

Transcript of proceedings  
- examination of Allen Mallach

note - ps336-462

p 126

CA002615S

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

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

Plaintiffs, :

-vs- :

BOROUGH OF CARTERET, et al., :

Defendants. :  
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TRANSCRIPT OF  
PROCEEDINGS

314

New Brunswick, New Jersey  
February 26, 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: Is the plaintiff ready to proceed  
2 here with respect to Piscataway Township?

3 MR. SEARING: Yes, your Honor.

4 THE COURT: Mr. Mallach, would you take the  
5 stand please.

6 MR. SEARING: Your Honor there are four items  
7 to be marked for identification.

8 THE COURT: P-139 and so forth.

9 (Documents received and marked P-139, 140,  
10 141 and 142 for identification.)

11  
12 A L L A N M A L L A C H continued.

13 DIRECT EXAMINATION BY MR. SEARING:

14 Q Mr. Mallach, I show you P-139 ask you to  
15 identify it please.

16 A This is a copy of the zoning ordinance of the township  
17 of Piscataway.

18 Q I show you P-140, and ask you to identify it  
19 please?

20 A This is P-140 the zoning map of the Township of  
21 Piscataway.

22 Q I show you P-141 and ask you to identify it.

23 A P-141 is the zoning map of the Township of Piscataway  
24 as amended.

25 Q And I show you P-142 for identification.

1 A P-142 is the summary of the zoning ordinance provisions  
2 for the Township of Piscataway prepared by me.

3 MR. SEARING: Your Honor, having shown these  
4 to counsel I would now move their admission.

5 (Whereupon the court heard legal argument.)

6 THE COURT: All right, may be marked into  
7 evidence.

8 (Documents received and marked P-139, 140,  
9 141 and 142 in evidence.)

10 Q Mr. Mallach, could you describe for us the  
11 principal features of this zoning ordinance?

12 A Yes, sir.

13 The township of Piscataway ordinance contains a  
14 total of 5 single family residential zones, one multi family  
15 zone, four business, commercial or professional zones, two  
16 industrial zones and three educational and research  
17 zones.

18 In the single family zone the first zone is an RR1 single  
19 family zone, rural residential. Minimum lots are 43,000 square  
20 feet or approximately one acre, minimum frontage is 150 feet.  
21 The minimum floor area provisions in this and the other  
22 residential zones apply only to the first floor of the  
23 building for a one-story building or ranch house, there are  
24 1300 square feet, for one half story building 1100, for 2 story  
25 building 1000.

1           The R-20 zone requires lots of 20,000 square feet or  
2 approximately half an acre, frontage of 100 feet and  
3 minimum floor area of 1200 feet, square feet 43, for a one  
4 story, 1100 on the first floor, for one and a half story  
5 900 on the first floor for a 2 story.

6           The R-15 zone, the lot requirement is 15,000 square feet,  
7 frontage, 100 feet and minimum floor area requirements  
8 similar to the R-20.

9           In the R-10 zone the lot size is 10,000 square feet  
10 or approximately quarter of an acre, frontage is 100 feet, the  
11 floor area requirements are 1000 square feet for one story  
12 building , 900 on the first floor of a one and a half story  
13 and 800 on the first floor of a 2 story building.

14           In the R-7.5 zone the lot requirement is 7500 square  
15 feet, the frontage requirement 75 feet, the floor area  
16 requirements are 900 feet for one story building, 800 on the  
17 first floor of a one and a half story and 700 on the first  
18 floor of a 2 story building.

19           There's a look-alike ordinance provision in all  
20 residential zones, requiring differentiation of facades and  
21 elevations.

22                   (Whereupon the court heard legal argument.)

23           THE COURT: Have you finished about a look-  
24 alike?

25           THE WITNESS: Yes, sir.

1 A The cluster, there is a cluster option provision in the  
2 R-20 zone which requires 20 percent open space dedication and  
3 provides that the overall, the number of units in a given  
4 development under the cluster provision may not exceed the  
5 number of units developed under the regular R-20 zoning.

6 There is a RM, multi family zone in the township,  
7 multi family units must have a minimum tract size of 5 acres,  
8 a minimum frontage of 200 feet.

9 The density ceiling is 15 bedrooms per acre rather than  
10 15 units per acre, the minimum floor area requirements are  
11 700 square feet for one bedroom unit, 900 square feet  
12 for two bedroom units.

13 Now both standards specified for larger units.

14 I believe Mr. Bernstein is correct that the  
15 75-25 provision is no longer in the ordinance. In addition  
16 to this the RN zone requires air conditioning, requires  
17 160 square feet of storage space over and above the required  
18 unit size, requires 2.0 parking spaces per dwelling unit.

19 THE COURT: It says here 1.5.

20 THE WITNESS: I'm sorry, that's in error.

21 THE COURT: All right.

22 A And the ordinance further contains a zig-zag  
23 provision of the thesource described yesterday, with regard  
24 to changing facades and elevations.

25 R-10, single family uses are also permitted in the RN

1 zone.

2 Finally residential uses are not provided for in the  
3 nonresidential zones.

4 Mobile homes are prohibited.

5 With regard to the distribution of vacant land, the  
6 township has provided information specifying that there are  
7 2637.1 acres of vacant land, exclusive of land in public  
8 ownership, including Rutgers as well as municipal and other  
9 kind of ownership.

10 THE COURT: Would you give me that acreage  
11 again?

12 THE WITNESS: 2637.1.

13 THE COURT: Not vacant acreage, not under  
14 public ownership?

15 THE WITNESS: Not under public ownership, not  
16 including street rights of ways and not including  
17 approximately 500 acres of designated flood plain  
18 land and park land in the RRI zone.

19 A Of the total of approximately 2600 acres approximately  
20 1600 are in residential zones and approximately 1000 are non-  
21 residential zones.

22 Of the residential zone lane 1250 approximately are in  
23 the R-20 zone and approximately 350 in other single family  
24 zones.

25 There are approximately 24 acres in which multi

1 family development is permitted.

2 There is the overall relationship between residential  
3 and industrial land is apparently, is not substantially out  
4 of proportion, to the projections of the county planning  
5 board.

6 However within the residential land the overwhelming  
7 majority is in the R-20 zone and very little is in the multi  
8 family zone.

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

11 A No, sir.

12 Q I'm sorry, Mr. Mallach?

13 THE COURT: The answer will stand, no.

14 MR. SEARING: Yes, I understand.

15 Q Going back to your previous testimony, what if  
16 any of the features you have described have an adverse effect  
17 on the provision of housing for low and moderate income  
18 persons?

19 A There are a number of, there are a number of such  
20 features. First thing is the prohibition on mobile homes is  
21 restrictive of this housing type which represents one means of  
22 meeting low or moderate income housing needs.

23 Within the single family residential zones, the lot size,  
24 frontage--

25 (Whereupon the court heard legal argument.)

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THE COURT: Would you start your answer again, please.

THE WITNESS: Yes, sir.

A In the RR1, R-20 and R-15 zones the minimum lot size is 43,000 square feet, 20,000 square feet and 14,000 feet are all in excess of what is required for reasonable and modest accommodations.

The frontages in all of these zones, as well as in the R-10 zone being 100 feet or greater are of a similar nature.

The minimum floor area requirements are excessive, in particular those for one and a half and two story buildings, which have the substantive effect of requiring units substantially in excess of the minimums provided.

The 1300 square feet for one story building in the RR1, 1104 a one and a half story and two, 1000 for a two story are all substantially in excess of what is required.

The provisions are similarly in excess for the R-20 and the R-15 zones and the provisions for one and a half and two story buildings by virtue of their effect, I consider in excess in all of these zones.

The cluster option has no significant effect on these provisions, since the option provides that the number of units may not exceed the number on the given tract provided by the conventional zoning.

With regard to the multi family zone there are a number

1 of provisions which have the effect, both of limiting the  
2 number of units, as well as increasing the cost of the units.

3 The requirement that multi family tracts contain 5  
4 acres and 200 foot frontage is restrictive and limits the  
5 number of opportunities in which multi family housing can be  
6 developed.

7 This particularly so in view of the relatively small  
8 land area zoned for multi family developments.

9 The density requirement of 15 bedrooms per acre is,  
10 first a low density, substantially less than the density that  
11 can, that garden apartments can be developed for under reason-  
12 able planning practices. In addition this tends to discourage  
13 larger units by substantially differentiating between the  
14 number of units that can be built on a given tract by bedroom  
15 size.

16 For example, development containing three bedroom units  
17 for development which would average three bedrooms a unit could  
18 only be built at a density of 5 units an acre while a  
19 development containing on the average one bedroom per unit  
20 could be built up to a maximum of 15 units an acre. So this  
21 differentiation substantially penalizes from an economic  
22 standpoint, the development of large units.

23 The requirements with regard to the floor space for one  
24 and two bedroom units is in excess of modest, reasonable  
25 requirements.

1           The requirement for air conditioning poses an  
2 additional cost factor. The requirement for 160 square feet  
3 of storage space over and above carpet space, especially since,  
4 I didn't mention this square footage, must have a 7 foot head  
5 room, is a substantial increase in the cost of housing and  
6 the cost of the dwelling units.

7           The requirements that there be two parking spaces per  
8 unit is also high and can have an effect in increasing the cost  
9 of the unit.

10          The zig-zag provision may also have such an effect.

11          In addition to these provisions the distribution of  
12 vacant land has a restrictive effect. Only 23.8 acres less  
13 than 1 percent of the vacant land and private ownership in the  
14 township is zoned in a manner that permits multi family  
15 dwellings. Of the residentially zoned land, over three-quarters  
16 approximately yearly 80 percent of the residentially zoned  
17 land is contained in the R-20 zone which contains highly  
18 restrictive provisions for lot size and frontage and floor  
19 area.

20          Only 63.7 acres or slightly more than 2 percent of the  
21 vacant land area is zoned for the, only single family  
22 residential zone which contains what we reasonably can describe  
23 as modest requirements for development. So that the imbalance  
24 of land although perhaps not severe with regard to residential  
25 versus industrial issue is extremely severe in terms of the

1 types of residential development that are permitted and  
2 those that are, if not excluded, at least discouraged by  
3 the relative absence of land availability.

4 Q Is there any state or federally subsidized  
5 housing in this municipality?

6 A No, sir.

7 Q Mr. Mallach, I'd like to draw your attention  
8 to question 12 in the response to, request to admissions  
9 submitted by Piscataway concerning building permits.

10 Could you read the question and the answer, please?

11 First, does the defendant admit that?

12 A Number--

13 Q Piscataway. A "Does the defendant  
14 admit that the number of building permits it issued between  
15 1965 and 1970 was as follows: 1965, 1967 single family, 668  
16 multi family.

17 1966, 833 single family, 532 multi family.

18 1967, 1906 single family, 1700 multi family.

19 1968, 651 single family, 522 multi family.

20 1969, 107 single family, zero multi family.

21 1970, 229 single family, zero multi family.

22 1971, 347 single family, 169 multi family.

23 1972, 167 single family, 24 multi family.

24 1973, 65 single family, zero multi family. "

25 The answer, "Yes."

1 Q Now, Mr. Mallach, I would draw your attention to  
2 question four in the answer provided by the, in the  
3 interrogatories and the answer provided by the defendant.

4 MR. SEARING: Your Honor, this is a list of  
5 rental units in the municipality which I will, I'm  
6 going to ask Mr. Mallach to summarize by rental  
7 ranges.

8 Counsel and myself have stipulated to the  
9 extract of this and the, its introduction followig.

10 Q Mr. Mallach, could you summarize this reponse  
11 for us, please?

12 A Yes, sir. This is a table of rental ranges for apart-  
13 ments in Piscataway, by the number of bedrooms. There are  
14 2311 one bedroom units specified.

15 46 rent between 150 and 199.

16 2265 rent between 200 and 249.

17 There are 769 two bedrooms units specified, 64 rent  
18 between 200 and 249, 705 rent between 250 and 299.

19 There are 12 three bedroom units specified, these all  
20 rent for over \$300.

21 Q Thank you, Mr. Mallach. I would like to draw  
22 your attention to Plaintiff's exhibit P-53 on page 68 of that  
23 exhibit is the summary for urban county municipalities.

24 Is there an entry on that table for this municipality?

25 A Yes, sir.

1 Q Could you read for us please.

2 A Yes.

3 In the first column the number of substandard dwelling  
4 units in Piscataway, figure is 324.

5 In the second column the number of lower income house-  
6 holds in need of housing assistance, the number is 1187,  
7 the total is 1511.

8 MR. SEARING: Thank you Mr. Mallach.

9 Your Honor, we have no further questions.

10 (Whereupon the court heard legal  
11 argument.)

12

13 CROSS-EXAMINATION BY MR. BERNSTEIN:

14 Q Mr. Mallach, it would be a fair statement to say  
15 that your analysis of Piscataway ordinance as well as all the  
16 other ordinances was, as you put it, facial rather than  
17 based on field work, correct?

18 A That's correct.

19 Q You are presently living in Pennington, correct?

20 A That's correct.

21 Q Do you have a certain knowledge of economics,  
22 correct?

23 A - I believe so.

24 Q You believe that under the freemarket system  
25 where you do not have restrictive zoning, the demands of the

1 market place will dictate what will be built in a certain  
2 municipality?

3 A To a degree.

4 Q Well, when you said to a degree, what other  
5 factors would there be pulling on what would be built other  
6 than the demands of the market?

7 A Well, what the housing market is part of the overall  
8 economic picture and there are a lot of other factors  
9 which go into the, how the housing market is able to operate  
10 at any given point.

11 THE COURT: Wouldn't the other factor be  
12 publicly built housing?

13 MR. BERNSTEIN: The availability of public  
14 funds, the general economic conditions, the availability  
15 of investment money.

16 THE COURT: Wouldn't the housing market encompass  
17 the general economic situation?

18 THE WITNESS: I guess so.

19 THE COURT: But his question was, would the  
20 housing market, in the absence of zoning restrictions,  
21 determine or dictate what housing would be built within  
22 the municipality?

23 THE WITNESS: Within the realm of economic  
24 feasibility, yes.

25 THE COURT: Wouldn't there also be the factor

1 of publicly built houses which not be related to  
2 particular market conditions?

3 THE WITNESS: Yes, sir.

4 THE COURT: Alright.

5 Q Wouldn't another factor be that with the housing  
6 market your consumers often don't have the funds which are  
7 needed in order to provide apartment housing and single family  
8 homes and as a result their needs to be, in some areas,  
9 some form of subsidization of those lower income individuals  
10 to afford housing?

11 A Yes.

12 Q In other words, it's not like cheaper produced  
13 commodities that everyone can afford, correct?

14 A No, that's correct.

15 Q Now, you wouldn't hold yourself out to be an  
16 expert in the field of health, would you?

17 A Not as such, no.

18 Q So that when you talk about square foot  
19 requirements for housing I assume you're adopting standards  
20 of others rather than creating your own square footage  
21 standards?

22 A I'm both using standards of others as well as my  
23 experience and observation.

24 Q Well, you haven't had any courses in health;  
25 is that right?

1 A Well, not in, not that are relevant to this issue.

2 Q Do you have with you any standards propagated  
3 by the State of New Jersey with regard to minimum square  
4 footage requirements?

5 A I don't have them with me here, I'm familiar with some  
6 of them.

7 Q And you would concede that if certain square  
8 footage requirement is necessary for the health of tenants  
9 and homeowners--

10 A Well, certain types of, certain types of facilities  
11 and certain types of living conditions are most likely  
12 necessary, whether these are best achieved through a square  
13 footage requirement for an on a unit basis is a debatable  
14 point.

15 Q I missed something there, was it your testimony  
16 that you didn't think that you should have a square footage  
17 minimum requirement for each particular unit?

18 A I think, I think I've stated that, I think there are  
19 better ways of meeting requirements than through unit floor  
20 area minimums, yes.

21 Q You would have to have one minimum, though,  
22 whatever standards you report?

23 A There would have to be some kind of standard, yes.

24 Q What would happen then if you didn't have a  
25 standard, what would be the problem?

1 A Well, it's hard to say, in theory the problem would be  
2 that people would build housing that would be too  
3 small or too crowded or would lack necessary facilities  
4 and that people would move into that housing because of lack  
5 of choice and would, and their health would, as a result,  
6 be harmed.

7 In practice I suspect the effect of that are not  
8 likely to be too drastic because in practice very few people  
9 are likely to move from their present living conditions into  
10 worse living conditions so that even if there were no  
11 minimum standards the likelihood of anybody's conditions  
12 being worsened as a result would probably be fairly, fairly  
13 skimpy.

14 Q Well--

15 A Slender.

16 Q I have a problem with that, didn't you testify  
17 previously that there's a housing need throughout the state?

18 A Yes.

19 Q Well, if there's a housing need, isn't it  
20 possible that many individuals who move into substandard housing  
21 conditions merely because there weren't more attractive  
22 alternatives presented?

23 A No, but my point, Mr. Bernstein, is that these  
24 people live presently in substandard conditions or will live  
25 in substandard conditions, even in the absence, the

1 minimum floor spaces do not present the existence of sub-  
2 standard housing.

3 Q OK.

4 I'm going to drop the questions on this area.

5 We've heard a lot of talk about a balanced  
6 community. Now you would agree that not every community  
7 should have the same percentage of industrial land, office  
8 land, business zoned land, multi family zoned land and one  
9 family residential zoned land; is that correct?

10 A That's correct.

11 Q Could you give us any general guide lines as  
12 to percentages figures for an urban community or would they  
13 differ in each particular instance?

14 A They would certainly differ to some degree in each  
15 instance because of, oh, very wide number of factors.

16 THE COURT: How do you define urban  
17 community?

18 THE WITNESS: Well, I guess I was more or less  
19 implicitly thinking in terms of the, developing large  
20 townships in the context of the question.

21 Q Mr. Mallach, prior to your becoming involved in  
22 this lawsuit you had testified in a few other lawsuits; is  
23 that correct?

24 A That's correct.

25 Q With the exception of the welfare rights versus

1 Cahill and all the other suits you testified, there was a need  
2 for more and low moderate income housing wherever the parti-  
3 cular suit was brought; is that correct?

4 A Within the region which the particular suit was  
5 brought, yes.

6 Q All right. You testified that, previously in  
7 this case that you had testified in Mount Laurel and I assume  
8 that your testimony was that, in that area, I believe it is  
9 Camden County, there was a need for low and moderate  
10 income housing, correct?

11 A Well, Mount Laurel is in Burlington County and the  
12 reference was to, roughly speaking the three county  
13 metropolitan area, yes.

14 Q You testified there was more low and moderate  
15 income housing needed in Bedminster in the Allen Mead vs.  
16 Bedminster case, correct?

17 A Again in that  
18 case the reference was to Somerset County, specifically and  
19 the New York Metropolitan area, generally.

20 Q And you testified in the Cinnaminson case,  
21 Camden National Realty vs. Cinnaminson that there was more  
22 moderate and low income housing needed in Cinnaminson,  
23 correct?

24 A Again in that three county metropolitan in which  
25 Cinnaminson is located, yes.

Q In the Randolph Township case you were prepared

1 to testify that more low and moderate income housing was  
2 needed in Randolph Township, correct?

3 A In that case it would have been with reference to  
4 Morris County.

5 Q The case was dismissed on a standing count so  
6 that you never actually testified in court in that  
7 particular case, correct?

8 A That's correct.

9 Q And in the Garden City versus Mahwah case you  
10 were prepared to testify to more housing being needed in  
11 Mahwah which I believe is more low and moderate income housing  
12 needed, Mahwah I believe is in Bergen County, correct?

13 A That's correct.

14 Q So essentially when you've testified in court  
15 it's always been to the same effect, yes?

16 A Well--

17 Q More low and moderate income housing is needed  
18 in the region in question?

19 A Well, that wasn't, you know, the sum total of the  
20 testimony.

21 Q I understand, obviously this is--

22 THE COURT: Excuse me, Mr. Bernstein.

23 MR. BERNSTEIN: I'm sorry.

24 THE COURT: The answer to that question is yes,  
25 isn't it?

1 THE WITNESS: I guess so, yes.

2 THE COURT: All right.

3 Q Now with regard to these cases, at least with  
4 regard to the Cinnaminson case, a specific case was prepared  
5 for the board of adjustment, correct? A That's  
6 correct.

7 Q You didn't testify before the board of adjustment,  
8 did you?

9 A No.

10 Q With regard to the Mahwah case, a case was pre-  
11 sented to the planning board, wasn't it?

12 A I don't believe there was a specific case on the low  
13 and moderate income housing, as you presented to the planning  
14 board in the Mahwah situation, except to the degree that it  
15 was sort of background to the proposal.

16 Q Well, there was a proposal made for so-called  
17 Ramapo Mountain in the Mahwah situation, wasn't there?

18 MR. SEARING: Your Honor I have an objection  
19 to this, in that--

20 THE COURT: I'll sustain the objection, we're  
21 not trying the Mahwah case.

22 Q Are you the author of the booklet, the housing  
23 crisis in New Jersey which I believe has been introduced into  
24 evidence?

25 A The principal author, yes.

1 Q So I assume that you are in substantial agreement  
2 with whatever's been written in this book, correct?

3 A In generally speaking, this was quite sometime ago.

4 Q At the time you wrote it what was written in the  
5 book would have been correct, correct?

6 A Yes.

7 MR. SEARING: That's P-36 in evidence, your  
8 Honor.

9 MR. BERNSTEIN: Thank you.

10 Q And doesn't this book indicate on page 7, last  
11 full paragraph which goes into page 8, "The single family  
12 home therefore is still typical of the growth areas of  
13 the state. Large scale development of multi family housing is  
14 concentrated in those areas in which adequate land is no longer  
15 likely to be available or maybe too expensive for the  
16 development of single family homes and in which the overall  
17 pattern of development has tended to slow down.

18 " The only exception to this trend is to be found in  
19 Middlesex County, a fast growing county in which garden apart-  
20 ments represented a large part of the development."

21 THE COURT: Are you asking a question?

22 MR. BERNSTEIN: No, sir, I'm just asking if this  
23 was part of what was written in 1970 by him.

24 THE WITNESS: Yes.

25 MR. BERNSTEIN: I could just as easily read this

1           into the record if the court would prefer it.

2           THE COURT: It's already in evidence, P-36.

3           MR. BERNSTEIN: I just wanted to call certain  
4 things to the court's attention that this gentleman  
5 had written and--

6           Q        Didn't you indicate, sir, that on page 92 of this  
7 booklet that with regard to subsidized housing and rent  
8 supplements one of the problems is that private developers  
9 aren't interested in getting involved in these programs?

10          A        That was true at the time.

11          Q        That's all that I'm asking.

12                 Doesn't it indicate that at that time that only one  
13 builder developer firm in New Jersey has shown any  
14 willingness to participate in such programs?

15          A        That was the case at the time, yes.

16          Q        That's all I'm asking. Didn't your booklet  
17 also indicate that urban renewal was originally planned to  
18 help low income families but as it was carried out in many  
19 instances it had directly the opposite effect?

20          A        That's correct.

21                 (Whereupon the court heard legal argument.)

22          Q        I have two documents which have been marked  
23 DEB-4 and 4A for identification, I believe you testified that  
24 you had authored these documents?

25          A        That's correct.

1 Q Relatively recently?

2 A Yes, sir.

3 Q So that they would comport with your present  
4 thinking, I would assume, with regard to housing?

5 A By and large, yes.

6 Q And you indicated in these documents and I  
7 believe you would still feel that TDR's and PUD's were one  
8 answer to increasing the stock of low and moderate income  
9 housing?

10 A No, PUD, planned unit development approach, yes. I  
11 think there are ways and I believe I do discuss ways in which  
12 that approach can be used to increase low and moderate income  
13 housing opportunity. I believe the reference to transport  
14 development rights approach is not so much to increase housing  
15 opportunity as a way of providing open space preservation,  
16 without harming housing opportunity but it's not a housing  
17 device.

18 Q You would favor the TDR approach though, as  
19 beneficial in a planning sense rather than from an exclusionary  
20 standpoint, correct?

21 A I think it has potential planning, yes, relative untried,  
22 of course.

23 Q Now you don't believe that developers should be  
24 forced to include low income housing in their project because  
25 they're making excessive profits on the particular zoning

1 involved, is that correct, is that a correct statement of  
2 yours?

3 (Whereupon the court heard legal argument.)

4 Q Now, Mr. Mallach, in DEB-4A, you  
5 indicated that there was a, there are many difficult problems  
6 involved in the event that a municipality requires that a  
7 developer subsidize low income housing; is that correct?

8 A There are some problems associated with that approach,  
9 yes.

10 Q Would you explain to the court the problem or  
11 problems that are involved, in the event that a developer  
12 is required to sell at subsidized rates, single family homes  
13 to prospective low income purchasers with the purchasers having  
14 no restrictions on their ability to sell the dwelling unit?

15 A Well, I mean the question as to whether the purchaser  
16 is to be restricted in terms of the resale of the dwelling  
17 unit is one of the issues.

18 Q Explain that, would you?

19 A Well, the question has come up that in the event,  
20 that, through one kind of ordinance provision or another a  
21 developer, say hypothetically is able to juggle the course  
22 of the development so that he sells, say 80 percent of the  
23 units for \$35,000 and 20 percent of the units which may be not  
24 substantially different at \$25,000, the question has come up  
25 what happens if and when a low income family wants to resell

1 these and theoretically get some kind of a windfall profit  
2 by reselling the unit at something comparable say to \$35,000  
3 plus his appreciation, presumably sell the unit not to a  
4 lower income family but to a more affluent family. So, one  
5 of the suggestions is that some--

6 Q I didn't ask you the suggestions, I just asked  
7 for the problems.

8 A OK, well, so--

9 Q One of the problems.

10 A That's an issue that has to be looked at and considered,  
11 perhaps dealt with in some way.

12 Q Now, there's been some question in the case as  
13 to who should be paying for low and moderate income housing that  
14 has to be subsidized. Now you indicate in DEB -4A that there  
15 are certain financial constraints on local municipality in the  
16 70's that there may not have been in previous times; is that  
17 correct?

18 A To a degree.

19 Q And can you tell us what these financial  
20 constraints are arising out of?

21 (Whereupon the court heard legal  
22 argument.)

23 Q You're not opposed to environmental controls  
24 with regard to zoning, are you?

25 A I'm not opposed to environmental controls, I'm not sure

1 that they always fit in neatly with the, within the confines  
2 of the zoning ordinance.

3 Q In fact during your tenure with the Commission  
4 they've written a series of booklets on environmental  
5 controls, didn't they?

6 A Yes.

7 Q You're just concerned with what I would assume  
8 you would characterize as the misapplication of environmental  
9 controls?

10 A I think that's a fair characterization.

11 Q Now you're aware of the fact that the population  
12 growth in New Jersey has been increasing at a very small  
13 rate?

14 A In the last couple of years that's  
15 been true, hasn't been true over the longer period, the past  
16 period.

17 Q You, as a planner, believe that planning is  
18 essentially is best done as part of the local process?

19 A I think that there, a lot of the different aspects,  
20 my personal believe is that wherever planning can be done on a  
21 competent scale and consistent with, you know, social needs that  
22 if it can be done at the local level it should be done at  
23 the local level.

24 Q And you believe that planning at the state level  
25 at best is a marginal one?

A Well, I'm generally not enthusiastic about the idea of

1 doing land use planning and having the state do land use  
2 planning, no.

3 Q You've talked about the need for bedrooms and  
4 the problems with the restrictions on the number of bedrooms,  
5 isn't it a fact that there has been a , of late a reduction  
6 in the amount of family size?

7 A Yes.

8 Q And as a result of this reduction in the  
9 amount of family size there's less need for larger amount of  
10 bedrooms and dwelling units?

11 A Well, relative to periods say the 1920's, I mean the  
12 reduction in family size has been very gradual and I don't  
13 think it's, the shift has been such in the last couple of  
14 decades that it would significantly change the demand for  
15 housing by bedrooms.

16 Q Didn't you indicate on page 39 of DEB-4 that  
17 shrinkage in family size is another element arguing for a  
18 more modest bedroom configuration?

19 A Yes.

20 Q And isn't it a fact that while there may be a  
21 need for increased rental dwelling units at the present time  
22 there are certain reluctance by some buildings to go into  
23 this self field of activity?

24 (Whereupon the court heard legal

25 argument.)

1 Q You testified about many zoning ordinances, that  
2 one of the problems was that they didn't include enough 3  
3 bedroom units; is that correct?

4 A 3 bedroom multi family and town houses, distinction  
5 from 3 bedroom, two family.

6 Q And isn't it your feeling as a planner that beyond  
7 3 bedroom it's best to put 4 bedrooms in either one family  
8 house or in a town house?

9 A It, that four bedroom units should best be in a single  
10 family house, detached house, town house as distinction from  
11 an apartment building?

12 Q Yes, that's the general question.

13 A Yes, as a general rule.

14 Q Didn't you testify on depositions on page 129  
15 starting on line 5 that the mix, that your studies found  
16 was appropriate for urban multi family housing would be 40  
17 percent one bedroom, 15 percent 2 bedroom and 10 percent 3  
18 bedroom?

19 A That was with specific regard to rental apartments as  
20 distinct from town houses.

21 Q Right, that's all?

22 A Yes.

23 Q And that you'd recommend that today as being a  
24 reasonable mix?

25 A I think that's reasonable, yes.

1           Q       With regard to constructing subsidized housing,  
2 this is, often has to be done at a high rate than it often  
3 costs more to construct subsidized housing than nonsubsidized  
4 housing, is that correct?

5           A       You mean the full physical cost of the construction?

6           Q       Right.

7           A       Yes.

8           Q       And could you give us some of the reasons why  
9 this subsidized housing would be more expensive?

10          A       This is not true of all subsidized housing but under  
11 some subsidized housing programs you have increased costs,  
12 principally the larger single reason seems to be then because  
13 the laws governing these programs require what is known as  
14 prevailing wage scale for construction employment on the jobs  
15 which tends to be substantially higher than the wage scale  
16 under which most nonsubsidized stick type housing is  
17 constructed.

18                So this tends, this is the most significant reason.

19          Q       You aren't recommending as a planner that each  
20 municipality has an exact mix of housing opportunity and  
21 employment opportunity, are you?

22          A       You mean of one to one balance?

23          Q       Right?                           A       Not necessarily.

24          Q       More on a regional basis, as far as you're  
25 concerned?

1 A Yes.

2 Q With regard to P-142 that chart indicates  
3 approximately 2600 vacant acres in Piscataway; is that right?

4 A In private ownership, yes.

5 Q Right. And doesn't include the property which  
6 is under the control of Rutgers University, correct?

7 A It does not.

8 Q Now you were taking your figures from the answers  
9 to interrogatories supplied by Piscataway, right?

10 A Right.

11 Q So that you assume they were correct?

12 A Yes.

13 Q For the purpose of your testimony?

14 A Yes.

15 Q Now I'm going to show you answers that  
16 Piscataway has supplied which indicate there are approximately  
17 1000 acres of vacant land which are owned by Rutgers University  
18 at the present time.

19 A Yes.

20 Q And you would accept that as being as true, as  
21 the vacant average you've put in P-142, wouldn't you?

22 A That's correct.

23 Q Now are you familiar with the fact that there is a  
24 great deal of--strike that--are you familiar with the fact  
25 that there is much housing on the land that Rutgers owns in

1 Piscataway?

2 A Yes.

3 Q And are you aware of the fact that as well as  
4 having dormitories there's married student type of housing and  
5 multi family housing and at one time they had detached single  
6 family homes for students?

7 A Yes.

8 Q Are you aware of the fact that under recent  
9 cases by the New Jersey Supreme Court the Township of  
10 Piscataway cannot control the uses that are put on that  
11 1000 acres of Rutgers land?

12 (Whereupon the court heard legal argument.)

13 Q Is it your personal contention, Mr. Mallach, that  
14 the, approximately 1000 acres which is owned by Rutgers is  
15 not available for housing?

16 A I have no idea what Rutgers would do to it but it's  
17 certainly not susceptible to municipally, to encourage  
18 housing developments.

19 Q But equally it's not susceptible to municipal  
20 discouragement or to exclusionary zoning, correct?

21 A That's correct.

22 MR. BERNSTEIN: That's it, your Honor.

23 THE COURT: All right, you might offer  
24 proofs as to Plainsboro, I guess.

25 MR. SEARING: Your Honor, there are a series of

1 exhibits in this case, because there are a series of  
2 amendments, however you would like to have them marked

3 THE COURT: Show them to Mr. Stonaker.

4 MR. SEARING: OK, your Honor. I have a series  
5 of documents to be marked for identification.

6 (P-143, 144, 145, 146, 147, 148, 150  
7 marked for identification.)

8  
9 A L L A N M A L L A C H continued.

10 DIRECT EXAMINATION BY MR. SEARING:

11 Q Mr. Mallach, I show you P-143 and ask you to  
12 identify it.

13 A It's an amendment to the  
14 Plainsboro Township zoning ordinance adopted July 27th, 1970.

15 Q And P-144? A This is the Plainsboro  
16 Township major and minor subdivision ordinance, amended to  
17 July 20th, 1967 and an insert containing further amendments.

18 Q P-145? A Amendment to the  
19 Plainsboro Zoning Ordinance dated 9-22-72.

20 Q P-146? A It's an amendment to  
21 the Plainsboro Zoning Ordinance dated March 7th, 1969.

22 Q P-147? A Amendment to the  
23 Plainsboro Township zoning ordinance dated March 1974.

24 Q Subject of that? A Planned multiple  
25 use development.

Q P-148? A P-48 is an amendment

1 to the Plainsboro Zoning Ordinance which is updated.

2 MR. SEARING: Your Honor, counsel, defense  
3 counsel, plaintiff's counsel has stipulated that  
4 this is a recent amendment.

5 MR. STONAKER: That's correct, your Honor.

6 THE COURT: All right, thank you.

7 Q And P-150, Mr. Mallach?

8 A P-150 is the summary of zoning ordinance provisions  
9 of the Township of Plainsboro, prepared by me.

10 MR. SEARING: Your Honor, I would move that  
11 these be admitted into evidence at this time.

12 MR. STONAKER: No objection.

13 (Documents heretofore marked for identification  
14 now marked in evidence.)

15 Q Mr. Mallach could you describe the principal  
16 features of this zoning ordinance please?

17 A Yes, sir, the Borough of the Township of Plainsboro  
18 contains a series of zones, including two single family  
19 residential zones, a business zone, an industrial zone,  
20 an educational and research zone and a zone entitled service  
21 residential apartments and two planned unit development type  
22 zones, one designated planned unit development and the other  
23 planned multi unit development.

24 In the first single family residential zone, the  
25 R-200 zone, the minimum lot size is 35,250 square feet,

1 approximately .8 of an acre, the minimum frontage requirement  
2 is 200 feet, the minimum floor area requirement is 750 square  
3 feet.

4 There's a conversion option permitted in this zone which  
5 allows existing units to be converted to two or three family  
6 houses, to be convertible into a 2 family unit, the unit must  
7 have at least 1250 square feet and into the 3 family unit at  
8 least 1750 feet, frontage and lot requirements are the same.

9 There is a cluster option available also in this zone  
10 which provides for a minimum lot size of 15,000 square feet,  
11 an average lot size of 25,000 square feet, minimum frontage  
12 of 100 feet. The tract must contain at least 50 acres and at  
13 least 20 percent of the--excuse me--20 percent of the tract  
14 must be dedicated for open space.

15 The second zone is an R-85, provides for 15,000 square  
16 foot lots, 85 foot frontage and 750 square foot floor area  
17 for houses. As in the R-200 zone there is a similar provision  
18 for conversion of existing units into two and three family  
19 houses.

20 The R-85 provisions for housing are permissible in the  
21 general business zone and the R-200 provisions are permissible  
22 in the education and research zones.

23 In the, residential uses are not permitted in the  
24 industrial zone.

25 In the service residential zone apartments are

1 permitted on tracts of no less than 10 acres, at a density of  
2 12 units an acre. 90 percent of the apartments must be one  
3 bedroom and 10 percent two bedroom.

4 The R-200 uses are also permitted in the service  
5 residential zone.

6 The planned unit development zone is a form of planned  
7 unit development. In order to qualify a minimum of 500 acre  
8 tract must be assembled. The principal provisions of this  
9 zone are as follows, 50 percent gross residential area must  
10 be dedicated for open space. The area must contain a golf  
11 course, a clubhouse and a swimming pool. Up to 5 percent of  
12 the area may be in retail commercial use, 30 percent in  
13 industrial use.

14 One bedroom apartment must have 600 square feet and two  
15 bedroom apartments must have 750 square feet, 1.9 parking  
16 spaces per dwelling unit. Until the amendment of about, I  
17 guess about two weeks ago to the ordinance there were a  
18 series of bedroom restrictions under this provision. The  
19 75 percent one bedroom and 25 percent two bedroom units, as  
20 well as a provision that on, that forbade children from  
21 living on the second floor of any residential building in  
22 this so-called zone this was amended, as I say, approximately  
23 2 weeks ago. The bedroom restriction was stricken. The,  
24 excuse me, the provision was made for up to four bedroom units,  
25 floor space requirements, were set at 800 square feet for

1 two bedroom units, 1000 square feet for three bedroom units  
2 and 1200 square feet for four bedroom units.

3 The density was changed from 11 units per acre, per  
4 net residential acre to 14 bedrooms per net residential acre.

5 The second planned zone is a plan, multi use develop-  
6 ment, which also requires a minimum of 500 acre tract, to  
7 qualify under this provision in the planned multi use  
8 development, 50 percent of the total area, of the development  
9 must be devoted to office, industrial or research uses.  
10 All single family developments are subject to the R-200  
11 provisions but there are no specific provisions governing  
12 the form and the character of the multi family development  
13 which can include town houses and apartments. The maximum  
14 density is 8 dwelling units per net residential acreage,  
15 exclusive of common open space. The open space requirement  
16 is if one acre of open space for 8, each 8 residential units,  
17 which is equivalent, assuming the developability of maximum  
18 density to 50 percent of the land and 3 acres of open space  
19 for every 10 acres of nonresidential development.

20 In addition the two parking places are required for  
21 each dwelling unit. Mobile homes are nonconforming use.

22 With regard to the distribution of vacant land in the  
23 township, the township provided information for all except  
24 the planned multi use development zone and specified a total  
25 of 5,473 acres, vacant acres, exclusive of this zone, of this

1 2,565 or just under 50 percent of the vacant land is in the  
2 R-200 zone, 1,335 approximately 25 percent is in the industrial  
3 zone, 1000 acres or approximately 20 percent is in the planned  
4 unit development zone and the remaining approximately 5 percent  
5 is principally in the education and research zone. There  
6 are 40 acres in the service apartment zone and 3 acres in the  
7 general business zone.

8 There are, as I say, there we do not know exactly how  
9 many acres are in the planned multi use development but there  
10 are certainly at least 500 acres in that zone, vacant.

11 THE COURT: What do you base that on?

12 THE WITNESS: Well, that, the, this zone was  
13 designed to create the development known as the  
14 Forest Hall Center development for Princeton University.

15 THE COURT: You assume since there's a 500  
16 acre minimum acre must be at least 500. All right.

17 THE WITNESS: Yes.

18 Q Mr. Mallach, what if any of the features you have  
19 described have an adverse effect on the provision of housing  
20 for low and moderate income persons?

21 A There are a number of features, the minimum lot and  
22 minimum frontage provisions in the R-200 zone, under both the  
23 conventional and cluster option are substantially in excess  
24 of modest and reasonable requirements. These are the .8 acres,  
25 roughly, lot size and 200 foot frontage.

1           The lot size provision in the R-85 zone, also, sub-  
2           stantially in excess, not to the degree of the R-200 zone,  
3           there's no provision in the ordinance for single family homes  
4           of a modest nature, on modest lots.

5           The requirement of the service residential apartment  
6           zone are restrictive in terms of the density which is sub-  
7           stantially lower at which garden apartments can be adequately  
8           developed. The 90 percent one bedroom and 10 percent two  
9           bedroom requirements in this zone is obviously restrictive  
10          of two bedroom and larger apartments.

11          The 10 acre lot requirement may be further restrictive  
12          in this zone because of the relatively, in fact the small  
13          amount of land available for apartments under this zoning  
14          provision in the township.

15          The planned community development zone contains a  
16          number of provisions which are restrictive. The most  
17          egregious of those provisions of course have been eliminated  
18          by the 11th hour amendments that reference was made to but  
19          which eliminated the bedroom restrictions. However, the present  
20          requirement of 14 bedrooms per acre maximum density has  
21          restrictive effects in that it continues the substantive  
22          effect of the bedrooms restricted by providing economic  
23          counties for development of larger units. This is similar to  
24          the Piscataway ordinance in that again under this ordinance  
25          units containing 75 percent 1 bedroom and 25 percent 2 bed-

1 room apartments as under the present existing ordinance  
2 provisions would continue to be developable at the density of  
3 11 units an acre, roughly, provided by the present existing  
4 ordinance. Units, for example, containing an average of 3  
5 bedrooms per unit, even though permitted could only be  
6 developed at a density of 4.6, 4.7 dwelling units an acre  
7 which is substantially less and restrictive in that regard.  
8 Requirements that a tract contain 500 acres to qualify for  
9 development under these provisions is restrictive and limits  
10 the number of people, the number of landowners and developers  
11 who can take advantage of these provisions under the current  
12 ordinance, severely and results in the fact that a substantial  
13 part of the land zoned for this purpose cannot be used for  
14 this purpose and can only be used, I believe for R-200 uses.

15 The requirement that a development contain a golf course,  
16 a clubhouse and a pool tends to increase the cost of the  
17 development and discourage the provision of low and moderate  
18 income housing within the provisions of this section.

19 The requirement that 50 percent must be dedicated for  
20 open space is also restrictive in that it substantially re-  
21 duces the number of units and the net overall density of the  
22 development. In the PMUD, planned multi use development, even  
23 though there are no provisions that deal directly with the  
24 provision of the town house and garden apartments permitted  
25 under this section, the manner in which the land is

1 distributed substantially reduces the number of units that  
2 can be built under the provisions of this zone, below what  
3 is a reasonable capacity for the area.

4 I have made a series of calculations based on a  
5 hypothetical 500 acres, under the PMUD provisions and dis-  
6 covered that under these provisions, as I interpret them,  
7 a total of 700 dwelling units would actually be permitted to  
8 be constructed over 500 acres, for an effective gross density  
9 of development of only 1.4 units per acre. Since then half  
10 of the area would be devoted to industrial, industrial re-  
11 search and office uses and the open space dedications provisions  
12 would take up the substantial majority of the remaining land  
13 in this, in any such development. So, even though the, you  
14 know, there are no specific provisions in the apartments as  
15 such the overall land use provision substantially restricts  
16 the number of units that can be built in this zone.

17 With regard to the distribution of vacant land, there  
18 appears to be substantially more industrial land in this land  
19 zoned in this municipality than is required or is likely to be  
20 required by industrial land demand in the foreseeable future.  
21 This is so both with regard to the industrial zone as such as  
22 well as to the reasonable projections of the amount of  
23 industrial land to be generated in the planned community and  
24 planned multi use development sections.

25 Q Can you relate this to plaintiff's exhibit 105?

1 A Could I--using a conservative estimate of the amount,  
2 amount of land, industrial land in the planned unit, planned  
3 use multi use development zones, there is 2000, 2100 acres  
4 set aside for industrial uses, including office and research  
5 in the township. This is in comparison to an estimate of  
6 328 acres, that is likely to be required for industrial and  
7 related uses to the year 2000, by the Middlesex County  
8 Planning Board, so there is over 6 times such industrially  
9 and related zoned land, vacant land in the township as is  
10 required by the demand projections.

11 Furthermore, the great majority of the land available  
12 for residential development even including reasonable  
13 assessments of residential development in the planned  
14 community, planned multi use zones, is contained in the R200  
15 zone of approximately 3, 32 to 3300 acres, likely to be  
16 available for residential development, 2500 in 65 or approxi-  
17 mately 75 to 85 percent are located in the R-200 zone which  
18 permits only single family units to be constructed, albeit  
19 allows conversion of existing units for two and three family  
20 dwellings and has extremely restrictive lot size and frontage  
21 requirements.

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

24 A No, it does not.

25 Q Is there any state of federally subsidized housing

1 within the confines of this municipality?

2 A Not to the best of my knowledge.

3 Q I would like to draw your attention to question  
4 14 in plaintiff's request for admissions which were returned  
5 by the defendant dated June 18th, 1975, signed by Mr. Stonaker.  
6 Could you read that question and answer please.

7 A Question 14, "Does defendant admit that the number of  
8 building permits it issued between 1965 and 1973 was as  
9 follows, 1965, single family, six multi family, zero. 1966,  
10 single family 9, multi family zero.

11 1967, single family 6, multi family zero.

12 1968, single family 9, multi family zero.

13 1969, single family 9, multi family zero.

14 1970, single family 3, multi family zero.

15 1971, single family 3, multi family zero."

16 Should I read the original question here or-- there's a  
17 comment by, in response to regarding the question.

18 Q You can read the comment.

19 A OK, 1972, according to the response, "single family 6,  
20 multi family 480.

21 1973, single family 3, multi family 584."

22 The answer is yes, qualified by that change.

23 Q I understand.

24 MR. SEARING: Your Honor, could I have a  
25 moment to confer with the witness?

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THE COURT: All right.

Q Mr. Mallach, in testifying as to the distribution of vacant land, is there any additional, are there any additional remarks that you wanted to make?

MR. STONAKER: Objection your Honor, that's a broad question.

THE COURT: I'll sustain that objection.

Q You are testifying regarding vacant land, Mr. Mallach, was there a correction to your previous testimony?

MR. STONAKER: Objection, your Honor.

THE COURT: I'll allow that.

A Yes, sir. In my earlier comments when I was discussing the distribution of residentially zoned land I failed to take into consideration the effect of the minimum tract requirement in the PCD zone so that in actuality there is over 3000 acres which are subject or approximately 3000 acres in which development can take place according to the R-200 provisions which substantially more than I stated and--

THE COURT: That's just based on your assumption; is that right?

THE WITNESS: This is with regard to the PCD zone.

THE COURT: Oh, I see.

THE WITNESS: Not--

1 THE COURT: All right.

2 THE WITNESS: In other words, the remaining  
3 vacant land in that tract which does not qualify for  
4 the PCD provisions can only be developed under the R200  
5 provisions.

6 Q Thank you, Mr. Mallach.

7 I would like to draw attention to question 4, answers  
8 to interrogatories supplied by defendant.

9 Could you read the question and the answer please.

10 A "Provide the number of multi family units in each of  
11 the following rental categories and ranges: efficiency, 31  
12 units, between 100 and 149, 40 between 150 and 199, one between  
13 200 and 249. Total number of units, 72. One bedroom, 1 unit  
14 under \$100, 23 units between 150 and 199, 365 between 200 and  
15 249 and 468 at 250 and over. The total number of units is  
16 857.

17 "Two bedroom units, 19 under 100, 6 between 100 and 149,  
18 3 between 150 and 199, one between 200 and 249 and 257 between,  
19 excuse me, 257 at \$250 and over. The total number of units  
20 is 286.

21 "Three or more bedrooms under 100, 200 to 249, one,  
22 250 and over, one. The total number is four."

23 Q I'd like to draw your attention to plaintiff's  
24 exhibit 53, page 68, the summary for urban counties. Is there  
25 an entry for this municipality on that page?

1 A Yes, there is.

2 Q Would you read it please.

3 A In the first column there are 26 substandard dwelling  
4 units identified in the Township of Plainsboro, in the second  
5 column there are 81 lower income households specified as  
6 being in need of housing assistance. The total in the third  
7 column is 107.

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

10 THE COURT: All right, we'll have a recess  
11 at this time.

12 (After a brief recess the trial continued.)

13 THE COURT: Mr. Stonaker.

14 MR. STONAKER: Yes, your Honor.

15  
16 CROSS-EXAMINATION BY MR. STONAKER:

17 Q Mr. Mallach, can we agree that it would be  
18 impossible to construct housing for the low income families  
19 you talked about without subsidy.

20 A Low income categories generally, yes.

21 Q How about the moderate subsidized category you  
22 talk about?

23 A I think there are some, it was a borderlinesituation,  
24 there's, it's probably possible to construct housing that  
25 would meet the need of part of that group without direct

1 governmental subsidy.

2 Q Part of that group?

3 A Part of a group, yes.

4 Q So no matter what the zoning was, we could not  
5 provide for low income housing and part of the moderate  
6 subsidized housing without some subsidiary from the government;  
7 is that correct?

8 A That's correct.

9 Q Now--

10 MR. STONAKER: Can I have this marked for  
11 identification.

12 THE COURT: DPL-1.

13 (Document received and marked DPL-1  
14 for identification.)

15 Q Mr. Mallach, can you identify this please?

16 A Yes. This is the April 1975 issue of New Jersey  
17 municipalities magazine.

18 Q Did you write an article for this issue?

19 A Yes.

20 Q Do you remember that article?

21 A In general, not in detail.

22 Q And what was the title of the article, if you  
23 remember?

24 A It was about, it had to do with apartments and local  
25 governments.

1 Q In the suburbs--

2 A The implication of multi family development for local  
3 government.

4 Q And did that article contain your views as to  
5 housing in the suburbs?

6 A Some of them, yes.

7 Q And your views and the staff that you directed;  
8 is thatcorrect?

9 A Yes.

10 Q Now would it be fair to say if I read this to you--  
11 let me read this to you, first, on this page, page 23 of the  
12 article talks about a recommendation for land use, "Finally  
13 the third recommendation deals with land use regulation.

14 In this area the study staff rejected the various quota or  
15 fair share schemes that have been discussed in recent years.  
16 What is needed instead is an approach that balances environ-  
17 mental concerns with housing needs and provides protection  
18 to the municipalities against the pace of growth too great to  
19 be assimilated."

20 Is that correct?

21 A That's correct.

22 Q Then it goes on to say, "In essence the  
23 commission adopted a scheme centered on the concept of  
24 development timing."

25 Is thatcorrect?

A Correct.

1 Q And then it sets forth three standards to set  
2 up the development timing; is that correct?

3 A Correct.

4 Q Could you read those to the court please?

5 A First was environmentally the valuable and sensitive  
6 areas would be set aside from intensive development from  
7 official mapping and establishment of density and development  
8 feeling, two, municipalities would, on the basis of a, demand  
9 in the region, b, municipal capacity, promulgated development  
10 timing plans, designation of priority areas with regard to the  
11 municipality and a plan showing how the typical investment  
12 and service extended needed to support development will take  
13 place. Three, within each priority area which would be an  
14 area large enough to serve a service shed for major facility  
15 such as sewer collector, municipality could regulate land  
16 uses, saw fit through conventional zoning, PUD, et cetera.  
17 But would be required to maintain a balance of housing in  
18 keeping with regional needs.

19 Q Now those were your views at that time?

20 A These are my views at that time, yes.

21 Q Are they still your views, sir?

22 A I would qualify it somewhat more at this time. I think  
23 that I have somewhat more reservations about the ability of  
24 a hopefully self regulating machinery as is described in that  
25 article to be effective and too, there would have to be some-

1 what more sort of regional intervention in the system than I  
2 believe is reflected in that description.

3 Q You would agree that there should be a mapping  
4 of the environmentally sensitive areas; is that correct?

5 A Yes.

6 Q Now, have you done any field work in Plainsboro  
7 Township, sir?

8 A No.

9 Q Are you familiar with Plainsboro Township?

10 A Generally speaking.

11 Q And are you familiar with the Lincoln property  
12 development in Plainsboro Township?

13 A Again, generally speaking, yes.

14 Q Are you familiar with the fact that that  
15 development plans to construct 5150 garden apartments?

16 A Yes.

17 Q Are you familiar with the Forestal campus?

18 A Again generally speaking.

19 Q Do you know the number of acres that is planned  
20 for that particular development?

21 A Except that it's at least 500, I don't actually know  
22 the acreage.

23 Q Would it surprise you to learn that it was 1400  
24 acres?

25 A No.

1 Q Would it surprise you to know that at the time  
2 that that development was approved there was a requirement that  
3 20 percent of the town houses should be constructed in low  
4 and modern income?

5 A I have heard some discussion to that effect but I  
6 don't believe it was reflected in the actual PMUD ordinance.

7 Q As it relates to PCD provisions of the ordinance  
8 you said that the 500 acres requirement was excessive; is  
9 that correct?

10 A That's correct.

11 Q Would it change your mind if I told you that  
12 Lincoln properties had a 600 acre development that was already  
13 approved and being constructed?

14 A I was aware of that.

15 Q You were? A It would not change  
16 my mind.

17 Q Now--

18 THE COURT: Does that fit within the category  
19 of the vacant land?

20 THE WITNESS: Well, I believe in the 1000 acres  
21 here that does include, most if not all of the Lincoln  
22 property tract.

23 THE COURT: That been stipulated?

24 MR. STONAKER: That has been stipulated,  
25 your Honor.

1 THE COURT: All right.

2 Q And as it relates to the vacant land which you  
3 did not have listed and you indicated that that was part of  
4 the Forestal Center of development, that is the 1400 acres  
5 that I referred to?

6 A That would be so.

7 Q Now you objected to the, some of the amenities  
8 that were required in the PCD zone; is that correct?

9 A That's correct.

10 Q Now do you believe that there should be some  
11 amenities in development of that magnitude?

12 A I believe that as a general rule there should be.

13 Q There should be and what kind of amenities?  
14 do you think there should be in a development of that size?

15 A Well, I think most of the amenities should be left to  
16 the discretion of the developer and the, his judgment of the  
17 type of market that he's attempting to meet. I think for  
18 example on the development of the size and the type of Lincoln  
19 properties development I think that some of the amenities  
20 would certainly be provided without municipal regulation.

21 I think there should be some open space set aside, I think  
22 there should be some provision for play areas, for children,  
23 if there's an reason to believe there will be more than a  
24 negligible number of children in the development and I expect  
25 there should be some provision for both passive and active

1 and recreational activities for adults such as picnicing  
2 and sitting areas, perhaps facilities and such as tennis  
3 courts and similar modest facilities but again I don't know  
4 that this outside of the children's play area and the basic  
5 availability of open space, I don't know that it's necessary  
6 or desirable to require these by ordinance.

7 Q Only the children's play area and the open space  
8 requirement should be in the ordinance itself?

9 A I think that would be a reasonable minimum.

10 Q And what percentage would you allocate for  
11 open space?

12 A Well, I don't, I don't think there's a hard and fast  
13 figure, I believe a good deal of the discussion in one of  
14 the books which Mr. Bernstein was referring to earlier had  
15 to do with establishing ways of establishing criteria for  
16 open space. So it would be, you know, suitable use and  
17 accessible and the like. The amount is secondary to the  
18 quality of the open space.

19 Q Now, as it relates to Plainsboro Township, do  
20 you think that Plainsboro Township is affected more by the  
21 housing pressures from Trenton than the pressures from New  
22 Brunswick?

23 A More, I would think not.

24 Q You feel that there's any effect on Plainsboro  
25 Township in the housing pressures from New Brunswick?

1 A I don't know for sure but I think it's a good  
2 possibility of that.

3 Q You don't know for sure?

4 A No.

5 Q Are you aware of any public transportation  
6 facilities that are available in Plainsboro Township?

7 A Not familiar with any in Plainsboro Township, no.

8 Q Are you familiar that there, would you accept  
9 the fact that there is pressure from Trenton, the Trenton  
10 housing market on Plainsboro Township?

11 A I would accept it as a possibility, yes.

12 Q Would you accept that there's pressure from the  
13 Princeton housing market on Plainsboro Township?

14 A Well, there it's not so much a pressure from Princeton  
15 as such, I think it kind of, Plainsboro does serve to some  
16 degree, what one might call an area of diversion from  
17 Princeton. In other words people moving into the general  
18 area of Princeton looking for housing tend to be shunted out  
19 of Princeton and Plainsboro is one of the areas that they're  
20 probably shunted to see that in that sense the answer would be  
21 yes.

22 Q How about pressures from West Windsor Township  
23 in Mercer County?

24 A I don't think that there would be identifiable  
25 pressures as such from West Windsor Township.

1 Q Are you familiar with any multiple family units  
2 in West Windsor Township?

3 A Yes.

4 Q And where are those located?

5 A There is, I'm not, I certainly don't know if I'm aware  
6 of all of the developments, there's substantial multi family  
7 development oh, I believe it's Alexander Road or is it Meadow  
8 Lane on the, it's on the east side of U.S. 1 roughly half a  
9 mile to a mile from U.S. 1.

10 There's another substantial development near the Prince  
11 Theater, maybe others.

12 Q Are you aware of where the people who live in  
13 Plainsboro work?

14 A No.

15 Q Have you made any studies of that at all?

16 A No, I have not.

17 Q Have you made any studies of the industry that's  
18 located in Plainsboro Township?

19 A I've made no such studies.

20 Q What do you consider a reasonable density for  
21 multiple family garden apartment construction?

22 A I believe a reasonable density and obviously this  
23 would depend on other factors but as a general rule of thumb  
24 a reasonable density for garden apartment type construction  
25 would be in the area of 15 to 20 units an acre.

1 Q Do you have any recommendation as to the mix of  
2 bedrooms in such a development, garden apartments?

3 MR. SEARING: Your Honor that was testified  
4 to on cross-examination by Piscataway.

5 THE COURT: I'll allow the question, it may  
6 stand.

7 A OK. It would depend on the type of market, to some  
8 degree and also whether we were talking about a general  
9 conventional market or a more lower income or subsidized  
10 market. In terms of the conventional market, I believe, as I  
11 mentioned earlier that a reasonable mix in garden apartments  
12 as a rule could be in the area of example as 40 percent one,  
13 50 percent two and 10 percent three. In the case though,  
14 this could vary substantially, depending on the specific  
15 market one was trying to reach that would, I still think  
16 that mix is a reasonable rule of thumb.

17 Q So that if a municipality provided for that kind  
18 of mix you would consider their reasonable as to that  
19 provision?

20 A Well I'm inclined to believe, particularly since the  
21 demands change over time, they change because of the specific  
22 area, I believe and I have stated in fact in the same  
23 publication as that suggestion came from that the idea of  
24 municipality regulating the bedroom mix is, in my opinion  
25 inherently undesirable.

1           Q       What regulation would you have sir, would you  
2 agree that there should be a minimum habitable floor area  
3 regulation as it related to apartments?

4           A       I believe there should be some, some regulations which  
5 would insure that certain minimums were adhered to. I think the  
6 minimum habitable floor areas requirement is one, I think a  
7 preferable one, for example, could be to establish minimum  
8 sizes, minimum standards for the kind of facilities that would  
9 be required in an apartment and minimum sizes for those, for  
10 example bedroom, bathroom, kitchen, so on and allow a floor  
11 area, any, you know, gross floor area so long as the specific  
12 size requirements of floor area requirements and the specific  
13 facilities were met.

14          Q       Now, from an environmental point of view, do you  
15 feel that every multiple family apartment complex should be  
16 served with public sewer and public water?

17          A       Not necessarily.

18          Q       How else should they be served?

19          A       Well, through package plans where public sewer and water  
20 may not be available. I acknowledge that that is the less  
21 desirable, in most cases than a public sewer system. But it's  
22 not out of the question.

23          Q       Now you're familiar with the section 8 housing?

24          A       Generally speaking.

25          Q       Does that provide that there be public sewer-

1 and public water for all housing projects?

2 A Not necessarily.

3 Q It provide for package plan?

4 A It does not specifically provide one way or the  
5 other.

6 Q Are you familiar with any projects that don't  
7 have public sewer and public water?

8 A Under section 8?

9 Q Under section 8. A No.

10 Q Now, as it relates to towns houses, sir, do you  
11 consider--what density would you consider reasonable?

12 A I would say town houses, well, there's really  
13 tremendous room for variation, depending on the type of  
14 development, the typical densities which seem to be  
15 reasonable for suburban town houses would be in the area of  
16 8 to 12 units an acre. I believe properly designed the  
17 density can be a good deal higher than that.

18 Q Now do you believe that a town house project  
19 should be served by public sewer and public water?

20 A Again with the qualifications of their circumstances of  
21 package plans, maybe acceptable, yes.

22 Q If there is not a package plant or sewer available  
23 you would not recommend that there be any septic systems, I  
24 assume?

25 A I think accepting as a general rule I would think septic

1 systems would be unsuitable for town house developments.

2 Q Are you familiar with the character of the land  
3 in Plainsboro Township?

4 A Not in detail.

5 Q Are you familiar with the farming uses in Plains-  
6 boro Township?

7 A I'm aware there are some, I'm not familiar with these  
8 specific uses.

9 Q Are you familiar with any of the streams that  
10 flow through Plainsboro Township?

11 A Again not in detail.

12 Q Are you familiar with any of the bans imposed  
13 on effluent discharge into the, any of the streams in  
14 Plainsboro Township?

15 A Not specifically.

16 Q Are you familiar with the land uses in  
17 Plainsboro Township?

18 A Again generally speaking yes, but not in detail.

19 Q Generally speaking. What land uses are you  
20 familiar with? A Well--

21 THE COURT: Pretty broad question.

22 Q You said you were familiar with some of the land  
23 uses in Plainsboro Township, what land uses are you  
24 familiar with?

25 A There's a great deal of, there's a good deal of land--

1 MR. SEARING: I'm sorry, your Honor, I think  
2 that's exactly the same question.

3 THE COURT: I'll sustain the objection.

4 Q Now have you ever visited Plainsboro  
5 Township? A Yes.

6 Q In your visits to Plainsboro Township what land  
7 uses did you observe? A I've observed quite  
8 a number of land uses. There's, for example at one end of  
9 Plainsboro Township. There's a Holiday Inn and a small garden  
10 apartment development. There's a good deal of the land in  
11 Plainsboro Township is used for various purposes, including  
12 some academic uses by Princeton University.

13 There's a large, I believe it's either a seminary or  
14 seminary preparatory school in Plainsboro Township.

15 There's a, there are sort of farms, tree nurseries and  
16 I believe some woodlands in Plainsboro Township.

17 There's those small village which are in Plainsboro  
18 Township, with residences, scattered residential uses, single  
19 family houses spread on the streets leading up to and through  
20 the village.

21 There's a lengthy property development.

22 Q Would you say that there are a variety of housing  
23 uses in Plainsboro Township?

24 A Well, not a wide variety, there are two predominant  
25 types of housing.

1 Q That would be apartments and single family  
2 houses?

3 A Garden apartments, principally one bedroom and some  
4 two bedroom and single family houses.

5 Q Do you know the mix between one bedroom and two  
6 bedroom in the Lincoln properties project?

7 A Well, I assume it was--

8 Q Do you know it sir?

9 A I--

10 THE COURT: Do you have that specific knowledge  
11 yourself?

12 THE WITNESS: I do not have personal knowledge  
13 of that fact.

14 Q How would you characterize Plainsboro Township,  
15 a rural community?

16 A I would consider it kind of mixed rural and suburban  
17 character.

18 Q Now as it relates to lot size and frontage, what  
19 do you consider the frontage requirement more important than  
20 the lot size or the lot size more important than the frontage  
21 requirement in providing housing for low and moderate income  
22 people?

23 A Well, it's not an either or, I would say--

24 THE COURT: You've answered it.

25 Q Do you consider the lot frontage requirement a

1 important factor in providing housing for low and moderate  
2 income people?

3 A Yes.

4 Q Could you consider a lot frontage requirement  
5 of 85 feet to be excessive?

6 A I think a lot frontage of 85 feet is higher than what  
7 is necessary for a modest and reasonable development and in  
8 the absence of more modest uses I would consider a lot front  
9 requirement of 85 feet excessive.

10 THE COURT: That's contrary to your listing  
11 of exclusionary features. You do not refer to the  
12 85 foot frontage, might point that out to Mr. Stonaker.  
13 As I heard it you referred only to the minimum lot size  
14 in the R-85 zone.

15 MR. STONAKER: That's correct, your Honor.

16 MR. SEARING: As I understand--

17 THE COURT: Then why ask him about whether he  
18 considers 85 foot exclusionary?

19 MR. STONAKER: I have no further questions, your  
20 Honor.

21 THE COURT: All right, you might proceed with the  
22 Borough of Sayreville to be followed by the City of  
23 South Amboy.

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

1 THE COURT: Apparently we've passed by,  
2 irretrievable lost P-149, P-151, on.

3 (Documents received and marked P-151, 152 and  
4 153 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 Would you identify, Mr. Mallach, P-151 for us?

9 A Yes, sir, this is the zoning ordinance of the Borough of  
10 Sayreville.

11 Q Could you identify P-152 for us?

12 A This is the planned unit development ordinance of the  
13 Borough of Sayreville with an attached amendment..

14 Q Could you identify P-153 for us?

15 A This is a summary of zoning ordinance provisions of the  
16 Borough of Sayreville prepared by me.

17 MR. SEARING: Your Honor haveing been shown  
18 two and examined by Mr. Karcher I now move these into evidence.

19 (Whereupon the court heard legal argument.)

20 THE COURT: The objection will be overruled,  
21 at this time, P-151, 152 and 153 will be admitted  
22 into evidence.

23 (Documents received and marked in evidence.)

24 Q Mr. Mallach, can you describe the principal  
25 features of this zoning ordinance for us?

1 A Yes, sir, I'd like to make one, there's one typographical  
2 error on this chart which I'd like to note that the cluster  
3 option provisions listed under R-20 and R-10 actually apply  
4 to the zone beneath them rather than above them.

5 In other words, the cluster option provisions under  
6 R-20 are actually R-10 provisions and the floor areas should  
7 be 1400 square feet rather than 1500 with respect to the  
8 R-10.

9 The second set of cluster option provisions actually  
10 belong with the R-7 rather than the R-10.

11 THE COURT: 1400 minimum floor area?

12 THE WITNESS: And it should be 1000 instead of  
13 1400 in that because it's consistent with the R-7  
14 provisions.

15 A The Borough of Sayreville provides for three residential  
16 zones, one apartment zone, four business zones and two  
17 industrial zones. They provide a PUD option which is  
18 available in the various parts of two of the business zones  
19 and the two industrial zones.

20 The first residential zone is a R20 single family  
21 zone, requires lots of 20,000 square feet, slightly half an  
22 acre, frontage of 100 feet and minimum floor area of 1400  
23 square feet.

24 The second zone is an R-10 single family zone, requires  
25 minimum lot of 10,000 square feet, frontage of 100 feet,

1 floor area of 1400 square feet.

2 The cluster option provides that through the clustering  
3 20 percent of the lots in the zone may be below the 10,000  
4 square feet minimum down to a minimum of 10,000 square feet  
5 but that the gross density of the entire tract may not exceed  
6 2.4 dwelling units per acre. The frontage provision again may  
7 be reduced to 80 feet, the minimum floor area space the  
8 same.

9 The R-7, single family zone provides for lots of 5500  
10 square feet, frontage of 75 feet and minimum floor area of  
11 1000 square feet. A cluster option is permitted which, which  
12 may not exceed a gross density of 3.2 dwelling units per  
13 acre.

14 In addition there's a town house option available under  
15 the R-7 provisions, a developer with a minimum tract of 20  
16 acres may build town houses up to a maximum density of 5  
17 dwelling units per acre with minimum floor area requirements  
18 of 800 feet, square feet.

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

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

1           There's a requirement that two parking spaces be pro-  
2           vided per dwelling unit and 25 percent of the parking be en-  
3           closed.

4           The PUD option is permissible in the B-3 and B-4  
5           business district in parts of those zones and in parts of  
6           the M-1 and M-2 industrial districts.

7           THE COURT: Is there new housing permitted in,  
8           new residential housing in the business or the  
9           industrial zones apart from PUD?

10          THE WITNESS: No.

11          A     Mobile homes are prohibited.

12          With regard to the PUD provisions, these are  
13          summarized on the second sheet. The PUD provisions vary  
14          to some degree, depending on the location. There are 5  
15          separate PUD provisions, two options in the M-1 zone and one  
16          option for each of the other three zones in which PUD's are  
17          permitted.

18          In the M-1 zone the first option, the tract must be at  
19          least 250 acres, 10 percent of the tract must be developed for  
20          commercial purposes, 25 percent must be developed for  
21          industrial purposes and 25 percent must be set aside for open  
22          space.

23          The gross density may not exceed 4.5 dwelling units per  
24          acre.

25          The single family units may not exceed 15 percent,

1 garden apartments may not exceed 50 percent and town houses  
2 must be between 35 and 45 percent of the total dwelling units  
3 in the PUD.

4 Single family houses under this option may be developed  
5 on lots of 7500 square feet. Town houses may be up to 8  
6 units per acre density and garden apartments up to 12 units  
7 in acre density.

8 The minimum requirements for commercial, industrial and  
9 open space are identical for all of the PUD options. The  
10 acreage requirements varies from a minimum of 50 acre tracts  
11 to up to 250 minimum tracts. The density varies, the density  
12 in the other options is 4 dwelling units an acre.

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

22 There are a number of other provisions which are  
23 applicable to all the PUD options. There's a provision which  
24 provides that senior citizens public or nonprofit housing  
25 is allowable in the PUD's as an excess over the residential

1 maximums otherwise permitted.

2 The floor area requirements are 600 square feet for an  
3 efficiency apartment, 800 square feet for one bedroom  
4 apartment, 950 square for 2 bedroom apartments. Town house  
5 units must be at least 1000 square feet.

6 In the apartment areas there must be recreation space  
7 of 10 percent of the gross area of the apartment parcel.  
8 This is over and above the old, the general open space  
9 dedication.

10 There are 1.75 parking spaces per dwelling unit re-  
11 quired in town house and apartment zones. There's requirement  
12 that no two adjacent buildings can have identical structural  
13 form and finally there's an elaborate--

14 MR. KARCHER: I object and I ask that that  
15 be stricken, elaborate is an opinion, not  
16 responsive to the question asked.

17 THE COURT: All right, I'll sustain that  
18 objection.

19 A There is a timing provision requiring, according to a,  
20 a formula involving various percentages that various  
21 percentages of the nonresidential uses required in the PUD  
22 be in place prior to the issuance of certain percentages  
23 generally comparable of the residential, of residential  
24 uses permitted in a PUD.

25 With regard to vacant land availability, the Borough

1 of Sayreville--

2 (Whereupon the court heard legal argument.)

3 Q Mr. Mallach, could you comment on the vacant  
4 land distribution in the municipality of Sayreville, please?

5 A Yes, sir, since the vacant land information is not  
6 provided by the Borough of Sayreville we've relied on the  
7 information provided in the DCA study, I believe that's P-104,  
8 4 purposes of this analyses.

9 The study indicates that there are 4083 vacant and by  
10 their definition, developable acres in the Borough of  
11 Sayreville. Of these 3,027 approximately 75 percent  
12 are contained within the industrial zones, approximately 900  
13 or 22 percent are contained in the residential zones, divided  
14 more or less evenly between R-10 and R-7 zones. There is no  
15 land shown as being available in either the R-20 zone or the  
16 G-1, garden apartment zone and there's 147 acres available in  
17 the business zone, though it does not specify to which  
18 business zones the reference is made.

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

24 (Whereupon the court heard legal

25 argument.)

1 A Approximation would suggest that between a third and a  
2 half of the industrial land qualifies for the PUD option and  
3 slightly more than a half of the business land qualifies  
4 for the PUD option. This would be then between 1000 and 1500  
5 acres in the industrially zoned parts of the town and an un-  
6 determined number of acres in the business zones.

7 Q Do you relate the distribution of vacant land to  
8 plaintiff's exhibit 105 in evidence?

9 A According to the study of the Middlesex County Planning  
10 Board the demand for industrial and related uses in the  
11 Borough of Sayreville through the year 2000 there's approxi-  
12 mately 1024 acres. Using the approximation I mentioned it  
13 would appear that including the industrial lands, that is not  
14 zoned for PUD and the minimum percentage of industrial land  
15 required within the PUD development, that the Borough of  
16 Sayreville has between 1800 and 2200 acres of land in which  
17 residential uses are the permitted use which is therefore  
18 approximately twice as much industrial land as a demand figure  
19 provided by the Middlesex County Planning Board.

20 THE COURT: I don't think that answer came out  
21 right.

22 Q You want the answer read back to you?

23 THE COURT: Didn't he say 1800 to 2200 zoned?

24 THE WITNESS: No, for industrial.

25 THE COURT: You said residential, I believe.

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THE WITNESS: Sorry.

THE COURT: You mean zoned for industrial?

THE WITNESS: Yes.

THE COURT: All right.

Q Now Mr. Mallach, referring back to the testimony you gave summarizing the zoning ordinance provisions and vacant land data, what if any of the features you have described have an adverse effect on the provision of housing for low and moderate income persons?

(Whereupon the court heard legal argument.)

THE COURT: Go ahead with your answer, please.

A Yes, sir.

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

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

The provisions of the R-7 zone with regard to single

1 family dwellings are not unreasonable.

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

6 With the requirement that a 20 acre tract be provided  
7 to permit the town house option to have effect is restrictive,  
8 limits the number of areas in which town houses can be  
9 developed and bears no relation to the requirements of town  
10 house development.

11 With regard to the G-1, garden apartment zone, the  
12 size acre requirement is restrictive in a similar manner as  
13 the requirement in the town house zone and it's particularly  
14 so in view of the apparent absence or relative small amount  
15 of land available in this zone.

16 The density of 12 to one units per acre is lower than  
17 densities at which garden apartments can be reasonably  
18 developed.

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

22 The zig-zag provision in the facades of the apartment  
23 development is also a provision is also tending to increase the  
24 costs.

25 The open space provision of 500 square feet per

1 dwelling per unit appears then excessive and not directly  
2 related to specific open space needs.

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

6 With regard to the PUD option which represents apparently  
7 the principal vehicle for construction of multi family  
8 housing in the Borough of Sayreville, the requirements for  
9 substantial part of the PUD option that one have a minimum  
10 of 250 acres or in some cases 100 acres to qualify then for  
11 the PUD development is restrictive.

12 Therequirements that 10 percent of the land be devoted  
13 to commercial uses and 25 percent of the land be devoted to  
14 industrial uses restrictive of the amount of housing that can  
15 be built in the PUD areas and put a substantial burden on the  
16 developer in regard to uses which may be for--excuse me--  
17 uses, the feasibility of which may not be established, may be  
18 difficult to obtain in the development.

19 The lot size requirements for single family units in  
20 the PUD's under the M-2 area and option 2 in the M-1 area  
21 which represent between them a substantial part of the PUD  
22 potential development of 15,000 square feet are excessive,  
23 reasons I have mentioned before.

24 The provision that the senior citizens housing be  
25 provided over and above the residential ceiling on the PUD,

1 while reasonable in and of itself is unreasonable that the  
2 same provisions are not provided for other possibly equally  
3 or even more needed subsidized public and nonprofit housing  
4 development for nonsenior citizen families.

5 The floor area requirements in the PUD zone for  
6 apartments by bedroom 5 and for town houses are all in excess  
7 of reasonable minimums for the types of housing that they  
8 represent.

9 The requirement that no two adjacent buildings can have  
10 identical outside structural form is a cost increasing  
11 feature.

12 The nature of the timing provision in the PUD ordinance  
13 is such that it compliments the restrictive aspects of the  
14 high percentages of industrial and commercial land development  
15 required in the PUD. In other words, the cause of the  
16 difficulty of providing the amount of industrial and  
17 commercial development that may be required under the PUD  
18 ordinance, the timing provision precludes the development of  
19 the residential part of the PUD until the development of  
20 certain percentages of the industrial has taken place, which  
21 provides very little leeway for possible economic problems  
22 and feasibility problems associated with the nonresidential  
23 development.

24 With regard specifically to the vacant land availability  
25 in the Borough of Sayreville--

1 (Whereupon the court heard legal argument.)

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

6 THE COURT: Excuse me a minute.

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

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

20 Q Does Sayreville have a public housing  
21 authority?

22 A No, sir.

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

25 A Not to my knowledge, sir.

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

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

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

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

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

10  
11 CROSS-EXAMINATION BY MR. KARCHER:

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

15 A That's correct, sir.

16 Q And you're familiar with the workings and the  
17 functions and the statutory prerogatives of such housing  
18 authorities?

19 A Generally speaking, yes.

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

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

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

3 A That's correct.

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

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

12 THE COURT: Try to answer the question.

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

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

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

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

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

1 you are telling me that? A Only public housing  
2 which is a specific term.

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

4 A No.

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

9 A That's not proven.

10 Q That's right, OK, fine.

11 That can't be proven.

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

15 A That--

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

18 THE WITNESS: No, I guess not.

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

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

1 A Since the zoning ordinance deals principally with what  
2 will be built in the future, say principally speaking it's  
3 potential adverse effects.

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

8 A Adverse effects from that point when the zoning ordinance  
9 went into effect through the future.

10 Q From the point it went into effect was March  
11 13th, 1974; is that correct? A That's  
12 correct.

13 Q Now we are at May or February 20th, something or  
14 other, 1976, can you tell me of your own knowledge once  
15 again facts that opinions or conclusions who has been  
16 restricted to your personal knowledge by the operation of that  
17 zoning ordinance?

18 A You mean specific individuals or firms?

19 Q Yes. Who has been restricted?

20 (Whereupon the court heard legal argument.)

21 Q Well, can we assume, Mr. Mallach, that to your  
22 knowledge there is no one who has been presently operating  
23 in time and space now who has been restricted in what you  
24 testified to, operates perspective--

25 (Whereupon the court legal argument.)

1 Q Mr. Mallach, you at one time were employed by the  
2 state government, isn't that correct?

3 A That's correct.

4 Q You testified you also as to the fact that you  
5 thought that the floor area requirements under Sayreville's  
6 PUD were restrictive in the sense that it required the grand  
7 total of 600 feet for efficiency, is that correct, is that  
8 one of the things you testified to?

9 A That's correct.

10 Q Are you aware or isn't it a fact that you are  
11 aware that for instance the State of New Jersey establishes  
12 for those individuals that within the society you happen to  
13 be incarcerated for the commission of a crime, 500 square  
14 feet of living space.

15 Are you aware of that?

16 A No, I'm not.

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

21 Are you aware of that?

22 A Not specifically,  
no.

23 Q Assuming that those figures I gave you are  
24 accurate, to you still think 600 feet is too large a sum for  
25 people to live in?

1 A I think the figures you gave me bear no relationship to  
2 the figure, you have completely separate instances.

3 THE COURT: The answer is yes?

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

6 Q So 500 feet is sufficient for a criminal but  
7 600 feet is too much for an individual in a home, apartment;  
8 is that right?

9 (Whereupon the court heard legal argument.)

10 Q Mr. Mallach, would it be accurate to say what  
11 you said earlier on direct examination was that 600 feet re-  
12 quirement for a couple living in an efficiency apartment within  
13 a PUD zone in the Borough of Sayreville somehow had an  
14 adverse effect on the housing supply?

15 A Yes.

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

19 A Yes.

20 Q That's all I wanted to hear.

21 Now you also said that the Borough of Sayreville by  
22 having within their ordinance, a regulation prohibiting  
23 look-alike structures next to each other was restrictive and  
24 drove the price up; is that correct?

25 A That's correct.

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

3 A Some.

4 Q Don't all special regulations to a degree have  
5 the operate to drive the price of the cost of the building?

6 Let me help you.

7 All right. Borough of Sayreville in exhibit 151, I think  
8 it is, page 9--OK, in the top of the left hand column talking  
9 about garden apartments, talking about this morning--for  
10 instance, they require that all apartment units include  
11 complete kitchen facilities, toilets, bathing and washing  
12 facilities.

13 Doesn't that drive the price up?

14 A Not above what is reasonable and necessary.

15 Q So that what you are saying is then, is that kind  
16 of a restriction, that kind of a restriction is reasonable?

17 A Yes.

18 Q And you're saying that the other one is un-  
19 reasonable, is that what you are saying?

20 A Yes.

21 Q Now there must be a dichotomy between those  
22 regulations that a municipality puts in by way of a  
23 restriction, those that are reasonable, those that are  
24 unreasonable. Is that correct? A Well, to

25 some degree.

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

3 (Whereupon the court heard legal argument.)

4 THE COURT: I think it's a proper question.

5 What is your answer to that?

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

7 Q Now how did you arrive at what regulations within  
8 the Borough of Sayreville zoning ordinance are good restrictions  
9 and which are bad restrictions?

10 How did you arrive at that? What was your process?

11 A Well, the immediate process was a review of the  
12 ordinances of the Borough of Sayreville, the more general  
13 basis for having arrived at that, these conclusions on the  
14 basis of that review with the experience, knowledge, background  
15 and observation that I've had over the past 10 years or so  
16 working in the area of housing and development.

17 Q Now in that experience isn't it, isn't it a  
18 fact that look-alike housing depreciates values of real estate?

19 A No.

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

23 A No, sir.

24 Q Just in there to pass the time?

25 A No.

1           Q       Just arbitrary?                   A       Not  
2 necessarily.

3           Q       How about esthetics, is it there for esthetics,  
4 you think?

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

7           Q       It's in there about a certain judgement about  
8 esthetics,

9                    Could that judgment be, esthetics be that houses that  
10 are not look alike and ticy-tacy happen to hold higher values  
11 that is, when you put them in unison and in duplication that  
12 it tends to depreciate the value?

13       A       The term ticy-tacy and the term look alike are not  
14 certainly the same.

15           Q       I had reference to Peter Seeger's song, they  
16 all look the same, isn't that really what was wrong with them,  
17 isn't that what prohibited--

18       A       Not necessarily by any means.

19           Q       What did--

20       A       What did what?

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

23 mentioned one of the factors was a judgment under the esthetic  
24 made by certain people under the esthetic pros and cons of  
25 the houses looking alike or not looking alike.

1 Q And that's not your judgment, is that correct?

2 A I--

3 Q Your judgement about esthetics is different?

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

6 Q That's not the question.

7 My question is, that is not your judgment of the  
8 esthetics of look alike houses?

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

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

16 (Whereupon the court heard legal argument.)

17 A My personal judgment on the esthetics of the matter is  
18 that the, whether or not houses look alike or not look alike  
19 in the context of typical subdivision design, does not  
20 substantially effect their esthetic quality, there are many  
21 other factors or substantially more important.

22 Q And without expressing my opinions, conclusions,  
23 et cetera, facts only, what facts do you have to support the  
24 contrary of that, that they somehow or the corrolary of that,  
25 that it somehow changes the value or the cost of the house?

1 Facts, OK?

2 A Because there are specific, the, the provision of a  
3 no look alike ordinance can restrict, well, can increase the  
4 professional fees associated with the development and can in-  
5 crease--

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

8 (Whereupon the court heard legal argument.)

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

11 Q Fine, thank you very much.

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

15 A No first hand personal knowledge.

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

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

21 A I believe there are some.

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

23 A That's correct.

24 Q And the Borough of Sayreville exercises its  
25 general zoning powers to prohibit other things besides mobile

1 homes, not just mobile homes we prohibit?

2 A That's correct.

3 Q Junk yards, that's a good thing, right?

4 We put up a junk yard, that's OK?

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

7 Q How about we prohibit uses which emit objectionable  
8 amounts of dust fumes, noise, vibrations and waste products.

9 That's good? A Unbalanced.

10 Q Your judgment-- A As a general  
11 rule, yes.

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

15 A Again it would depend on the specific circumstances.

16 Q So in other words, a house next to a junk yard  
17 or factor that emits fumes is worth as much as a house that's  
18 not situated in an area where those things are prohibited?

19 A If the house is immediately adjacent to such a use,  
20 might be worth less than a comparable house elsewhere.

21 Q Isn't it a fact that the situation, the situating  
22 of mobile home parks and trailers once again depreciates  
23 real estate values. Isn't that accurate?

24 A No.

25 Q What proof do you have, facts, facts, what facts

1 do you have to the contrary that increases or maintains  
2 or stabilizes real estate values?

3 A From first hand personal knowledge?

4 Q Yes. A None.

5 Q OK, thank you.

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

14 A I cited a number of factors.

15 Q Could you refresh my recollection just what were  
16 they again?

17 THE COURT: Well, that seems to be burdening the  
18 record, Mr. Karcher.

19 MR. KARCHER: It's not that long of litany,  
20 Judge.

21 THE COURT: PUD zone, I think you took about 10  
22 minutes to go through them all.

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

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

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

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

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

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

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

18 Q Who put the question mark there, you or the  
19 DCA?

20 A I put the question mark there.

21 Q The DCA figure say zero?

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

23 Q Then assuming that that is accurate that the DCA  
24 was accurate, was no entry because there is no such land,  
25 vacant land, could you now--now the question is, still is,

1 could any of those factors that you enumerated have any  
2 adverse effect or are they totally irrelevant?

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

5 Q Fine, thank you again.

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

11 A Yes.

12 Q In reviewing the Borough of Sayreville's  
13 ordinance, did you come across Section 25 that, sorry,  
14 Section 25 subsection, subsection 2, A2, undersized lots  
15 which provides that within any residential zone, 50 foot lots,  
16 if they exist, can be built upon. Isn't that what that provides?

17 A They existed prior to August 1961.

18 Q And is there, people can build on them, isn't that  
19 correct?

20 A Yes.

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

22 A I don't believe so.

23 Q Do you know where it is?

24 A Yes.

25 Q You familiar with any of the existing housing

1 that's in Sayreville? A Not from personal  
2 knowledge except from what one sees when one goes along the  
3 Garden State.

4 Q You've gone along the Garden State, you've driven  
5 on the Garden State Parkway?

6 A Yes.

7 Q That's Sayreville, you've been in Sayreville then.  
8 Do you know how many houses already exist on 25 and 50  
9 foot lots? A No, I do not.

10 Q All right. This doesn't show anywhere in any of  
11 your studies; is that correct? A No.

12 Q Now do you know anything about the industries  
13 which are located within the Borough of Sayreville?

14 A Not specifically.

15 Q Have any idea what they manufacture, whatsoever?

16 A No.

17 Q You ever heard about anything with regard to any  
18 of the industries in Sayreville?

19 A I'm vaguely familiar well, I don't remember any  
20 specifics.

21 Q You've come across the Garden State Parkway Bridge  
22 though, haven't you? A Yes.

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

25 Q Now let me ask you this, the largest companies

1 in Sayreville are N.L. Industries, Hercules, Dupont, Jersey  
2 CentralPower & Light, Sunshine Biscuit.

3 Do you know if any of those are in the housing business,  
4 you're familiar with the housing industry?

5 A Dupont is.

6 Q And where are they doing any housing?

7 A Well, on the west coast, they, probably elsewhere as  
8 well.

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

12 Q With their industry, all right, fine.

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

18 Q Even if the bodies of water are contained within  
19 zones that are within areas that are in, zoned for residential  
20 use or industrial use exclusive? A Well, I believe,

21 you know when there was the testimony on the collection of  
22 this data was made that the indication was that where the  
23 bodies of water were large enough to be noticeable as a  
24 distinct entity they're excluded, although I guess minor  
25 creeks and brooks might have been excluded.

1 Q So it's your belief, you're not sure it's your  
2 belief--

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

11 MR. KARCHER: I know, I didn't mean to be  
12 repetitive.

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

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

19 THE COURT: Again, Mr. Sullivan testified that  
20 it would exclude swampy land but if there was flood  
21 plain land not identifiable as swampy, then the Bureau  
22 of Geology, topographical map that would be excluded in  
23 the estimate of vacant land.

24 Q Now, do you have any knowledge of how much of the  
25 land that is in here in these figures, falls within that

1 euphemistic generic category of swampy? A I don't

2 have any--you mean within these figures is swampy?

3 Q Yes. How much of that is, do you know, do you

4 have any knowledge of how much is swamp?

5 A None of this is swamp, swamp has been excluded from

6 this.

7 Q Flood plains haven't but swamps have. Is that

8 right? A Roughly speaking.

9 Q Now do you know of any other municipality in

10 Middlesex County which is surrounded on three sides by

11 tidal waters other than the Borough of Sayreville?

12 A No.

13 Q Have you had available to you the zoning map of

14 the Borough of Sayreville? A Yes.

15 Q And which one do you have? Which one has been made

16 available to you? A This is the one that's in-

17 cluded in the exhibit P-151.

18 Q And on that there is a marginal footnote or a

19 legendary footnote indicating that it has been, it has marked

20 upon it the flood plain; is that correct?

21 A That's correct.

22 Q Now how much of that would you estimate is in-

23 cluded within the flood plain area?

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

25 A How much of the borough?

1 Q Yes, how much of it? Your guess?

2 A Between 5 and 10 percent.

3 Q Now, with regard to the, Sayreville's PUD  
4 ordinance, is there, you had testified that the minimum  
5 acreage is somehow once again operates adversely, is that  
6 correct, is that your testimony? A Yes.

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

10 A No.

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

13 A Yes.

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

15 A Somewhat.

16 Q --to develop.

17 Somewhat if they were in single ownership. OK.

18 Now are you familiar at all with the history and  
19 development of the Borough of Sayreville?

20 A No, sir.

21 Q Have you looked at any topographical maps or  
22 area maps with regard to the Borough of Sayreville?

23 A No.

24 Q You're not aware then that Sayreville at one  
25 time was one of the substantial mining areas. You're not

1 aware of that? A Yes, I am aware of that.

2 Q OK, you are aware of that.

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

6 A Not specifically aware of that.

7 Q If you were to have an area photograph made  
8 available to you to compare to the zoning map which you have,  
9 could you compare and make that observation that area zoned  
10 PUD are mined out areas? A Possibly.

11 MR. KARCHER: All right, could I have this  
12 marked then, your Honor.

13 THE COURT: DS-1 for identification.

14 (Map received and marked DS-1 for  
15 identification.)

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

18 Now starting with M-2, PUD, can you fit that in on  
19 this map?

20 (Whereupon the court heard legal argument.)

21 Q This area here-- A This seems  
22 to be the area.

23 Q And would the area photograph seem to indicate  
24 that the M-2 PUD is an area that has been heavily mined?

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

1 Q Some, OK.

2 How about the B-3 PUD, can you see where that fits?

3 Does that appear from the aerial photograph to be substantially

4 mined? A Substantial part of this appears

5 to be mined.

6 Q How much is substantial on that, on that

7 B, B-3 PUD? 90 percent?

8 A Say 80 or 90 percent.

9 Q OK, 80 or 90 percent, OK.

10 How about, let's move down here to this M-1 PUD down

11 here along the creek, it's on both sides. There's M-1 on one

12 side of the Garden State Parkway and B-4 PUD on the other side

13 of the Garden State Parkway.

14 Does that aerial photograph show that they are

15 substantially mined? A It would appear that

16 a good part of this has also been substantially mined.

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

18 Now isn't it fair to say that a municipality has a

19 legitimate concern that someone does not develop prime

20 property without also assuming some obligation for the

21 marginal areas or the result would be that the town be left

22 with just the worse of the worse. Isn't that an accurate

23 statement? Isn't it a legitimate concern of the municipality?

24 A I think it's a legitimate concern of the municipality to

25 try to provide the development for the marginal areas.

1 I'm not sure it has the obligation to require people to do that  
2 as well as develop primaries, should see that they get developed  
3 one way or another though, if they can.

4 Q Isn't it a legitimate thing to suggest that it  
5 is once again a legitimate judgment on the part of those  
6 making that determination that the facing of the PUD with a  
7 mix of or first of all a PUD option providing for commercial,  
8 residential or industrial with a face in is one way that  
9 potentially handles that problem of insuring that your  
10 marginal areas don't get abandoned?

11 A I think the use of the PUD option may be a legitimate  
12 approach to that problem.

13 Q Fine. Thank you.

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

15 One, just so we understand it, you think that 600 square  
16 feet for an efficiency is too much, 800 for one bedroom is  
17 too much? A Yes.

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

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

1 Q OK.

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

3 Now as to one last thing as to the acreage, my figures  
4 added up differently than your figures added up, I think.

5 My figures seem to indicate that this chart from DCA so that  
6 there were three hundred and twenty-seven available acres.

7 That you would testify that the PUD option for  
8 residential covered one third to one half of that available  
9 acreage and just to ask you--

10 A Of the 3,027.

11 Q 3,027 available and you had testified that the  
12 PUD option and I would ask you to take a look at that again  
13 and just so we have, you know, no--

14 A Covers one third to one half.

15 Q One third to one half, OK.

16 That the County Planning Board says that the borough  
17 should need another 1,124 industrial acres.

18 Now, where I got confused, assuming the one half acre  
19 giving me the benefit of the doubt, assuming the one half  
20 figure at PUD and 1,024 from the county planning board, give us  
21 a total of rough figures of 26424 which would be only an excess  
22 of 400 acres rather than I think what you said a hundred.

23 A No.

24 Q I missed a figure.

25 A Because in addition to the industrial land that's left

1 out of the PUD there's, you have the provision, the 25 percent  
2 at least of the PUD land be industrially used.

3 Q I see. A So it's a combination of the  
4 two.

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

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

13 Q Is it, assuming then, assuming then that  
14 N.L. Industries, Hercules, Dupont are all in heavy chemical  
15 manufacturing, OK, and also assuming that is between the three  
16 or four of them they own maybe 1500 of those acres, is it a  
17 legitimate concern for them to have a proper buffer area for,  
18 to shield themselves or to shield actually to shield  
19 residents from the operation that they are carrying on at  
20 those plants? A I do not have enough  
21 information about their activities to answer that question.

22 Q OK. Is it a proper and legitimate concern for  
23 growing, strong, viable industries to hold industrially zoned  
24 land adjacent to their facility for possible expansion?

25 A It may be.

1 MR. KARCHER: Fine, thank you.

2 I have no other questions.

3 THE COURT: All right. The intention of the  
4 court then would be to proceed with the South  
5 Amboy case after that turn to Helmetta.

6 MR. SEARING: Your Honor there are two exhibits  
7 to be marked for identification.

8 THE COURT: P-154 and 155.

9 (Documents received and marked P-154 and P-155  
10 for identification.)

11 MR. SEARING: Sorry, your Honor, we do have  
12 one additional exhibit I forgot.

13 (Document received and marked P-156 for  
14 identification.)

15 (Whereupon the court heard legal argument.)

16 THE COURT: Why don't you just offer P-154  
17 and 155.

18 MR. SEARING: Thank you, your Honor.

19 Q Would you identify P-154 for us please?

20 A This is the zoning ordinance of the City of South  
21 Amboy.

22 Q Could you identify P-155 please?

23 A This is a summary of zoning ordinance provisions of the  
24 City of South Amboy prepared by me.

25 THE COURT: These will be marked in evidence.

1 (Documents received and marked P-154 and P-155  
2 in evidence.)

3 Q Mr. Mallach, would you describe the principal  
4 features of this zoning ordinance for us please?

5 A Yes, sir. The City of South Amboy contains 5 zones,  
6 a one family residential zone, a two family residential zone,  
7 a business zone and two industrial zones.

8 In the one family residential zone houses are permitted  
9 on lots of 7500 square feet with 75 foot frontage. There's  
10 no minimum floor area specified in the ordinance. One  
11 parking space unit is required.

12 In the two family residential zone, one and two family  
13 houses are permitted on lots of 7500 square feet and 75 foot  
14 frontage. No minimum floor area is specified and one parking  
15 space per dwelling is required.

16 Multi family units are permitted in this zone by  
17 special exception variance to the board of adjustment.

18 In the business zone, residential uses are permitted on  
19 upper stories above commercial uses, up to, no more than two  
20 families in any structure.

21 Residential uses are not permitted in the industrial  
22 zones.

23 The, with regard to the special exception provisions  
24 there are provisions for garden apartments and separately for  
25 category defined as multi family buildings, of two, up to

1 four dwellings. The garden apartment provisions require a  
2 density of 12 dwelling units per acre, maximum two story  
3 height, floor area of 500 square feet, minimum per unit.  
4 Require 80 percent one bedroom, and 20 percent two bedroom or  
5 rather than no more than 20 percent two bedroom. Apartments  
6 require 1.5 parking spaces per dwelling unit.

7 In addition they require 130 square feet of recreation  
8 per 1000 square feet of floor area plus an additional 1000  
9 square feet of open space per dwelling unit.

10 The multi family provisions which refer, I believe, to  
11 3 and 4 family buildings in this case require 1000 square  
12 feet of floor area and 500 square feet of recreation space  
13 per dwelling unit. The ordinance does not provide for mobile  
14 homes.

15 With regard to these vacant lands, since the city did  
16 not provide a breakdown, we have utilized the information  
17 on P-104 in part. There are a total of 198 vacant  
18 developable acres specified on that table of which 19 are in  
19 the single family zone, approximately 10 percent, 51 in the  
20 two family zone, approximately 25 percent, 13 in the business  
21 zone, approximately 6 percent and 115 in the industrial zone,  
22 just under 60 percent.

23 In the master plan of the City of South Amboy.

24 (Whereupon the court heard legal argument.)

25 Q Have you completed your answer as to the summary

1 of zoning ordinance provisions? A One more item  
2 that, in the response to interrogatories, the town, without  
3 providing a figure stated that the vacant acreage in the city  
4 is zoned for industry and further that much of this is zoned  
5 by railroads, in receivership.

6 THE COURT: You accept that. You accept that as  
7 being so?

8 THE WITNESS: If I, I did until I was, until I  
9 looked at the master plan but I--

10 (Whereupon the court heard legal argument.)

11 Q Mr. Mallach, with reference to page 4, could you  
12 provide us with the statement of the vacant land within the  
13 municipality as derived from the master plan?

14 A Yes.

15 The table on page 4 of the master plan states as 305.5  
16 acres or 30.8 percent of the City of South Amboy is vacant.

17 Q Could you read us--

18 THE COURT: Read that acreage again.

19 THE WITNESS: 305.5 acres.

20 Q Could you read us the other reference on page 17  
21 please?

22 A This is under a reference headed future housing.

23 "The three existing large vacant tracts totalling approximately  
24 140 acres--"

25 MR. VAIL: What page is this, your Honor?

1 MR. SEARING: Page 17.

2 THE WITNESS: Top.

3 MR. VAIL: Go.

4 Q OK, continue.

A "--while

5 well suited for non residential uses if developed in a dense  
6 manner with garden or medium rise apartments could result in  
7 approximately two thousand new dwelling units or if developed  
8 as single family houses on 5000 square foot lots could  
9 result in approximately 550 new dwelling units. If there is  
10 no residential development on any of the large tracts, field  
11 survey of existing land use is determined there are approxi-  
12 mately 90 to 100 sites over the city which might developed  
13 two single residential sites."

14 (Whereupon the court heard legal argument.)

15 Q Mr. Mallach, what if any of the features you  
16 have described have an adverse effect on the provision of  
17 housing for moderate and low income persons?

18 A There are certain features in the South Amboy Zoning  
19 Ordinance, the provisions governing single family residential  
20 developments are not excessive provisions. With regard to the  
21 multi family and the garden apartment provisions there are a  
22 number of features. First, the requirement that they be  
23 approved by special exception rather than by right gives rise  
24 to the hurdles and the potential obstacles that have been  
25 discussed previously, that can account to restrain this

1 development.

2 Secondly, with regard to the specific provisions under  
3 which that approval takes place, the 80 percent one bedroom  
4 and 20 percent two bedroom requirements, the garden apartment  
5 zone is restrictive of two bedroom units and prohibitive  
6 of larger units.

7 The requirement for recreation and open space is  
8 excessive. The combination of 130 square feet per 100, per  
9 1000 square feet of floor area, less 1000 square feet per  
10 dwelling unit can result particularly in a small municipality  
11 with relatively small land areas available, it would appear,  
12 can account as a restriction on development of multi family  
13 housing as well as potentially cost increasing factor. The  
14 limitation of density at 12 to 1 unit an acre and height to  
15 two stories are also provided for development of a 98, that's  
16 less density and less intense than can be reasonably provided  
17 on the land, in garden apartment development and can, and is  
18 in that sense restrictive.

19 The floor area requirement in the garden apartment  
20 section is not as a general rule restrictive. The floor  
21 area requirement of 1000 square feet for apartments and 3 and  
22 4 family apartments is restrictive. On the basis of the  
23 DCA figures, the distribution of vacant land area appears to  
24 be in some imbalance. The county planning board projection,  
25 an additional 59.5 acres demand for industrial and 149 acres

1 demand for residential development in the City of South  
2 Amboy in the projected future, period, this is approximately  
3 the reverse of the actual zoning of the vacant land according  
4 to the DCA report. The approximately twice as much land is  
5 zoned industrial as the projected demand and only about half  
6 as much land is zoned residential as is the projected  
7 demand.

8 Q Does this municipality have a public housing  
9 authority?

10 A No it does not.

11 MR. VAIL: I beg your pardon?

12 A Oh, I'm sorry, the, South Amboy does have a public  
13 housing authority.

14 Q Then I refer you to plaintiff's exhibit 106, page  
15 14.

16 Is there an entry on that for South Amboy?

17 A Yes, sir.

18 Q Could you read it off for us please?

19 A There are 75 dwelling units of public housing in one  
20 housing development in the City of South Amboy which was  
21 occupied first in 1952.

22 Q Is there any other state or federally subsidized  
23 housing within the municipality?

24 A Not to the best of my knowledge.

25 Q Could I draw your attention to page 68 of

1 plaintiff's exhibit P-53 which is the summary of the urban  
2 county. Is there an entry there for this municipality?

3 A Yes, there is.

4 Q Could you read it off for us please?

5 A Yes, under number of substandard dwelling units the  
6 figure for the City of South Amboy is 186. Under lower income  
7 housing in need of housing assistance the figure for South  
8 Amboy is 447, the total is 633.

9 MR. SEARING: Your Honor, we have no further  
10 questions.

11

12 CROSS-EXAMINATION BY MR. VAIL:

13 Q There are 447 households in the City of South  
14 Amboy, according to your figures, of lower income people needing  
15 help, isn't that correct?

16 A Needing housing assistance.

17 Q Needing housing assistance. How does that  
18 compare with New Brunswick and Perth Amboy on the average?

19 A We don't have the New Brunswick and Perth Amboy  
20 figures here. I'm certain it's a smaller number.

21 Q Much smaller? A Most probably.

22 Q How many households are there in South Amboy?  
23 Perhaps P-50A would be of some assistance to you.

24 A Where?

25 Q The yellow covered.

1           Maybe you want to look at page 17, total housing units  
2 2902.

3 A       That's correct.

4           Q       And out of that a total of 600 and what, what  
5 is the total number?

6 A       A total of 633 households or units, we're including  
7 both substandard units as well as those families living in  
8 most likely sound units but who needed housing assistance  
9 in the sense that they were paying more than what they could  
10 afford for shelter.

11           THE COURT: You don't say most probably sound  
12 units, you must be referring to two categories without  
13 overlapping, aren't you?

14           THE WITNESS: I believe there are two  
15 categories, they're nonoverlapping categories.

16           THE COURT: All right.

17           Q       So slightly more than 25 percent of the families  
18 in South Amboy have a problem with housing and in that say  
19 they can't afford it; isn't that correct?

20 A       No, about 22 percent have a, one of two problems,  
21 one group which is--

22           THE COURT: All right, you mentioned that.

23           Q       That's correct, isn't it?

24 A       About 22 percent.

25           Q       Did you have anything to do with the preparation

1 of P-104? A P-104? No, sir.

2 Q Did you total the column on South Amboy to  
3 determine the exact number of acres DCA says South Amboy had  
4 at the time this graph was prepared?

5 A That's correct.

6 Q And did it come to 832 acres?

7 A The total?

8 Q Total acreage in the city.

9 A Yes.

10 Q 832? A According to this table.

11 Q When did you know that?

12 A Pardon?

13 Q When did you know that?

14 A When I looked at the table.

15 Q Well, how about when you prepared P-105, did you  
16 know it at that time?

17 A Yes.

18 Q Why do you have 842 acres as the land in use  
19 in the city in 1967? Where did the ten acres come from?

20 A The figures, the figures on land in use came from the  
21 Middlesex Planning Board Master Plan Report.

22 THE COURT: You concede the discrepancy of  
23 10 acres, wouldn't you?

24 THE WITNESS: Yes.

25 THE COURT: Can you account for the

1 discrepancy?

2 THE WITNESS: My guess is that the--

3 MR. SEARING: Objection.

4 THE COURT: Well--

5 THE WITNESS: My best--

6 MR. VAIL: Objection, no guessing, please.

7 THE COURT: I think that would be so, if you know,  
8 tell us, if not say you don't know.

9 A I do not have firm knowledge of why the discrepancy  
10 exists.

11 (Whereupon the court heard legal argument.)

12 MR. VAIL: I'd like to have this document  
13 marked if I may.

14 (Document received and marked DSA-1 for  
15 identification.)

16 Q Doctor, I do not wish to take advantage of you  
17 but I'm going to show you a deed and represent to you that  
18 it is a deed of approximately 60 acres known as the South  
19 Amboy Land Fill from the State of New Jersey to the City  
20 of South Amboy. It has a map attached to it. I'm going to  
21 ask you to look at the map and ask you if you can relate that  
22 to the 51 acres which you say is available under private  
23 ownership for multi family development under P-104.

24 Now, before you answer, I want to inform you that I spoke  
25 to Mr. Sullivan and he informed me that, that is the

1 specific land referred to on the chart as the 51 acres and  
2 I am prepared to bring him into court to so testify.

3 THE COURT: The only question is, can you  
4 identify it?

5 THE WITNESS: No, I cannot identify it one way  
6 or the other.

7 Q Is the deed any assistance to you?

8 A Beg your pardon?

9 Q Is the deed of any assistance to you?

10 Is the map on the deed any assistance?

11 A No, I have no first hand knowledge of the location of  
12 the acreage identified on P-104.

13 Q Now with reference to the 19 acres that's in-  
14 dicated to be available on the same chart, I might add as  
15 under 10,000 square foot, would you know where that is?

16 A It's, I do not know where the specific pieces of vacant  
17 land referred to on the charts are.

18 Q Would you consider it suitable to build low or  
19 moderate income housing under the main power transmission line  
20 for the New Jersey Central Power and Light Company in South  
21 Amboy as it proceeds through South Amboy to Sayreville?

22 A It's not necessarily out of the question, I'd have to  
23 look at the specific circumstances.

24 Q Have you ever heard of that being done before?

25 A There is a, there is a very large multi family

1 family development I believe it's either near Woodbridge or  
2 Edison, near the Menlo Park Shopping Center which is  
3 immediately adjacent to or underneath a major power.

4 Q Adjacent.

5 Doctor, isn't it a fact that the only issue in that  
6 type of a case to which you refer is the distance to the lines  
7 will go outside of the right of way in the event of a break,  
8 isn't that the only issue in that type of construction?

9 A I'm not specifically familiar with that.

10 Q Do you personally know of any time that multi  
11 family or single family or any type of building of any nature  
12 unless it's related to the transmission of that electric  
13 through those high tension lines, have been built directly  
14 under the lines, the transmission lines?

15 A Within the right of way?

16 Q Within the right of way, under the transmission  
17 lines.

18 A Not specifically, no.

19 Q And you haven't made any personal inspection of  
20 this area that I'm referring to now, the 19 acres?

21 A No.

22 Q So if my representations are correct, you might  
23 be willing to concede it wouldn't be an appropriate place  
24 to build?

25 A That's possible.

1 Q Now if we add to the, what I've said about that  
2 particular 19 acres, the fact that it's slightly elevated,  
3 there's a horrible erosion problem, in fact one of the  
4 worst that we have in South Amboy borders on the Raritan  
5 River where, within a couple of hundred feet and for the  
6 most part is covered by a building used for roller skating,  
7 wouldn't you think that that in itself would also make it a  
8 little bit less useful for low income or moderate income  
9 housing?

10 A Well, if it's covered by a building used for  
11 roller skating, it wouldn't be considered vacant.

12 Q Only partially? A That part  
13 of it then wouldn't be considered vacant, of the factors  
14 you've mentioned.

15 Again they're not in and of themselves determinant of  
16 whether or not the site is suitable. They may be, they may not  
17 be.

18 We would have to look at it more closely.

19 Q They're not insurmountable?

20 A No.

21 Q All right. Now assuming that I can prove the  
22 representations that I've made today and your Honor has  
23 allowed me to resume my cross-examination of Mr. Sullivan,  
24 if I recall our conversation correctly on the record, that  
25 will leave us with P-104, completely devoid of land available

1 for residential development, according to DCA. Isn't that  
2 correct?

3 A No, land zoned presently for residential development.

4 Q Oh, then there's land that you know about,  
5 personally that can be residentially developed?

6 A No, all I'm saying is that the charters to land zoned  
7 for residential development doesn't make a judgment on whether  
8 the residential or the industrial land can be used for  
9 residential or other purposes.

10 Q Now, when you read this paragraph into the record  
11 from this so-called master plan about preexisting margin,  
12 vacant tracts, you were not aware that 60 some acres of that  
13 was owned by the city on the land fill, right, and did you  
14 happen to read the graph on the page which you quoted to me,  
15 by the way, page 4 I believe it was?

16 A Page 4?

17 Q Yes. A Yes.

18 Q Did you read the column second from the far  
19 right, percent of change, 1963-1960-1973 in use category?

20 A Yes.

21 Q And what does it indicate happened insofar as  
22 Item No. 8, light industrial use, what happened to the land  
23 that was being used during that period of time for light  
24 industry?

25 A It declined.

1 Q By 77.8 percent? A That's  
2 correct.

3 Q Would it surprise you to know that the declines  
4 were caused by natural disasters, fires by the Spiral Metal  
5 Company going out of business in South Amboy because its  
6 president had embezzled a million dollars from it which he's  
7 presently serving time in the federal prison for.

8 A I have no knowledge of this situation.

9 Q But it did decline 77.8 acres?

10 A That's correct.

11 Q So that land became available for another use?

12 A It may have.

13 Q But the buildings are still there, unfortunately,  
14 completely covering the Spiral Metal property, approximately  
15 2 acres of buildings, one story high.

16 THE COURT: Are you aware of that?

17 Q Used for the smelting, Doctor, if I may volunteer  
18 for your assistance, used for the smelting of 50 gallon drums  
19 of silver nickels into silver and copper.

20 Do you consider that type of a building suitable for the  
21 type of people that you want to house in South Amboy?

22 THE COURT: Are you able to answer that  
23 question?

24 THE WITNESS: I'm not sure when, what the  
25 question was.

1 MR. VAIL: I'll withdraw it.

2 Q Staying with the same comment, I'm referring to  
3 Item No. 5, commercial, what happened to commercial usage of  
4 lands in South Amboy during that lean year periods.

5 A Commercial uses declined by 12.2 percent.

6 Q And let's go for example to Item No. 4, directly  
7 above that--what happened to that?

8 A That declined by 13.4 percent.

9 Q In fact the only increases were in streets and  
10 roads, 6 percent, residential, 16.7 percent and vacant and  
11 2.8 percent, correct?

12 A Yes, sir.

13 Q Now Doctor, you read the whole master plan as  
14 proposed, didn't you? A Not entirely.

15 Q Well, let's go to page 3 and read the last  
16 sentence of the last paragraph together.

17 "Attrition from age, fire and financial distress has  
18 slowly eroded many of the light industrial factories found  
19 throughout the city."

20 You dispute that?

21 A No.

22 Q Doctor, if you read the master plan did you  
23 arrive at any conclusion as to the age of the people that  
24 live in this city, are there two significant groups? How  
25 about Page 11, starting with the second paragraph and

1 going into the third.

2 A Would you like me to read that paragraph?

3 Q If you can make it short. I really don't think  
4 it would be necessary to read the whole thing in.

5 A Well the substance of the two paragraphs on page 11 is  
6 that there's an increase in the population of senior citizens  
7 and an increase in the population of young adults in the  
8 20 to 29 age group category and that conclusion that the  
9 author draws is that the housing demands in South Amboy are  
10 moving away from single family units and towards rental and  
11 smaller dwelling units.

12 Q And you forgot the significant decrease in the  
13 30 to 45 year age bracket; isn't that correct?

14 A That's the corrolary.

15 Q That's a natural corrolary to what you said?

16 A That's correct.

17 Q We have a town that's populated by the very young  
18 and by the very old, isn't that a fair statement?

19 A I don't think you would get from this data.

20 Q You wouldn't go that far?

21 A No.

22 Q You agree with the statement that South Amboy  
23 is shifting away from the single family owner occupied  
24 housing type to the smaller low cost renter type unit?  
25 You agree with that?

1 A That the housing demand within the City of South Amboy  
2 is shifting in that manner?

3 Yes, sir.

4 Q Well, aren't the houses available at the low  
5 rent that are required? A Some units may be but

6 the inference to be drawn from this paragraph I believe is  
7 that more in that area would be required.

8 Q What about P-50A, aren't the statistics in there  
9 as to what's available, Doctor? Help us out about that.

10 A By the way, I'm not a doctor, Mr. Vail.

11 Q I'm terribly sorry, I meant that as a term of  
12 esteem, I thought you were, thought you were a Ph.D.  
13 I apologize.

14 THE COURT: Able to find it in P-50A?

15 Q Would that be page 26?

16 A Well, in South Amboy, city, approximately a third of  
17 the dwellings, are two or more family units and--

18 Q May I stop you at this time and have something  
19 marked for identification.

20 THE COURT: DSA-2.

21 (Document received and marked DSA-2 for  
22 identification.)

23 MR. VAIL: Your Honor, this is a chart which I  
24 had prepared relative to that specific item.

25 Q I've called this a ratio, single family to

1 multi family, which is two or more units as we now computed  
2 from page 17 entitled selected population and housing  
3 statistics.

4 What I've done, you can see is taken the first 7  
5 municipalities in the county and I've taken the two or more  
6 families and put them in one column and the one families and  
7 divided the one by the other in order to arrive at a percent  
8 of multi family per 100 families. Do you understand the--

9 A Yes, I do.

10 Q Now was it your statement that one third of  
11 South Amboy is composed of two family? Is that your state-  
12 ment?

13 A One third or slightly more than that, yes.

14 Q Then, my number is not correct that 62 homes  
15 exist on a 2 or more family basis for every 100 single  
16 families?

17 A Oh, they're just, they're two  
18 different ways of stating the same item of information.

19 Q Well, am I correct or not?

20 A Yes.

21 Q Thank you.

22 MR. VAIL: I'd like to, it's not the proper  
23 time to offer it, your Honor.

24 Q Now Doctor, you've made a few comments on our  
25 zoning ordinance and you like the single family aspect, the  
10,000 square foot, you like?

1 THE COURT: He doesn't challenge those,  
2 Mr. Vail.

3 MR. VAIL: Yes, your Honor.

4 Q With reference to multi family you have a  
5 complaint about the necessity for a special exception  
6 requirement; is that correct?

7 A That's correct.

8 Q How would you handle the, how would you, how is  
9 it controlled from a municipal point of view, the building  
10 of this type of building? Who would supervise this project?

11 A Be controlled in the same manner as the building of  
12 single family buildings is controlled.

13 Q By a, the issuance of a building permit?

14 A By the issuance of a building permit to develop this  
15 meeting the conditions of the ordinances of the  
16 municipality.

17 Q Fine. What would you consider a model ordinance  
18 insofar as this particular use is concerned?

19 A I don't have--

20 Q Multi family, Doctor.

21 A I don't have reference to a specific model ordinance  
22 in mind.

23 Q What's your preference?

24 A Are you asking me to cite a model ordinance?

25 THE COURT: No, no.

1 Q Let me put it to you this way, suppose it,  
2 that the City of South Amboy will probably accept your  
3 recommendations and amend their ordinance, wouldn't you be  
4 willing to assist us?

5 THE COURT: That doesn't seem to be a proper  
6 question, Mr. Vail.

7 MR. VAIL: I'll withdraw it, your Honor and  
8 try--

9 THE COURT: You can have, you can approach him  
10 separately of course but you can have a transcript of  
11 the points that he raised, if there's any question  
12 about it.

13 MR. VAIL: I have the points that he raised  
14 your Honor and I am serious when I say that the  
15 city is willing to cooperate with the plaintiffs in  
16 that regard. If this is something that we can agree  
17 upon we are willing to do it but we're not willing--

18 THE COURT: That's with respect to the multi  
19 family and garden apartment factors that he referred  
20 to as some way interfering with or preventing,  
21 inhibiting low and moderate income housing. Is that  
22 what you mean?

23 MR. VAIL: Yes.

24 Q Now you're, you don't like the 80 percent one  
25 bedroom and you don't like the 20 percent two bedroom?

1 A I find them as having an adverse effect on certain types  
2 of housing opportunity, yes.

3 Q What percentages would not have an adverse  
4 effect in South Amboy?

5 A I believe I've stated that I, that in terms of my  
6 preference in this regard that a requirement as to the  
7 numbers that are permitted is in itself inappropriate in an  
8 ordinance.

9 Q Well then how can anyone possibly supervise  
10 the construction of a building, if there were no limitations  
11 whatsoever if it were 5 bedrooms, there has to be some kind  
12 of a standard, doesn't there?

13 A Standards, yes, limitations on the number of bedrooms,  
14 no.

15 Q Give me a standard on bedrooms.

16 A No, not standards for the number of bedrooms for any  
17 given type of unit, you should have a standard that would  
18 govern its construction so that if somebody wanted--

19 THE COURT: You've answered it.

20 Q Give me the ideal multi family ona one acre tract  
21 of land.

22 THE COURT: Apparently Mr. Vail, he's saying and  
23 I believe he has said this on other cross-examination,  
24 that he does not favor any reference to number of  
25 bedrooms in a zoning ordinance.

1 THE WITNESS: That's correct.

2 MR. VAIL: I'm awfully dense, your Honor  
3 because I'm trying to write a zoning ordinance that  
4 will comply with what your Honor may determine the law to be  
5 and I'm trying to get some assistance in order to do  
6 it, possibly in advance.

7 THE COURT: I don't see how you can do it.  
8 I think there are two questions, one would be, should  
9 there be any reference to bedroom restrictions whatsoever,  
10 Mr. Mallach as I understand would favor no reference  
11 to bedroom restrictions. In other words, it would be  
12 up to the builder, does he have one, two, three,  
13 four, five bedrooms.

14 MR. VAIL: I understand.

15 THE COURT: Now there is, might be, there is, might  
16 be something about density that would affect the  
17 decisions as to the number of bedrooms, the other  
18 question might be what he would regard as, as  
19 reasonable provision as to bedrooms, without running  
20 counter to the objection that it was unduly exclusionary,  
21 if you want to ask him that, I suppose you can.

22 Q Doctor, what you are saying then is you will allow  
23 the bedrooms to be determined by the market place?

24 A That's correct.

25 Q How are these people of low and moderate income

1 to afford the number of bedrooms that the market place may  
2 provide for them? A Well, in the

3 case of the number of different types of situations, in the

4 case of the low income people I believe I did testify

5 earlier that, to the degree their housing needs are going to

6 be fully met that there will have to be housing subsidies

7 under one or the other programs. Certainly eliminating the

8 bedroom restrictions will not in itself meet all the, meet

9 housing needs but to the degree that there are people, for

10 example, who are, who need say moderately priced, reasonably

11 priced say 3 bedroom rental apartments and that this is an

12 identifiable section of the housing demand, a builder may

13 build these and rent them at moderate price, which in the,

14 if the provision forbade 3 bedrooms and then he wouldn't be

15 able to build these in that sense, it would benefit people,

16 I would not argue that it would benefit in and of itself.

17 Q All right. So on the multi family section of the

18 South Amboy ordinance you said that, paraphrase you that

19 you would be happy with it if we were to remove the bedroom

20 restrictions entirely, correct, and eliminate the need for a

21 special exception use?

22 A Those are two things.

23 Q Please tell me if I'm wrong.

24 A Those are two of the things I stated.

25 Q State something else if there's something else

1 you wish? A Well, I'm, I'm not entirely  
2 clear.

3 THE COURT: I've heard his testimony,  
4 Mr. Vail, I heard him refer to some other things, he  
5 thought the owner space requirement was excessive,  
6 recreational space requirement.

7 MR. VAIL: Fine.

8 THE COURT: He was opposed to a 2 story limit,  
9 wasn't that so?

10 THE WITNESS: Yes, sir.

11 THE COURT: Maybe some other points.

12 Q So, if the City of South Amboy removes the two  
13 story limit, what is your preference on open space per unit?

14 A Well--

15 THE COURT: You're getting into, Mr. Vail, it's  
16 almost as though you're asking him to recommend the  
17 wording, as I suggested before, there are two things,  
18 one is what he regards as being the limit of what  
19 would be legal and another thing then might be what he  
20 personally favored which might be considerably beyond  
21 that. You see what I mean?

22 MR. VAIL: What I see is that, so far everything  
23 that he feels is beyond legal so we're past that  
24 point.

25 THE COURT: But you're asking him what he

1 prefers.

2 MR. VAIL: I know your Honor but I'm trying to  
3 take the same approach that Mr. Lerner did and get  
4 out of this case and if I can get the governing body  
5 to go along with whatever this gentleman feels is  
6 reasonable and if they feel it's reasonable I am  
7 perfectly willing--

8 THE COURT: I suggest then that--do you have  
9 further cross-examination, not upon the features of  
10 multi family and garden apartments but on anything else?

11 MR. VAIL: I do.

12 THE COURT: I suggest that if you have further  
13 cross-examination on anything else you conduct that,  
14 we'll have a recess, I'd be willing to confer with you  
15 and Mr. Sloane and Mr. Searing with respect to the multi  
16 family and garden apartment factors.

17 MR. VAIL: At this time--

18 THE COURT: At the recess.

19 MR. VAIL: It's 3 o'clock, your Honor, and I  
20 think my cross-examination on other matters may carry  
21 over for some time.

22 Would you prefer--

23 THE COURT: What would be the other matters you  
24 would cross-examine?

25 MR. VAIL: Most of it's P-58, population

1 density, what effect the fair share will have on the  
2 city income, medium income of residents.

3 THE COURT: All right, we'll recess now and  
4 will plaintiff's attorneys, Mr. Vail, come to side  
5 bar and Mr. Mallach, you may stay there.

6 Court is in recess.

7 (Whereupon court had a brief recess, following  
8 which no testimony from Mr. Mallach was heard.)  
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