, what if any of the features you
13 have described have an adverse effect on the provision of
14 housing for low and moderate income persons?

15 A There are a number of features in the Milltown ordinance
16 within the single family zones, the provisions in the R-18 zone
17 have an exclusionary effect. The lot size of 18,000 square
18 foot, the frontage requirement of 120 feet and the minimum
19 floor area requirement of 1300 square feet are all larger than
20 is necessary for reasonable modest housing.

21 In the other zones, consistent with what I've mentioned
22 earlier, the 10,000 square foot lot in the R-10 zone is
23 possibly exclusionary as is the 90 foot frontage in that
24 zone.

25 Q The minimum floor area requirement of 1300 square

1 / in the R-10 zone, 1200 square feet in the R-8 zone, 1100 feet
2 in the R-6 zone and possibly 1000 square feet in the R-4 zone
3 are excessive.

4 There are no provisions in any of these zones for smaller
5 floor areas than a 1000 square feet.

6 In addition the multi family provisions are severely
7 limiting. First the fact that the multi family units are
8 permitted only by special exception variance rather than by
9 right is a limiting factor.

10 Secondly the requirement that a lot for multi family
11 contain two acres and 200 feet frontage is a severely limiting
12 factor in a municipality where a large part of the vacant
13 land is in smaller parcels and where only 10 acres of,
14 in the entire municipality qualify for this special exception
15 provision.

16 The unit sizes are substantially in excess of what is
17 necessary in all categories in the multi family. The one
18 bedroom and two bedroom unit specified in the ordinance and
19 the provision of 300 additional square feet be provided for
20 each additional bedroom is excessive. 10 dwelling units an
21 acre and 20 percent coverage are lower density or lower
22 intensity features than are reasonable for modest and
23 reasonable accommodations and tend to increase the cost of
24 housing.

25 Two parking spaces per dwelling unit features in the

1 multi family may also be an excessive requirement.

2 Finally with regard to the distribution of the vacant
3 land, with reference to the comparison with the Middlesex
4 County Planning Board figures, the 40 acres zoned for
5 industrial uses appears to be substantially in excess of the
6 likely demand for industrial uses, in the foreseeable
7 future and the 50 acres or 60 acres zoned for residential
8 purposes seems to be substantially less than may be required
9 for those purposes in the foreseeable future.

10 Q Does this municipality have a public housing
11 authority?

12 A No, it does not.

13 Q Is there any state or federally subsidized
14 housing within the confines of the municipality?

15 A Not to my knowledge.

16 Q I would liketo draw your attention to
17 Plaintiff's Exhibit 53 which you have previously identified
18 as being the summary for urban county municipalities on
19 Page 68, is there an entry for municipality of Milltown?

20 A Yes, there is.

21 Q Would you read that off for us, please.

22 A Yes, sir, in the column providing the number of
23 substandard dwelling units, the column specifies 53 for the
24 Borough of Milltown in the column two it specifies 202
25 lower households in the need of housing assistance.

1 The total is 255 for the Borough of Milltown.

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

4 Cross-examine, Mr. Booream.

5
6 CROSS-EXAMINATION BY MR. BOOREAM:

7 Q Mr. Mallach, just to begin with a few general
8 questions. Have you ever visited the Borough of
9 Milltown?

10 A Yes, I have.

11 MR. BOOREAM: If your Honor please, I have a
12 large zoning map, may I put it on this board and move
13 it over?

14 THE COURT: Yes, you may, you may put it on
15 that area, if you wish.

16 Q Mr. Mallach, you say you visited Milltown, did
17 you just ride through it or did you spend some time
18 there and tour the town?

19 A I've never really spent time in Milltown.

20 Q All right. But from your, have you actually
21 visited the town though?

22 A Yes, I've driven through it.

23 Q Then you're familiar with Main Street which
24 bisects the town this way?

25 A Yes.

1 Q And the Milltown which bisects the town this
2 way. A Generally, yes.

3 Q And the Raritan River railroad which cuts
4 another section through?

5 A I'm not really with the railroad but I'm aware of
6 it.

7 Q And it shows on the zoning map?

8 A Yes, I see it on the map.

9 Q And the New Jersey Turnpike which cuts off a
10 section of the town?

11 A Yes.

12 Q From the remaining section of the town. Now
13 every municipality in accordance with good planning
14 should have a certain area zoned for industrial, certain for
15 business and certain for residential; is that correct?

16 A Not ever municipality, no.

17 Q Would there be some municipalities that would
18 not have a business zone or industrial zone?

19 A I think there are quite a number of municipalities that
20 do not have business or industrial zones.

21 Q Referring specifically to Milltown and as it
22 exists today and your observation of it together with the
23 zoning map, should Milltown in its location in Middlesex County
24 and considering its population have a business zone, and an
25 industrial and an a residential zone?

1 A I think it's not unreasonable for Milltown to provide
2 for all of those uses.

3 Q Is there any, do you have any figures in mind
4 as to percentages which would be appropriate for a town of
5 the characteristics of Milltown as far as division between
6 business, and industrial and residential zones?

7 A Well, I think the major consideration is the likely demand
8 in the different categories and I believe as I cited certain
9 figures that were provided in the Middlesex County Planning
10 Board's analysis in that regard.

11 Q In your visit to Milltown did you notice the
12 industrial area that was there today?

13 A No, I did not.

14 Q Did you ride down Main Street when you went
15 through Milltown? A Yes.

16 Q Did you notice the old factory buildings that
17 were there?

18 A Yes.

19 Q Here along the brook?

20 A Yes.

21 Q And did you continue on through Main Street?

22 A Yes.

23 Q Did you notice the factory buildings that were
24 here on the other side of the New Jersey Turnpike?

25 A I think so, I wasn't certain at that time where the

1 boundary of Milltown was so I may not have noted that they
2 were in Milltown.

3 Q Do you know the size of the Borough of Milltown?

4 A Slightly over one and a half square miles.

5 Q And according to my calculation that breaks
6 down to approximately 1,025 acres.

7 Would that be approximately correct?

8 A That seems right, yes.

9 Q Have you reviewed the Borough of Milltown's
10 answer to interrogatories?

11 A Yes, I have.

12 Q Requested by--do you have a copy available?

13 A Not in front of me, no.

14 Q I refer you to Page 5, Mr. Mallach, according to
15 our answers to interrogatory No. 9 the industrial area con-
16 sists of a total of how many acres?

17 A 140.

18 Q And how many are vacant at this time?

19 A 40.

20 Q And the total commercial area?

21 A 31 acres.

22 Q How many are vacant?

23 A 10.

24 Q And the residential area?

25 A 720.

1 Q And vacant? A 50.

2 Q With a total acreage of around 1025 acres, an
3 industrial area of 140 acres would be roughly 14 percent; is
4 that correct?

5 A That's correct.

6 Q And a commercial area of 31 acres would be
7 roughly 3 percent? A That's correct.

8 Q Is that correct? You can see, I assume by looking
9 at the zoning map that the industrial area is situated primarily
10 along either side of the New Jersey Turnpike; is that correct?

11 A That's correct.

12 Q And is there any reason from a planning
13 standpoint why industrial areas should not be located
14 immediately adjacent to a major traffic artery such as the
15 New Jersey Turnpike?

16 A Well, there's no reason they should not be located there.

17 Q So you have no objection with the location of the
18 industrial area as it applies to the Borough of Milltown; is
19 that correct?

20 A I don't have any, I'm not saying it's intrinsically
21 wrong, I don't have any, I don't know of any specific
22 arguments in favor of it, either.

23 Q Well, if you were choosing a place to locate an
24 industrial area, you would locate it along a traffic artery
25 or a railroad wouldn't you?

1 A Well, the railroad, yes, in this case since there's
2 no direct access within the borough to the traffic artery in
3 question locating it along that traffic artery may be largely
4 a relevant consideration.

5 Q Except possibly for advertising purposes?

6 A Conceivably.

7 Q But there is no objection along the railroad?

8 A No.

9 Q With access to it. Now referring to your chart
10 which I believe is P-133 in evidence, I think you stated in
11 your comments that you had an objection to the R-18 zone
12 because of the excessive minimum lot size, the excessive
13 minimum width and the excessive minimum floor area?

14 A That's correct.

15 Q Is that correct? Is there a special provision in
16 the Milltown Zoning Ordinance which refers to an R-18 zone?
17 I specifically call your attention to Section 20-9.3B as
18 a amended would be in--would be on the amendment, Mr. Mallach,
19 which is in there, 20-9.3b.

20 A Yes.

21 Q Bottom of the first page.

22 Could you read that reference, please.

23 A If in the R-18 zone the lots are faced on and have
24 access to anterior residential street and said lots have no
25 access to Ryders Lane then the minimum lot with requirements

1 may be reduced from 120 to 90 feet and the lot area reduced
2 from 18,000 square feet to 13,500 square feet. The minimum
3 lot depth shall remain at 150 feet.

4 Should I continue?

5 Q No, that's sufficient.

6 So there's a special provision in the zoning ordinance
7 which requires, which would enable people to build a smaller
8 area with a smaller frontage than according to your original
9 statement.

10 A Yes.

11 Q Can you see from this map or from the map in front
12 of you where the R-18 zone is? I think I have a large--

13 A Yes, well it should be the same.

14 Q Now, it's not, that's the updated map.

15 A The R-18 zone is located in a strip of approximately
16 200 feet deep along Ryders Lane.

17 Q For the benefit of the course, is this the area
18 that you are referring to?

19 A That's the area.

20 Q As R-18?

21 A That's correct.

22 Q Can you estimate the distance along Ryders Lane?

23 A Well, there's some markings nearby, 1200 feet, a
24 thousand feet, something in that area.

25 Q I won't argue with a thousand feet, roughly a

1 thousand feet along Ryders Lane, 200 feet deep is the
2 entire area of the 18 zone; is that correct?

3 A Yes.

4 Q Now are you aware that there is no sewer system
5 that exists in this R-18 zone?

6 A No.

7 Q If I were to tell you there were no sewer system
8 available in that section of town would the lot size which is
9 required, namely 1350 feet as a minimum, be excessive?

10 A For the, well, in the absence of sewers a lot size of
11 that sort may not be excessive.

12 Q Now, referring to the zoning map which I have here
13 and which you have in front of you exclusive of the R-18 zone,
14 Milltown has an R-10, an R-8 an R-6 and an R-4 and glancing
15 at that it's then delineated over the map can we say that
16 approximately one quarter of the land area's divided in each
17 one of those areas?

18 In other words, those four remaining areas are roughly
19 equal within the Borough of Milltown or take an acre or two
20 here and there.

21 A I suspect that might be stretching it some, there's most
22 of the, the largest single chunk seems to be in the R-10, the
23 next largest R-6 and then--

24 Q All right, the largest single chunk, I assume you
25 mean here?

1 A And to your right.

2 Q That's R-10? A And to the
3 right.

4 Q To my right, this is industrial.

5 A No, before the industrial.

6 Q In here? A Yes.

7 Q In the western part of the town seems to be
8 divided into some sections of R-6, R-8 and R-4, that's west
9 of the Mill Pond and then the area east of the Mill Pond but
10 south of John F. Kennedy Drive seems to be largely R-6 with
11 some parks R-8 and R-4.

12 Just for purposes of discussion, breaking down what
13 percentage would you give to the various areas?

14 A I would guess and it would be merely a range guess,
15 probably somewhere in the area of 40 percent R-10, 22 to
16 30 percent R-6 and 10 to 15 percent R-8 and R-4, each, but
17 that would be a very crude guess, it's off the residential
18 map.

19 Q Yes, that's what we're discussing.

20 A Yes.

21 Q Now I believe you stated under cross-examination
22 by Helmetta and also by Middlesex that lot sizes between 5000
23 and 10,000 square feet were appropriate; is that correct?

24 A Were reasonable, yes.

25 Q Is there anywhere in Milltown exclusive of the

1 18 zone where there are no sewers that lot sizes are required
2 in excess of 10,000 square feet?

3 A No.

4 Q In the R-4 zone the minimum lot size is 4,000
5 square feet, is that not correct?

6 A That's correct.

7 Q And the largest frontage, minimum frontage re-
8 quired anywhere within the Borough of Milltown is 90 feet; is
9 that correct?

10 A With the exception of the R-18 zone.

11 Q With the exception again of the R-18 zone.

12 A That's correct.

13 Q Now I call your attention again to the zoning
14 ordinance, Section 20-9.2 and this is in the booklet, it is
15 not in the amendment.

16 A Yes.

17 Q Does that section refer to special provisions
18 for the conversion of a single family dwelling into a multi
19 family dwelling?

20 A Yes, it does.

21 Q And does that permit the conversion of a single
22 family dwelling into a multi family dwelling in any residential
23 area in town?

24 A It would appear to.

25 Q In fact anywhere that a single family dwelling would

1 exist? A Yes.

2 Q Is that correct? So that in effect then multi
3 family units are permitted?

4 A Two family.

5 Q In any residential area.

6 A Two family units as distinct from multi family,
7 generally.

8 Q Well now, a specific reading of that section says
9 that it can be converted into two or more smaller dwelling
10 units? A That's correct. It also refers to

11 existing housing rather than the construction of new.

12 Q That's correct.

13 A Units.

14 Q Existing, any existing family dwellings may be
15 converted into two or more smaller dwelling units; is that
16 correct? A That's correct.

17 Q All right now, are multi families permitted
18 in all three business zones, subject to a special permit?

19 A Yes.

20 Q So in effect then multi family housing is per-
21 mitted anywhere in the Borough of Milltown, possibly in some
22 cases by special exception but it is not excluded?

23 A Well, if you are referring, if you are including in that
24 the conversion of existing single family units--

25 Q Yes. A Yes.

1 Q Are residences permitted in all three business
2 zones in the borough? A Yes.

3 Q Now again I call your attention to the provisions
4 of 20-9.4 of the Milltown Ordinance which applies to garden
5 apartments. Is that correct?

6 A That's correct.

7 Q And by special permit are garden apartments
8 permitted anywhere within the Borough of Milltown, even in-
9 cluding industrial zones? A It would
10 appear not.

11 Q Why not? A Beg your pardon.

12 Q Why not? A The , under the
13 industrial zone provisions the list, there's a list of
14 permitted uses which does not include any reference to multi
15 family housing and there's no provision in the provisions of
16 that zone for the special exception variance.

17 Q Is there a prohibited use under the industrial
18 zone? A The special exception variance is.

19 Q Now I'm asking you if there's a prohibited use
20 under the industrial zone?

21 A There's no reference in the language of the industrial
22 zone to prohibited uses.

23 Q Now I ask you then to read Section 20-9.4 and
24 doesn't that--will you please read it. This is an an amendment,

25 also. A Yes. From the beginning of the

1 subdivision--

2 Q Just Section 20-9.4, that is the first para-
3 graph.

4 A Garden apartments, there are certain areas within the
5 borough which could support the garden type apartment,
6 allowing this type of use to be a permitted use in any one
7 zone of the borough might be amenable to other permitted uses
8 in that zone. Therefore garden type apartments may be per-
9 mitted in Milltown by a special permit in accordance with
10 Subsection 20-11.5B.

11 Q Now, doesn't that imply that garden apartments
12 would be permitted anywhere within the Borough of Milltown
13 upon application for a special permit?

14 A Not if seen in the context of the enabling statute for
15 special exception uses, 39B.

16 Q Allright, and still referring to your chart or
17 summary as P-133, you mentioned I think in your direct
18 examination that only 10 acres would qualify for multi family
19 dwellings within the Borough of Milltown now; is that correct?

20 A That's correct.

21 Q What 10 acres are you referring to?

22 A The 10 acres that were designated in the response to
23 interrogatories as commercial.

24 Q Wouldn't the 50 acres that were designated as
25 undeveloped residential land qualify?

1 A The multi family housing is not specified as a permitted
2 use, through special exception variance in the residential
3 zones.

4 Q But it is not prohibited?

5 A But it is not prohibited, no, sir.

6 Q And the Section which you just read relating to
7 garden apartments would imply that they would be permitted
8 in any area of town subject to special exception?

9 A That was not my interpretation of it in the context of
10 the ordinance as a whole.

11 Q Is it your interpretation of the ordinance that
12 garden apartments could not be built in the 50 acres of
13 residential area?

14 A It is my interpretation of this ordinance that garden
15 apartments can only be built in the commercial zones.

16 Q Assuming for the sake of argument if garden
17 apartments can be built anywhere in the 50 acres remaining
18 of undeveloped residential land and in the 10 acres remaining
19 of commercial land as to two acre minimum and unreasonable
20 requirement?

21 A Yes.

22 Q Don't you require a certain minimum land in order
23 to properly build and service garden apartments?

24 A It would depend on the number of apartments in the
25 building, certainly two acres is far in excess of what is

1 required for an adequate small apartment development.

2 Q Garden apartments provided for in the Milltown
3 ordinance refer to densities of 10 per acre; is that correct?

4 A That's correct.

5 Q And if there were 10 units to be built, 20 units
6 to be built, would 2 acres be too small?

7 A Too small?

8 Q I'm sorry, too large.

9 A For 20 units?

10 Q Yes. A It would be possible
11 to build a perfectly satisfactory apartment development of
12 20 units on less than 2 acres.

13 Q What minimum do you suggest for garden apartment
14 units, if at all?

15 A I don't believe there's a need for a minimum lot size.

16 Q You don't think that the people who are going to
17 rent these apartments at a later date should be protected
18 and provided with open air and playground areas and--

19 A I certainly do but I don't believe that that protection
20 is provided by minimum lot size requirements.

21 Q According to the, again, the interrogatories or
22 the answers to interrogatories submitted by the defendant
23 municipality and I believe you have accepted the calculations
24 as to the vacant land?

25 A That's correct.

1 Q The 100 acres which remain vacant and unused at
2 this time within the Borough of Milltown are less than 10
3 percent of the total--

4 A That's correct.

5 Q --acreage of the municipality.

6 Now of the 50 acres remaining undeveloped for
7 residential purposes, you know whether any of those acres lie
8 within the flood plains?

9 A That information is not provided.

10 Q Milltown is bisected by the Mill Pond, is it
11 not?

12 A That's correct.

13 Q And along the southerly side or the easterly side
14 by Lawrence Brook and Sucker Brook?

15 A That's correct.

16 Q And again along the westerly side by Bod
17 Brook?

18 A Yes.

19 MR. SEARING: I have to object to this,
20 would appear to be moving into an affirmative
21 defense.

22 THE COURT: I'd allow that.

23 Q Based on your knowledge of the flood plain
24 designations by the State of New Jersey, is it possible that
25 these areas or areas immediate adjacent to these water ways

1 would have been designated by the State of New Jersey as
2 flood plain areas?

3 A It's possible.

4 Q Now again Mr. Mallach, I call your attention
5 to the Borough Zoning Ordinance, this time Section 20-8.2.

6 A -8?

7 Q Yes, .2, limited industrial zone.

8 A Yes.

9 Q Are there prohibited uses specified under that
10 zone?

11 A Yes, there are.

12 Q Would you read them please.

13 A One, trucking or bus terminals or depot, two, storage
14 or repair of heavy equipment over 3 tons gross weight except
15 to the extent necessitated by actual construction on property
16 were located.

17 Q Now in your review, the other 9 zones within the
18 Borough of Milltown, are there any prohibitive uses in any
19 of those other nine zones?

20 A Not to my recollection.

21 Q Is there any prohibition to your recollection as
22 to the number of bedrooms which were permitted in any zone?

23 A No.

24 Q Is there any prohibition or any formula relating
25 to one bedroom or two bedroom or three bedroom apartments or

1 multi dwellings?

2 A With the exception of the floor size requirement there's
3 no formula.

4 Q There's no percentage?

5 A No.

6 Q Of one against the other.

7 Is there any specific prohibition in the Milltown Zoning
8 Ordinance against mobile homes?

9 A Not to my recollection.

10 Q I call your attention now to P-50A--

11 A Could I qualify the, my previous comment, the
12 definition of house in the definitions of this ordinance is
13 written specifically to exclude mobile homes so that even
14 though mobile homes as such are not specified as a prohibited
15 use I think there is some question as to whether they are
16 permitted under the ordinance.

17 Q But there is no prohibition against them?

18 A No.

19 Q Except for example when the, for example under
20 20-6.1A whereas a permitted use it refers to single family
21 houses, I think this would be interpreted as not including
22 mobile homes as a permitted use.

23 Again they're not expressly excluded.

24 Q As long as you're in the definitions, would you
25 read Section 20-3.10 which applies to floor area.

1 A Floor area, inhabitable floor space present in the
2 interior surfaces of exterior wall or walls enclosing the
3 dwelling unit or use in question this area shall include
4 storage areas and stairways.

5 However, it shall not include breezeways, porches or
6 garages, only that floor area at ground level above shall
7 be measured.

8 Q All right.

9 In view of that definition of floor area are the re-
10 quirements of 1000, 1100 and 1200 square feet of floor area
11 excessive for the Borough of Milltown?

12 A I believe so, yes.

13 Q According to my rough calculations, if I were
14 to build a 2-family home in the 1000 square foot floor area
15 that would be a home 25 feet by 20 feet; is that correct?

16 A But you can't build a 2-family home under the
17 ordinance.

18 Q 2-story, I'm sorry.

19 A Oh, that's correct.

20 Q Would that be in, excessive building for a low
21 or moderate income person?

22 A Well--

23 Q To purchase?

24 A If you were, I
25 think if you were building a modest house and trying to keep
the cost as low as possible you would try to build a one storey

1 home rather than a 2 story.

2 Q Correct me if I'm wrong. But it's always been
3 my impression that it's cheaper to build a 2 story home than
4 a single family because you eliminate the cost of a large
5 portion of foundation, you eliminate cost of the large portion
6 of the roof--

7 A If you are
8 building a, depending on the question of size, if you are
9 talking about a very large house you would because the size
10 would be reasonable, if you are talking about a modest house
11 with a relatively modest slab requirement than the savings in
12 terms of the size of the roof would be more than balanced
13 out by the increased costs in terms of going up the second
14 story.

15 Q Mr. Mallach, now I call your attention again to
16 Exhibit P-50A.

17 You should be well familiar with it by this time.

18 A Intimately.

19 Q Referring to Page 17, housing units.

20 Will you indicate the total housing units in Milltown,
21 please?

22 A There are 2067.

23 Q All right. And of those how many are one unit
24 structures?

25 A 1603.

Q And 2 or more? A 464.

1 Q Now according to my rough calculations, 464,
2 2000 is roughly 23 percent, is that?

3 A That's roughly correct, a little below.

4 Q You'll accept that as a round figure?

5 A Yes.

6 Q All right. Then on Page 26 please, the same
7 document, housing values, all right, will you read the
8 total number in all ranges and then up to the 20,000 to
9 24,999.

10 A The total number is 1450, there are 10 under 10,000,
11 93 between 10 and 14,999, 289 between 15,000 and 19,999.
12 Want me to continue?

13 Q And is it 20,000?

14 A 428 between 20,000 and 24,999.

15 Q Now I broke off there and according to my
16 calculations that's roughly 820, could you answer that.

17 A That seems about right.

18 Q Then would you read the one for the 25,000,
19 35,000 and 50,000?

20 A 430 between 25 and 34,999, 178 between 35 and 49,999
21 and 22 above 50,000.

22 Q All right. And here again my calculations
23 are roughly 630.

24 A That appears to be correct.

25 Q All right. And based on a total residences of

1 1450 I calculate the 820 below 25,000 to equal about 60 per-
2 cent? A That seems about
3 right.

4 Q Then of course the 630 over \$25,000 would equal
5 the remaining 40 percent? A That's correct.

6 Q Then once more to page 27, these are the rental
7 costs of rental occupied units?

8 A That's correct.

9 Q Would you please read the figures for the
10 Borough of Milltown up to \$200 a month?

11 A Under 40, 12 units, 40 to 59, 16 units, 62 to 79, 35
12 units, 80 to 99, 77 units, 100 to 119, 73 units, 120 to
13 149, 95 units and 150 to 199 32 units.

14 Q Now again according to my calculations that's
15 approximately 350 units?

16 A Yes.

17 Q All right. And then would you read the three
18 ranges beyond \$200 a month?

19 A 200 to 299, 3 units, 300 and over, 6 units, no cash
20 rent basis, 28 units.

21 Q So including all of those three, including the
22 not cash basis, that totals 40, according to my calculations?

23 A That's correct, 37.

24 Q Or a total of roughly 390 units altogether and
25 of that 350 are under \$200 per month or 90 percent of the

1 available rental units are under \$200 per month?

2 A That's correct.

3 Q Is that correct?

4 All right then, just one more question, Mr. Mallach.

5 I call your attention to Plaintiff's Exhibit P-28.

6 Again referring to the Borough of Milltown of course, will you
7 read the number of families under \$10,000?

8 A There are 461 families under \$10,000.

9 Q Then how many families are there above \$10,000?

10 A 1275.

11 Q Making a total of about 1720?

12 A 1736.

13 Q The 461 then under \$10,000, round figures,
14 25 percent?

15 A Roughly, yes.

16 Q So the 25 percent of the families in the Borough
17 of Milltown are in the low and moderate income groups; is
18 that correct?

19 A That's correct.

20 Q All right.

21 Now even going as far as up to \$25,000, that would
22 include the next two groups, I believe that figure would be
23 90 percent of the residents of the Borough of Milltown would
24 be under \$25,000 income; is that correct?

25 A Somewhat more than 90, yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. BOOREAM: I have no questions of
this witness.

(Whereupon the court heard legal argument.)

THE COURT: Do you wish to proceed to
Monroe?

MR. SEARING: Yes, your Honor.

THE COURT: I guess at this point we would
not reach Sayreville today and I would ask Mr. Bernstein
to wait a few minutes.

MR. SEARING: Your Honor, I have three items
to mark for identification.

THE COURT: 134, 135 and 136.

(Documents received and marked P-134, 135
and 136 for identification.)

MR. FARINO: I have no objections, your
Honor.

THE COURT: P-134, 135, and 136 in evidence.

(Documents received and marked P-134, 135
and P-136 marked in evidence.)

MR. SEARING: Haven't been identified
yet.

THE COURT: I'm sorry, we can mark them in
evidence.

MR. SEARING: OK.

1 A L L A N M A L L A C H continued.

2 DIRECT EXAMINATION BY MR. SEARING:

3 Q Mr. Mallach, would you identify P-134 please.

4 A This is the zoning ordinance of the Township of Monroe.

5 Q Would you identify P-135 please.

6 A This is the zoning map of the Township of Monroe.

7 Q And P-136? A This is the summary
8 of zoning ordinance provisions of Monroe Township prepared by
9 me.

10 Q Mr. Mallach, will you describe the principal
11 features of this zoning ordinance please?

12 A Yes, sir.

13 Before I begin I'd like to comment that the note on the
14 right-hand side regarding total area rather than vacant
15 area was a result of a confusion in reading the material and
16 it is indeed vacant land.

17 MR. FARINO: It is vacant land?

18 THE WITNESS: The numbers in the parentheses
19 are in the specified answers to interrogatories as
20 vacant land in each zone rather than the total land in
21 each zone. So it was my confusion in reading the answers
22 that led to this footnote.

23 THE COURT: You are now saying that these
24 figures represent vacant land area?

25 THE WITNESS: Yes, sir.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR.FARINO: As expressed in the interrogatories?

THE WITNESS: Yes, sir.

THE COURT: All right.

A There are 6 zones in Monroe Township, 3 residential, 2 business and one industrial.

In the 3 residential zones the first is an RR, rural residential zone, it requires a minimum lot of 30,000 square feet, roughly three-quarters of an acre minimum frontage of 150 feet, minimum floor area varies with the number of stories of the unit. One story building must have 1500 square feet, one and a half stories or split level 1950 square feet and a two story building 2200 square feet.

In the RA, residential area, the lots must be 20,000 square feet or approximately half an acre. The frontage, 100 feet.

The minimum floor area for one story building is 1350 feet, for a one and a half story, 1750 feet and for two story, 1950 feet, square feet.

The RB zone, the lots are 10,000 square feet or approximately a quarter of an acre, frontage is 100 feet, minimum floor area is 1200 square feet for one story building, 1600 for one and a half story and 1750 for two story building.

There are in the business district, RB uses are permitted, residential B zones, quarter of an acre lots and

1 so forth, in the rural business district, RR, rural residential
2 uses are apparently permitted and in the industrial district,
3 rural residential uses are permitted.

4 In these provisions the ordinance provides for PRC use,
5 which is a planned retirement community. A planned retirement
6 community can be built subject to its meeting the various
7 requirements in any of the zones in the municipality for
8 practical purposes this is limited to the RR and the
9 industrial zone.

10 THE COURT: Why do you say that?

11 THE WITNESS: Because of the amount of land
12 in the other zones is too small to meet--

13 THE COURT: The amount of vacant land?

14 THE WITNESS: Of vacant land, yes.

15 THE COURT: Wouldn't be anything to preventing
16 somebody tearing down existing buildings, progressing
17 that way?

18 THE WITNESS: No.

19 THE COURT: Alright.

20 THE WITNESS: That would make it theoretically
21 possible in the RA zone.

22 THE COURT: All right.

23 A Planned retirement community must have 400 acres of
24 land contiguous area, it is restricted to the residence of
25 persons age 48 and over, it must contain at least one of the

1 following, golf course, a lake, a swimming pool, a clubhouse
2 and a shuffleboard court. It may have no more than 28
3 residences per acre in residentially developed area and the
4 maximum of 20 percent coverage.

5 Other than these provisions the ordinance provides
6 no way for multi family housing and prohibits mobile
7 homes.

8 With regard to vacant area, there's a total of 26,600
9 acres of vacant land or approximately all but 2000 acres of
10 the township, according to the answers.

11 MR. FARINO: Your Honor, if I may object
12 at this point, the answers to interrogatories were
13 answered by my predecessor, Mr. Inglese in this case
14 and there's obviously an error in connection with the
15 figures and columnvacant land area to state that only
16 152 acres are developable out of a total of 26,752
17 is obviously in error.

18 THE COURT: Was that Mr. Inglese's?

19 MR. FARINO: I don't know that for a fact,
20 your Honor.

21 THE COURT: If it was his answer it would appear
22 that the plaintiffs can offer that. You've, I would
23 allow you to, in effect not be bound by that and to
24 present testimony to the contrary.

25 MR. FARINO: Dr. Mallach stated that there

1 was some confusion in the interpretation of the
2 answer.

3 THE WITNESS: If I can explain that.

4 THE COURT: All right.

5 THE WITNESS: The reason I, I doubted the
6 figures at first was for basically the reason for
7 that I specified that the amount of vacant land appears
8 to be excessive.

9 In looking more closely at the figures I noted
10 that there are two columns provided by Mr. Inglese in
11 the answers, one of which is total land in the zone,
12 one of which is vacant land. The difference between the
13 two for the township as a whole is the, slightly over
14 2000 acres, theoretically, which is probably a reasonable
15 figure for the total amount of developed land in the
16 township, 2000 acres. However--

17 THE COURT: You are treating farmland or he's
18 treating farmland as vacant land?

19 THE WITNESS: I assume so, yes.

20 THE COURT: Except for the house or the home lot,
21 whatever it's called.

22 THE WITNESS: That's my assumption but the
23 problem arises that I don't believe that this is his
24 figure for the total land area of the township
25 which is 28,640 acres, is I believe somewhat larger

1 than the actual land area of the township.

2 MR. FARINO: That's correct.

3 THE WITNESS: And again I'd like to think that
4 his figures for total land and for vacant land are at
5 least in the appropriate relationship to each other.

6 THE COURT: At some point we'd better resolve
7 this. Just for example, Mr. Searing, Mr. Farino,
8 I think it's significant enough that I would defer
9 Monroe at this time for you to try to stipulate what
10 the vacant land area is.

11 MR. SEARING: Fine, I mean, yes, sir, if we
12 could have, I mean it's possible this could be resolved
13 in, shortly, just haven't had an opportunity to discuss
14 this with Mr. Farino.

15 THE COURT: Make an attempt to do it between now
16 and tomorrow morning and we'll proceed then against
17 North Brunswick.

18 MR. SEARING: Your Honor, there are two
19 documents to be marked for identification.

20 THE COURT: All right, P-137, P-138.

21 (Documents received and marked P-137 and P-138 for
22 identification.)

23 MR. LEFKOWITZ: If your Honor please, I've had
24 the opportunity to examine P-137 marked for identification
25 and P-138 marked for identification.

1 P-137 if your Honor please, was based on the
2 zoning ordinance which was received, according to
3 Mr. Searing, on September 10th, 1975.

4 I have information that on September 15th, 1975,
5 there was an addition or an amendment to the zoning
6 ordinance of the Township of North Brunswick, specifically
7 with regard to P-137, the section dealing with town
8 houses.

9 It's my understanding that the zoning ordinance
10 has been amended to indicate that the 3 bedroom units
11 percentage has been increased to 50 percent and that's
12 my understanding of the effect of that amendment.

13 Other than that I have no objection.

14 THE COURT: All right, P-137 and P-138 in
15 evidence.

16 (Documents received and marked P-137 and P-138
17 in evidence.)

18 THE COURT: Could you supply the amendment?

19 MR. LEFKOWITZ: I don't have it with me, one
20 will be supplied, your Honor.

21 THE COURT: All right.

22 Mr. LEFKOWITZ: My planner is expected
23 momentarily.

24 A L L A N M A L L A C H

continued.

25

DIRECT EXAMINATION BY MR. SEARING:

1 Q Mr. Mallach, can you tell us what P-138 is,
2 please? A This is the Zoning Ordinance of
3 the Township of North Brunswick.
4

5 Q And P-137? A This is a summary of
6 zoning ordinance provisions of the Township of North
7 Brunswick prepared by me.

8 Q Mr. Mallach, can you describe the principal
9 features of the zoning ordinance for the municipality of
10 North Brunswick?

11 A Yes, sir. There are 13 zones provided for in this
12 ordinance of which four are single family residential zones,
13 one is a garden apartment zone, one is an optional ERD,
14 which I believe is economic residential district zone or
15 single family residential, one is a planned unit development
16 zone and six are various commercial, industrial and office
17 zones.

18 Q With regard to the four residential zones,
19 the R-1 zone requires minimum lots of 30,000 square feet or
20 approximately three-quarters of an acre, 150 foot frontage,
21 1600 square foot floor area.

22 There is also cluster option permissible in this zone,
23 under which a developer assembling a tract of at least 50
24 acres dedicates at least 15 percent to open space, may
25 obtain a reduction in lot size to 20,000 square feet and

1 frontage of 120 feet. In this and in the other residential
2 zones there are larger frontage requirements for corner
3 lots.

4 The R-2 zone provides for 15,000 square foot lots, for
5 interior lots, 20,000 for corner lots, 100 foot frontage for
6 interior lots, 125 for corner lots.

7 The minimum floor area in the R-2 zone is 1400 square
8 feet.

9 In the R-3 zone, this lot size is 10,000 and 12,000
10 square feet, frontage 100 and 120 feet. The minimum floor
11 area is 1200 square feet.

12 The R-4 zone, the lot sizes are 7500 and 9000 square
13 feet, respectively.

14 Frontage is 75 and 90 feet respectively and the floor
15 area requirement is 1000 square feet.

16 Two family units are permitted in the R-4 zone, a
17 private farm is required in the residential zones and two
18 off street parking places per unit.

19 The R-5 zone is the garden apartment zone. Garden
20 apartments are permitted on tracts of 5 acres or more,
21 containing a frontage of at least 300 feet. Maximum
22 density is 10 dwelling units per acre. The one bedroom unit
23 must contain at least 750 square feet of floor space, two
24 bedroom units must contain at least 1000 square feet. There
25 are a number of provisions in the garden apartment zone.

1 The units, 80 percent of the units must be one bedroom and
2 20 percent or no more than 20 percent, two bedrooms. Air
3 conditioning is required.

4 420 cubic feet of storage space per unit over and
5 above the floor space is required, 450 square feet of
6 playground area per unit is required. Two parking spaces per
7 unit are required and in developments of over 10 units,
8 at least one of the parking spaces per unit must be in a
9 carport or garage.

10 There's also a provision that can be referred to as a
11 zig-zag requirement, that the facade of the building must be
12 in the shape of a zig-zag rather than straight, with a 10
13 foot variation in facade or depth, every 4 dwelling units.

14 The R-6 zone is the economic residential district
15 option. It is buildable, either under the R-1 single family
16 provisions or if in lots of 25 acres or more as a mixed single
17 family and multi family development.

18 In addition to the minimum lot size of 25 acres it
19 must meet the following provisions. The gross density cannot
20 exceed 3.5 dwelling units per acre. All single family units
21 must meet R-2 standards, all multi family units are R-5
22 garden apartment standards. A maximum of 75 percent of the
23 units may be multi family units, 25 percent minimum for single
24 family units and 20 percent of the lot must be dedicated for
25 open space.

1 The planned unit development zone provides also for
2 mixed use or multi family development. The minimum tract or
3 lot size in a planned unit development is 50 acres, the gross
4 density over the tract as a whole cannot exceed 7 units per
5 acre and net cannot exceed 10 units per acre in the
6 residential areas. The nonresidential community, there must
7 be no less than 10 per cent non residential development in the
8 tract as in the R-5 and R-6 zones, garden apartments must
9 be 80 percent one bedroom and at least 80 percent one bedroom
10 and no more than 20 percent two bedroom.

11 The town houses in the planned unit development district
12 were, until 1975, limited to 20 percent of the units, could
13 be 3 bedroom units and the remainder had to be smaller, now
14 that's 50 percent. No units in the zone may be larger than
15 3 bedrooms and no more than 60 percent of the units in the
16 PUD, maybe town houses. 15 percent of the area of the PUD
17 must be dedicated for open space. Residential uses are not
18 permitted in the nonresidential zones.

19 Mobile homes are prohibited with regard to vacant land
20 area. Information was not provided by the township with a
21 breakdown of vacant land by zone and the zoning ordinance
22 was changed since the DCA information was provided.

23 The township did indicate that there are, according to
24 their calculations, 3,520 vacant areas, of these 200, 2717
25 are vacant and undeveloped, by which is meant they are neither

1 in agricultural watershed or water uses.

2 Q Thank you.

3 What if any of the features you have described have an
4 adverse effect on the provision of housing for low and moderate
5 income persons?

6 A There are quite a number of them.

7 MR. LEFKOWITZ: I'm going to object to the
8 formulation of that question, your Honor, as to the
9 phrasing of it, having adverse effect. I believe the
10 proper phrase, framing would be, have any effect, if
11 any.

12 THE COURT: I'd have to overrule that
13 objection, I think he's being asked as to factors
14 against inhibiting low and moderate income housing
15 opportunities.

16 All right.

17 A There are a number of such factors, the minimum lot
18 size, frontage requirement and floor areas in the R-1 and
19 R-2 zones are all greater than is required to provide
20 reasonable and modest accommodations. In particular the
21 R-1 zone, the three-quarters of an acre lots, 150 foot
22 frontages and 1600 square foot interior floor space contains
23 substantially provisions, substantially in excess of
24 reasonable modest standards.

25 In the R-3 zone, consistent with what I've said

1 earlier, the lot size of 10,000 square feet for interior lots,
2 12,000 for corner lots is at the borderline of what is
3 excessive and in my judgment would be considered not as
4 excessive only if there were adequate land in more modest
5 zones, elsewhere in the municipality.

6 The floor space requirement of 1200 square feet in this
7 zone is also excessive.

8 The R-4 zone, at least approaches a definition of a
9 reasonable and modest standard.

10 In the R-5 garden apartment zone there are a number of
11 provisions which either tend to restrict the availability of
12 these units or to increase their cost. The requirements of the
13 5 acre lot and 300 foot frontage can put restraints on
14 developing multi family housing, particularly in the more
15 built up parts of the township where it may be desirable to
16 build of higher densities. It would limit the number of lots
17 available for residential development. 10 dwelling units per
18 acre density is an unreasonably low standard for garden
19 apartment developments. The floor space requirements of
20 750 square feet for one bedroom unit and 1000 square feet for
21 2 bedroom unit are in excess of what requires and is
22 reasonable and modest. The requirement that 80 percent of
23 the units at least be one bedroom and no more than 20 percent
24 two bedroom, substantially restricts the provision of units
25 which can accommodate families with children.

1 The additional requirements in the R-5 zone have a
2 cost impact, the requirement that air conditioning be provided,
3 a substantial requirement for storage space, a very substantial
4 requirement for the amount of playground space that has to be
5 set aside, the zig-zag provision which increases the
6 cost of construction per useable square foot of interior
7 floor space and the parking requirement, particularly that
8 which requires that one parking space per dwelling unit be
9 enclosed, also has a cost increasing factor.

10 In the R-6 zone, using the ERD option, all of the
11 provisions that I've mentioned in the R-5 zone apply
12 equally, since they're adopted by reference.

13 In addition, the gross density standard of no more than
14 3.5 dwelling units per acre is very low and can again have a
15 substantial cost increasing, as well as supply decreasing
16 effect on housing.

17 The planned unit development farm provides for, excuse
18 me, incorporated the bedroom restrictions of the R-5 zone
19 and provides bedroom restrictions which are not negligible
20 even though perhaps more modest with regard to the town houses,
21 even with the recent amendment of the ordinance. The gross
22 density of 7 dwelling units per acre in this zone is also
23 lower than is, that might produce the most efficient and cost,
24 reasonable use of the land in this zone.

25 The requirement that at least 10 percent of the land

1 be set aside for nonresidential uses, also could be excessive
2 and restrictive of development, depending on the location of
3 the tract and the feasibility of providing nonresidential
4 uses in the tract over and above those needed for the
5 residents themselves.

6 The prohibition on mobile homes is restrictive of
7 this housing type, which is relevant to certain housing
8 needs for low and moderate income people.

9 Because of the absence of information it's impossible
10 to comment on the distribution of vacant land and what
11 effect that might have.

12 Q Does this municipality have a public housing
13 authority?

14 A No. I'm sorry, they've recently created a public
15 housing authority.

16 Q Have they built any public housing?

17 A They haven't--there is one development, I think it's
18 in the works, I'm not, I'm not sure whether it's at the
19 construction stage, exactly what stage it's at.

20 Q Is there any other state or federally subsidized
21 housing?

22 A Not to the best of my knowledge.

23 Q I would like to draw your attention to
24 plaintiff's exhibit P-53 which is the community development,
25 specifically on Page 68 the summary for urban municipalities,

1 is there an entry there for this municipality?

2 A Yes, the entry for North Brunswick Township is with
3 regard with the number of substandard dwelling units, 99.
4 With regard to the housing assistance needs at lower income
5 households, 473 households, the total is 572.

6 MR. SEARING: Your Honor we have no
7 further questions.

8 MR. LEFKOWITZ: I have.

9
10 CROSS-EXAMINATION BY MR. LEFKOWITZ:

11 Q During your general direct examination you
12 listed four factors which may be favorable or may have a
13 favorable impact on low and moderate income, isn't that
14 correct, at low, moderate income housing?

15 A I believe so, yes.

16 Q And one factor was the adoption of a public
17 housing authority; is that correct?

18 A That's correct.

19 Q And North Brunswick has such an authority; is
20 that correct?

21 A That's correct.

22 Q The factor, resolution of need?

23 A Yes, that's correct.

24 Q Does North Brunswick have such resolution of
25 need?

1 A I believe so.

2 Q Another factor was application to the HUD, isn't
3 that correct, that application that you have before you?

4 A Yes.

5 Q Do you know if North Brunswick has joined in
6 such an application? A North

7 Brunswick is, I believe, I specified when I, in my
8 discussion of that I specified not just participation in the
9 community development program but participation for specific,
10 certain specific purposes.

11 Q And what was the fourth factor, favorable
12 factor?

13 A The fourth element I mentioned was the direct
14 application for Section 8 subsidiary funds.

15 Q Do you know if North Brunswick has made such an
16 application?

17 A No, I do not.

18 Q If I understand your testimony correctly and
19 correct me if I'm wrong but you've presented with regard to
20 your summary of the North Brunswick Zoning Ordinance provisions
21 what may seem to be a facial exclusionary section; is that
22 correct?

23 A That's correct.

24 Q And as a matter of fact you haven't made a
25 field study of any type in North Brunswick, have you?

1 A I haven't made a field study of North Brunswick,
2 no.

3 Q And as a matter of fact you can't tell us where
4 the, in what zone the existing undeveloped land may be
5 located, can you?

6 A No, this information is requested of defendants but
7 not provided by North Brunswick.

8 MR. LEFKOWITZ: I ask that be stricken,
9 your Honor, as not responsive.

10 THE COURT: I'll allow that to stand.

11 Q Although some of these restrictions may be
12 facially restrictive they may be subject to be rebutted
13 isn't that correct?

14 A Certainly.

15 Q I direct your attention, as your attention has
16 been directed before to 50A in evidence, specifically to
17 Page 17, if you would.

18 This page has a chart on it indicating how the units
19 by structure; is that correct?

20 A That's correct.

21 Q And would you go to the line for North Brunswick
22 Township, please?

23 A Yes.

24 Q And how may, how many housing units does North
25 Brunswick have according to this chart?

1 A 5034.

2 Q And out of that 5034 figure, how many of the
3 structures were single family structures?

4 A 3604.

5 Q How many were more than one unit structures,
6 two unit structures or more?

7 A 1426.

8 Q So would it be fair to say, based on those
9 figures that at least one third of the housing units in
10 North Brunswick according to this document were more than
11 single family structures?

12 A No.

13 Q Well, what is your interpretation of the figures?

14 A 28 percent, almost exactly.

15 Q Thank you. Almost 30 percent?

16 A Yes.

17 Q And I would then direct your attention to Page 35
18 of P-50A and this chart indicates the percent of distribution
19 of renter occupied and vacant for rent housing units by rent
20 raises, is that correct?

21 A That's correct.

22 Q Would you again look to the line which focuses
23 on North Brunswick Township, please.

24 A Yes.

25 Q And if you would roughly add the percentages

1 for the ranges of \$150 and up for rent range rather than go
2 the other way, there are more columns in the other direction.

3 A 100, the total of the columns from 150 and up is between
4 43 and 44 percent.

5 Q So would it be fair to say that roughly 47
6 percent of all the rental units in North Brunswick, according
7 to this chart, were below \$149?

8 A 57 percent, sir.

9 THE COURT: 100 minus 43.

10 Q 50 percent, that's correct, 57 percent is below
11 \$149; is that correct?

12 A Yes, sir.

13 Q \$149 or below?

14 A Yes, sir.

15 Q I would direct your attention to Page 34, the
16 chart indicating the percent distribution of owner occupied
17 and vacant for sale, one family house.

18 Would you direct your attention to the line for North
19 Brunswick?

20 A Yes.

21 Q And for homes, \$24,999 and less?

22 A Yes.

23 Q Would it be fair to say that 40 percent of all
24 homes in North Brunswick, according to this chart roughly 40
25 percent of all homes in North Brunswick, according to this

1 chart roughly 40 percent--

2 A Slightly , yes, slightly under 40 percent.

3 Q Come within that category?

4 A Yes.

5 Q In 1970, what would be, what was considered to
6 be the proper average or the maximum in your opinion, average
7 monthly rental for a moderate income family?

8 A Well, in 1970 the, a representative moderate income
9 family with an income in the \$8000 or so range would be
10 looking for rental of no more than say 160 or so a month.

11 Q And for the low income range?

12 A No more than 120 a month, say.

13 Q And again is that based on 25 percent of the
14 monthly income?

15 A It's an approximation of that, yes.

16 Q In 1970 again because that's, those are the
17 figures, census figures that we've been provided for, what
18 would be, if you have an opinion, the cost of or the maximum
19 cost of a home available to someone in a moderate
20 income category?

21 A In working on the same, in the same numbers, the
22 maximum at that time, take a moderate income representative
23 of a moderate income family could afford, would be in the
24 area of 20 or \$21,000.

25 Q It light of the tables that we have just gone

1 through, we have tables on, in P-50A with regard to the
2 rental units and regard to the number of single, of multi
3 dwelling units in North Brunswick and rental range of those
4 dwelling units, do not in fact those tables somewhat rebut a
5 conclusion with regard to your conclusion, with regard to the
6 impact of the zoning ordinance on low or on low or moderate
7 dwellings in North Brunswick?

8 A Not whatsoever.

9 Q It has no impact, it has no value whatsoever with
10 regard to rebutting that determination?

11 A No.

12 Q Would the tables have an impact in judging
13 if North Brunswick has in fact met its share of low and
14 moderate income housing?

15 A Some of the facts, some of these statistics that you
16 elicited if looked at in the context with the rest of the
17 county and other municipalities and so on, could be used as
18 part of the basis for making such a determination.

19 Q In preparation for this trial, did you have an
20 opportunity to examine the master plan of the Township of
21 North Brunswick?

22 A No, unfortunately I did not.

23 MR. LEFKOWITZ: I have no further
24 questions, your Honor.

25 THE COURT: Take about a 5 minute recess.

1 (After a brief recess the trial
2 continued.)

3 MR. SEARING: Your Honor, Mr. Farino and I
4 have worked out the problem regarding vacant land
5 area from the Township of Monroe. We are prepared
6 to go with Monroe at this time.

7 THE COURT: All right, let's do that then.

8 I think that would then excuse Mr., I'm not
9 sure--I'm sorry.

10 MR. SEARING: Your Honor these documents have
11 already been marked, received into evidence.

12
13 A L L A N M A L L A C H, continued.

14 DIRECT EXAMINATION BY MR. SEARING:

15 Q Mr. Mallach, I believe you had completed your
16 testimony regarding the principal features of this
17 ordinance, up to the point of discussing the vacant land.

18 A Yes, sir.

19 Q Would you proceed from that point?

20 A The vacant land in the Township of Monroe is distributed
21 as follows.

22 In the RR, residential zone there are a total of
23 13,853 vacant acres of a total of 16,500.

24 In the RA residential zone there are approximately
25 50 vacant acres.

1 In the RB, approximately 20, in the business district
2 approximately 20, in the business rural district approximately
3 10.

4 The total land vacant and developable in those four
5 zones, approximately 2250 acres.

6 Finally, there are 7866 vacant acres in the industrial
7 zone, out of a total of approximately 8000 vacant and
8 developable acres in that zone.

9 The total vacant acreage in the township is 21,819
10 acres, out of a total of approximately 26,750.

11 Q Now, what if any of the features you have
12 described have an adverse effect on the division of housing
13 for low and moderate income persons?

14 A There are a number of such features in this ordinance.
15 First the ordinance prohibits mobile homes and makes no
16 provision for any form of multi family housing, except for
17 that contained in the planned retirement community.

18 Secondly, all of the provisions of the rural residential
19 zone are restrictive in the extreme. The lot size of 30,000
20 square feet, frontage of 150 feet and the minimum floor area
21 requirements are all much in excess of what is required for
22 modest reasonable accommodations. In particular the floor area
23 requirements for the one and a half story and the two story
24 units are extremely high.

25 The provisions of the RA residential zone are excessive,

1 although to a modest degree.

2 The minimum floor area provisions of that zone however
3 are extremely high, especially those for one and a half and
4 two story units.

5 The provisions of the RB residential zone for lot size
6 are on the borders of reasonable provisions, although the
7 frontage requirement is still high.

8 Again the minimum floor area requirement for all
9 units and especially the one and a half and two story units
10 in the RB residential zone is extremely high .

11 The provision for the planned retirement community far
12 restrictive. The restrictions obviously two, in residents
13 to persons of 48 and over has a very limiting effect on the
14 number of children and families with children that can be
15 accommodated in this zone.

16 The requirements that the density not exceed 28
17 residences per acre and in particular the requirement for
18 amenities such as golf courses, swimming pool, lakes and the
19 like tend to have an effect on the cost and to preclude the
20 construction of modest accommodations at moderate costs .

21 Finally the distribution of vacant land, among the
22 zones, has a further restrictive effect. With regard
23 to the residential zone, the residential area, all except for
24 a negligible amount of land is zoned for the rural residential
25 zone, which are the most restrictive, which contains the

1 most restrictive provisions.

2 Since rural residential uses are permitted in the
3 industrial zone, the over zoning for the industrial uses
4 in and of itself is not as significant as it may be.

5 Nevertheless, based on an assumption, based on the projection
6 rather by the Middlesex County Planning Board of a demand for
7 an additional 594 acres of industrial uses through the year
8 200, a provision of 7866 acres in industrial uses does
9 appear to be facially excessive.

10 Q Thank you. I would like to direct your
11 attention to Question 4 in the interrogatories answered by the
12 defendant.

13 Would you read the question and the answer please.

14 A Yes, sir.

15 The question is, "Provide the number of multi family
16 units in each of the following rental categories and ranges."

17 The answer is, "In the type, two bedroom r units renting
18 between 100 and 149 per unit per month, 6 units--"

19 Q Is that all?

20 A Yes, sir.

21 Q I would like to direct your attention to
22 plaintiff's exhibit 53, page 68 which you have previously
23 identified as the summary for urban county municipalities.
24 Is there an entry for the municipality of Monroe?

25 A Yes, sir.

1 Q Would you read it please?

2 A Township of Monroe, this table indicates that there are
3 20 substandard dwelling units and an additional 195 lower
4 income households in need of housing assistance, for a
5 total of 405 households or units.

6 Q Does this municipality have a public housing
7 authority?

8 A No, sir.

9 Q Is there any other state or federally subsidized
10 housing in that town--

11 A Not to my knowledge.

12 Q --in the municipality?

13 MR. SEARING: Your Honor, we have no
14 further questions.

15 THE COURT: Cross-examine, Mr. Farino.

16

17 CROSS-EXAMINATION BY MR. FARINO:

18 Q Mr. Mallach, directing your attention to
19 Exhibit introduced into evidence, identified as P-136, your
20 summary of zoning ordinance provisions, specifically the
21 column designated other uses.

22 Would you indicate what other uses are permitted in the
23 rural business district?

24 A I indicated, well, the planned retirement community is
25 permitted, also, it's my belief the RR or rural residential

1 use is permitted.

2 Q I would direct your attention to Monroe Township
3 zoning ordinance, identified as P-134, to Section 130-9.

4 Do you have that answer?

5 A Yes, I do.

6 Q Would you read that section please?

7 A "All uses permitted in the business district shall
8 also be permitted in the rural business district, subject
9 to the restrictions, requirements set forth in 130-AA,
10 hereof."

11 Q OK. And then would you turn to the previous
12 pages, please, Section 130-8, business zone and read sub-
13 section one.

14 A Well, this is under A uses.

15 Q That's correct.

16 A "All uses permitted in the residential B zone."

17 Q So then sholdn't the other use be residential
18 B instead of rural residential?

19 A No because on Subsection B2A of 130-9 it specifies
20 that the minimum lot size shall be 30,000 square feet with a
21 minimum frontage of not less than 150 feet.

22 So that I assume that--

23 Q What's that again?

24 A In 130-9 the rural business zone, Section B, Sub-
25 section 2A--

1 Q OK.

2 A The minimum lot size in the rural business zone shall be
3 30,000 square feet, with a frontage of not less than 150 feet.
4 So even though the use, the use refers to residential use and
5 these are the provisions under which it's governed.

6 Q OK, with respect to the industrial zone, what
7 additional use did you testify to was allowed in addition
8 to the RC?

9 A Rural residential.

10 Q Now Mr. Mallach, would you agree that lot sizes
11 on a degree on the availability of sewer facilities and soil
12 characteristics?

13 A That is a factor, yes.

14 Q Would you further agree, if there is no sewer and
15 poor soil characteristics that lot sizes as a necessity must
16 increase? A Relative to what they would be with
17 sewer, yes.

18 Q And then if lot sizes are larger, would you
19 further agree that frontages must necessarily be larger, in
20 proportion to maintain proper balance?

21 A Up to a point but only to a limited degree.

22 Q Mr. Mallach, are you aware that the PRC zone within
23 Monroe Township has not excluded apartments?

24 A I believe when I mentioned that apartments were
25 excluded I made a specific exception for PRC.

1 Q Are you aware of the building height requirement
2 in this PRC zone?

3 A I remember noting it, the maximum height shall be 55
4 feet but at least 80 percent of the number, total number of
5 dwelling units shall be contained in buildings of not
6 more than 35 feet in height.

7 Q Are you familiar with the Clear Brook Retirement
8 Community in Monroe Township?

9 A Not in detail.

10 Q Are you aware that this Clear Brook Community
11 presently has apartment rentals?

12 A Yes.

13 Q You are. Are you aware that Clear Brook has
14 presently begun the development of multi story apartments?

15 A I believe so, yes.

16 Q So then Mr. Mallach you would agree that Monroe
17 Township does not have a blanket exclusion on multi dwelling
18 housing?

19 A No, I believe I specifically excluded the TRC from that
20 statement.

21 Q Mr. Mallach, I'd now like to direct your
22 attention to Section 130-20, the Monroe Zoning Ordinance.

23 A Yes.

24 Q Would you please read Provision A?

25 A Provision A is, "Notwithstanding other provisions of

1 this chapter regarding the construction of single family
2 dwellings, nothing here in shall prohibit the conversion or
3 alteration of any single family dwelling in existence on
4 April 7th, 1952 and no more than two separate dwelling units
5 provided that such dwelling units shall conform to the
6 following provisions."

7 Q Would you read Subsection 1, please.

8 A "Single family--" Sorry. "Any single family dwelling
9 converted under the provisions of this section shall be
10 required, to have, within the enclosing walls of the original
11 structure, not less than 1500 square feet of habitable
12 floor area for the two dwelling units."

13 Q That, Mr. Mallach, would equate to an average
14 dwelling unit of how many square feet?

15 A 750.

16 Q Would you consider that to be a modest figure?

17 A Yes.

18 Q You would, OK.

19 Mr. Mallach, have you ever visited the Township of
20 Monroe?

21 A Yes.

22 Q Are you familiar with its size?

23 A Yes, I am.

24 Q Are you familiar with its general character?

25 That's a broad question.

A Generally speaking,

1 yes.

2 Q How would you characterize the makeup of Monroe
3 Township?

4 A I would characterize Monroe Township as being a largely
5 rural township with scattered subdivisions and two retirement
6 communities and with some industry in the area, principally
7 in the area near the turnpike, the New Jersey Turnpike.

8 Q Would you be surprised if I indicated that
9 residential development at present comprises only 9.9 percent
10 of the total land mass of Monroe Township?

11 A No.

12 Q That commercial development comprises only one
13 percent?

14 A No.

15 Q And that industrial development, only one-half
16 of one percent?

17 A Not at all.

18 Q Do you know Mr. Mallach, the extent to which
19 Monroe Township has a water system?

20 A I'm not familiar with it.

21 Q The extent to which it has sewer facilities?

22 A No.

23 Q Could you further describe, using a word of
24 art in your profession, the interstructure of Monroe
25 Township?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Does it have a town hall?

A I don't really know specifically.

Q Do you know if it has a post office?

A I don't believe it has its own post office.

Q What about shopping centers?

A There's some, I don't believe there's a shopping center as such, there's some, there's a mixture of scattered commercial uses along various of the principal roads in the township.

Q What about the extent to which it has public transportation?

A I'm not familiar with any public transportation in Monroe Township.

Q Mr. Mallach, with respect to the agricultural use of land in Monroe Township, would you consider the preservation of agriculture a valid land use planning goal?

A Taken in the context with other goals, yes.

Q Would the quality of soils be a relevant factor in this consideration?

A That's a very debatable issue, I'm not sure.

Q You have no feeling one way or the other?

A Oh, I have feeling both ways.

Q Do you know the condition of the soils in Monroe Township?

A Not in detail, I think I have a general idea.

1 Q Would you express what the general idea is?

2 A I believe that they're generally it's relatively, well
3 it's relatively sandy and productive agricultural soil.

4 Q With respect to your definition of developable
5 land, would you consider farmland to be included within this
6 definition?

7 A Yes.

8 Q Would there be any qualifications such as to
9 whether or not the land is actively being farmed versus
10 fallow, inactive?

11 A Well, in terms of the basic consideration of
12 developability whether one likes it or not, there is no
13 distinction and, to the degrees that the municipality or the
14 state is able to adopt an effective policy through use of
15 some machinery like the transfer and development rights or
16 agricultural land acquisition to differentiate between the
17 two that would make a difference but failing that I think there
18 is no significant difference in developability of the two
19 types.

20 THE COURT: Well, specifically there's no
21 difference in your definition?

22 THE WITNESS: No.

23 THE COURT: All right.

24 A They're encompassed in the same definition.

25 Q Mr. Mallach, with respect to the size of farms

1 within Monroe Township, would you distinguish between large
2 agricultural tracts, say those which exist in the midwest
3 in excess of thousands of acres versus small farming parcels
4 such as exist in Monroe Township?

5 A I'm not really familiar with the ownership of the land
6 in Monroe Township.

7 Q Would you agree, irrespective of your unfamiliarity
8 with the parcels in Monroe Township that large farming tracts
9 would be more susceptible to development than smaller tracts?

10 A No.

11 Q You would not?

12 A No, there are two factors that tend to cancel each
13 other out, the large farm tracts are some ways more
14 attractive because they're easier to assemble, the require-
15 ments, for example, for a planned retirement community or
16 some similar large development but at the same time the
17 large tracts are more economically pliable, often, so that
18 the desire of the owner to sell the land is less intense.

19 MR. FARINO: Your Honor, I would like to have
20 an exhibit marked for identification, if I may please.

21 THE COURT: All right, DM-1.

22 (Document received and marked DM-1 for
23 identification.)

24 Q Mr. Mallach, I show you what has been marked
25 for identification, DM-1.

1 Can you identify it for us, please?

2 A This is a map entitled existing land use, 1974,
3 Monroe Township, New Jersey.

4 Q And would you identify the source of the map,
5 please?

6 A The map was prepared by a firm named Community Housing
7 and Planning Associates, Incorporated.

8 Q Now, Mr. Mallach, directing your attention to
9 the legend which exists in the upper left-hand corner, would
10 you state what land predominates in Monroe Township?

11 A Agricultural land use appears to be the largest
12 single land use in Monroe Township.

13 Q With respect to the yellow portions marked,
14 would you identify then what they would be please?

15 A The yellow, as is true in all of these maps, is
16 residential, single family.

17 Q Now will you notice that this is a rather un-
18 usual map in that lot lines are delineated on it?

19 A That's right.

20 Q Would you characterize the sizes delineated by
21 the lot lines, agricultural parcels, in general terms, large
22 versus small.

23 A I would say they range from relatively small to
24 medium, moderately sized parcels.

25 Q Would the small parcels predominate?

1 A There are certainly more small parcels than there are
2 large ones, I'm not sure in terms of acreage.

3 Q Now, Mr. Mallach, based on your observations
4 of what has been marked as DM-1 for identification, would it
5 be fair to characterize Monroe's agricultural use as small
6 parcels, small farms covered with residential farmhouses?

7 A Well, I'm not sure I'd go that far, I think many of
8 these, many of the farms are quite substantial, I'm not,
9 certainly up to the sale of the ranch range.

10 THE COURT: I assume that.

11 A Talking about a lot of 50, 150 acres.

12 Q Relatively small?

13 A Small to moderate size farms, there are in addition to--

14 Q All right, you've, appears you call them small
15 to moderate size?

16 THE WITNESS: Yes.

17 Q Now, Mr. Mallach, I believe in prior testimony
18 to your knowledge of market demand for housing; is that
19 correct? A I believe so, yes.

20 Q Do you have any specific knowledge in respect to
21 Monroe?

22 THE COURT: Market demand?

23 A Specifically in Monroe?

24 Q Yes.

25 A No, sir.

1 Q Would you agree that an indication of market
2 demand for housing would be the number of subdivision
3 applications made to that particular community?

4 A Not necessarily, it would if in the absence of
5 extraneous factors that might limit the number of applications
6 for one reason or another, the answer is yes but there are
7 factors unrelated to market demand that could affect it.

8 Q Do you have any knowledge as to the number of
9 subdivision applications made to Monroe Township say within
10 the past 5 years?

11 A No, sir.

12 Q Then you would have no knowledge as to the number
13 of lots proposed for subdivision?

14 A No.

15 Q Are you aware of the population in Monroe
16 Township?

17 A Not specifically, I believe I can find that--

18 Q More specifically, Mr. Mallach, would you have
19 any idea as to the population increase percentagewise in
20 Monroe over the past 20 years, say the time span, 1952 to
21 1970?

22 THE COURT: Ask him whether he knows.

23 A I don't know it offhand.

24 Q Mr. Mallach, possibly I could save some time--

25 A Yes.

1 Q --if I indicated that the population increase in
2 Monroe Township over the 20 year time span, 1950 to 1970 was
3 120 percent and that involving contiguous municipalities,
4 namely in South Brunswick, that that population increase over
5 the same time span was 251 percent in East Brunswick, 499
6 percent in Madison, 561 percent--would you have any
7 explanation for me as to the contrast in those figures?

8 A Yes, the most likely explanation that comes to mind is
9 that the time fathers of Monroe Township have been working very
10 hard to keep the lid on.

11 Q You would have no other explanation for that?

12 A Oh, there are many possible explanations, I'm saying
13 that's the most likely one.

14 THE COURT: How about if the farmland was
15 somewhat more, well, richer, more profitable in Monroe
16 than in the other municipalities?

17 THE WITNESS: That's conceivable, that seems
18 fairly unlikely.

19 THE COURT: I mean is that a possible reason, the
20 limitation in population?

21 THE WITNESS: Possible, but unlikely.

22 THE COURT: All right.

23 Q Mr. Mallach, I believe you testified that Monroe
24 Township has no public housing authorities; is that correct?

25 A That's correct.

1 Q If I told you that figures from the 1970 census
2 revealed that the average value of owner occupied units in
3 Monroe Township was as low as \$23,000 and that those for sale
4 were as low as \$23,306, the average rental paid in Monroe
5 Township was \$99 per month, the average rental for available
6 vacant units was as low as 75 per month that more than 35 per-
7 cent of owner occupied units was valued less than \$25 and that
8 more than 50 percent of renter occupied housing units had
9 rentals of less than \$100 per month.

10 Would you consider these facts relevant as to why Monroe
11 Township does not have a housing authority?

12 A Well, I would interpret those facts, believe that the
13 key question is the interpretation of those facts as to
14 suggested here is a traditional community with a characteristic,
15 modest, modest housing, that's accumulated through royal
16 development over perhaps 50 or 100 years.

17 Now in such royal community of which I'm familiar,
18 one of the characteristics of that housing, especially in
19 much of the rental housing is that it's often extremely
20 substandard housing because of the conversion of seasonal
21 housing to residential use, sometimes a conversion of farm,
22 chicken coups and other types of buildings to residential
23 users and the net result of such information would suggest
24 that there may be a particular need for housing authority
25 because there's a great likelihood that a large number of

1 the lower income families in the community are inadequately
2 housed.

3 Q Mr. Mallach, directing your attention now to
4 environmental factors as they would relate to Monroe Township,
5 were you to agree a study of the natural physical environment
6 as well as man-made aspect of it, has come to be recognized
7 as an important element in planning program?

8 A Yes.

9 Q Would you agree that includes all of the
10 aspect of the environment that can be affected by man's
11 activity in building?

12 A Well, I, all may be a little strong, there's certainly
13 a large number.

14 Q Would you agree that a master plan should be
15 an instrument for control and the development that's to come
16 into the township and that it should be responsive to the
17 environment?

18 A Yes.

19 Q Would you agree that most such control should
20 take the form of building and zoning regulations?

21 A No.

22 Q You do not.

23 Do you agree that these will effect the location and
24 physical layout of new construction and some standard layout
25 and manner of, and use of existing development?

1 A The building and zoning regulations will--

2 Q Yes.

3 A They certainly will, yes.

4 Q Would you agree that controls over natural and
5 physical elements should be oriented not toward the control
6 of the elements itself but toward the control over demands
7 to it.

8 For example, flooding should be controlled, not so
9 much the land filling and walls but through avoidance of
10 building on flood plains?

11 A Well, that's not an either or proposition. I mean the
12 type of flooding problem, for example, we have in New
13 Jersey is such that if we never built another unit in our lives
14 in, in flood plains there will still be some need to
15 provide dykes and walls and embankments and what have
16 you because of the existing characteristics of the system.

17 So it's not an either or proposition.

18 Q Mr. Mallach, would you agree that the following
19 natural elements of the environment should be taken into
20 account in a municipality controls over development, flooding--

21 A Yes.

22 Q --marshy drain?

23 A Yes.

24 Q Water table? A To a limited
25 degree.

1 Q Permeability?

2 A Again to a limited degree, particularly depending upon
3 the degree to which it's tied into the expansion of sewer and
4 water system.

5 MR. FARINO: Your Honor, I'd like to
6 have another exhibit marked for identification,
7 if I may.

8 THE COURT: DM-2.

9 (Document received and marked DM-2 for
10 identification.)

11 Q Mr. Mallach, would you identify what has been
12 marked DM-2, please.

13 A This is a map entitled stream overflow hazard, Monroe
14 Township, New Jersey.

15 Q And would you identify the source of this
16 information please?

17 A This map was prepared by Community Housing and Planning
18 Associates, Incorporated.

19 Q Directing your attention to the legend which
20 exists on this map, would you indicate the extent to which of
21 the items in the legend is applicable to the land map in
22 Monroe Township?

23 A There are a number of items, the first item is the
24 HUD designated flood hazard area and there are four or
25 five strips in the township which are designated as being

1 flood hazard area, one running through the middle, two in the
2 southern part of the township and the rest along what I guess
3 is more or less a north or northeastern boundary of the
4 township.

5 Q Would you indicate the magnitude of these
6 strips in relative terms? I realize--

7 THE COURT: You seem to be getting into
8 detail on what probably would be more properly
9 defense, affirmative defense, Mr. Farino.

10 MR. FARINO: All right, your Honor, I just
11 have one further question on this.

12 Q Respecting the total legend, Mr. Mallach, can
13 you give us a characterization as to the extent which stream
14 overflow plays in Monroe Township?

15 A A modest part.

16 Q You would also characterize it as modest?

17 A Yes.

18 Q Thank you.

19 Mr. Mallach, with respect to water table heights,
20 would you agree that even where the water table never
21 actually reaches the surface and makes the ground marshy, that
22 its distance below the surface has a considerable impact on the
23 feasibility of building?

24 A I wouldn't say considerable, some impact but not a
25 considerable one.

1 Q Some impact, OK.

2 MR. FARINO: Your Honor I'd like to have
3 one additional figure marked for identification.

4 THE COURT: DM-3.

5 (Document received and marked DM-3 for
6 identification.)

7 Q Would you identify this please, Mr. Mallach?

8 A Yes, sir. This is a map entitled depth to seasonally
9 high water table, Monroe Township, New Jersey, prepared by
10 Community Housing and Planning Associates.

11 Q Now, without getting into specifics, Mr. Mallach,
12 would you state the degree to which the water table,
13 specifically the one to 5 feet water table below the surface
14 plays in Monroe Township?

15 A An extensive part of Monroe Township has a water table
16 of 1 to 5 feet.

17 Q Could you be more specific than extensive?
18 Could you render a percentage? Is that possible?

19 A Half, maybe more.

20 Q Mr. Mallach, with respect to the aspect
21 permeability, would you agree that this characteristic has
22 to do with the ability of water to reach down to the soil,
23 sometimes called percolation?

24 A That's correct.

25 Q Would you agree that it's of importance because

1 ofits effect primarily on on-site sewage disposal systems
2 but also on drainage?

3 A That's its principal effect, yes.

4 Q Would you agree that if water is unable to
5 percolate through the soil and the disposal of both sewage
6 or excess drain will be more difficult?

7 A That's correct.

8 MR. FARINO: Like to have one additional item
9 marked.

10 (Document received and marked DM-4 for
11 identification.)

12 Q Would you identify DM-4 Mr. Mallach?

13 A This is a chart entitled permeability, Monroe
14 Township, New Jersey, prepared Community Housing and Planning
15 Associates.

16 Q Now directing your attention to the legend,
17 Mr. Mallach, would you characterize the extent to which
18 Monroe Township is affected by moderate to poor permeability?

19 A I would say again this is very rough because the map
20 isn't clear in this regard, half or perhaps slightly more but
21 perhaps about half of the--

22 Q At least half?

23 A About half.

24 Q Of the land? A Of the land is
25 either moderate or poor permeability.

1 MR. FARINO: Your Honor this is the last
2 exhibit I would like marked.

3 (Document received and marked DM-5 for
4 identification.)

5 Q Mr. Mallach, would you identify DM-5?

6 A Yes, sir, this is a map entitled limitations on
7 building, Monroe Township, New Jersey, prepared by Community
8 Housing and Planning Associates, Inc.

9 Q OK. It is intended that this chart incorporate
10 all the elements of the previous three charts. Directing your
11 attention, Mr. Mallach again to the legend, would you
12 characterize the extent to which limitations on building exists
13 in Monroe Township, specifically with respect to at least a
14 severe degree of limitation on building?

15 A This chart is based on a series of assumptions drawn
16 from the relationships on the previous charts, so I do not
17 necessarily agree that what this chart says is severe
18 limitations are indeed severe limitations. With that
19 qualification I would say perhaps 20 percent of the township
20 is designated as having severe limitation on this map.

21 Q Would you consider this a significant percentage?

22 A Given the overall size of the township and amount of land
23 no.

24 Q With respect to at least a moderate degree of
25 limitation, could you characterize the extent to which it's

1 applicable to Monroe Township?

2 A Perhaps another 30 percent.

3 Q Which would bring our total up to 50 percent or
4 half?

5 A Roughly, yes.

6 Q Mr. Mallach, do you agree with the philosophy that
7 housing should follow jobs?

8 A I think housing and jobs should be related, I'm not
9 sure it should follow jobs, in a precise sense.

10 Q You don't agree that jobs should precede
11 housing--strike that--that housing should precede jobs?

12 A I think when you are talking about a relatively small
13 area it's impossible to, again it's not an either or kind of
14 thing because within the overall range they're both going on at
15 the same time.

16 Q Mr. Mallach, if I told you that within Monroe
17 Township the extent of commercial development as of 1974
18 was approximately one percent of the total land mass and that
19 the percentage of industrial development was approximately one
20 half of one percent of the total land mass, could you form
21 an opinion as to the availability of jobs in Monroe
22 Township? A Well, translating that into acreage

23 we're talking about roughly it's about 400 acres developed for
24 commercial and industrial purposes, that might accommodate a
25 nonnegigible number of jobs, perhaps as many as a couple of

1 thousand.

2 Q Should the number of housing units, if any, to
3 be added in Monroe Township reflect the jobs in the township?

4 A I don't think you should have a, there is any need for
5 a precise reflection between the boundaries of the township
6 you have to fit into what's happening in the overall region.

7 MR. FARINO: I have no further questions,
8 your Honor.

9 THE COURT: All right, that would appear to
10 conclude Monroe Township. Appreciate Mr. Bernstein
11 staying but we'll have to go forward with Piscataway
12 tomorrow.

13 (Whereupon court adjourned the matter for
14 the day.)

15

16

17

18

19

20

21

22

23

24

25

E X H I B I T S

2	EXHIBIT	DESCRIPTION	IDEN.	EVIDENCE
3	P-112 and 113	Documents	4	6
4	DC-1A,B,C,D	Map in 4 parts	11	
5	DC-2	Document	15	
6	DC-2A	Map	15	
7	DG-3	Document	22	
8	P-105	"		29
9	DEB-5	"	31	
10	P-114 and 115	Documents	39	40
11	PD-1	Document	67	
12	P-116 and 117	Documents	81	82
13	P-118	Document	81	84
14	P-119	Document	113	114
15	P-120	Document	113	114
16	P-121	Document	144	146
17	P-122	Document	144	146
18	P-123 and 124	Documents	161	162
19	P-125	Document		178
20	P-126	Document		178
21	P-127	Document	178	179
22	DME-3	Document	191	
23	P-128,129,130	Documents	211	211
24	P-131,132,133	Documents	257	258
25	P-134,135,136	Documents	286	286

E X H I B I T S (CONTINUED)

2	EXHIBIT	DESCRIPTION	IDEN.	EVIDENCE
3	P-137 and 138	Documents	292	293
4	DM-1	Document	321	
5	Dm-2	Document	329	
6	DM-3	Document	331	
7	DM-4	Document	332	
8	DM-5	Document	334	
9	P-139, 140, 141, 142	Documents	337	338
10	P-143, 144, 145, 146, 147, 148, 150	Documents	368	
11	DPL-1	Document	382	
12	P-151, 152, 153	Documents	398	398
13	DS-1	Map	431	
14	P-154 and 155	Documents	436	437
15	P-156	Document	436	
16	DSA-1	Document	436	
17	DSA-2	Document	454	
18	P-157, 158, 159	Documents	465	466
19	DSB-1	Document	485	
20	DSB-2	Document	490	
21	DSB-3	Document	493	
22	DSB-4	Document	502	
23	DSB-5 and 6	Documents	503	
24	DSB-7	Document	506	
25				

E X H I B I T S (CONTINUED)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT	DESCRIPTION	IDEN.	EVIDENCE
DSB-8	Document	508	
P-160 and 161	Documents	512	
DSP-1	Document	520	
P-162,163,164	Documents	544	545
P-165 and 166	Documents		561
D-SPOT-1	Document	570	
P-167,168,169,170	Documents	579	

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS

PAGE

Allan Mallach

Direct by Mr. Searing

4,40,81,87,113,145,
161,179,211,258,287,
294,309,337,368,398,
437,465,512,544,561,579

Cross by Mr. Selesky

11

Cross by Mr. Busch

27

Cross by Mr. Cummins

47

Cross by Mr. Winter

94

Cross by Mr. Plachner

116

Cross by Mr. Brigiani

167,567

Cross by Mr. Spritzer

191

Cross by Mr. Johnson

221

Cross by Mr. Booram

263

Cross by Mr. Lefkowitz

302

Cross by Mr. Farino

313

Cross by Mr. Bernstein

348

Cross by Mr. Stonaker

381

Cross by Mr. Karcher

411

Cross by Mr. Vail

443

Cross by Mr. Gruber

476

Cross by Mr. Chernin

517

Cross By Mr. Rafano

550