

ML - Morris County Fair Housing Council
v. Boonton Township

19-Nov-1979

Deposition of Alan Gershen

pg. 86

M 2000415 G

SUPERIOR COURT OF MEW JERSEY
LAW DIVISION - MORRIS COUNTY
DOCKET NUMBER 6001 - 78 PW

MORRIS COUNTY FAIR HOUSING)

COUNCIL* et al.#)

Plaintiffs*)

v.)

BOONTON TOWNSHIP, et al.#)

-----Defendants*----->

DEPOSITION OF

ALAN GERSHEK

STENOGRAPHIC TRANSCRIPT
taken in the above-captioned matter before DARLENE M*
PAKLA, Notary Public and Certified Shorthand Reporter
of the State of New Jersey, at 126 West State Street,
Trenton* New Jersey# on Monday* November 19, 1979#
beginning at 11:00 a.m.

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

STANLEY C. VAN NESS, PUBLIC ADVOCATE
By: CARL S. BISGAIER
DEPUTY PUBLIC ADVOCATE
For the Plaintiffs.

MESSRS. SACHAR, BERNSTEIN, ROTHBERG,
SIKORA & MONGELLO,
BY: DANIEL S. BERNSTEIN, ESQUIRE
For the Defendants.

Reported by: Darlene M. Pakla, C. S. R.

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<u>Exhibit No.</u>	<u>Description</u>	<u>Iden.</u>	<u>Evid.</u>
	Memo, Dated October 3, 1979	3	
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'W-

1 ALAN GERSHEN, Sworn.

2 DIRECT EXAMINATION BY MR. BISGAIER:

3 Q You've been engaged by the defendant's in this
4 case to testify on their behalf at the Maxi Trial, is that
5 correct?

6 A I have.

7 Q Could you briefly but comprehensively state
8 that scope of your testimony that is intended to be?

9 A To analyze the cost of constructing housing in various
10 configurations and analyze the impact of land costs on those
11 costs and indicate whether or not they could be built and
12 rented without, or with subsidy. Secondly/ to analyze: 'f&' *;
13 component cost of housing and try to draw some conclusions
14 as to the relative weights the various components have to
15 the cost to the consumer on a monthly basis of housing, and
16 also to analyze that long-term historically what has happened
17 to the various component costs relative to each other, and
18 the impact they have to the consumer on a monthly basis,
19 and finally to see if there are any impacts and if there
20 are to what extent they are on what we call some of these
21 entities' in housing but not limited to what we call non-
22 income producing space, that is space devoted to community
23 services and what its long-term impact would be on the
24 cost of housing to the consumer.

25 Q Now, pursuant to your being required to testify,

1 have you been asked to, and if so have you produced reports
2 which essentially convey the scope of your testimony?

3 A Yes, sir.

4 Q Can you identify them? Those reports that you
5 have done and intend to rely upon.

6 A There are three. If you want me to read it, G-1?

7 Q Right.

8 A G-1 is a report marked in Evidence dated October 3,
9 1979, is done by Alan E. Gershen Associates entitled Public
10 Advocate et al, and the subject is Component Cost of Housing.
11 Second report is done by Geryan & Copollo Associates (Pkon.)
12 marked G-T2 dated March 29, signifying feasibility ^{anal^gls} ~~oil~~
13 Morris County C.B.D. North Triangle Model attached to that
14 is an N.J.H.S.A. 10 which is a form. The third report is
15 marked G-3, dated October 25, 1974. It is a part of a record
16 which was prepared by our firm when we acted as a con-
17 sultant to the Department of Architecture at Princeton
18 University which analyzes and talks to the subject of
19 building costs and other costs relative to non-income pro-
20 **m** ducing space and balconies relative to their impact on
21 ^{daily} ~~daily~~ ^{ntly} ~~ntly~~
22 ^ costs of housing.

23 In addition, we are in the processes of making analy-
24 ses, and I don't have a formal report, but I have work
25 papers which have not been marked yet as to what has hap-
pened over a 10-year period of time in an actual project

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1 which was built in the late 60's as to the interest and
2 cost of oil, cost of electric, cost of insurance; and this
3 analysis will be done for this project and probably on or
4 two others, trying to ascertain what the impacts of these
5 various elements are relative to each other and relative to
6 other factors over the decade or actual housing in place.

7 Q You anticipate at this point you are going to
8 be doing an additional pointing -

9 A Other attorneys asked as to formalize these figures and
10 the analysis and written form, which I anticipate will be done
11 shortly.

12 Q Why don't we identify or mark the work sheets
13 that you are referring to?

14 A Okay. The work sheets I have here will be labeled
15 Trenton Center East and they comprise two sheets. One is
16 the annual cost and one a monthly on a per unit basis for
17 interest, oil, electric, and insurance.

18 (Whereby a document with the heading of
19 Trenton Center East was marked G-4a and G-4b in
m Evidence.)

21 Q Prior to this deposition, you received copies
22 of a subpoena duces tecum, did you not?

23 A Subpoena? Yes, I received a copy.

24 MR. BERNSTEIN: That means to produce.

25 Q And you have attempted to comply to the best of

1 your ability with the request in that subpoena; isn't that
2 correct?

3 A Yes, sir.

4 Q Is it further correct that the documents which
5 you have produced today in your opinion comply with the
6 request in the subpoena?

7 A They are summaries and analysis of other information,
8 some of which existed, specific housing projects, and are
9 not here in the room with us, yes.

10 MR. BERNSTEIN: Mr. Gershen, you are not
11 contending to produce other documents other
12 than what you give Mr. Bisgaier during the next
13 month or so, is that correct?

14 THE WITNESS: Yes, sir.

15 MR. BISGAIER: For purposes of clarifica-
16 tion, I have only prior to this deposition known
17 that Al would be testifying on the documents
18 that is being marked. So, we are going to have
19 to set up a subsequent time to cover the other
20 reports and I would assume that the best thing
21 to do is to wait until he has completed his
22 fourth report.

23 MR. BERNSTEIN: What you may want to do,
24 Mr. Bisgaier is to finish G-1. You may want to
25 start with G-2 because I think Mr. Gershen will

1 make pretty clear what we intend to do, what
2 G-2 is and then we could set up a new date.

3 MR. BISGAIER: Let's see where we go.

4 Q Have you ever been askeel or have you reviewed
5 any of the reports submitted by Alan Malech in this case?

6 A I have seen them and our staffers reviewed them,
7 because I have not had any report on them.

8 Q Has your review of Mr. Malech's work ever resul-
9 ted in any written notes regarding his work or -

10 A No.

11 Q - or letters or written documentation at **all?**

12 A No, sir.

13 Q Do you have an opinion regarding the standards
14 set forth in that report?

15 A Malech's report?

16 Q The report regarding lease cost housing standards!.

17 A His report?

18 Q Yes.

19 A I have not refreshed myself on it in the last few
20 **weeks.** - I generally don't agree with Mr. Malech's analysis
21 **in other** cases, so I could characterize my position as not
22 being in agreement, fundamentally, with his in terms of
23 lost cost.

24 Q Do you recall what you felt about the speci-
25 fics of the standards?

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i
j
i

1 A I'm going to have to look up this document, Mr. Bisgaier.
2 I don't want to recall on them. I just want to look at j
3 them one more time. I didn't prepare myself this morning.

4 Q Do you anticipate any part of your testimony. j
5 would involve a critique of any of the work that has been
6 performed by Mr. Malech in this case?

7 MR. BERNSTEIN: Mr. Bisgaier, I will be
8 asking him to do some review work at the second
9 or third set of depositions. He will be prepared
10 with something in writing so you will be able j
11 to hopefully, review it ahead of time and ask him
12 questions. . . . 'K'

13 MR. BISGAIER: Well, I definitely would
14 like to review it ahead of time.

15 MR. BERNSTEIN: It is not an unreasonable
16 request.

17 MR. BISGAIER. Would it be granted?

18 MR. BERNSTEIN: Yes.

19 Q Have you ever, yourself, done an analysis of
20 what you would believe to be minimal standards with regard
21 to the production of housing which would insure the protec-
22 tion of the Public Health and Safety?
23

24 A No, I use and adhere to the HFA Minimal Standards. j

25 Q Is it your opinion that those standards do in fact
protect public health and safety?

1 A Yes.

2 Q With regard to residential developments?

3 A Yes, that doesn't mean I have some disagreement from
4 time to time with specific aspects of it, but generally
5 speaking, the answer is yes.

6 Q Now, are you also familiar with any other nat=
7 ional standards which also purport to provide minimal stan=
8 dards for the protection of the public health and safety
9 with regard to the residential construction?

10 A I'm generally familiar with the FHA Standards and the
11 American Health, AHP Standards.

12 Q- Do you agree or disagree that those standards
13 if utilized or adhered to in a residential development
14 would be adequate to protect public health and safety and
15 general welfare?

16 MR. BERNSTEIN: Wait, I would object to it
17 on the basis, I assume there is more than one
18 standard. That you asked for the overall planned,
19 approved, or condemnation, really would result
20 in a meaningless answer. However, if you could
21 answer the question despite my objection, answer
22 it.

23 A Both of those are a national standards and although
24 they might be applicable on a national basis, I myself use
25 New Jersey's HFA Standards since they are specifically for

1 this state and to that extent are different than a national
2 average which must take into account sun belt areas as the
3 northlji@|t areas, and the western areas, and the whole series
4 of other areas which may or may not be similar or identical
5 or be meaningful for New Jerseyians.

6 So, I just use the HFA as the standard that we adhere
7 to as being reasonable for the protection of the New Jersey
8 citizens.

9 Q Do you have any specific knowledge of any speci-
10 fic standards in the HUD or FHA minimal property standards
11 or the American Public Health Standards which you have
12 found to be inadequate to protect New Jersey citizens at a
13 point of view of health, safety and the general welfare?

14 A If we look at a project that is now being built at
15 the corner of Broad and Market in the city of Trenton, as a
16 202 that's under section 202 of the National Housing Act
17 and therefore, - or HUD standards as minimum room sizes and
18 compare those room sizes to HFA completed project in Lockner
19 and Hamilton, the standard of the 202 provide for smaller
20 rooms and lesser entities, as I called them. For instance,
21 in the bathrooms. To that extent they are different. Al-
22 though New Jersey might be larger and have a higher entity
23 level, I use those as a standard for New Jersey without
24 impuning the HUD standards for the 202 which will last
25 longer and cost less from a public purpose point of view.

1 Only fifty years will tell and there is reason why the New
2 Jersey standard is what the New Jersey standard is. So,
3 **to that** extent, they're in fact different. Both purport to
4 **protect** the public welfare. Variations are adopted at gov-
5 ernmental standards by governmental units using health, welfare,
6 and safety as its standard and they prevail on the state
7 basis, rather than the national basis. That's an example
8 of two differences which may or may not be fatal. I don't
9 know.

10 Q So, you do not have an opinion as to whether
11 the HUD standards or any specific HUD standards are, **or** the
12 HPHA or any specific APH standards if adhered to would **not**
13 protect the public health, safety and general welfare?

14 A That's an absolute statement. It would not protect
15 as well. Will not be as costly, would be less costly and
16 so on are gradations of what we are trying to achieve in
17 housing. My position is that the New Jersey HFA standards
18 are promulgated, adopted, used, and evaluated by governmental
19 agencies and it is that standard which is specific for the
20 ~~State~~ of New Jersey and by use -- there are no studies that
21 **I know of** and I have made no studies which would tend to
22 indicate that any other standard is better or worse except-
23 ing that other standards -- those standards are also known
24 to the office at HFA and are not used and are specifically
25 not used and have been replaced by their own standards and

1 which standards were accepted by the regional and central
2 offices of HUD as being the standards applicable specifica-
3 lly to New Jersey in projects which do have federal subsi-
4 diaries.

5 So, I have got to make the assumption that a - and the
6 observation that those are reasonable standards.

7 Q Are you making a contrary assumption that a
8 project built which adheres to the FHA or the APHA standards
9 would not protect, not minimally protect health and safety
10 and general welfare?

11 A You'd have to define for me what you mean **by protect**
12 general health or safety and welfare. I have an **assumption**
13 which may or may not be yours. Number two, I have got to
14 make the assumption that if the other standards which are
15 lower in terms of room sizes and entity levels or constru-
16 ction standards or acceptable to the officials at HFA and
17 they would have been adopted, and if they were adopted,
18 they were adopted, they were not adopted for specific
19 reasons.

20 Q Do you know what those reasons are?

21 A Yes, because the officials at HFA in conversations
22 at least with me felt that the HUD standards were in many
23 cases downspec. In other words, too low in value, constru-
24 ction wise or room size wise to be proper - to be adopted
25 by them in view of the fact that FHAmortgages weren't from

Gershen - direct

1 thirty to fifty years. Subsequent studies by this office
 2 indicates that the minimal difference in cost - initial
 3 cost of construction is diminutive in time as to the effec-
 4 tive cost to the consumer on a monthly basis; and therefore,
 5 if we can get a same cost or lower cost by increasing ini-
 6 tial construction cost it might do well to increase the
 7 initial construction cost and does constitute longer term
 8 savings in protection of property.

9 Q Other than your assumption that the state HFA
 10 has a reason for their standards, do you know of any reason
 11 to believe that the HUD standards and the APHA standards
 12 would not adequately protect minimal concerns for heal^AB •-
 13 and safety -and general welfare to New Jersey citizens?

14 A I indicated to you there were national standards as
 15 how to run the gambit of being accepted on a national basis
 16 and there are in fact differences between requirements in
 17 the sun belt in the south, and the requirements in the north--
 18 east, and I indicated that that is reason enough to have
 19 state-wide standards which are specifically located, pro-
 20 iBQJgatecf fey a state agency for a state governmental agency
 21 withiiri the state.

22 Q What specific - can you be specific as to any
 23 HUD standard or APHA standard which you personally feel -

24 A Room sizes.

25 Q I'm not finished, - which you personally feel arfe

1 inadequate to minimally protect public health and safety and
2 general welfare of New Jersey citizens.

3 A I've tried to keep away from the word "inadequate"¹ but
4 I think that we can fall on the absolute and that is an
5 absolute term, inadequate. I indicated that the standard,
6 for instance room sizes, that a somewhat larger room size
7 more adequately outlines which is ASFHA Standard. FHA being
8 the national standard might have a very small initial con-
9 struction cost increase, but as our report indicates in G-1
10 as time goes on that initial construction cost becomes dimi-
11 nutive in terms of the cost to a consumer at the mofchlfr
12 basis.

13 Q Go ahead. I'm sorry,

14 A Additionally, in some of the non-income producing space,
15 the community pays the community entities from a social point
16 of view. It might be advantageous to have more non-income
17 producing space which means it is more expensive to construct
18 on a per unit basis, but might be less expensive in terms
19 of time. In this particular area I think the advocate's office
20 and dir office would be on the same wavelength

21 want to say the same general things, upspecing community space
22 and entity levels, because from a social point of view, it
23 is desirable and not very costly as is the other, and spe-
24 cifically you say it is the other non-protection of the
25 public healths, welfare and safety? I say it is a relative

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1 term, absolutely. It is to protect, but relativey does
2 this do a better job over a long period of time. My answer
3 **would** be yes. The HFA standard is a better standard and
4 does muster of the test of the protection of the health,
5 safety and welfare. It is not an absolute. It is/very ^a
6 relative kind of thing and I must assume that after close
7 to one billion dollars in mortgages that AFHA has written
8 and is building, that they have built over a ten or twelve
9 years period of time that there are standards for New Jersey
10 that are reasonable, proper, and protect the health, safety and
11 welfare to a better degree and more realistically than **the**
12 national standard does.

13 Q Are you familiar with or have you yourself done
14 work in New Jersey using the HUD standards exclusive of the
15 state standards?

16 A Yes, sir, on a number of cases.

17 Q And can you give me some idea as to the totality
18 of your work using the HUD programs, and I don't mean that --
19 I mean that in terms of the numbers of units, the amount of
20 ~~moiney~~ **spent**.

21 A ffeVwere responsible for three, 202 projects built under
22 the old CFA, Community Facility Administration and not to
23 confuse that the Community Facilities Administration when
24 this was an operation under the old housing and home finance
25 agency back in Mr. Eisenhower's day had standards which were

1 higher than FHA standards and more akin to HFA standards.
2 That agency was then absorbed into HUD and the standards
3 **lowered.** So, Trenton Center East which was built under CHA,
4 Wildwood Lions Club in Wildwood owns a building - an elderly
5 project under CHA, and East Orange Senior Citizens housing
6 bought a 202 under the CHA and that was on a more higher
7 standard closing. Those projects amounted to 220 units at
8 Trenton Center East. Now, I am just recalling - and I may
9 not be precise, 110 units in Wildwood, and probably close
10 to 200 units in East Orange. So, there had been some 500
11 units of housing built on that program.

12 Q What is your opinion?

13 A Just let me finish.

14 Q What is your opinion as to the program of stan-
15 dards in that?

16 A Those programs which are standard - HFA standards or
17 were adequate in each of those projects are still functioning.
18 Well, to the best of my knowledge, although I haven't
19 been in two of them in a couple of years.

20 Q Do you believe that standards in that program
21 **were adequate** to protect New Jersey health, safety and wel-
22 fare?

23 MR. BERNSTEIN: I'm going to object on the
24 basis that we asked for that program standard.
25 We are asking for a whole multitude of standards.

1 some of which Mr. Gershen might approve of and
 2 some of which he might not approve of. However,
 3 I «* ' - ' *• despite that fact that I am going to object, I
 4 **!!!* would ask the witness to answer the question if
 5 he can answer.

6 A I tried to indicate earlier that "it" is a relative term.
 7 IS it protective of the public health, safety, and welfare?
 8 If the answer is yes. The question is "would it be better
 9 protective on things that you could have done which would
 10 have saved money to the consumer and would have secured the
 11 property in a longer period of time, and at what cost?¹¹
 12 That is another series of questions. Is it adequate? - 3fes.

13 Q Now, have you been involved in construction of
 14 any projects which were developed pursuant to the H^TJD mini-
 15 mal property standards?

16 A In 1950 I was a home builder in Bergen County and J
 17 Morris County, and built some 50 or 60 houses - single family-
 18 houses which were an FHA insured built on the FHA
 19 standards.

20 Q And what was your experience with those projects
 21 as to whether the standards you used were adequate to protect
 22 public health, safety, and general welfare?

23 A Again, I indicate --

24 MR. BERNSTEIN: That is a continued objec-
 25 tion to the broad question.

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1 A I indicated -- do I answer?

2 MR. BERNSTEIN: No, I just raised the ob-
3 jection so that if the depositions are read at
4 the time of trial, I. can argue about the propri-
5 ety of the question. But, if I were to tell you
6 not to answer, then Mr. Bisgaier would have to
7 go to the Judge and seek an order and force you
8 to answer. It is a whole magilla.

9 Q I will rephrase that question just so we can
10 recall what it is. The building - the construction work
11 that you did in Bergen or Morris Counties in the 50's **Wfalch**
12 you have testified was pursuant to the HFA?- **Wfalch**

13 A HFA -- I'm sorry.

14 Q HFA standards. Was your experience with those
15 projects such that those standards were adequate in your
16 opinion to protect public health, safety, and general wel-
17 fare?

18 A Put in those terms with the safe caveat that I gave
19 earlier in testimony, yes. They are adequate. There is
20 **another** group - can I finish what I did? I want to be
21 comprehensive so I don't forget or do you want me to stop at
22 this point?

23 Q Why don't you stop at that point. How many
24 units did you build?

25 A Some 60 in two sites.

1 Q And -

2 A Fifty-five to sixty, something like that.

3 Q Where were the sites?

4 A Oakland, New Jersey and Randolph Township. Oakland
5 and Bergen County and Randolph.

6 Q Can you be more specific as to the actual loca-
7 tions?

8 A Yes. Grove Street in Oakland, a series of eight
9 houses and some 59 houses on the Dover-Chester Road in Ran-
10 dolph Township.

11 Q Were these single family homes?

12 A . Yes..

13 Q Do you recall the lot sizes?

14 A Yes, a third acre.

15 Q One-third of an acre? And do you recall what the
16 building size was?

17 A Somehow 1,100 square feet sticks in my head. Now, I
18 can't be held to that. That was in another part of my life.

19 Q Now, you have indicated that there are other
20 projects that you built?

21 A We- did a project with a carpenter's counsel for a
22 Housing Authority in Freehold Borough. Midrise elderly and
23 attached townhouses, I guess, which then were sold to the
24 Housing Authority in the Borough of Freehold. We did that
25 some eight years ago.

1 Q And that was not built pursuant to the HFA?

2 A No, that was built according to HUD. I will use HUD
3 **in** **stead of** me going into AHFA. It will be easier for the
4 **Court**, since the letters are all the same, and the transpo-
5 sition of letters sometimes lead to the confusion. That
6 was built in accordance with HUD,

7 Q Do you have any specific experience with that
8 project or did you?

9 A Yes.

10 Q Or have you learned anything since the construc-
11 tion of that project to indicate to you that the **construction**
12 standards were such as not to protect -- adequately **protect--**
13 **Public health, safety, and general welfare?**

14 A In that particular case, there was. In the row houses,
15 **i**t did not require block walls between the units. Our archi-
16 tect John Loyd from Philadelphia insisted that unless it
17 was built with fireproofing between the units, he would
18 with draw as the architect and in effect we would follow him
19 out as in that case the loan consultants. We prevailed and
20 **insisted**, that HUD finally accepted these fireproof walls.
21 of
22 Somewhat incidentally to the consternation/the client, the
23 carpenter development counsel, within a year of the project be:ng
24 completed, there was a fire in one of the units, and we were ;
25 told that the only reason it didn't spread, was because we
Insisted on the block walls between the units.

1 I think that's a good example of how upspeccing or speccing
2 to be better specifications was for the health, safety, and
3 welfare of the people. I'm not sure what the standard would j
4 be. I just haven't had occasion to look at it, but in working
5 with a fairly decent client and a very honest and decent
6 architect as ours, I think that by upspeccing that particular
7 project much to our credit we were able to prevent a disaster
8 and we've used it in our office on many occasions to indicate the
9 fact that we are the objectives and searching in terms of -'••^
10 standards no matter who promulgates them. So, that is a
11 good example.

12 Q Did you upspecc that job in any other way?

13 A Not that I remember. As I say, this was the one that
14 glaringly stands out in our memory. I could call the
15 archi-tect if you care for me to, and the next time we sit d(own
16 we will prepare ourselves and prepare to tell you if we
17 upspecced in any other way, and perhaps I will.

18 Q Have there been any other projects besides that
19 one?

20 A No, that's all I think that we worked with HUD stan-
21 dards that I can recall.

22 Q So, all of the otherwork that you've done has
23 been utilizing HFA standards?

24 A Yes, sir.

25 Q Have you ever rendered an opinion to anyone or

1 made a request to anyone that specific HFA standards be down-
2 spec for any job on which you were involved?

3 A T can only think of trying to ups spec. The upspeccing
4 **Would*** have to do with central air conditioning versus throughfi
5 the-wall conditioners where the HFA Was forced to accept a
6 federal standard. You see, there is a continuing relation-
7 ship as between the New Jersey HFA and the Federal Depart-
8 ment of HUD, and they completely review the Federal Depart-
9 ment - it completely reviews, as I understand it, the HFA
10 standards and this particular case in the last series of
11 jobs we closed with HFA, we were not permitted to ~~use cen-~~
12 ~~tral air conditioning for a whole series of reasons, Basic-~~
13 ~~ally, it was a HUD requirement. I thought then and I think~~
14 ~~now that this is a mistake in terms of the 40 years that we~~
15 ~~have to look into in terms of maintaining buildings, and the~~
16 ~~cost of maintaining those buildings will be higher on a per~~
17 ~~unit, per month basis then if we had a central air condition.~~
18 At the same time, HFA took it upon themselves in that same
19 configuration to insist on a heat recovery system on the
20 ~~roqjeu~~ of the building to recirculate some of the heat that
21 has ~~djk^si^pated~~ normally into the air. That was an ups spec
22 ~~o~~n ^hat occasion. I wanted to downspec that and not¹ put
23 that in until it was more proven. I guess that is an
24 example of downspec.

25 ~~o~~ Do you have any other recollection of a down-

1 spec of HFA standards that you have requested or it's been
2 your opinion that it should be granted?

3 A No, t did participate with them in a series of discu-
4 ssions on barrier-free housing and there may have been
5 discussions I engaged in, in meetings in terms of what the
6 barrier-free disign should be. And again, I don't recall any
7 specific meetings or memos and the discussions between
8 barrier-free people, the State Division of Construction and
9 HFA. There might have been instances where I would have
10 felt one way and the committee people might have thought
11 another.

12 Another area where we would have discussion's a*# their
13 I
14 various sophisticated design considerations in elderly projecjts
15 A large size facility/ individual pull chains for use - I
16 where tenants can pull a chain at the head of the bed and a
17 light goes on at the front officier. I believe part of that is
18 way off - since the office isn't manned 24 hours a day, therje-
19 fore, if a light goes on in the office, it is meaningless.]
20 So, some of that kind of alarm system might be, I think, a
21 redundant system. I'm not sure whether that's a HFA requirement
22 imposed by themselves or whether that is a HUD requirement
23 imposed by HFA. You find them in HUD buildings as well, but
24 regardless whether it be HUD or HFA, I think that would need som
25 downspecing.

25 Q Specifically as to room size, is it your opinion

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1 that if a municipality adopted HUD room sizes a minimum that
2 they would be acting unreasonably?

3 A Let me talk on that a minute because again I can't
4 answer the question, because room sizes by themselves are
5 meaningless unless they are in the configuration of an apartment
6 size. The spec normally adopted by a State of Federal Agency,
7 normally indicates minimal room sizes, HFA also gives you minimum
8 the juxtaposition to room to each other and if you have room
9 sizes which shows minimum and you can't add rooms -- you have to
10 look at it as a minimal apartment size.

11 Q Let me rephrase the question to say whether you
12 think the municipality adopting HUD room sizes and their
13 configurations HUD recommends for apartment sizes, and apart-
14 ment layouts as the minimum for municipalities, do you think
15 they would be acting unreasonably?

16 A For subsidized housing?

17 Q Yes.

18 A Yes, I think that it would be more reasonable to adopt
19 the state minimum apartment sizes.

20 Q My question is do you think it would be unreason-
21 ably as opposed to do you think it would be better to adopt
22 the state standard? Do you think it would be unreasonable
23 for if they adopted the HUD standards?

24 A Absolutely, the other standards just are the minimal
25 size of the apartment? Because that the whole series of

1 other standards that go with the apartment. The entity
2 level, the non-income producing space, the quality to that, and
3 **the alarm** system, the emergency generator. In other words,
4 given room sizes standing alone without any other consider-
5 ation for other standards.. I just enumerated and others
6 which I hadn't, then it would be unreasonable. If you were
7 to show me the total package of standards, then I might be
8 able to react to it, because the danger is that if you adjust
9 to build to a minimum apartment sizes, you might be under
10 building and creating in essence a future slum without some
11 of these other entities and checkpoints.

12 Q Well, if they adopted the totality of the **HFA**
13 minimum property standards and the minimum standards **for**
14 construction within the municipality, do you think they
15 would be acting unreasonably?

16 MR. BERNSTEIN: I would object here, when we
17 are talking about a town, of course, it is a
18 hypothetical situation. What might be reasonable
19 in New York City or in Philadelphia or Camden,
20 it might be unreasonable in Randolph or Chester or
21 Parsippany. With that admonition, I will let
22 the witness answer the question .

23 A Given all of the standards, it would not be unreasonably.

24 Q Do you make a distinction when you refer to rea-
25 sonableness of the HFA standards among or between different

1 type of municipalities as to the reasonableness of those
2 standards within New Jersey?

3 A No, I do not.

4 Q You do not?

5 A Because it makes no difference whether a person lives
6 in Randolph or Newark in terms of his health, safety and
7 welfare. He can burn up in Randolph just as easily as you can
8 in Newark. He could quite enjoy a reasonably social
9 activity in Randolph or Newark and really it makes no diff-
10 erence where you are in terms of the standard.

11 Q In terms of the non - I believe you called it
12 non-income producing entity?

13 A Yes, sir.

14 Q Do you believe that there is more or less or
15 equal need for providing such facilities within a specific
16 project in a municipality such as in Newark versus a. munici-
17 pality such as Randolph or a suburban municipality where
18 there may be open space for parks or the like at a totally
19 different scale that might be found in Newark?

20 A Open space is not a non-income producing entity. Don't
21 **let me lead** you astray. A nonproducing entity can be in
22 the structure or on the ground. So, that a project costs
23 can be with either.

24 Q Do you draw a distinction basically - what I'm
25 asking is do you draw distinction over any entities that

1 would be different in a project that might be built in an
2 urban center such as Newark or a suburban municipality?
3 A Obviously, the design will be different and the shape
4 of the Entity might be different. Its function would be the
5 same. So, that if you provide laundry facilities, you
6 provide laundry facilities. If you provide room for day-
7 care centers, it is a day-care center. Whether it relates to
8 other community aspects for people outside of the specific
9 projects or not, is another consideration. Whether it should
10 be larger or smaller is another consideration. In terms of
11 the density and utilization. But the provision **for** place to
12 shoot pool for old folks, the provision for a **place, -to dtake**
13 meals in a building, the provision for health outreach
14 programs to provide health care for elderly and youngsters;
15 all of those, the provision for the installation of a game
16 room, the provision for the hanging of art work, the provi-
17 sion for a place for bingo, the provision for musicals,
18 and so on and so forth. The same is whether you are talking
19 about Randolph or you are talking about Newark, as community
20 **aspects are** different. In other words, you might have a
21 **concern of** a kind that can't be provided for within a complex!
22 Now, that's another dimension and it's relationship to a project
23 is something else again.

24 Q What about open space per say in a suburban
25 municipality versus a municipality such as Newark or Pater-

1 son? Do you have an opinion as to open space requirements, I
2 the necessity for imposing them on a project in one area
3 versus a suburban municipality?

4 A **You** are talking - let me correct you again, and I don't
5 mean to be correcting you. But, we all make mistakes.
6 You mean useable positive space?

7 Q Right.

8 A And the concept of useable open space is one that
9 relates to the cost, initial cost of a project and to some
10 degree to its maintenance and upkeep in that the provision
11 itself would be a per-unit basis regardless of where it was. j
12 It is the entity of additional useable open space **in terms of,**
13 active playground and play field as associated with pro- j
14 jects which became a municipal function or in other governmental
15 I
16 functions as opposed to a private project function. In
17 addition to it, it might be different for a place such as
18 Newark versus Randolph. i

19 Q How might it be different? !

20 A How might it be different in that since the densities I
21 **..ould** be higher in Newark than they are in Randolph. The I
22 **implications,** and the land cost itself would be different
23 and the land uses would be different. The ability to attain j
24 these playgrounds and play areas might be more different ;
25 such as in the city such as Newark or Trenton, then they j
would be in a place like Randolph.

1 Q I'm not sure where I would understand why they
2 would be more difficult to attain. Let me switch from Newark
3 to Trenton and come to a project which is known in Kingsbury
4 which is built from Broad and Market in the center of Trenton.

5 A There are 364 units of family housing in that location wit?
6 no provision for outdoor recreation as part of the initial
7 site plan. Now, forgetting for a moment that that, was only
8 one-third of what would have been a 1100 units, the fact is
9 there are a number of children generated by that - by gener-
10 ated, I mean who live in the project, with both toddlers
11 and teenagers with no place with which to enjoy the activity,
12 or participation in outdoor sports that you would expect
13 from red blooded children in 1979. The area which was going
14 to be for the rest of the project is currently occupied by
15 the Justice Complex, and by building the Justice Complex on
16 the rest of the project, you have done an injustice to the
17 children in Kingsbury.

18 Now, there is no way in the world that a project should
19 have been required to provide entity such as outdoor recrea-
20 tion as part of its initial project and it becomes a munici-
21 pal function, a governmental function to provide that entity.
22 But, if you look at an area around Kingsbury, there is no
23 place in which to put it because there is no vacant land. Now,
24 if you take a look at the West Windsor, which is another
25 municipality in Mercer County, if you have 364 units of

1 family housing built out there, again, with no play areas,
2 the chances are very good that there would be areas within
3 walking distance of there that would be vacant; and the
4 municipality could at very little expense, provide these
5 entities. If children have an opportunity to engage in
6 sports and recreation and social activities, that could be
7 geared to their development and through which they can re-
8 lease their energies, you stand a chance of running a socially
9 proper project; and you wouldn't run into some of the pro-
10 blems that are being run into in Kingsbury where these entities
U were locked off, and the design of that particular project,
12 meaning the Justice Complex, where no regard was paid...
13 to these entities which should have been done. No real
14 objections short of myself and one or two others were
15 raised as to what it was doing to housing in the middle of
16 Trenton in this case. And I say in that particular case,
17 it became a governmental function and not a project function.
18 To that extent, it is different in the initial, question you
19 asked of Newark versus Randolph in terms of the opportunities
20 of providing for recreation facilities outside of the
21 structure of the project itself.

22 Q So, in an urban project, one that might be
23 built in Trenton, you feel it would be more important to
24 insure that as part of the project itself these entities
25 would be provided?

1 A No, sir, as part of the overall community design. A
2 project is only part of that community. The entities that
3 are subject and made incidently as part of the project are
4 those which the project itself funds and pays for, and ones
5 which other nonprofit community and governmental units fund
6 and pay for, and provide as a function of service to the
7 specific project.

8 Q Who are they? Who are the ones in your opinion
9 that are nonprofit or agency should provide as opposed to
10 the provided as the project itself? Health, nutrition,
11 recreation? Health services you mean?

12 A . You said what services. Health services, nutritional,
13 services, recreational services, home keeping services; a
14 whole series of community - you know, family services. Day-
15 care and so on. Some of the physical facilities can be
16 provided as part of the initial design. Some of the physical
17 facilities cannot be. Some of it is shared with other projects
18 both governmentally sponsored or not. Some of them is an
19 example as in Trenton near the North 25 project. There is
20 a health facility funded outside of the project and the
21 governmental financing of the housing although the entity,
22 the health facility as it's called the Austin, is physically
23 continuous to North 20. Nine people in the North 20, people
24 in it use the other community's facilities. In other instances
25 ^n Hamilton Township, which is housing for the old of HFA, a j

1 room in the building is set aside for St. Francis to provide
 2 outreach services, health outreach programs into that builds
 3 ing. So, there is no one answer excepting to say that you i
 4 tried to provide in some instances physical facilities, and j
 5 in some instances just an opportunity for the tenants of j
 6 th^e building. Another example for instance, would be in j
 7 Hamilton and Clockner which is a senior citizens building
 8 in Hamilton Township. The nutritional services are provided
 9 off-site in a church with the municipality providing the I
 10 transportation. True, the transportation is subsidized
 11 through the municipality for transporting tenants of that i
 12 building to the church location in another location, yr fiich is
 13 an HFA and HUD center building, the nutrition center is j
 14 in the building and the nutritional feeding takes place
 15 within the building. So, there you see a good example for j
 16 no need of transportation. So, that nutrition is done with j
 17 in the building under the nutritional programs. In Hamilton,
 18 it is done off-site. It has been provided by governmental !
 19 agencies. I

20 So, there is no one to say there has got to be flexi-
 21 bility in the design and flexibility in program which HFA
 22 provides in terms of their standards and which provides as j
 23 non-income producing space. j

24 Q Before I asked you about municipality adopting j
 25 HUD minimal property standards as to whether you thought j

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1 that that was reasonable or not and you limited your answer
2 to whether or not the standards were being established for
3 subsidized housing.

4 A Uh-huh.

5 Q I'd like to know if it is your opinion -- what
6 is your opinion as to whether it would be unreasonable for
7 a municipal entity to adopt the HUD minimum property stand-
8 ards for use as the minimal standards for nonsubsidized
9 housing?

10 A You might recall that in the answer to that question,
11 I said were they adopted, the whole bundle I didn't use, that
12 phrase. The whole bundle of other standards as well, and
13 you said "yes" and the reason I asked the question and let
14 me elaborate on that is if you adopt a HUD standard or a
15 HFA standard, a governmental standard, and you funded with
16 governmental funding mechanisms - let me give you an example
17 By setting aside adequate reserves for replacement and
18 adequate reserves for wear and tear, and you are not milking
19 the building, then when the roof gives way or the windows
20 leak, or the boiler has to be replaced, there are adequate
21 funds to do it. If you adopt just the building standard
22 which is in some cases might be marginal, but do not do the
23 funding standard, and do not put the reserves away, and do
24 not have the replacement funds because you are "conventional
25 housing" and don't have the housing requirements to do it

1 and then comes the problem of fixing the roof, replacing
 2 the boiler or repairing the refrigerator and the funds aren't
 3 there. Then the property runs down. So, it becomes very
 4 important to me in terms of what the standards are. As one
 5 of my reports indicate, and I think it is G-1 - was this
 6 in for identification?

7 Q Identification,

8 A G-1 for Identification, it is clear that some of the
 9 costs in terms of initial construction which might be
 10 higher and I will give two examples in a moment - might in
 11 fact cost less. So, I say it is an initial cost to the
 12 producer or the consumer? The producer being the ~~cojtr~~ "Sector
 13 and developer. The consumer being the tenant. My **interest"**
 14 is in the tenant. Two examples: You can downspec on home
 15 ' insulation-. . And now for the HFA for single family houses
 16 was thinking it would be advantageous to do so. And low and
 17 behold, in the last few years the government, naturally,
 18 has said contrary to what HUD was doing, why if you take and
 19 improve the insulation in your home, we will give you a tax
 20 credit because then even though it would have cost more to
 21 insulate properly and use it properly in 1979, is a lot
 22 different then when we considered it to be in 1959. The
 23 cost of energy would be so reduced as to make it worthwhile.
 24 In fact, we don't have energy to spare. That's a good exam-
 25 ple of how you downspec. Naturally, because you are getting

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1 a cheaper house and more affordable house and it winds up
2 to be more costly,

3 Q That was a shared experience by the conventional
4 market as well?

5 A Of course, conventional people all do it and this is
6 interesting in that the sale of the house or apartment in
7 a long range gaining planing. That short range gaining plan
8 is to sell the property anyway, get their capital gains, and get
9 out. My interest is, as you well know, Mr. Bisgaier, from
10 other relations of what has happened to the consumer in
11 long-terms. The second is the obvious question of how you
12 glass property. What glass you put in the windows? What
13 kind of glass you put in? What kind of frame do you put in?
14 As an example, we have been successful in getting HFA to
15 inspect windows, what is called AA2 windows to AA3 units.
16 A 160 unit, that would be 5,000 more when you go from A - 1
17 to two frame. AA2 frame leaks like hell, and the cost of
18 repairing it is far in excess of \$5,000. They now double
19 glass in all the windows. Double glassing is more expensive,
20 but it saves energy and so ten years ago almost everybody,
21 including HFA would be only single glassing windows. Now,
22 they have been double glassing them. So, the point being
23 that initial cost is not the material cost in terms of
24 lowest cost housing. If you were to define less cost as
25 the cost to the consumer, and not necessarily the cost to

1 the producer. The first cost vetsus total cost over the
2 life of a home, and I am not going to confuse you by saying
3 the life of a unit is far longer than the life of the ori-
4 **ginal** mortgage, because it just goes ion and on and on.
5 Maybe initial costs are higher and in fact produce less
6 cost from the consumer.

7 Q Getting back to the question I asked, if a muni-
s' cipality does or did adopt the page of resolutions that HUD
9 uses as a minimum property standard for residential constru-
10 ction, would you believe that that would be unreasonable to
11 govern the conventional housing market?

12 A Only if they adopted these other standards alone. .
13 Standing alone it becomes unreasonable. The difficulty is
14 As I say, how you finance and how you manage a property as I
15 well. Our problem is that we have separated out initial
16 construction in one set of codes and maintenance codes in
17 another set of codes and regulatory agreement as to the
18 financing and services and maintenance of property in another
19 set of codes. Sometimes it is absent of that. When the
26 **home buyer** or the tenant finally gets her downstream, we
21 **are** confused as to why they were hurt when we had such good
22 standards to begin with. Which in fact we haven't been
23 treating them in the totality and the purposes are being
24 protected.

25 Q Would you tell me then what you believe a

1 municipality to do if it did adopt the HUD minimum property
2 standards as the minimum standards they use for the conven-
3 tional as well as subsidizing mortgage? What else would
4 they have to adopt to insure protection of the public health,
5 safety and welfare that you are referring to?

6 A You are saying municipality. You see, I can't accept
7 it because sometimes I will tell you it can't be done on a
8 municipality basis. It sometimes should be done on a state
9 wide basis given to the fact that - just to digress a moment.
10 W
11 Municipalities have no inherit powers at all. It is
12 the state that have the inherit powers which have been dele-
13 gated to municipalities. In some instances a municipality
14 can't protect the public welfare because one, the state may
15 not have delegated that function to them and if they did,
16 there isn't ample excess at the local level to deal with
17 this entire problem that I indicated in terms of maintenance
18 and reserves and caring for the property itself. So, it
19 very well may be you'd have to take a step backward that in
20 this bundle of regulations which level of government should
21 take with regulations and how they relate to each other -
22 take this in the whole and see whether you adopt a minimum I
23 property standard and it is not reasonable -- I can't answer
24 with a yes or no, because it doesn't stand alone as you have
25 tried to say for the half hour. HFA works significantly
because it is a governmental agency. It has all of the

1 bundle of controls through the regulatory agreements. So,
2 being a governmental agency, the left-hand theoretically
3 **could know** what the right-hand was doing in terms of main-
4 tenance funding and financing and return inequity and all
5 of those interrelated things which you see in G-1 and are
6 marked for identification.

7 Housing finance absent any governmental regulation
8 works in a totality of financing effectively and if you
9 skip one or two items, you may do them injustice because
10 you skip them, but that doesn't make it right.

11 Q Assuming there was governmental power, **what***
12 specifically would you recognize that would be necessari
13 over and above the adoption of the HUD standards - minimum
14 property standards?

15 A That they'd have to adopt the minimum property standard
16 they'd have to make sure that those standards were
17 adhered to in terms of substitution materials. That they
18 would have review of the design. That design is very im-
19 portant in terms of not only initial construction, but
20 maintenance and costs in long-term. That they'd have to do
21 something in terms of the regulations of the mortgage, the
22 cost of money, both in terms of the length of mortgage, the
23 interest rate, and what kind of amortization would be used.

24 Q Why is that - I'm sorry. Why don't you finish.

25 A They'd have to talk a little bit and being concerned

1 with relationship of tax and tax structure to the cost of
2 the unit. Again, they are competitive forces here. In
3 many instances, we just tax properties, and what happens is
4 we overburden them, and their cost becomes so prohibitive,
5 that we can't maintain the property. We have to concern
6 ourselves on a long-term basis with the maintenance and the
7 operational costs and that the financing would have to be
8 so structured as to have adequate reserves set aside, and
9 the property being adequately maintained and reviewed on an
10 often but periodic basis. By that I mean at least four
11 times a year by somebody to make sure they are being properly
12 maintained. Then, we'd have to talk a little bit on the
13 type of ownership which has to do with what kinds of funds
14 an owner can benefit from since housing is a public purpose
15 thing. Again, you want to make sure that what he is taking
16 out is unreasonable in terms of what he is trying to provide.

17 Q How were these items which you have specified
18 accomplished by HFA?

19 A Through a regulatory agreement, which is an agreement
20 dictated as between the owner and the agency. The agency
21 being HFA and all these items. I think, obviously, the
22 plans are specifically reviewed as to conforming to the
23 requirements, and any changes during construction to be
24 processed through them. They have what amounts to be clerk
25 of works out there in the field, making sure it is all

1 built to their specification. So, that is taken care of.

2 Should I run through the rest of them?

3 Q - I'm not asking necessarily to run through the
4 list,

5 A Through the regulatory agreement?

6 Q They have regulatories which accomplishes this
7 to your satisfaction?

8 A I also add the one to my satisfaction, it is obviously
9 not adequate. Could it be better? Is the changes getting
10 better? Of course,

11 Q Is the Department of Housing adhering -j^tl^,*
12 same general processes, is done a little, differently, .V" "i&I"v^>
13 these regulatory agreements relatively standard documents? Jfig;<
14

15 A Yes.

16 Q Where do they exist is what I am saying. Are the
17 promulgated as official regulations of the HFA?

18 A Yes, adopted by them, I assume. I never looked at
19 the legal aspects of it, You might better ask your own
20 legal staff. The regulatory agreement, there are a series
21 of legal-documents executed between an owner and the HFA
22 **which** require the owner to do certain things during the life
23 of the mortgage and which regulate his activities both in
24 terms of keeping up the property, maintaining the property,
25 charging rents, and receiving subsidies. That series of
legal documents incorporating what used to be called the

Gershen - direct

1 regulatory agreement binds the owner and the lender in this
2 case, the HFA, to mutual obligations and responsibilities,
3 all of which tend to keep the property to a -high standard.

4 Q How is that done absent a subsidized project
5 with a conventional job?

6 A How would it be done? Or is it done?

7 Q Is it done with like a conventional projects?

8 A I don't know.

9 Q To your knowledge, there is no municipal or
10 state requirement for a comparable conventional project
11 that would insure the protection of the various items that
12 you've listed?

13 A The only two things that would come to mind in terms
14 of existing legislation would be if one were to build on an
15 urban renewal site as part of the urban renewal plan. There
16 could be urban renewal plan controls exercised through the
17 local public agency, the LPA, requiring the sponsor of
18 housing, even though it is conventionally financed even to
19 adhere to the maintenance standard. Secondly, if one were
20 to seek tax abatement, a payment in lieu of taxes, either
21 under the limited dividend housing law, even though you
22 had conventional financing, you might impose certain regu-
23 latory financial views.

24 Q Municipality might be able in part of granting
25 that type of --

1 A Yes, under the tax abatement resolution, an agreement
2 in the agreement over tax abatement, they might include cer-
3 tain requirements.

4 Q Now, on page four of G-1, you referred there in
5 the third paragraph of that page to potentially competitive
6 purposes which might be considerations public health, safety,
7 and welfare and you listed things such as energy conservatiom,
8 clean air and water, and soil conservation. Lower,
9 you referred to entities such as good design, landscaping,
10 non-income producing space, recreational facilities, and
11 street improvements, et cetera. And is it your opinioiv that
12 that adherence to the HFA standards in the developmerif-cdr
13 the residential project would not adequately serve to pro- j
14 tect those items?

15 A No, I didn't say that.

16 Q Could you clarify that for me what your opinion
17 ^s in that regard? Let me say is it your opinion that
18 adherence to HFA standards would be adequate?

19 A It might not. It depends.

20 Q How would you know, or how would you -

21 A" First of atl, these are changing times. I think I
22 indicated in the earlier part of my testimony that ten years
23 ago what we considered lowering cost we lowered cost and
24 payed no attention to the increase cost of energy and i
25 aside from the cost of energy, the fact energy at that

1 period of time and the public's mind and governmental minds,
2 were not generally taken to mean the saving of energy. So,
3 the public purpose now in energy conservation coming into
4 conflict with the public purpose of lowering the cost --
5 initial cost of housing. You have two public purposes and
6 it might very well be that the additional costs necessary
7 in initial construction and maintenance to conserve energy
8 as energy might be well worth it. If you didn't use a source
9 of energy - in other words, if you could substitute people
10 maintaining something instead of a machine, the machine
11 using some form of energy, people use self energy. It tni^t
12 be that you would do it even though it might cost you LHU9
13 in dollars. There are conflicts as between the ecology and
14 the purification of streams and what you would do with wood
15 and so on. The cost of accomplishing that both in short-
16 term and in long-term sense and there has got to be a bal-
17 ance.

18 You can see it more easily in maybe in the automobile
19 interms of some of the devices which help purify the air,
20 interms of what it does to increase the consumption of
21 gasoline? which becomes more of a public purpose and which
22 has to be served and what has to be compromised.

23 That is the impact - the purpose of the third para-
24 graph on page two to indicate that there are balances to be
25 achieved. It is not a clear black and white, yes or no

1 absolute item.

2 Q So, it is your opinion that neither the HFA
3 standards or the HUD standard units of themselves would be
4 adequate to protect public health and safety?

5 A I wouldn't say that. It depends upon at what point
6 and what standards - as an example in paragraph three.
7 A current three-to-five year old concept; very costly; very
8 proper. If brought to its ultimate conclusion to be total
9 barrier-free for all people at all times would be catastroph-
10 ically expensive. So, there has got to be a balance. I call
11 to attention to the initial times relative to the case of
12 making all buses barrier-free and how it would be less
13 expensive to have individual taxi rides. I think a taxi
14 ride was estimated at \$8.00 a ride and making it all barrier-
15 free, \$35.00 a ride. As an example of this point, although
16 the concept of barrier-free for all people is something no-
17 one would argue about in concepts. It's cost becomes pro-
18 hibitive.

19 Q As I understand with reservation in saying that
20 you feel that the HUD or HFA standards would be adequate to
21 protect the items listed on page four, so that as times go
22 on, we continually learn of new things which have to be
23 taken into account.

24 A Well, we decide to give you some things for a different
25 common good. Such as barrier-free, not being totally barrier-

1 free, but relatively barrier-free. That you will expend
2 more for energy conservation because in the long term it
3 will cost us less. Life safety doesn't mean that putting
4 pull cords at every head of the bed where they are, leads
5 to a false security which really is insecurity. You pull
6 it and there is no one in the office to respond when the
7 light goes on, that kind of thing. We overdesign hospitals
8 so the cost of hospitals goes up and we don't use those
9 systems a good portion of the time. So, there ought to be
10 construction conservation which costs less to build and
11 maintain.

12 . . . So, as we learned and requested, it is less
13 and responds to the lower density of the situation. We're
14 liable to find it is over a relative thing which changes as
15 social values change.

16 Q Would you be specific? You referred to energy
17 conservation. Are you thinking of something specific now
18 about the HUD standards or the HFA standards which you
19 would modify to insure protection of the health, safety and
20 general welfare?

21 Jt Yes, I would modify central air conditioning versus
22 individual room units. I would modify heat recovery factors.
23 In making them more efficient, although maybe more costly
24 initially. I would concern myself with a degree to which
25 we are heating and cooling these places and study the British

1 system where we heat less and cool less and maintain a lower
2 environment, initially. I would concern myself with heating
3 hot water to a degree or where it becomes, in fact, scalding.
4 Although that is not a reason to heat it that way to main-
5 tain cleanliness, if an illusion is the hot water is cleaner.
6 That is not necessarily so. The hot water is more costly.

7 I would concern ourselves with building materials
8 which would require less energy to maintain and cost more
9 to put in, but less in the long run. So, there is a whole
10 series of things I would examine. I am not sure what the
11 answers would be, but this is in terms of things, t^, look ^t.
12 In terms of even modifying whatever standard was cloifeV -let-
13 cidentally, if you or I were to write standards in the next
14 two months, I think three years from now we, ourselves,
15 would look at them and we would modify that which we thought
16 was perfect in the year 1979.

17 Q What were you thinking of specifically as to
18 clean air and water?

19 A The fuel we use in these buildings whether or not a
20 **study** should be made. Whether we use a number two oil
21 **versus** a number four oil. What the relative degree of
22 pluses versus the cost of the fuel in terms of now and it's
23 long term implications. The degree to which we take care
24 of our affluence from buildings and therefore, taking care
25 of the treatment plan; whether or not there isn't some other

1 way which we can treat that in terms of the safety.

2 Q What are you thinking of specifically there in
3 terms of the -

4 A Well, as an example, we are using house water which
5 is purified to water lawns and we're doing a lot of that.
6 Whether we need to have another system whereby we can use
7 some of the waters that come out from the purification of
8 our sewer systems to do some of the watering of the lawns,
9 which would then provide for its own purification, which
10 would give us a different degree of treatment of sewage
11 and a different technique for watering lawns. Wfcetheft'^
12 not that isn't something which we should be considerittj on
13 a long term or short term basis. It is different than the
14 water we drink and it is different than the water we shower
15 with. Right now we shower, we wash and we drink and we
16 water. The waters of our sewer system goes back to the
17 streams. It is that kind of thing that transcends any
18 project, but it goes to the pros.

19 Q But in a general residential development -

20 A "A commercial and industrial. You know, you have
21fr industrial uses of water, you use water for air conditioning,
22 you have to use the same water for air conditioning as you
23 do for drinking. Now, you are into the ecological field,
24 but we are bound by it. When we get into housing, we have
25 to accept the end product. We feel that whatever the hell

1 the costs are at the moment, regardless of whether we are
2 using water which is overpurified, whether we are using
3 fuel which is overrefined, which is too costly because some-
4 one said that number four fuel pollutes the air too much.
5 But, yes, to what degree? Does it pay and a whole series
6 of things like that.

7 Q What about soil conservation? What were you
8 thinking of there?

9 A That again is the same. Is it better to bunch your
10 buildings together and leave lands in their original form
11 and have density lighter, but gross density much heavier
12 for purposes of not destroying the soil and **everything?**
13 The concept that a foot to the acre is better than **100** to
14 the acre and shouldn't be more than sixteen to the acre or
15 gross. All these are an example of these concepts.

16 Q What is your opinion or your opinion in regard-
17 ing that in terms of soil conservation?

18 A I don't know if there is anything in soil conservation
19 excepting I would like to leave what is natural for nature.

20 & **I have** no problem with a gross area and a net density. I'm
21 **it** not disturbed there is gross density. And that would tend
22 to leave things much less expensive and much less damaging
23 to the environment.

24 Q Are you thinking of any specific experience
25 that you have had where there's been a conflict on this or

1 a problem that you've had with the municipal entity or with
2 an agency?

3 A None specifically at the moment, no.

4 Q Is there any specific examples that come to
5 your mind in trying to graphically understand this problem
6 of how someone might treat it and how you would treat it
7 in the alternative be different?

8 A We've wrestled as an office outside of the concept of
9 this would be concept of transfer of development rights and
10 the whole concept of overall municipality difficulties.
11 All which is beyond the relevancy of this. I don't think
12 it is an area which I've been asked by my client. - Hoipvek,
13 it is an area.

14 Q Essentially, then you are generally speaking
15 when you talk about soil conservation with the idea of
16 clustering development on smaller space so to take up less
17 of the -

18 A Or transferring rights of one area to the other area
19 that you perceive to guard and you have a better opportunity
20 to provide the services that man needs.

21 |5-1?M Now, let me ask you. When you talk about good
22 design on page four and you've indicated that -

23 A Page four where?

24 Q I'm sorry. Page four on the fourth paragraph
25 you see a sentence. It says "Requirement for certain ameni-f-

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1 ties such as good design, landscaping -" and the like.

2 A Right.

3 Q It is your opinion that utilizing the HFA or
4 the HUD standards would accomplish the protection of public
5 health, safety and general welfare in so far as good design
6 is concerned?

7 A Yes, sir.

8 Q What about -

9 A Would permit you to accomplish it. It doesn't accom-
10 plish it alone by the standards. You still need a good
11 architect to get good design.

12 Q Well, essentially then the list of items that
13 you have on page four, good design, landscaping, non-income
14 producing space, recreational facilities, drain and street
15 improvements, et cetera, is not a concern of yours in so
16 far as an HFA or HUD job is concerned? You are listing
17 this as concerns for a conventional job that these might -

18 A I'm listing them as concerns for all jobs. Let's
19 backtrack for a moment. Because you have an opportunity
20 to have good design with the standards that HFA has, doesn't
21 **mean** that you will get good design. You still need good
22 design, and my point here is sometimes good design may cost
23 you initial dollars, but may save you in the long run. It
24 may save you dollars in the long run. This is the point
25 I'm trying to make.

1 Q What you are saying, though, is that within the
2 context of HFA standards or HUD standards a good designer
3 should design adequately to protect the public health, safety
4 and welfare and that your concern is with the conventional
5 project as to whether that is being taken into consideration?

6 MR. BERNSTEIN: Wait. That's not what the
7 paragraph says. Let me read that.

8 A It is not the application of a standard which may
9 comprise the purpose of providing least cost housing. That
10 is unreasonable. But the use of excessive standards beyond
11 what is necessary to serve a legitimate public purpose,
12 requirement for certain amenities such as good design,
13 landscaping, non-income producing space, recreational faci-
14 lities, drain and street improvements, are overall justifi-
15 able as long as they are related to valid public purpose.

16 Q What I'm asking you here is how do your concern
17 regarding these items which you have just listed, interface
18 or juxtaposition standards that are published by the HFA or
19 HUD?

20 %\ ijet's take the one that we can talk about. Street
21 improvements. There was an HFA standard which six years
22 ago or seven years ago provided for certain context of an
23 improvement into what we call Pond Run which is the senior
24 citizenfe project in Hamilton Township. And that was desig-
25 ned and constructed to that HFA standard. We built a sec-

1 ond building on three acres next to this first building and
2 totally changed the standard HFA used. In fact, they changed
3 the standard for very simple reasons, that after the first
4 building was built, we were successful in getting Mercer
5 Metro which is the only county owned mass-transit system
6 in the state. We were successful in getting them to run
7 buses into the project and so we could go anywhere in the
8 county and get to the Pond Run One. By running into those
9 buses in the project, the buses destroyed the paved area
10 and it became very apparent that the design standard as
11 promulgated by HFA for that driveway and that area **was** ia-
12 corr-ect and improper relative to running in mass*-transit
13 buses.

14 Q Has that now been changed so it is upspec ?

15 A A good designer used good design and good standards
16 seven years ago and found out they were faulty. So# public
17 purpose in that case was not being served inadvertently by
18 everyone, and so the standard is improved.

19 Q I'm talking now about the existing standards
20 to your knowledge as to how the existing standards may
21 interface with these concerns you have about the public
22 health, safety and general welfare.

23 A We are constantly reviewing them and based upon our
24 own experiences HFA, I assume, is doing it based upon their
25 own experiences. We know the HFA is generally higher and

1 has more requirements than the HUD standards; and I'm trying
2 to indicate that either with HFA they could expect from
3 **time** to time as experience shows us the cost of replacement
4 **short term**, is so expensive - that it is less expensive to
5 cost more initially that is the whole thrust of this prob-
6 lem.

7 Q I understand. Do you have any particular ex-
8 perience now with regard to the present HUD or HFA standard
9 which indicate to you a need for upspeccing in order to
10 adequately protect the concern that you have listed on para-
11 graph four?

12 A No,, other than the ones relating to roads., We Jtave
13 found that we need some additional non-income producing
14 room spaces and we're getting some of them. That's all
15 relative. If you look at the HFA statute, there is no
16 percentage. The word reasonable is used.

17 So, their standards change from time to time. There
18 are a whole series of studies going on and evaluations we
19 are doing which would be the subject of our series G-4
20 **memos to** you relative to the inordinately high increase of
21 **cost of** oil, electric and insurance, and the question of
22 how to reduce those. There may nqt be an answer to that.
23 I talk to you in terms of number two, number four oil as
24 an alternate means of energy. It is that kind of thing
25 that we tend to increase initial cost but in the long term

1 will decrease monthly cost to the consumer.

2 Q Again you're concerned with listing those as
3 time changes you would perceive a need to change as we gain
4 more knowledge or concern with different things that there
5 may be need to alter the specifications and the HFA or the
6 HUD specifications?

7 A Yes.

8 Q I take it in paragraph four on page four you
9 used the - I don't know if that's a word or not - the
10 abbreviation for the word et cetera without anything speci-
11 fic in mind but just to -

12 A , I apologize for the use of that. That's a ^{vejcy} bad
13 word to use and I keep telling myself I'll never use it.
14 I also condemn lawyers toward using it but now I stand
15 corrected. Strike the word et cetera from that document.

16 Q You refer on paragraph five of page four you
17 say these standards referring to the HFA standards more
18 than any others are inclined to reflect the particular
19 climatic conditions to which New Jersey residents are sub-
jected as well as the availability of kinds of labor and
21 materials. Specifically comparing the HUD standards to
22 the HFA standards and if so, what are you thinking of when
23 you talk about climatic conditions, kinds of labor and or
24 materials?

25 A I'm thinking of double glassing. I'm thinking of the

1 heat recovery units we now have in HFA projects. I'm think-
2 ing of whole series of standards which HFA now have adopted.
3 Those standards which are somewhat different than the
4 HUD standards. Certainly, in room sizes and that kind of
5 thing. As I indicated quite early in my testimony, there
6 is close to one billion dollars of HFA finance housing in
7 New Jersey over the last ten or twelve years. This is no
8 evidence that I know of any challenge to HFA standards and
9 I've got to assume as a practitioner in the field that if
10 one spends that kind of money, public purpose tax rebounds
11 with all the tax abatement and the tens of thousands of
12 people living in these units in a state operated through
13 through state promulgated regulations that they must be
14 reasonable; and if they are in fact different than the nat-
15 ional regulations, that in my mind they would reveal that.
16 That doesn't make the other's obscene, and correct, improper,
17 or unrealistic, but it makes these more appropriate. If
18 the other's were, someone would have attacked this or should
19 have attacked it as being too costly. Since they are being
20 inspected on a continuing basis as a new knowledge gained,
21 I've got to assume that this is a reasonable exercise of
22 these powers inherent in the state government. That's what
23 the fourth paragraph or fifth paragraph says.

24
25 Q Specifically as to climatic conditions, you
are referring to the colder in the northeast and you are

1 referring to the south and that a national standard might
2 not act for that?

3 A **Yes**, obviously a national HUD standard has got to
4 **find its** way through a federal register subject to execute
5 any conditions to all fifty states with all those pressures.
6 God, we have enough variance in climate going on let alone
7 **goijig** from the tip of Florida to Montana.

8 Q As to labor, the kinds of labor. What are you
9 referring to there?

10 A We've certain labor practices in terms of techniques.
11 We have certain precasting on a sophisticated level **and**
12 those techniques are what I'm talking about. .

13 Q Are they in conflict with HUD standards to
14 you): knowledge?

15 A I have no opinion. I don't know.

16 Q And specifically you are referring to materials.
17 Are there specific materials that you are thinking of are
18 satisfactory under an HFA standard which would not be
19 acceptable under a HUD standard?

20 A **Yes**. I remember the whole thing. When we consult
21 **an HPCH** in terms of a texture 111 which the architects kept
22 taking with a finish to low-rise buildings by HUD but which
23 HFA would not accept and the technical services people said,
24 if I" recall correctly, some six or seven years ago, regard-
25 less; of what HFA had the wrong standards and material and

1 that was one specific which I remember.

2 Q Do you know if that's still the case?

3 A I don't know. I knew it was then and I again - I
4 don't recall all the HFA work. So, I have no way of knowing
5 of what all their requirements are, but they do have separate
6 technical staff which are their own standards.

7 Q Now, do you know whether the state HFA has
8 attempted at various times to accomplish comparability
9 between their standards and the HUD standards?

10 A I know it is a constant discussion and battle because
11 HFA jobs cost per unit slightly more than comparable HUD
12 jobs - because the entity- levels are higher. The #ooi& sizes
13 are higher and this has always been one of the problems in
14 terms of justification for the higher cost. And those
15 higher costs are because of room sizes, materials, non-
16 income producing space and other kinds of things. That's
17 the memo four of ours. Memo three. I am guessing. Anyway
18 it indicates some of the costs.

19 Q To your knowledge has HUD accepted the higher
20 HF&"standards?

21 A They have because jobs are closing. Well, the fact
22 that the jobs are closing is indicative to the fact that
23 the HUD - that's not indicative which state has accepted
24 the standard. Well, if they weren't that the proof of the
25 pudding is whether or not it gets the two, three, six,

1 which is the intersubsidy or section eight. If you get
2 those subsidies and the plans were sent to HFA which have
3 **been** approved, the test is whether or not you get it under
4 **the** fair market rents. Fair market rents are rents pro-
5 mulgated on a regional basis by HUD for purposes of back-
6 wardly determining the feasibility of jobs. They are the
7 rents which HUD determines would be fair market for various
8 standards, metropolitan, labor areas and if you could
9 **achieve those rents**, then it's given that the job is
10 "feasible".

11 Q And there are possibilities for **subsidation**?

12 A The jobs which cost more on a monthly basis are **not**
13 eligible for federal subsidies.

14 Q Now, to your knowledge -

15 A Part of the ability to get them feasible is to have
16 HFA financing which provides longer term and lower interest
17 monthly and by having longer term and lower interest monthly
18 and I refer you now to my memo, G-1 by having lower interest
19 money and lower terms, you can afford to expend more for
20 **initial** construction and still achieve fair market rents.
21 **That's** why all of these interplay with each other.

22 Q So, having a HFA piggyback to a HUD job enables
23 you to upspec over some of the HUD specifications?

24 A Over initial construction and by ~~tipspeci-ftg~~ initial
25 construction, you wind up with a lower monthly costs to the

1 consumer which is least cost housing in my opinion.

2 Q Least - lower cost in any way?

3 A Lower cost in terms of what the Judge in another case
4 says should be lower cost. What most people interpret to
5 be lower initial cost which is incorrect as far as I'm
6 concerned.

7 Q Now, to your knowledge are the HUD fair market
8 rents based on HUD specifications the HUD minimum property
9 standard in New Jersey or are these based on conflicts of
10 the HFA standards?

11 A They are based on neither, I believe. They are based
12 on what the rents are in the region, and they go **out** and
13 they try to find comperable multi-family buildings, regard-
14 less of who built them, when and how. So, in that regard
15 an unreal number - but I'm not just figuring fair market
16 rents. Neither, I'm sure, are you. We wind up with having
17 fair market rents giving the characteristic of a SMSA stan-
18 dard, metropolitan statistical area. Which has nothing to
19 do with cost of construction because coming from the other
20 direction, the cost of construction might be the same in a
21 whole series of SMSA's and the state. The fair market
22 rents are different because buildings are different.
23 Whether a laborer - and you don't have to use organized -
24 to build, but you have to use prevailing wage rates which
25 winds up to mean the same thing and you may pay a plumber

1 the same in Freehold as you pay in Paterson. Since, you are
 2 in different SMA's, you have different fair market rents,
 3 although the cost of constructions are the same or pretty
 4 nearly the same.

5 Q Can you indicate an HFA project which you are
 6 knowledgeable of which you feel complies with or satisfies
 7 the concerns that are listed on page four of G-1 relative
 8 to good design landscaping?

9 A PCH, Princeton Community Housing.

10 Q Princeton Community Housing?

11 A That's in Princeton, New Jersey.

12 Q Princeton Township?

13 A It's a family housing, 200 units. A six-story midrise
 14 building, in a whole series of attached residences. Built
 15 on 30 acres in the woods, North 25 which is a project also
 16 with an eight-story midrise, ten-story midrise and a whole
 17 series right here in Trenton, two blocks from where we are
 18 sitting right now. That also complies generally with what
 19 you said.

20 Q Are there any others that you are familiar
 21 with?

22 A A whole host of them. Let's leave it at this for the
 23 moment. We will come back if you want.

24 Q Are there any in Morris County or the Morris
 25 County region that you are familiar with?

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1 A I'd like to know what the Morris County region is.

2 MR. BEPNSTE.IE: It's a term of art.

3 MR. BTSGAEER:. I didn't mean to get your
4 blood pressure up. In Morris County or the
5 Morris County area.

6 MR. BERKSTfiIN: Are you talking about
7 Somerset and Huntingdon areas as being the
8 Morris County area?

9 A There is one very elderly project, one or two-stories
10 in Bernards Township which is not Morris County, but might
11 be considered the Morris County area.

12 Q I will accept that.

13 A We do a lot to preserve entities.

14 Q But as far as you are concerned, that project
15 would protect the public health, safety and welfare in the
16 concerns you list on page four?

17 A Yes.

18 Q And what's the name of the project?

19 A Ridge Oak.

20 Q Bernards Township?

21 A Bernards Township, yes, sir.

22 Q Are there any others in this area?

23 A There's one in the Newton, but we are again - we are
24 stretching out of Morris County.

25 Q What is the one in Newton?

1 A Where?

2 Q What's that?

3 A It's a family housing project of some 250 units, also
4 a midrise and some townhouse kinds of configurations com-
5 pleted about 35 years ago, built on an urban renewal site,
6 if I recall correctly. It is in the middle of Newton.

7 Q What about conventional projects in Morris
8 County which you feel comply or adhere to public health,
9 safety, and general welfare requirements? Are you familiar
10 with any that meets the standards that you have set forth?

11 A I'm not familiar with them and I form no opiniqq.

12 Q To your knowledge, are there any substantial
13 aspects of residential construction which are not covered
14 by the HFA or HUD minimum property standards?

15 A No, no.

16 Q How does those agencies and those specifications
17 deal with the issues resulting to relate to gross density
18 and net density?

19 A They really don't.

20 Q How do you as a packager or as a developer in
21 your experience ascertain what density you would use versus
22 a specific job?

23 A It depends upon two things. The local zoning and the
24 land use around the property in question.

25 Q I'm speaking now specifically with regard to

1 the subsidy projects.

2 A Yes.

3 Q I take it you are also?

4 A Yes.

5 Q Is there a site in review of the density?

6 A To a degree, yes. When they do site selection.

7 Q And they review or recommend or criticize
8 density that you are proposing?

9 A They have. I have seen them do that in specific
10 cases, yes.

11 Q What are some examples of that?

12 A In every case that we submit a project, they look at
13 the site. They look at the proposal and they comment in
14 site selection whether it is a proper area for the proposal
15 they have. In some cases, they want - they have asked us
16 to add land in some cases, they have asked us to take land
17 away in some cases. It is as well as density.

18 Q What examples what they have asked you to lower
19 the densities that you have proposed for specific projects?

20 A- I don't know if in terms of lowering or raising the
21 density they have asked us to change or acquire additional
22 property, sometimes for the purpose of having effective
23 lowering or raising.

24 Q Because it wasn't specifically for the purpose
25 of changing the gross density?

1 A Not in those terms, because I don't think they agree
2 on those terms. They approach it from a project basis, not
3 from a pyeruse basis. It is a function whether or not the
4 lands uader the project will hold the project. Not whether
5 or not the entire R-1 zone is appropriately zoned. . 'They are
6 not a governmental agency that approaches that from land
7 use point of view.

8 Q Is there a relationship between the number of
9 units that - is there a relationship between the number of
10 units that you propose for a specific project and the fair
11 market rents?

12 A In terms of what? I, don't understand. . v X

13 Q In terms of overall project of cost. in terms
14 of your desire to a specific site with a specific developer
15 to bring a project in within the fair market rents?

16 A Fair market rents are composed of basically two sets
17 of figures. One are the interest and amortization in
18 relation to initial cost and maintenance and operation
19 depending upon running the project. If you come with a
20 50 Ainit project and need a superintendent during mainten-
21 ance and a porter, and you have a 150 units and need the
22 same thing and a porter, the cost unit basis is reduced by
23 56 and 2/3%, so a relatively expensive \$12,000 a year
24 superintendent for 50 units cost you 1/3 when you are con-
25 sidering 150 units, and the same with the other items of

1 maintenance and operation. So, we have a rule of them some-
2 where between 175 and 200 units are the smallest minimum
3 **size** project.

4 Q Why is that?

5 A Because in terms of let's say a 200 unit project, you
6 could still use three people to maintain it, a superintendent,
7 a maintenance man, and a porter. If you have a 600 unit
8 project, you could - you would need a superintendent and
9 a - in fact, a superintendent you would almost need two
10 of them to do it. Two hundred and fifty units probably you
11 could get by with hiring one additional porter **and, saow**
12 removal. It probably cost you the same to remove **snow from**
13 a 125 unit project then from a 250. That's not the absolute
14 in terms of the same configuration. If you had a story
15 building or a 12 story building, it's maintenance cost in
16 terms of replacing roofs would be the same, because it
17 would be the same roof area to be maintained. As the
18 elevator cost might be somewhat higher, but not proportion-
19 ately higher.

20 Q Basically, these are economies of sale?

21 A j^jfHhfat's right. And so, when you talk about a social
22 program which is a very important part of this, one social
23 worker could certainly maintain 200 units and it would be
24 the same social worker for the 100 units. The social
25 worker outreach program and the bingo games and the nutri-

1 tional programs go on with all the elements, and you get to
2 the point where if a project is so small, some fundamental
3 costs start, start-up costs of an annual basis are there
4 whether you like them or not.

5 Q So, that's like compared a 150 units price to
6 a 250 which are an economy of scale with uses. You could
7 do it with 170 better with 200. Do you itemize to the best
8 you can, and I know you can't be so thorough, itemize what
9 the specific economies of scale are like, the specific items
10 that leads you to have this as a rule of thumb?

11 A Legal costs are the same regardless. I am not talk-
12 ing about cost for dispossessing or rent collecting, I am *
13 talking about just general corporate legal costs are the
14 same. Your ordering costs were substantially the same.
15 Whether or not you have a smaller project or not might be
16 somewhat different, but proportionately the advising pro-
17 ject is still - the still weight or in other words, the
18 project twice the size isn't twice as expensive. The jani-
19 >
20 torial are disproportional again. They are not proportion-
21 ately higher
22 . Even payroll in some instances remain sub-
23 stant|Tis3|ly the same. The repairs are proportionately higheir
24 The wear and tear of 200 units that are twice that generally
25 are the same as of the 100.

Q Those are the kinds of things. Now, depending
also upon the configuration of the project, as I said, if

1 you have a six-story job and a twelve-story job, it does
2 not cost you twice as much to heat a twelve-story job
3 **because** there is still one roof. It's that kind of thing.
4 If **you** are building basically two-stories and it's all
5 spread out in the terrain, then it must cost you twice as
6 much to heat it as the 200 units as the 100 units. That
7 would be more a configuration of project on absolute num-
8 bers.

9 Q The desire to - or the rule of thumb for the
10 175 to the 200 unit project, is that what you need to bring
11 the project in under the fair market rent?

12 A . . . No,, that was - this is only one consideration **tipn'bf. a**
13 whole series of social considerations as well. If **you**
14 tried to manage and provide social entities, to 7500 units
15 availability, let's say, as opposed to 175 units of elderly,
16 you are far better off with 175 units because you could
17 achieve better mixes. You could achieve better groups that
18 are more homogeneous with 175. You have a greater variety
19 to choose from, if you get it, the opportunities for social
20 **programs** are there. There may not be enough people for a
21 **reading** course or a knitting course or woodworking or what
22 have you, but certainly you would have them in 175. So,
23 that there are a whole series of social opportunities which
24 are there at that scale. Now, if you jump now to 600 units,
25 you have such an over concentration that the opposite might

1 be true. That you tend then to get the ghetto list. You
2 have the ghetto syndrome. It tends to become an anchor to
3 pull down the project and not allowing it to mix, so to
4 speak, in the community. That's part of both the physical
5 design and the social amenity design of the project.

6 Q That's the social side of it and the reasons why
7 you might want to increase the size in a project. What is
8 the relationship between the increased size or your rule of
9 thumb and the fair market rents or the financing of the job?

10 A Well, working backwards from fair market rents, you
11 have to achieve a certain minimal scale in order to be able
12 to come in with a project to begin with. j.

13 Q So, the economy of scale?

14 A The economy of scale allows you to get the key turned j
15 in the lock,, but just by turning the key in the lock, you
16 could just get into the room to play the game. Now, you
17 have got to have a project which is viable for the next
18 50 years. Now, it so happens that both of those tend to be
19 in the 150, 200, 225 unit scale because from a economic and
20 social views, you have a happy compromise.

21 Q Would that: apply as well to a conventional job?

22 A Generally speaking, yes, this is true of a housing
23 commission in a sense.

24 Q Do you have any rule of thumb that you used as
25 to general gross in site levels which you believe are achie-j

1 vable for different types of uses such as a midrise, two or
2 three-story garden?

3 A No"/again I don't know what that would mean. Because
4 there are two forces at play here, one the land use where
5 you are talking about densities from a land view point. The
6 other is intensity of design. A ten-story building having
7 160 units of elderly on 11,000 square feet which would be
8 just about the footprint of that building if it is on five
9 acres, it is one "density" if it is on three acres, it is
10 another density but it is still a ten-story building. You
11 might recall that I testified about a Basking Ridge project,
12 some 200 odd units or 20 or 30 acres, in Bernards Township.
13 You could have put in a ten-story building on the same 20
14 acres and its density would be the same in terms of the gross
15 density. In many ways, it would be a better project from a
16 social point of view. From a social point of view in terms
17 of community acceptance, they would not accept a ten-story
18 building in Bernards Township because it is a mistake and
19 it is unacceptable. You go to Hamilton and we have two,
20 ten-story buildings. The only high rises, so called, in
21 Hamilton Township. Both of them have a 160 units of elderly.
22 One is a five acre site and one is on an eight acre site
23 and in very attractively done with lots of green space
24 around it. The work is better from a social point of view.
25 So, it is a matter of community acceptance as well as what

1 you call gross density. So, there is no optimum because
2 you are dealing with a series of optimum from a community
3 point of view from the ability to run the project point of
4 view, from the economics, from the rent, they can't be
5 taken individually. They must be taken in relation to each
6 other.

7 Q From the point of view of project design giving
8 a - let's say. If we could just hypothetically take a
9 site which is relatively impacted or critical in terms of
10 land or configurations such that it is adaptable to the
11 various types of uses that we are going to talk about;,, do
12 you have a notion as to how many townhouses you **would want**
13 to put on a one fifty or ten acres of such land? Is there
14 a way?

15 A Oh, I think you would find that differences on a gross;
16 basis you may want to say that the community might hold
17 four, six or eight to the acre and you might want to go to
18 sixteen or eighteen or twenty to the acre in terms of rela-
19 ting the houses to each other for purposes of living and
20 **leaving** the remaining acres vacant. So, that there is a
21 reasonable rule for a suburban location, four, six or
22 eight on a gross basis and sixteen, eighteen to twenty on
23 a net basis if you made a density concept.

24 Q Where do you arrive that as a reasonable rule?

25 A A whole series of studies based on acceptability in

1 the community of four to eight from the acre gross from the
2 design point of view working with architects, ten to twenty
3 to the acre to design buildings to have some interesting
4 relationships to each other for family housing.

5 Q Have you ever developed townhouse developments?

6 A Professionally, no. Built them? No.

7 Q Part of a package?

8 A Part of a package, oh yes, sure.

9 Q And what has been the different gross densities
10 for the townhouses?

11 A I will have to look those up. There is one in Newton,
12 Salem, Lafayette and Jersey City, North 25 and in Jefferson
13 and in Camden. I don't have a list before me, but the
14 generally are it. I could get up and supply you with both
15 a list of gross densities if you wish to have them.

16 Q Now, some of those projects would have a mixture
17 of mixed uses?

18 A A family of elderly. Normally what you do is mix
19 them for two reasons. One it is advantageous not to build
20 elderly alone but build elderly among where the family is
21 subsidized or nonsubsidized.

22 Q I will tell you if it is not too much trouble
23 and whether it is reasonably excessive for you to do this.
24 Can you ascertain the kind of density levels that you have
25 been using for those projects both for the different types

1 of uses?

2 A I would be delighted to do that.

3 & Basically, what I would like there is the pro-
4 ject type in terms of the different uses, high rise and low
5 rise, garden, townhouse, elderly versus nonelderly.

6 MR. BERNSTEIN: Are these all subsidized
7 projects you are talking about? Or -

8 MR. BISGAIER: I'm not concerned about my
9 understanding that all of the work would be
10 subsidized. If you have conventional jobs of
11 that nature put those in also.

12 Q I'm curious. You mentioned before that you had
13 a problem with a bus route or a bus coming onto to & speci-
14 fic job. Where was that job?

15 A Pine Ridge.

16 Q Hamilton?

17 A Yes, the problem is ultimately we had to rebuild the
18 road.

19 Q It was not fore seen when that project was
20 built that the bus would come to that project?

21 A It was never designed with the idea that the bus
22 would come into the project.

23 Q Why is that, because they had no bus route at
24 the time it was designed?

25 A I don't think Mercer Metro was in existence at that

1 time. The standard they used was a standard for driveways,
2 parking lots, and would have been a perfectly acceptable
3 standard for parking lots. The parking lots are still last-
4 ing- I mean buses don't drive over the parking lots. It
5 all was able to be resolved satisfactorily because that was
6 then used - that driveway was used by the contractor to
7 drive his construction vehicles for the construction. So I
8 wont bore you with the cost of the repair, but when we de-
9 signed the second building, noting that we now had buses,
10 we designed it to a different specification and, as I say,
11 that is what happened in terms of just plain experiences
12 Otherwise, nothing would have happened to the road. :SQ>
13 these are again competing as I say public purpose. It is
14 cheaper to have built the road better. It sounds like a
15 contradiction, but it is a lot cheaper to build it better
16 to begin with, although it costs more in initial construc-
17 tion. It is a lot less in terms of maintenance and that's
18 the part of my testimony. A major part.

19 Q What has been your suburban experience with
20 subsidized or subsidized jobs what you would consider a
21 rionurban?

22 A The PCH which is family housing in the suburbs -

23 Q That's the Princeton?

24 A The Princeton job.

25 Q You consider the Hamilton one?

1 A Hamilton is elderly.

2 Q Well, elderly and family?

3 A Oh, a lot in Wayne Township in Wayne, New Jersey. I
4 testified to the other ones. We have Ocean Township and
5 Monmouth County and two of them in Hamilton.

6 Q What about the Bernards Township?

7 A Bernards Township in Somerset County, Millwater in
8 Sussex, Wayne in Paterson or Passaic, Pompton Lakes in
9 Passaic. These are considered to be suburban locations.
10 Hamilton I gave you.

11 Q Did you do anything differently in terms, of the
12 packaging of a family or an elderly subsidized job' whether
13 it is a suburban location or an elderly one?

14 A Definitely in terms of what?

15 Q Do you have different standards that you use?

16 A Uh-huh. The only difference would be in order to
17 achieve feasibility on a family job, we have found that you
18 should insert and project some elderly housing, since you
19 get a far better ratio for feasibility for market rentals
20 with elderly. So, the art in the business is to try to mix
21 enough elderly in the totality of the job to give you finan-
22 cial feasibility and achieve two other things at the same
23 time. One, enough elderly to give you social programming
24 for the elderly and so you don't get an off/ kilter to that
25 way and secondly, a physical relationship as between the

1 elderly and the nonelderly to allow the project to exist
2 over a 50 year period of time. By that you have to have -
3 meaning the elderly have to be related to the family housing
4 and kept separate in design terms so that they can achieve
5 their life ability.

6 Q I'm not sure I understand the classical need
7 that you are referring to to have an elderly mix in order to
8 make a family job work. Why is that the case?

9 A The largest cost in a single unit is the plumbing and
10 heating cost. So, that an efficiency unit which is two and
11 a half room count has a bathroom and a kitchen, a one-bed-
12 room unit is a three and a half room count. It has a bed-
13 room, a bathroom and a kitchen. So, for the same plumbing
14 costs you get one additional room and the additional room
15 when you look at fair market rents and you can't list it
16 gives you more construction dollars than it cost to build
17 the additional one room. A two-bedroom unit still has one
18 bathroom and one kitchen and so on.

19 Q It sounds like it would be feasible to build
20 **family** housing then?

21 A * No, it is more feasible at a certain point to build
22 efficiencies and one-bedroom units because efficient, essen-
23 tially it is a two and a half room count and you get with
24 the one bedroom, two and a half rooms. You never get
25 another two and a half rooms out of it.

1 Q Is that a problem with the fair market rent in
2 terms of how there is another structure?

3 A As far as I'm concerned, the whole concept of - there
4 is a problem of course. This is unrelated to reality because
5 that's the way the game is played. This is the way the
6 program is set up.

7 Q I'm not sure why you raised this in the context
8 of different packaging experience you might have with an
9 urban versus a suburban project?

10 A You said what is it you do, and I said even with the
11 urban project it is the same with suburban projects. You
12 have to develop the relationship between elderly and
13 elderly projects. That's true whether you are building in
14 Trenton or whether you are building in Windsor, whether you
15 are building in Paterson, or you are building in Wayne.

16 Q Have you ever built a family project or a senior
17 citizen project where location was a problem from the point
18 of view of the residents of the project?

19 A Yes, we just were turned down in Trenton on West State
20 It was on the site next to the Episopal Church
21 where the residents thought it was an improper use for
22 senior citizens in their neighborhood.

23 Q Okay, I think you misunderstood the question.
24 Have you ever had an experience with an elderly or family
25 project where the location of the project posed a problem

1 for the residents of the project?

2 A Not that I recall, no, sir.

3 Q Before, from the prospectives about access to
4 jobs, transportation, public transportation, is it your
5 experience that the residents have access to cars?

6 A All our family jobs including Princeton have access
7 to public transportation.

8 Q How far?

9 A In Princeton, Mercer Metro came up to the door.

10 Q Prior to -

11 A No, they were a milea^/ay.

12 Q . Prior to that, they were a mile away? . . . i_

13 A And hidden driveways. In the street that injects up
14 to an area that had trees as their neighbors and may have
15 been one of their reasons why it was approved that 35 acres
16 with the woods and the municipality partially built this
17 road of 5,000 feet to the site, and Mercer Metro agreed to
18 bring a Mercer Metro bus. Therefore, people can now commute
19 out. We have found in the particular case of Mercer Metro
20 that the Mercer Metro follows housing when housing is put
21 in. Maybe one of the reasons why you want counties and mass
22 transit buses. That is one of the functions. That's it.
23 It isn't a bottom line dollar.

24 Q What about the Bernard project you are referring
25 to?

1 A That's an elderly job.

2 Q What did you do about adequate transportation
3 there?

4 A It's two blocks from the center of Basking Ridge and
5 I would have to check to see whether or not there was any
6 county or municipal bus service.

7 Q You mean it is walking distance for the elderly
8 to the scene?

9 A It is the other side of walking distance. That could
10 be done. It was one of the drawbacks. Frankly, I remember
11 looking at five or six sites in Basking Ridge, and this
12 was one of the more desirable sites given in Basking Ridge®,
13 I say given Basking Ridge. I don't mean socially. I mean
14 physically, so it made sense.

15 Q How could the needs of elderly residents of a
16 particular project for example be satisfied inclose enough
17 proximity to the project that they wouldn't need transpor-
18 tation out. In other words, I am saying what needs do they
19 have that would require transportation outside of the pro-
20 ject area and walking distance around the area?

21 A fetritional, health, shopping, if you include that in
22 recreation. Just plain getting along to see other people,
23 health in terms of if there wasn't a health food program,
24 children in their project. We now have - incidentally,
25 I'm saying that St. Francis does come into the Pond Center,

1 nutrition if there wasn't an eating site to go out/ recrea-
2 tion because there are all sorts of recreation just beyond
3 bingo and playing pool. There are trips going out to Atlan-
4 tic City or to Hershey, Pennsylvania. These kinds of things
5 that need transportation. Shopping, even though there might
6 be a supermarket shopping or other kinds of shopping as well.
7 Christman shopping, or birthday shopping. All this kind
8 of thing requires a method of transportation other than by
9 foot.

10 Q Can any of those - to what extent can those
11 concerns not be met by doing something in the development
12 itself or closely adjacent, to it? . . . "T i

13 A Again, it depends somewhat on the size of the develop-
14 ment on the one hand, and the availability of financing on
15 the other. The development itself could not afford to buy
16 buses and maintain it unless it was two, 300 units or more
17 in my judgement. Meals are the same thing. There has got
18 to be some suplimental nutrition program such as meals on
19 wheels coming in on a part-time basis or on a permanent
20 basis.

21 Q In your experience, what has been done where
22 public transportation was not available to accomodate those
23 needs?

24 A Either from a individual unit through a project it-
25 self, you can suppliment the municipality of a county bus

1 service, the county through what we have just described in
 2 here. There are odd some federal opportunities for nonprofit
 3 organizations to acquire vehicles. The maintenance of it is
 4 possibly through charges, So, are all of the above or some
 5 of each. So, these things can be done.

6 Q Is this particular concern of the elderly because
 7 they don't tend to have cars or what is it?

8 A They tend to use their cars less as they grow older
 9 and as we are lengthening their life, we are increasing the
 10 possibility of them not having cars.

11 Q What percentage would you say of the units--in
 12 an elderly project would have a capacity, to use their own
 13 car?

14 MR. ... Wait, I'm going to object,
 15 when you say the capacity -

16 MR. "I ..." I will change the question.
 17 It really came in unartfully.

18 Q Is there to your knowledge some expectation
 19 that a certain proportion of the elderly household in an
 20 elderly job would have their own vehicles?

21 A Yes.

22 Q And what is that?

23 A It depends upon two things again. On a suburban or
 24 an urban location and the age of the resident and the sub-
 25 urban end or urban location is because of a choice. That

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1 means if someone moves into a project where there is public
2 transportation which is more probable in an urban location,
3 one if they don't drive they are more likely to choose that
4 other choice and two, if they choose it, they are more
5 likely to give up their car anyway as an ultimate means of
6 transportation. As opposed to a suburban location as
7 Basking Ridge where they know they must keep their car or
8 where they think they keep it, they wouldn't choose living
9 there.

10 Q What proportion would you say of the household
11 is -

12 A. Possibly 50% or 40% in a location like that. Biesflably
13
14 as low as 20 like that in an urban location. And the sec-
15 ond factor and the second factor is age of residents. That
16 if you start with a project that is close to 62 years of
17 age, all people there tend to be more vehicles. As they
18 grow older, their tend to be fewer vehicles, so vehicles
19 would be an edge or a sign of infirmity and ability.

20 Q Do you have an equal concern in this regard
21 when you have a family project?

22 A Equal in what sense?

23 Q In terms of public transportation, access to
24 public transportation and on site services?

25 A Yes, for all the series of reasons.

Q Can you state what they are?

1 A Work is one, recreation is another, shopping is a
2 third. Now, I'm not talking only of the bread winner. I'm
3 **talking about** a whole series of TH people, kids who can't
4 drive>ke^:ause they are not old enough to, but can get
5 around because they ought to. PCH is a good case in point.
6 The kids at PCH, you may want to have them to get downtown
7 for instance to the Quaker Bridge shopping mall for a
8 whole series of reasons. Not only for shopping. The
9 Quaker Bridge Mall has also in terms of recreation like
10 band concerts. Which you can't really depend upon mom and
11 pop who may be a one car family or even a two car. Actually
12 they really need three or four vehicles.

13 So, you really need some means of transportation. ^{TV}
14 So, if you need it for shopping, and all the other things,
15 in urban living, suburban living needs mass-transit. Now
16 to put that into context of your current energy problem
17 and what in fact today literally is happening to Iran and
18 you exasperate the situation.

19 Q Is there a reason to expect that there is a
20 diffeJEeat ward to your concerns here for a subsidized pro-
21 ject versus a conventional project?

22 A The needs are the same. The opportunities are more
23 easily met in nonsubsidized. If you are given this fact
24 that nonsubsidized have more expendable dollars. So, the
25 choice is for the dollar where now it is one dollar for a

1 gallon of gas and the cost of insurances and everything
2 else may be making it more difficult for projects to locate
3 where you have a subsidized nature without achieving the
4 densities. We make mass-transportation feasible and possi-
5 ble where otherwise they wouldn't have been.

6 Q What are the densities that might -

7 A I don't know. I am not a transportation expert and
8 I wouldn't want to attempt an answer rather from the con-
9 cept land or point of view. If you indicate that you have
10 more riders, you have more possibilities for mass-transit.
11 I wouldn't want to testify as a mass-transportation expert
12 because that I am not.

13 Q Granted it is not in your area of expertise.
14 Perhaps you have had substantial matter of experience as
15 a developer and packager. Has that experience given you
16 an opinion?

17 A No.

18 Q Within this regard?

19 A No.

20 Q Have you, do you have any knowledge or infor-
21 mation regarding the percentage of householders in a family
22 project which would have their own vehicle?

23 A No.

24 Q Do you know of any standard rules of thumb or
25 reports or analysis done in that regard?

1 A I have not prepared myself today for that answer at
2 all. I don't know off hand without so much research.

3 Qv How do you account for differences with regard
4 to the minimum parking space requirements in subsidized
5 housing between the elderly project and the family project?

6 A There are fewer people driving in an elderly project,
7 and since elderly projects tend to be single person families
8 as opposed to multi-person families, you only have one, and
9 in some cases two drivers, but mostly one where as in the
10 family you could have two or three or four drivers requiring
11 more vehicles. Secondly, the frequency of the use of the
12 vehicle is less frequently in the elderly tending to require
13 less individual vehicles. Since you shop once a week as
14 an elderly and about three or four times a week as a family
15 person, since you go to on fewer trips and so on, since you
16 need the vehicle as you tend to use it less, it gets more
17 expensive so you are required less parking stalls since you
18 require fewer vehicles.

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CERTIFICATE

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I, DARLENE M. PAKLA A Notary Public

and Certified Shorthand Reporter of the State of New Jersey,

do hereby certify that the foregoing is a true and accurate transcript of the proceedings in the above-entitled matter as reported by me stenographically on the date and at the time and place hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither of counsel nor attorney for any party in this action and that I am not interested in the event nor outcome of this litigation.

Darlene M. Pakla
A Notary Public of New Jersey

Dated: December 13, 1979

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