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2/26/1980

Deposition of

Harvey S Moskowitz

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D.L. Moore
2/26/80

MORRIS COUNTY FAIR HOUSING :
COUNCIL, et als, :
Plaintiffs, :
-V- :
BOONTON TOWNSHIP, et als, :
Defendants. :

DEPOSITION OF:
HARVEY S. MOSKOWITZ

T R A N S C R I P T of stenographic notes as
taken by and before JILL FRIEDBERG, Shorthand Reporter
and Notary Public of the State of New Jersey, as taken
at the offices of HARVEY S. MOSKOWITZ, 7 Burlington
Road, Livingston, New Jersey, on Friday, February 22,
1980, commencing at 10:30.

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

STANLEY C. VAN NESS, ESQ., PUBLIC ADVOCATE
BY: KENNETH E. MEISER, ESQ.,
Deputy Public Advocate
For the Plaintiffs.

MESSRS. MILLS, HOCK, DANGLER & MILLS
BY: JOHN M. MILLS, ESQ.,
For Morris Township.

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I N D E X

WITNESS DIRECT

HARVEY S. MOSKOWITZ

By Mr. Meiser

2

E X H I B I T S

NUMBER DESCRIPTION IDENT.

P MORT 1	Resume of Harvey S. Moskowitz	2
P MORT 2	Memo of John Mills, 10 pages, dated 10/3/79	15
P MORT 3	Memo to John Mills, 5 pages, dated 1/22/80	15
P MORT 4	Zoning Map, Township of Morris	34

1 HARVEY S. MOSKOWITZ, residing at
2 7 Burlington Road, Livingston, New Jersey, 07039,
3 duly sworn by the Reporter, testifies as follows:
4

5 DIRECT EXAMINATION BY MR. MEISER:

6 Q Mr. Moskowitz, I'm going to ask you some
7 questions. If at any time you're not sure or you don't
8 understand the question, just let me know and I'll try to
9 rephrase it. Could you see if this is your resume, if
10 it's correct? Accurate?

11 A Yes, it is. This is my resume and it is correct
12 and accurate.

13 MR. MEISER: Mark this for identification,
14 P MORT 1 for identification.

15 (Whereupon, resume of Harvey S. Moskowitz,
16 consisting of four pages, marked P MORT 1 for
17 identification.)

18 Q Have you prepared zoning ordinances for
19 any towns in Morris County?

20 A Yes, I have.

21 Q Which ones?

22 A Morris -- well, I did by myself or obviously with
23 assistance of others, such as the Planning Board and
24 Township attorneys, I've prepared zoning ordinances for
25 Morris Township, Mount Arlington -- I have to think for a

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1 monent. Washington Township. I'm referring to, just a
2 list of towns in Morris County.

3 I prepared parts of zoning ordinances for Florham
4 Park, Jefferson Township, Mine Hill Town -- I guess it's
5 Township, Pequannock Township and that's it.

6 Q Could you tell us approximately what years
7 you did these, starting with Morris Township?

8 A Morris Township was 1977. When was it adopted?
9 I would say 1977 would be a fair estimate.

10 MR. MILLS: Yes.

11 A Florham Park was early -- I would say 1972.
12 Jefferson was 1973, Mine Hill was 19 -- approximately
13 1974 and 1975. Mount Arlington was 1979. Pequannock
14 was 1971 and Washington was 1977.

15 Q Now, what about, when you say parts of
16 ordinances, what parts did you do for Pequannock, for
17 example?

18 A I don't recall, to be perfectly honest but, I
19 know we did some major revisions to the zoning ordinance
20 at that time. It has since been superceded. They have
21 a full time planner and I know that that was completely
22 redone about two years ago.

23 Q What parts did you do for Florham Park?

24 A We did revisions to their schedule of controls,
25 additional controls and requirements for new zones,

1 changes in procedures or -- necessitated by changes in
2 the state enabling act.

3 Q What about Jefferson Township?

4 A Again, additional zones were required, changes
5 in requirements of existing zones, procedural changes
6 and changes in -- that's it.

7 Q In Mine Hill?

8 A Total ordinance.

9 Q Now, what about the master plans in Morris
10 County?

11 A Master plans, included parts of master plans for
12 Florham Park.

13 I have to add one other -- I have to add to the
14 previous question, Ken. I am also consultant to Madison
15 Borough and we did revisions to their existing zoning
16 ordinance, which included the planned commercial
17 development zone, the office zone and the other changes.

18 It's my understanding that the Town will request
19 me to redo the entire ordinances subdivision, zoning and
20 procedural into a single land development ordinance.

21 In addition to the previous question, Florham
22 Park, Jefferson, no, I did not -- I'm sorry, Madison,
23 I prepared the update required by the new municipal land
24 use law. Mine Hill, I did not. Morris Township, only
25 that portion of the master plan required by the municipal

1 land use law. I did the entire zoning ordinance for
2 Mount Arlington.

3 Q You mean the entire master plan?

4 A Excuse me, yes. The entire master plan for
5 Mount Arlington.

6 Q What about Washington Township?

7 A No, the master plan was completed and I just did
8 the land development controls.

9 Q I see. Now, in your resume, you state that
10 you've been involved in review and redesign of approxi-
11 mately 5,000 dwelling units in planned residential
12 developments. Has any of that been in Morris County?

13 A Two. One in Morris Township, which involved
14 approximately 250 -- excuse me, 150 dwelling units, which
15 was subsequently turned down by the governing body and
16 a planned unit development in Mount Arlington, which is
17 currently before the Planning Board. I estimate the
18 number of units there is 600 units.

19 Q Now, what was your role in the development
20 in Morris Township?

21 A My role was to prepare the amendment to the
22 zoning ordinance, which enabled the applicant -- let me
23 rephrase that.

24 My role in the Morris Township was to prepare a
25 suggested amendment to the zoning ordinance, which would

1 have permitted the planned residential development to be
2 developed.

3 Q What was the name of this project, by the
4 way, do you know?

5 MR. MILLS: Alexandria.

6 A Alexandria.

7 Q Any other PRD's in Morris County, which
8 you've reviewed or PUD's?

9 A The planned commercial development or -- do you
10 just want planned residential development?

11 Q Why don't you just tell me -- you're
12 referring to Madison?

13 A Yes, Madison, of course, the Giraldo projects of
14 Prudential with about 2.2 million square feet of office
15 space. That's being developed under a planned commercial
16 development amendment to the zoning ordinance. I have
17 reviewed a planned unit development in Mine Hill Township.
18 I estimate about 1500 dwelling units in addition to other
19 space.

20 Q Has that been approved or what is the status?

21 A Not only was it not approved but it was -- that
22 was what led to my ultimate firing from that Town. It
23 led to my ultimate dismissal.

24 Q You recommended it?

25 A I had drafted the ordinance and I had recommended

1 it and the citizens of the community took strong
2 exception to my recommendation, which manifested itself
3 in the new municipal government, which did not include
4 Moskowitz.

5 Q Anything else in Morris County?

6 A In terms of actual planned residential development?

7 Q PUD's, yes.

8 A Madison has -- no, excuse me. From time to time,
9 Jefferson Township would receive planned -- we would
10 receive applications for variations of planned development
11 but, they were never acted upon.

12 Q I see.

13 A Let me just see what else. That's all I can recall
14 in the county.

15 Q In your resume, you also say that you have
16 represented private clients.

17 A Yes.

18 Q On matters relating to site design and
19 other matters for projects, approximately totaling 10,000
20 dwelling units. Are any of those in Morris County?

21 A No.

22 Q Do you presently represent any housing
23 developers in the Morris County in any issues?

24 A Let me consult my current files. I'm serving as
25 planning expert for Guerin, in their litigation with

1 Chester Township. I represent Laganella, in litigation
2 with the Town of Dover.

3 What was your question again? Any housing developers
4 or any other kinds of developers?

5 Q Basically, housing in Morris County at this
6 point.

7 A I represent Max Sherman, Esquire, who is in current
8 negotiation and/or litigation with the Township of
9 Rockaway, to get certain properties rezoned, which would
10 also permit housing. That's all.

11 Q What is the issue in controversy in the
12 Chester Township case?

13 A The arbitrary and capricious action on the part of
14 the Township in zoning certain parts of property for
15 Laganella for very large lot zoning.

16 Q We're talking about Chester or Dover?

17 A Chester.

18 Q Laganella -- I thought you said that's
19 Dover?

20 A Excuse me, Laganella is Dover.

21 Q Going back to the issue of large lot zoning--

22 A It's actually two acre zoning in an area which
23 the courts, in the Caputo case, indicated as being
24 suitable for higher density development.

25 MR. MEISER: Off the record.

1 (Whereupon, an off-the-record discussion
2 took place.)

3 MR. MEISER: On the record.

4 Q What was the issue in Dover Township?

5 MR. MILLS: Dover Town.

6 A The Town of Dover.

7 Q I'm sorry.

8 A The issue again, was that an applicant's land
9 had been zoned -- had previously been zoned for multi-
10 family development. The community subsequently rezoned it
11 for one acre zoning. Excuse me, subsequently rezoned it
12 for single family detached and the applicant has sued.

13 Q Have you prepared any reports at this
14 point in the Dover --

15 A Yes, I have.

16 Q Is the issue in the Dover case, Mount Laurel
17 exclusionary for pure arbitrariness.

18 A Arbitrariness. There is no exclusionary question.

19 Q What about Rockaway, what does the builder
20 seek there, the developer?

21 A The builder -- actually, the builder owns property
22 across the Rockaway Mall and the Town rezoned that to
23 allow -- to permit only offices and housing.

24 It had previously been zoned for retail commercial
25 and it was then under a new zoning amendment.

1 The applicant was limited -- the owner was limited
2 to predetermined levels of office and housing use.

3 The question does not relate to Mt. Laurel. It
4 is really a question of arbitrariness.

5 Q Have you testified in any cases where the
6 issue was whether a town was either developing or
7 developed?

8 A Yes.

9 Q Which cases would those be?

10 A I thought he'd never ask. I testified on Pascack
11 Associates V. The Township of Washington, which we won
12 at the trial level in a brilliant decision by Judge
13 Gellman and reversed in the Appellate level.

14 I have to make a comment. The issue there was
15 not whether Washington Township was developing or un-
16 developed -- developing or developed. That was, I believe,
17 prior to Mt. Laurel or it wasn't. It came out about the
18 same time. There was no question that Washington Township
19 was a developed municipality so, that was not an issue.
20 I may have given you the wrong impression but the issue
21 was exclusionary zoning.

22 MR. MILLS: Are we talking about Washington,
23 Morris County?

24 THE WITNESS: No, excuse me, Washington
25 Township, Bergen County. There are five

1 Washington Townships in the State.

2 Q Any other cases?

3 A I testified in Glenview Development V. Franklin
4 Township, in which, of course, one of the issues was
5 whether or not it met the criteria established by Mt.
6 Laurel as a developing municipality. I testified there.
7 We lost at the trial level, as you indicated. It's going
8 up to the Supreme Court.

9 I might add that that was one of the issues.
10 There were other issues involved. I testified in Holmdel.
11 It was -- may I just refer to -- I forget the citation.
12 It was named after the road. Excuse me. I'm having a
13 problem. I don't recall the citation. It was in Holmdel
14 and it was based on -- it was a case which involved the
15 developing municipality.

16 Q It may come to you. Why don't we go on.
17 Who did you testify in behalf, in that case?

18 A Alan Wurtzman (phonetic) was the attorney and it
19 was Harold Kramer who was the principle in the firm.
20 They're from Clifton.

21 Q Your testimony was that Holmdel was a
22 developing municipality.

23 A Absolutely and we won on the local level and the
24 Appellate Division, in fact, supported our position with
25 respect to that point, that it was a developing

1 municipality.

2 Q Let's continue. Were there other cases
3 in which you've testified as to this issue of developing
4 or undeveloped?

5 MR. MILLS: Morris Township.

6 A Excuse me, that's correct.

7 Q Is that part of your answer?

8 A Morris Township, it slipped my mind. In the case
9 of Berken Corporation V. Morris Township Board of Adjust-
10 ment, et al.

11 Q Was there a written decision in that case?

12 A I have to defer to my attorney. I don't know.

13 MR. MEISER: Off the record.

14 (Whereupon an off-the-record discussion
15 took place.)

16 MR. MEISER: On the record.

17 Q Do you know if that case was appealed?

18 A I don't know. I think the applicant has submitted
19 a -- submitted a development plan based on the existing
20 development so, I don't know whether or not -- in fact,
21 it's right in front of the Planning Board at this time so,
22 whether or not there's an appeal, I'm not sure.

23 MR. MILLS: Off the record.

24 (Whereupon an off-the-record discussion
25 took place.)

1 MR. MEISER: On the record.

2 Q Any other cases in which the issue of
3 developing or developed municipalities have come up?

4 A There probably are. Let me ask you, Ken, again,
5 can you give me a further definition? Do you mean a case
6 where I testified before the Board of Adjustment and/or
7 the courts?

8 Q At this point, I'm looking before the
9 courts.

10 A I think that's all that I can recall at this time.

11 MR. MILLS: Off the record.

12 (Whereupon an off-the-record discussion
13 took place.)

14 MR. MEISER: On the record.

15 Q Are there Zoning Boards of Adjustment cases
16 in which the issue of developing or development has arisen
17 in which you've testified?

18 A Yes, but I -- the answer to that is yes but, I
19 don't -- I can't recall which ones they are. I could
20 get you copies of that, if you like.

21 Q All right.

22 A Do you want me to do that, Ken?

23 Q If you could.

24 A I have to go to my files and just --

25 Q Besides these cases, are there any other

1 cases in which you prepared reports or are planning to
2 testify --

3 A Yes.

4 Q -- where the issue is developing or undeveloped
5 municipalities?

6 A Yes.

7 Q What would they be?

8 A Two others. Madison Borough.

9 Q Do you mean this case?

10 A Yes, in this case, I'm sorry. That was my under-
11 standing. I thought you were talking about this case.

12 Q I meant the whole builders versus all 26
13 towns but, go ahead. What about Washington Township?

14 A I'm going to testify on their behalf in terms of
15 developing versus developed.

16 MR. MEISER: Excuse me, off the record.

17 (Whereupon an off-the-record discussion
18 took place.)

19 MR. MEISER: On the record.

20 Q So, there are no other towns in which
21 you're preparing testimony?

22 A Madison Borough, in which you will be deposing me
23 today. Morris Township and Washington Township.

24 Q Fine. In preparing your -- first of all,
25 let me ask you, is this the only report you have prepared

1 at this time in conjunction with the suit against Morris
2 Township?

3 A Subsequent to this report, I prepared another
4 report.

5 Q Do you have a copy of that with you?

6 A Yes.

7 MR. MEISER: Can we have this one marked?
8 Mark the October 3rd report, MORT 2 and this one
9 will be MORT 3.

10 (Whereupon, the above-mentioned report,
11 memorandum addressed to John Mills, Esquire, re-
12 garding Morris County Fair Housing Council, et al,
13 versus Township of Morris, dated October 3, 1979,
14 consisting of ten pages, marked P MORT 2 for
15 identification.)

16 (Whereupon, memorandum directed to John
17 Mills, Sr., Esquire, regarding Morris Township
18 Housing Region, dated January 22, 1980, consisting
19 of five pages, marked P MORT 3 for identification.)

20 Q Now, in preparing your October 3rd report,
21 did you consult with any other materials?

22 A I don't understand what you mean by "consult with
23 any other materials."

24 Q I'm trying to find out what breakdown
25 references you may have used in preparing this report.

1 A It would be too lengthy to detail except that I
2 used all the material that has been prepared by other
3 experts, both in this case and also, the very, very large
4 amount of material which has been written with respect to
5 Mt. Laurel and what the decision means and in delineation
6 and developing and non-developing municipalities.

7 Q Did you use any materials, specifically
8 relating to the Township of Morris?

9 A Oh, yes.

10 Q That's what I'm more interested in, rather
11 than your breakdown as to what constitutes a developing
12 municipality at this point.

13 A That material included -- included the master plan
14 of Morris Township. It included computations prepared
15 for me by the Township Engineer, which included amount of
16 land zoned for various uses and developed for various
17 uses and lands affected by environmental problems.

18 Q Let me just ask you, when you say "compu-
19 tations," are those the charts which are attached at the
20 end of your report, as Table 1 and Table 2?

21 A May I see that? Yes, those are the ones.

22 Q Were there any materials from Mr. Herbert,
23 that you reviewed?

24 A The map was -- well, there was a large map that
25 was prepared for -- as part of the case. I don't have

1 that here. That was a hand colored map and he did write --
2 he did accompany his charts with one or two pages of
3 written text.

4 Q Now, what does the map delineate? What is
5 the purpose of the map?

6 A Just showing developed areas before the Planning
7 Board, some in various stages, in the process of develop-
8 ment.

9 Q Now, you said in addition to these charts,
10 that there were several pages of comments from Mr. Herbert.
11 Do you have those?

12 A Yes, one or --

13 Q Is this -- let me ask you, are these the
14 comments that you're referring to?

15 A Yes, this is exactly it.

16 MR. MILLS: On the first page, that is
17 something added to it.

18 MR. MEISER: Okay.

19 THE WITNESS: Yes, the first page was not
20 it but, obviously the second page was.

21 Q Did you make any field trips to Morris
22 Township, in conjunction with preparing this report?

23 A I spend about -- I would estimate ten hours a
24 week, between five and ten hours a week in the Township,
25 on various departmental matters.

1 I did not spend any specific time, to the best of
2 my recollection, in the preparation of -- excuse me, I
3 have to take that back.

4 Much of the information that I got from this
5 report, that I've used in this report, came from the files
6 of Morris Township so, I went to Morris Township to pick
7 that material up but, probably in conjunction with my
8 other work, obviously.

9 Q Now, Table 1 lists land that's vacant.
10 Are you familiar with where this land is or which piece
11 of land they are?

12 A Yes.

13 Q What is the present population of the
14 Township, do you know?

15 A I will get that for you. It's approximately
16 19,000. I think it is included in my report. I was
17 looking for my other -- the 1978 population of the
18 Township is 18,500, approximately 18,550.

19 Q Do you have any opinion as to what the
20 population of the Township will be at full or ultimate
21 development?

22 A My feeling is that the population of Morris
23 Township, given the demographic changes that are taking
24 place in the Township now, will probably be somewhere in
25 the order of 25,000.

1 MR. MILLS: For what year?

2 THE WITNESS: At ultimate development.

3 MR. MILLS: What was the question? Read
4 it back, please.

5 (Whereupon, the following was read back:

6 "Do you have any opinion as to what the
7 population of the Township will be at full or
8 ultimate development?")

9 MR. MILLS: Okay.

10 Q Do you have any opinion as to what time
11 period that's likely to be?

12 A Well, I think the ultimate development is a process
13 that takes place, I think, when all the land which is
14 zoned for residential development is built upon. I
15 think you're probably talking about 1990.

16 Q How many additional units, housing units,
17 do you think we're talking about in the Township, between
18 now and ultimate development?

19 A About 2,000.

20 Q Now, turning to Table 1, for the moment,
21 of your report, do you know/^{how}this determination of vacant
22 developable land was made?

23 A I do not.

24 Q Do you know what was included in the term
25 "vacant developable land?"

1 A Yes. The term, in the presentation of the table,
2 "vacant developable land," was classified as land which
3 is privately owned and not committed for a specific
4 purpose at this time. It included land owned by public
5 institutions and/or agencies such as Greystone.

6 The Municipal Utilities Authority, parks, et cetera.
7 It included large land holdings, which were owned by
8 non-profit and/or institutional uses, such as Delbarton
9 School, Seeing Eye, the country clubs, such as Morristown
10 Golf Club, Springbrook Country Club.

11 Q Now, supposing for a moment that there was
12 a, let's say, 20 or 30 acre tract within one piece of
13 one building on it, a house. Would that entire land
14 be considered developed --

15 A No.

16 Q -- on this chart?

17 A No, it would not. In my discussion with Mr. Herbert,
18 it was -- I recall the ground rules are -- I'm not
19 definite about it but, it would be that a reasonable
20 amount of that land would be taken off for the homestead
21 so to speak and the rest would be considered as vacant.

22 Q Do you have any idea what the demarcation
23 was, whether it be one acre, two acres?

24 A I would think it would be about three acres.

25 MR. MILLS: Zone?

1 THE WITNESS: Well, most of that stuff is
2 OS-GU zone, which calls for a minimum of three
3 acres. Let's see, that would be the basis for it.

4 Q Now, on Table 2, you refer to development
5 restrictions and one restriction is steep land. What is
6 the definition of steep land?

7 A I don't recall the figure. I could call -- make
8 a phone call immediately and get it for you.

9 Q All right. Let me just ask you that on the
10 note, on footnote one, it says that it was taken from the
11 Township of Morris Soils Survey.

12 A Yes.

13 Q Would it be that which is severe slopes or
14 was that -- you don't --

15 A That's not the category. I think what you're --
16 the designation has a code which goes from three to eight
17 and from eight to fifteen but, I can't tell you which
18 ones he included. Ken, I could call him up and find out
19 immediately.

20 Q All right.

21 A Would you like me to do that?

22 Q Yes. Off the record.

23 (Whereupon an off-the-record discussion
24 took place.)

25 MR. MEISER: On the record.

1 A 15 percent. 15 percent was considered as steep
2 slopes.

3 Q Now, 135 acres of this steep land, is listed
4 as Mendham and Mt. Kemble Avenue. What is the present
5 zoning of that? Would the zoning map help you?

6 MR. MILLS: Off the record.

7 (Whereupon an off-the-record discussion
8 took place.)

9 MR. MEISER: On the record.

10 A In answer to your question on the record, 135
11 acres that Mr. Herbert had indicated as being in excess
12 of 15 percent or steep slopes, runs in a wedge along the
13 southwesterly portion of the Township. It is zoned an
14 open space government use, which calls for minimum acreage
15 of three units per acre.

16 Q Now, are we talking about -- how many tracts
17 are we talking about there, do you know, within the 135
18 acres?

19 A I can't answer that, That looks like in excess to
20 me -- excuse me, I don't have an answer to that question.
21 I don't know.

22 Q On Page 1 of your chart, Table 1 --

23 A Yes?

24 Q -- where it lists vacant developable land --

25 A Right.

1 Q -- that does not consider whether there are
2 development restrictions on there, does it?

3 A Does not. You mean private development restric-
4 tions?

5 Q Well, environmental restrictions.

6 A Yes, it excludes those areas which are noted
7 either as slope or in flood plains.

8 Q To make sure I understand then, to get
9 vacant land in the Township, we would add the 740, which
10 is listed to the -- listed as developable, to the 171,
11 69 and 62?

12 A Yes.

13 Q I'm a little bit confused. Now, on Page 6
14 of your report, at the second to last paragraph, at the
15 bottom, it states that Table 2 rules out an additional
16 275 acres, leaving 400 acres of land, which is to be
17 considered as developable.

18 A I see, yes. You are correct. The two charts are
19 mutually exclude -- are exclusive then. The 740 acres
20 includes the land under development restrictions.

21 Q In other words, there are 740 acres which
22 are vacant and we have to go to Table 2 to see which of
23 those 740 are actually developable?

24 A Well, you have to subtract out Table 2, which has
25 development, physical development restrictions on them.

1 Q Now, the 135 acres on Mendham tract, to
2 Mt. Kemble Road, is zoned as OS-GU.

3 A Now, I have to answer that in a different way.
4 I can't pinpoint specifically on this map which of those
5 areas between Mt. Kemble, from Mendham Road, to Mt. Kemble
6 Avenue, are included in that, so, the answer is I can't
7 say whether it's one tract or more than one tract or what.

8 Q On Table 1, 740 acres of vacant developable
9 land broken down by district, I'm trying to find out
10 how much -- why districts have no environmental constraints.
11 Is there anyway to do that?

12 A I think Allen Herbert is the best witness for that
13 because he prepared the charts for this.

14 Q So your answer then, is you don't know.
15 Is that correct?

16 A I don't know.

17 Q Now, what about the 20 acres, from Sussex
18 Avenue, to Mendham Road, can you tell from the zoning map
19 where that would be?

20 A I cannot. You need a topographical map. I think
21 Mr. Herbert has all that in his files.

22 MR. MEISER: Off the record for a second.

23 (Whereupon an off-the-record discussion
24 took place.)

25 MR. MEISER: On the record.

1 Q Now, moving along, the flood plain, in
2 note two, that was taken from the -- first of all, let
3 me ask you, has HUD ever done a flood insurance map for
4 Morris Township?

5 A That's exactly where that -- those flood plain
6 areas were noted as being taken from the HUD flood
7 insurance study.

8 Q Now, the 45 acres from Speedwell Avenue
9 to Sussex Avenue, can you identify that on this map?

10 A Here's Sussex, yes. No, that's not it. I'm sorry.
11 I think that land is two categories. I think I can identify
12 it. One is an actual lake.

13 Q Does the lake have a name?

14 THE WITNESS: Isn't that Speedwell Lake?

15 MR. MILLS: Is that in Morris Township?

16 THE WITNESS: No, a portion of it is -- I
17 beg your pardon, it is not in the Morris Township
18 area. What he's talking about is that area
19 adjacent to Route 24; on both sides of Route 24.
20 Portions of that area along the Whippany River are
21 zoned -- are in the flood plain.

22 Q Do you know what the zoning is now?

23 A It's -- yes, it's RA-25. I have to say that it is
24 RA-25 as a result of a court case in which the property
25 owner, who was Mrs. Streeter, that that was the solution.

1 Q What was it zoned prior to that?

2 A I think it was zoned three acre.

3 Q Now, do you know if this 45 acres in this
4 RA-25 zone, is one parcel?

5 A I don't believe it is. I think it runs along
6 the river, on both sides of Whippany River.

7 Q Now, can you tell or do you know whether
8 these are entire tracts that are within the flood plain
9 or only part of tracts?

10 A I think they're parts of tracts. I know that the
11 court case was settled because the Town adopted a flood
12 plain -- a storm water control and flood plain manage-
13 ment ordinance, based on HUD so consequently, those areas
14 which were sensitive to flooding, were excluded from
15 development so consequently, we were able to rezone the
16 remainder of that land for RA-25.

17 We were able to rezone the entire land for RA-25,
18 although the flood plain portions cannot be built upon.

19 Q So then, these 45 acres could be open space
20 for development. Is that correct?

21 A Yes.

22 Q What about the 18 acres listed on James
23 Street, to Woodland Avenue? Do you know where that is
24 on the map?

25 A I'm looking. That's south -- James Street is

1 south of Morristown and I think it's in here, yes, it is
2 part of -- it is part of the Great Brook flood plain area.

3 Q Now, is this 18 acres, one tract or several
4 tracts?

5 A It is one tract.

6 Q What is the zoning of that today?

7 A OL-40. Excuse me, I erred. It is two tracts
8 of land in -- let me go back again and say that it is
9 three tracts of land, two large tracts and one smaller
10 tract.

11 It is zoned office and laboratory, OL-40.

12 Q Now, note three refers to unsewered parts
13 of the Township.

14 A Yes.

15 Q Do you know what percentage of homeowners
16 in the Township have access to public sewer?

17 A Don't know.

18 Q Is it over 50 percent?

19 A Yes.

20 Q Is it over 5 percent?

21 A Don't know.

22 Q Now, do you know, on any of these tracts,
23 what the soils suitability for septic is?

24 A The answer to your question is no, I cannot answer
25 that with any assurance of accuracy. That's something

1 you have to talk to Allen Herbert about.

2 Now, let me add, what I recall from our discussion
3 was but again, I don't feel -- I think you have to go
4 back to the source. Those were areas that were unsewered,
5 which because percolation problems, would not accept
6 septic; on site septic on about 70 acres in the community,
7 based on the soils surveys, which indicate the inability
8 to sewer -- the inability to utilize on site septic.

9 Q Now, 32 acres, listed from Sussex Avenue
10 to Mendham Road. Is that the same -- could that be part
11 of the land which is both steep and unsewered?

12 A I don't know, I don't know.

13 Q Is your answer the same for the land,
14 Mendham Road to Mt. Kemble Avenue?

15 A Yes, I think again, Allen prepared it and I think
16 he's the man who has to answer it.

17 Q The Woodland Avenue, to Whippany Road,
18 is that the same?

19 A Yes, it is.

20 Q Now, do you know what the zoning -- did
21 you tell me for the Sussex Avenue to Mendham tract is --
22 area?

23 A From Sussex to Mendham, is generally open space,
24 government use, although there are three acre residential
25 as well and there is a RA-15 zone in that particular

1 area as well.

2 Q So, you can't tell --

3 A I cannot tell.

4 Q -- just from sewers, what it is?

5 A No, I'm sorry, I can't.

6 Let me say this. I do know that 15,000 square
7 foot zones are sewerred. All these are not.

8 Q All RA-15 in the Town are sewerred?

9 A Yes.

10 Q What about all the RA-7, 11?

11 A Yes.

12 Q What about the RA-25?

13 A Sewerred or capable of being sewerred.

14 Q That's your answer?

15 A Yes.

16 Q In other words, there are RA-25 acre areas
17 which have not been developed yet but, sewer areas are
18 available to them or capable of being sewerred?

19 A Yes.

20 Q What about the RA-35?

21 A I know that some of the RA-35 have **sewers** and
22 some are capable of being sewerred but, I can't tell you
23 whether or not these are areas that are zoned for RA-38--
24 of 35, which will have to use on site septic.

25 Q And the RA-130?

1 A The RA-130 and OS-GU zones, are totally unsewered
2 except where the RA -- except where the OS-GU is occupied
3 by a -- some sort of an institutional use, which might
4 have its own treatment facility. For example, Greystone.

5 Q Does Greystone have a package plant?

6 A Yes, it does.

7 Q Are there any other package plants in the
8 Township, that you know of?

9 A I am not aware of any.

10 Q What about the OL zones? There is a 5, a 15
11 and a 40. Do they have --

12 A All sewerred.

13 Q And the I-21?

14 A All sewerred.

15 Q And the TH-6 and 8?

16 A All sewerred.

17 Q What about the RB-7?

18 A All sewerred.

19 Q Do you have any opinion as to whether
20 package plants would be feasible within the OL-40?

21 A All the OL-40 zones are sewerred.

22 Q I'm sorry, OS-GU or the RA-130.

23 A I think they probably would be feasible.

24 Q Now, the RA-35, what is the smallest home
25 that can be built on RA-35?

1 A We have no minimum.

2 Q I'm not talking about -- I'm talking about
3 square footage.

4 A 35,000 square feet.

5 MR. MILLS: Wait a minute, the question was
6 home. Now --

7 MR. MEISER: I meant lot. I would amend
8 my question.

9 A You can cluster down to RA-25. We allow clustering
10 from the next higher zone to the next lower zone.

11 Q But, is there an overall limitation for over-
12 all density?

13 A The density is higher. Then, the less density
14 zone or the RA-35 designation establishes density. The
15 applicant establishes -- can reduce lot size to RA-25 and
16 he can do that to each of the subsequent zones in the
17 Town.

18 Q Now, can you show on the map where the 274
19 acres of vacant land in the RA-35 is located?

20 A I think I can. Oh, excuse me, I'm sorry. I would
21 need a -- I need a map that Allen Herbert has, which
22 shows those particular zones, particular tracts which
23 are zoned RA-35 and are still vacant and available for
24 development.

25 Along Harter, for example -- wait a minute, hold

1 it. I have to answer the question by saying how many --
2 let me ask you a question. How many acres was in that
3 category?

4 Q He lists 274.

5 A Okay, those areas which are still developed, still
6 undeveloped, are generally in the area -- those areas
7 between Jockey Hollow Road and Woodland Avenue. On both
8 sides of Woodland Avenue, these are indicated as RA-35,
9 with a designation of RA-35. Some of these have been --
10 I'm not definite but, some of these are in the process
11 of being developed and consequently, not being included.

12 What I mean by process of being developed, actual
13 construction has begun in the area of Frederick Place and
14 Harter Road, a large tract in the area of -- to the south
15 of Blackberry Lane and in the area to the west of Mt.
16 Kemble, a plan has been submitted to the Planning Board
17 and has received preliminary approval. Those probably,
18 in fact, I know those have been excluded from the developed
19 -- from the vacant undeveloped areas but, the others
20 include areas immediately on both sides of Woodland Avenue,
21 between Victoria Lane and James Street.

22 Excuse me, between Victoria and James Street and
23 I know portions of those that I just mentioned before,
24 are being developed or are in the process of being developed
25 and are also included as part of that available for

1 development.

2 Q Do you know the reason why there is a 35,000
3 square foot lot size requirement in the R-35 zone?

4 A Part of a comprehensive plan.

5 Q Could there, consistent with public health
6 and safety, could those densities in the R-35 zone be
7 lowered, the lot size be lowered?

8 A Yes.

9 Q Do you have any opinion as to what the
10 smallest lots that could safely be built upon in the RA-35
11 zone would be?

12 A Safely? It's a very difficult question to answer
13 only because you discount -- if we zoned it for 5,000
14 square foot lots that pertains to safety, these areas
15 are much -- of the RA-35 acre, the character of that
16 area has been established. I think you probably -- some
17 of the RA-35 zones, for example -- rather than reduce
18 the lot size in terms of single family development, I
19 would probably prefer to see some sort of a townhouse
20 development or attached housing at densities consistent
21 with what I think a good townhouse density is, eight to
22 an acre or thereabouts.

23 I think in the RA-35, it could probably safely
24 reduce them to RA-11. That is 11,000 square foot, about
25 four to the acre.

1 Q Add impediments to that, that you're aware
2 of, that would be the character of the neighborhood
3 and the master plan recommendations?

4 A Yes.

5 Q The RA-25 requires 25,000 square foot lots?

6 A Yes.

7 Q And that could be through clustering,
8 reduced to fifteen?

9 A Yes.

10 Q All right. The 42 acres located in the
11 NRA-25 that are still vacant and do you know?

12 A I have to see. Oh, I'm sorry. It's on both sides.
13 I do know it's on both sides of proposed Route 24, between
14 Sussex and Lake Road -- was this zoning map marked into
15 evidence, Ken? Do you want to mark it so that we know
16 what we're talking from?

17 MR. MEISER: Sure. Mark that P MORT 4 for
18 identification.)

19 (Whereupon, zoning map for the Township of
20 Morris, marked P MORT 4 for identification.)

21 Q Any in the RA-25 that's vacant in that -- in
22 the middle of this tract or --

23 A All of it.

24 Q This entire section --

25 A That is correct.

1 Q -- is vacant?

2 A On both sides of Whippany, the river, although
3 portions of that river have been donated for open space
4 as part -- what trail?

5 MR. MILLS: Patriots Path. Just to refresh
6 your memory, Harvey, some of this is -- has
7 already been developed, Ironwood.

8 A I'm sorry, some of that has been developed, the
9 Ironwood development, that's previously been improved.

10 Q Was this entire RA-25 tract rezoned to
11 RA-25 as a result of litigation?

12 A I think the Ironwood development was probably --
13 was in place or had been approved prior to that but, I
14 think the good part of it between Lake -- I would say
15 that portion between Inamore Road and Lake Road was, I
16 think, part of the Streeter litigation.

17 Q Now, the adjoining, to the south and to the,
18 I guess south and -- east --

19 To get my bearings, that is R-15?

20 A Correct.

21 Q Is there a reason why this has a higher
22 lot size requirement?

23 A This is only -- the reason was it was at one time
24 zoned even larger because of the general wetness of the
25 areas immediately adjacent to the road, which is Sussex

1 Avenue, are fairly dry. The land then slopes down toward
2 the Whippany River, Consequently, the -- hence, the
3 reason for the larger lot size designation. It is a
4 different quality and a different kind of land and I think
5 it would be -- it would take a larger lot size to compen-
6 sate for the general lowness and wetness of the area.

7 Q What problems would you see with zoning
8 that for townhouse and keeping the area along the river
9 as open space?

10 A I see no problem if the question of the wetness
11 can be overcome.

12 Q Now, the chart lists 274 acres in RA-35
13 as vacant and can you tell us where that would be?

14 A I thought we had --

15 MR. MILLS: He already answered that.

16 MR. MEISER: I'm sorry. I'm getting confused.

17 We've done 35 and 25. Where is the 130 then, the
18 83 acres?

19 A The 130, RA-130, is in the western portion of the
20 Town, characterized by very hilly topography and lots of
21 streams. As you can see, the Whippany River and its
22 many tributaries cuts through that area. It's an area
23 with very porous percolation and no sewer service.

24 Q Do you know specifically what the vacant
25 land would be in the RA-130?

1 A The RA-130 vacant land is off, north of -- north
2 of Lake Road. There's one of those tracts. The portion
3 to the west of the Whitehead Road, would be another
4 tract. You have RA-130 off of Picatinny Road, as being
5 vacant. Then, there's scattered parcels coming out.

6 Q Do you know of any difference between the
7 lands north and south of Lake Road?

8 A I don't know. I can't answer the question.

9 Q Where are the 98 acres of vacant OL-40 land
10 that you refer to in the chart?

11 A That's -- let me see, OL-40, 98, that is a tract
12 of -- a part of that is a tract of land south of Mt. Kemble
13 and up to the Harding boundary.

14 Q How much of the OL-40 site is actually being
15 used for office or laboratory at this point?

16 A What I'm indicating on the map is a large tract
17 of about 80 acres. It has a large office building on it
18 and approval was just given at the last meeting for another
19 office building.

20 To the north of that, off the Mt. Kemble, the
21 tract that I am pointing to is the one between the
22 existing housing, RA-15 and those are office uses.

23 Q Could that appropriately be used for
24 residential land?

25 A Yes, it could.

1 Q It has next to it -- what is the zone?

2 I can't read upside down.

3 A RA-15.

4 Q Can and did you indicate there was another
5 OL-40 land that's vacant?

6 A No longer. That was the area around Great Book
7 and an application for office use has been received for
8 the remaining OL-40 zone in the Township.

9 Q So, that would not be included in this length
10 of development?

11 A It was included but it has to be removed. The
12 application just came in within the last two weeks and
13 the list doesn't reflect it.

14 Q Now, you had indicated that, I believe, 18
15 acres of OL-40 land was in a flood plain. Is that one of
16 the tracts we were just talking about?

17 A Yes, it is.

18 Q Is that one for which approval has been
19 granted or one that is still vacant?

20 A Approval has been granted on one, right.

21 Q My question is, the reference is to OL-40,
22 between James Street, to Woodland Avenue, as being in the
23 flood plain.

24 A Yes?

25 Q The tract to which preliminary approval has--

1 application has just been submitted?

2 A Yes, partly. I'm not quite sure. I haven't seen
3 the application yet so, I have a problem to pick out where--
4 how far it extends out into that area.

5 Q What about the OL-15? There's 16 acres
6 listed as vacant and do you know where that would be?

7 A Yes, that is called the Martini tract. This is part
8 of the large tract adjacent to I-287 and is indicated on
9 OL-15 as part of that as being developed. A small portion
10 is not. How many did Allen say he indicates on L-15?

11 Q Fifteen acres.

12 A Let me find out where the rest of it is. This is
13 Medco that's being developed. This is on OL-15, which
14 I'm pointing to, off the Whippany Road. It is -- excuse
15 me, I know where it is. It is the area immediately
16 adjacent to the I-287 that's developed already.

17 A piece across is now under development at this
18 time. Okay. Let me make a comment that this map is
19 inaccurate and we may have to get amendments from Allen
20 Herbert because there is OL-15 indicated to the south of
21 Punchbowl Road, which has been zoned for townhouse
22 development.

23 MR. MILLS: These were subsequent changes to
24 the zoning from the time of that map?

25 THE WITNESS: Yes.

1 MR. MILLS: It's not that the map is
2 inaccurate.

3 THE WITNESS: Right but, it appears that it
4 was done prior to the February 2, 1979, date of that
5 report so, it probably doesn't reflect -- so
6 probably, the chart reflects -- the table reflects
7 accurately how much land is left. Let me say that
8 I think the OL-15, vacant OL-15 referred to in the
9 chart refers to what is called the Martini tract,
10 like the drink.

11 Q Where is the vacant part of the Martini
12 tract at?

13 A To the northeast, General Learning building.
14 General Learning is located off the Victoria Lane and this
15 is to the east of that. Generally to the east.

16 Q Is it along Victor Lane?

17 A That's Victoria Lane.

18 Q Victoria Lane.

19 A General Learning is, I think, along Victoria Lane.
20 This is the piece -- vacant portion of that OL-15 is
21 zoned, is east of that.

22 Q The I-21 lists 27 acres as vacant.

23 A Yes.

24 Q Can you indicate where that is?

25 A Along the Lackawanna Railroad and off the Hanover

1 Avenue.

2 In this particular area, 21 acres have not yet been
3 developed.

4 Q Do you know if those 21 acres are in the
5 middle of the tract or if they adjoin residential areas
6 or where their location is?

7 A They do not adjoin residential areas. They are in
8 the northerly portion, abutting the proposed 24 freeway
9 and next to the railroad.

10 Q Now, there is an indication that 21 acres
11 in the TH-8 zone are vacant. What is the -- first of all,
12 what is permitted in the TH-8 zone?

13 A Town houses.

14 Q At eight to an acre?

15 A Yes.

16 Q That 21 acres is located where?

17 A Well, here. I'm pointing to a tract of land off
18 of James Street. I'm sorry, excuse me. You said TH-8?

19 Q I said eight that was in the section. I
20 believe the TH-8 along what road?

21 A Along Mt. Kemble Avenue.

22 MR. MILLS: It's now been developed.

23 THE WITNESS: Subsequent to that, they have
24 approved a plan for approximately 90 or so units.

25 Q Is there any vacant land today in the TH-8?

1 A Yes, yes. We also approved TH-8 for what is
2 referred to as OL-15. That's approximately 21 acres.

3 Let me go back over that for a moment, if I may.
4 That's 12 and 21. I'd like to delete the previous answer
5 and indicate as follows: TH-8 has been approved as of
6 February 2, 1979, for a development plan but, what has
7 shown -- what is shown on the zoning map, OL-15, east of
8 Punchbowl Road, is about 21 acres and that as of the date
9 of that chart, had not been approved. It has subsequently
10 been approved so, that I would say there are not vacant
11 land left which has not received approval. No vacant land
12 in the TH-8 zone which has not received approval.

13 Q The second tract which is when?

14 A I would say about a month ago.

15 Q What about TH-6, that's 17 acres?

16 A I think he asked that it be approved. It is
17 scheduled for public hearing in March so, that's -- that is
18 no longer vacant either.

19 Q Public hearing before the Planning Board?

20 A Correct.

21 Q And that's at six per?

22 A Yes, that's a very flat, low area. That area to the
23 south of Morristown and generally east of I-287 is
24 characterized by very difficult soils, unstable soils.

25 The Mormon Church, for example, constructed a church

1 there and found -- ran into severe problems. As a result
2 of that, the church -- let me make another -- let me
3 continue my point.

4 There is approximately a ten or twelve acre tract
5 of land adjacent to the Mormon Church and that is between
6 I-287 and James Street, for which a request for rezoning
7 had come in for either office use or -- for office use,
8 initially and it was the recommendation of the Planning
9 Board, or the Planning Board is now considering that
10 particular area for multi-family and/or town houses.

11 The problem we have -- we have two problems.

12 The first problem is the unstable conditions there.
13 They require a very heavy expenditure of funds for
14 preparing the land for development and two, there is some
15 question as to whether or not the noise standards set by
16 HUD, for mortgaging along I-287, would be exceeded.

17 Q What is that presently zoned as?

18 A OS-GU, open space government use.

19 Q Is that the entire 28 acres of vacant OS-GU
20 that's being considered or only a part of it?

21 A Only one small part of it. I think there's about
22 five acres of that.

23 Q How many units of town houses will be built
24 if the six and eight are built as they're presently being
25 proposed?

1 A Let me get that data. The answer is 328 town houses
2 will be constructed as a result of the -- in all of the
3 TH-6 and TH-8 zones.

4 Q The remainder of the OS-GU that's vacant,
5 where is that located?

6 A I think I have a problem in pointing that out. I
7 think you have to get Allen Herbert to indicate that
8 because he knows where he has it on the map, where the
9 major institutional uses are that he has declared non-
10 developable.

11 Q Now, you mentioned earlier that the
12 Alexandria tract, where there has been a hearing, has
13 that subsequently been adopted?

14 A It has received preliminary approval for single
15 family detached homes at a density of 15,000 square foot
16 to the acre.

17 Q How large a site is that, the Alexandria
18 tract?

19 A Approximately 45 acres.

20 Q Has that been a prior to your report for
21 preliminary approval?

22 A That has had a long, rich and unhappy story. Let
23 me show it to you. I thought it was here. Excuse me,
24 it's between Mt. Kemble and Sussex.

25 MR. MILLS: Mendham.

1 A On Mendham Road and Sussex.

2 Q Now --

3 A I think I have -- excuse me, just let me go off the
4 record? Do you want to hear this story very briefly?

5 The story is that City Federal came to the Township and
6 purchased this 45 acre tract of land, zoned RA-15. When
7 we, meaning the Planning Board and consultants to the
8 Board, myself and the Township Engineer and others, looked
9 at the property, we all felt that it lent itself to a
10 planned residential development and we so proposed to the
11 Planning Board that the area be rezoned to allow planned
12 residential development.

13 The Planning Board prepared an amendment to the
14 ordinance, which allowed planned residential development,
15 which included town houses, apartments and single family,
16 including open space and recommended eight to one that it
17 be adopted.

18 There was opposition from the neighborhood, re-
19 quiring a two-thirds vote. The entire membership, the
20 Township Committee, to effect a zone change, the five
21 member Township Committee, one member worked for a
22 subsidiary of City Federal and consequently was -- had to
23 step down because of potential conflict of interest and
24 one member of the Township Committee was against it, three
25 in favor and because of the two-third requirement, we could

1 not get approval of the Town, for the planned residential
2 development.

3 Q I'm not clear if that was excluded from the
4 list of developable vacant land.

5 A Yes, because subsequently, City Federal turned
6 around and submitted a single family development plan,
7 meaning the zoning ordinance requirement, which was
8 reviewed and approved by the Planning Board and they would
9 post bonds and/or install improvements in order to build.

10 Q Now, there's only ten acres listed in the
11 RA-11. Is that one tract or scattered tracts?

12 A I think it's scattered parcels.

13 Q The RA-7, also, is scattered?

14 A Scattered. These are scattered.

15 Q Now, turning to the master plan for the
16 moment --

17 MR. MILLS: Do you have a copy?

18 THE WITNESS: Well, I'll use his.

19 Q The list on Page 7 of your report, a number
20 of lands which are either golf courses or schools.

21 A Yes.

22 Q Have there even been in Morris Township,
23 any proposals to use part of the schools, part of these
24 golf courses, for any higher use?

25 A None.

1 Q Based on your knowledge of the Township,
2 do you feel that there's any likelihood of that happening
3 in the near future or the future?

4 A I think the possibility is always there that any
5 institution for use, with the exception of the county
6 reservoir, which I suspect is committed to reservoir but,
7 any private or semi-public institution is always
8 amenable -- is always subject to financial pressures and
9 consequently, would be open for development at some time
10 in the future but, at this time, we have had no indication,
11 either by word of mouth or otherwise about that.

12 Q Do these all have same zoning?

13 A OS-GU, that is correct.

14 Q Now, the Delbarton School, what type of
15 school is that?

16 A It's run by the City.

17 THE WITNESS: Who runs the Delbarton School,
18 John? It's run by the Sisters of -- is that Good
19 Shepherd? It's run by a church.

20 MR. MILLS: No, it's not. It's a Catholic
21 Church sponsored, oriented -- run by the Fathers
22 but, it's now the St. Marys. I believe that's it.

23 Q Elementary or high school?

24 A High school.

25 Q Do you know what part of that tract is

1 actually occupied by buildings?

2 A I don't know. I've never been on the tract and I
3 couldn't tell you.

4 MR. MILLS: Off the record.

5 (Whereupon an off-the-record discussion
6 took place.)

7 MR. MEISER: On the record.

8 Q What about the Villa Walsh School?

9 A That's a Catholic school also.

10 THE WITNESS: Is it, John?

11 MR. MILLS: Yes.

12 A I don't know anything about that, Ken. I don't --
13 I do know the sisters -- the Villa Walsh is also a
14 Catholic institution. I don't know anything about it.

15 Q What about the Beard School?

16 A That used -- it amalgamated by --

17 MR. MILLS: Morristown Prep.

18 A The Morristown Beard School is located off on
19 Whippany Road, 21 acres.

20 Q Is that grade school?

21 A High school, private school.

22 Q Do you know what part of that tract is
23 occupied by buildings?

24 A I would say 21 acres, all of it.

25 MR. MILLS: Well, not 21 acres. You mean

1 actual physical buildings, Ken?

2 THE WITNESS: I think it's all of it.

3 MR. MILLS: Athletic fields, dormitories,
4 housing for teachers --

5 THE WITNESS: Yes but, it's all essentially
6 developed.

7 MR. MILLS: Essentially, yes. It's totally
8 developed.

9 Q What about the Seeing Eye?

10 A I don't know anything about it. I think most of
11 their land is in Mendham. It's here.

12 MR. MILLS: This is the corner of Sussex
13 Avenue -- not Sussex Avenue, Washington Valley
14 Road and Sussex Avenue.

15 Q So, you have no knowledge of what's used
16 there?

17 A I have no knowledge.

18 Q How long has the Springbrook County Club
19 been there, do you know?

20 A Don't know.

21 Q Do you know how long the Morristown golf
22 course has been there?

23 A They've been there a long time. That's probably
24 one of the oldest golf courses in the State and probably
25 one of the most wealthy.

1 Q That's private?

2 A Yes, it is. Both private, Springbrook and
3 Morris County.

4 Q And the reservoir is zoned by the county?

5 A There's a utilities authority southeast --

6 MR. MILLS: No, the County of Morris County.

7 A Utilities.

8 Q Have they ever proposed any construction
9 on any fringe area or any part of land that they own for
10 reservoirs?

11 A No.

12 Q Now, do you know how much of that 800 acres
13 is actually reservoir?

14 A No, they're requiring it for proposed reservoir.
15 It is still in the process of acquisition.

16 Q Who owns the land now?

17 A Title has shifted or is in the process of shifting.

18 Q It was in private ownership prior to
19 condemnation?

20 A That I can't tell you. Mostly private.

21 MR. MILLS: Off the record.

22 (Whereupon an off-the-record discussion
23 took place.)

24 MR. MEISER: On the record.

25 A Middle Valley Associates V. The Township of Holmdel.

1 That's it. Now I remember. That's what I was trying
2 to think about before when we first started this
3 deposition.

4 Q Are there any mobile homes in the Township?

5 A No.

6 Q Are they permitted?

7 A No -- well, let me -- no, they are not permitted.

8 Q Any of these zoning ordinance that you've
9 drafted, have you made provisions for mobile homes?

10 A Washington Township is -- we have made provision
11 for and Mt. Arlington, we have made provision for.

12 Q Is that the Washington subdivision or
13 mobile home park?

14 A No, mobile home park and in the Mt. Arlington
15 for mobile home park.

16 Q What is your feeling as a planner for using
17 mobile homes for least cost housing?

18 A I have some serious problems with that. There was
19 a recent newspaper article which indicates that they are,
20 you know -- they offer less protection in case of torna-
21 does, in areas where tornadoes are prevailing than other
22 types of housing. I think -- none of the studies that I
23 have seen with respect to mobile homes, have indicated
24 that they have kept pace with the appreciation that has
25 taken place in housing. In fact, if you use a constant

1 dollar, they have lost money. What has gone up is the
2 land that they sit on.

3 Up until very recently, they've been financed as
4 chattels. Is that the word, chattels? They're not even
5 considered real estate in terms of how they are financed.
6 I think for the amount of investment that takes place,
7 I would prefer to see a more substantial type of housing
8 being developed. I would rather see rental units being
9 built with that kind of money than to invest it in mobile
10 homes.

11 I think they deteriorate. They do not last as long.
12 I have some specific problems with them. Esthetically,
13 I have problems with them as well. If I'm going to spend
14 money to allow town houses -- to allow mobile homes, I
15 would rather invest the money in either rental supple-
16 ments or some kind of other long term program.

17 Q Was it your recommendation that Washington
18 Township, they provide for mobile home parks?

19 A There is an existing mobile home park in Washington,
20 which is minimal in terms of esthetics, how it's run,
21 et cetera. My theory, in attempting to encourage people
22 to upgrade that, the best encouragement is in economic
23 incentives so, I suggested to the Town that we zone more
24 of the land for -- to permit them to enlarge and establish
25 decent standards and densities and hopefully, we can get a

1 general upgrading of that particular site and they took
2 my advice.

3 Q How many additional acres did you provide
4 for?

5 A I think another approximately 20 acres, about eight
6 to the acre.

7 Q Now, can you give me a breakdown in the
8 Township between single family and multi-family units?

9 A Yes, I think I can. I have to find that data. We
10 have at the present time 631 garden apartment developments--
11 631 apartments in garden apartment developments. We have
12 328 town house units, either planned or under construc-
13 tion and we have received approval for 100 units of senior
14 citizen housing, public housing so, you're talking about--
15 about a thousand -- 1059 I think is what it comes out to.

16 Q When you say "public housing," is that
17 through the County Public Housing Authority?

18 A Yes, that's senior citizen.

19 Q Did you say that's -- what is the status?
20 Is that under construction?

21 A It was approved -- well, I don't know what the
22 status is on the county level. The Township approved the
23 site plan and amended the zoning ordinance to provide
24 for that type of housing. See, we have -- it has cleared
25 Morris Township as far as we are concerned.

1 Q How many single units are there in the Town?

2 A I'm just looking for that. I have it at my finger-
3 tips and I don't -- I didn't break it down but, it's just
4 a matter of getting --

5 Q How many? How many units are there in the
6 Township? Can you get it that way?

7 A Yes, let me just -- let me get that for you. I
8 would estimate somewhere in the order of about 500 housing
9 units, total.

10 Q That would be existing?

11 A Yes.

12 Q So, the existing units, 630 of those existing
13 are multi-family?

14 A Right, that's about right.

15 Q What is your figure? How many total units?

16 A I estimated 500 as of this time.

17 Q Do you know when the garden apartments were
18 built in the Township?

19 A All prior to 1970.

20 Q Do you know what the population in the 70's
21 were?

22 A Yes, '70 population was 18,000.

23 MR. MILLS: Page 5 of your report.

24 A I have it here. I think it was 18,135. What did
25 I say? Yes, 18,135.

1 Q Now, the zoning ordinance does not provide
2 for any other apartments to be built except for the
3 100 senior citizen units. Is that correct?

4 A Correct.

5 Q Would you know what the density of garden
6 apartments in the Town are?

7 A I think they're 12 to the acre. That's what they've
8 been. Let me get my book. I'll tell you in a minute.
9 Twelve to the acre.

10 Q Do you know, are there any type of bedroom
11 ratios?

12 A At one time there were. I think it was 80 and 20.
13 Before you put that down, I have to let -- I do have that.
14 Hold the line. I can make a copy of a listing of garden
15 apartments by bedroom units, if that would be of any
16 help to you.

17 Q Why don't we just read it into the record?

18 A Here, I'll give you a copy.

19 Q Fine. Do you have any breakdown of the
20 single family units? How many of them have been built
21 under the different zone classifications, R-7, R-11, R-25?

22 A I don't have that available. We can get that for
23 you, but, I don't have that available.

24 Q By the way, what is RB-7?

25 A RB is single and two family zoned. RB-7 is a two

1 zone.

2 Q Have there ever been any variance applica-
3 tions to build apartments in Morris Township, that you're
4 familiar with?

5 A The apartments, no, no.

6 Q What about for town houses?

7 A Yes, there have been. There have been variance
8 applications. There have been.

9 The Berken tract was an application for town
10 houses.

11 Q Any others?

12 A There was a request for rezoning of the Hubschmidt
13 property for town houses. That was turned down.

14 MR. MILLS: Off the record.

15 (Whereupon an off-the-record discussion
16 took place.)

17 MR. MEISER: On the record.

18 Q Do you know how many employees work in
19 Morristown?

20 A Morris Township?

21 Q I'm sorry.

22 MR. MILLS: What is the question?

23 Q How many employees work for businesses
24 in Morris Township?

25 A Yes. I imagine the next question is, how many?

1 Q Yes.

2 A 5,472.

3 Q What was your source for that?

4 A New Jersey covered employment.

5 Q Is that as of a certain date or certain year?

6 A As of the last day of 1978 -- not the last day,
7 I'm sorry. As of 1978.

8 Q Has there been any increase in that since
9 1970, do you know?

10 A Oh, yes.

11 MR. MILLS: Wait a minute, now you said 1970.

12 MR. MEISER: My question is, has there been
13 any increase from '70 to '78.

14 MR. MILLS: He gave you the '78 figure.

15 MR. MEISER: Right.

16 MR. MILLS: Now he's going back.

17 THE WITNESS: Yes, right.

18 Q Do you know what the figure was as of '70?

19 A Yes.

20 Q What was that?

21 A Approximately 937 or so. I don't know if I have
22 that down.

23 MR. MILLS: 1970?

24 THE WITNESS: Yes -- no, about 900 -- 925.

25 Q Do you have any data as to the income levels

1 of these employees in the Township?

2 A Do not.

3 Q Have there been any studies -- do you have
4 any knowledge of where these employees live?

5 A No, to the best of my knowledge, I don't know.
6 I have to answer it and say that I don't know if there
7 have been any studies as to where these employees live.

8 Q Are there any industrial development
9 proposals which have received preliminary approval or
10 which are under construction, which will create new jobs?

11 A Yes.

12 Q Which are they?

13 MR. MILLS: The question is industrial.

14 THE WITNESS: I'm sorry, industrial. No,
15 none.

16 Q What about office?

17 A Yes, Columbia Park, approximately a hundred --
18 approximately 100,000 square feet of office space.

19 Q What is its status?

20 A Under construction. Max office, approximately
21 350,000 square feet, plans approved. Southgate,
22 approximately 435,000 square feet.

23 Q Were there any projections or estimates of
24 the number of employees that would be working in any of
25 these office complexes?

1 A Well, rule of thumb, if you figured four per
2 thousand square feet, you're talking about -- you come up
3 with an estimate of 400 for Columbia; 1200 for Max and
4 probably 1600 for Southgate.

5 Q Do you feel that the zoning ordinance, as
6 its now drafted, adequately takes into any consideration,
7 any housing needs to be created by the increased employ-
8 ment in the Township, since '70?

9 A Yes.

10 Q And what would be the basis for your
11 answer?

12 A Well, a statewide average now is three persons per
13 job. This is throughout the entire state so that at this
14 time, with approximately 500 jobs in the Township, we are
15 still a housing donor. In other words, we still, if
16 you multiply three times 5500, you're talking about
17 16,500 people and I estimate we have about 18,500 living
18 in the Town so that we're approaching equilibrium but,
19 we still have provided for more housing than jobs.

20 For that reason, using that kind of ratio, I
21 would say we have adequately provided for the employment
22 that we have in the Township.

23 Q Do you feel that would be true after these
24 office complexes are constructed and fully occupied?

25 A No, no, I think we have -- I think the Town is

1 aware of the needs -- of the need to provide additional
2 housing.

3 Q Do you have any thoughts as to how this
4 additional housing should be provided?

5 A Yes, my -- I think the Planning Board does, also.
6 I mean, the Planning Board has been discussing it. For
7 example, the Township Committee has agreed just this last
8 week to find -- to attempt to find the location for 30
9 units of public housing from the Morris County Housing
10 Authority. This would be straight out and out public
11 housing.

12 Q Was this by resolution or just a discussion
13 or how was that done?

14 A I don't know. I was not at the meeting. The
15 newspaper reported it, as that the Mayor and Council
16 agreed to attempt to find a suitable location for these
17 units.

18 Q I see. What other attempts are being made
19 at the Planning Board level?

20 A Well, both Planning Board and Township Committee
21 level, are just in the last two or three years, we have
22 rezoned to allow 328 town houses, which will be built.
23 We have permitted -- we have approved the senior citizen
24 housing proposal and I want to see that developed.

25 The Town has -- is presently -- let me just go --

1 comment, that the Planning Board has had a number of
2 discussions on how to provide for housing, more modest
3 housing in the Township and I think they are acutely aware
4 of the fact that such housing is needed and necessary.
5 Their previous attempts to provide such housing has been
6 subverted -- I don't think it's a good word but, it's
7 descriptive of anything. For example, when the zoning
8 ordinance was adopted in 1977, there was a maximum size
9 house -- there was maximum housing size related to lots
10 size. To the best of my knowledge, this was the first
11 time any community attempted to keep the size of the homes
12 down.

13 The purpose being, to attempt to develop some
14 housing which would meet the local -- to meet a different
15 economic group. There was not one developer who came in
16 who would build to the new minimum size and these were not
17 1200 foot. We're talking about sizes of anywhere from
18 eighteen to 2,000 square foot as maximum house size.

19 They pointed out to us that the land cost -- cost
20 of land in Morris Township, that they had to put a bigger
21 house to get more money for the entire package. The
22 Township is blessed with affluence in terms of desir-
23 ability and consequently, market values are such that the
24 price of land and homes is very, very high.

25 The Township -- we mentioned Wheatkheaf, in which

1 the area was rezoned to 15,000 square foot lots at the
2 request of the applicant and this was back in the early
3 70's. I think he was claiming that with 15,000, he could
4 build a -- more housing, somewhat smaller houses on the
5 property. I don't have to tell you the rest of the story.
6 The houses -- the first house was, I think, for 40,000.
7 The second, 60, 80 and there isn't a house available for
8 sale in that subdivision that probably is less than
9 \$150,000. They are hugh houses on 15,000 square foot lots.

10 Q Have you made any recommendations, yourself,
11 to the Planning Board or to the Township, as to meeting
12 this need for additional housing that's being created
13 by these new industrial or these new office buildings?

14 A Yes, I think the Planning Board has had active
15 discussions. We have met with them. I have taken along
16 with the Planning Board -- we have recommended areas
17 where we feel additional housing at a higher density is
18 appropriate.

19 The Alexandria PRD was one which got ~~an~~ eight to
20 one vote ~~on~~ the part of the Planning Board.

21 There was a tract of land by the Burnham Parkway,
22 in which we recommended town houses instead of the single
23 family detached and the Planning Board agreed but, the
24 opposition by the neighbors was such that the applicant
25 decided to go ahead with single family detached. All of

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1 the town house developments that have been approved, were
2 done on part of the recommendation by the Planning Board,
3 unanimously recommended by the Planning Board in terms of
4 that kind of --

5 Q Is there a PUD ordinance presently in the
6 Township?

7 A There is not.

8 Q Have you specifically recommended any new
9 developments for the future, to the Planning Board?

10 A For planned --

11 Q For housing or PUD. Let's start with PUD
12 or PRD.

13 A There were areas. We did a study early in the
14 70's -- I'm sorry, in the mid 70's, which indicated or
15 suggested areas that might be appropriate for planned
16 development or higher density housing, some of which --
17 as a matter of fact, the Punchbowl Road was one of those
18 areas and subsequently was rezoned. I guess -- I beg
19 your pardon. It was about 1976.

20 Q Do you have a copy of that?

21 A No, it was -- it was a single map showing those
22 areas which I felt could be rezoned for more appropriate --
23 for high density housing. I think the Township has it.

24 The Township has also knocked down a couple of
25 applications for office -- for rezoning to office use by

1 indicating that we don't need anymore office use in the
2 Township.

3 Q You said earlier that you thought it makes
4 more sense to do multi-family, particularly rental than
5 mobile homes. Have you thought that there should be any
6 additional housing, additional apartments?

7 A Absolutely, absolutely. I think the Planning
8 Board agrees that multi-family housing, there should be
9 more. We have to find an adequate location. We have an
10 active, intelligent and articulate citizenry and if they
11 perceive these uses as a threat to the property values
12 or, giving them the benefit of the doubt, generating
13 additional traffic or additional use on the utility
14 system, they actively fight development.

15 Q Do you have any thoughts as to how many
16 additional apartment units would be appropriate in relation
17 to the jobs and to the number of employees within the
18 Township? Is there a number or an appropriate --

19 A That's a hard -- I would have to reserve that --
20 the answer to that question, based on some additional
21 studies that I think would be -- would have to be under-
22 taken.

23 Q What would those studies be about?

24 A Well, I'd like to see what kind of tenants are
25 coming into these units.

1 I have a feeling that the Max -- and I have no
2 basis, I have a feeling that Max office building and I have
3 no -- I can't quote you a source on that except rumor,
4 would be occupied by executives from a large utility and
5 consequently, that housing supply is being met or they
6 don't want to live in Morris Township because it's not
7 rich enough.

8 Obviously, there would be secretaries and people
9 of that kind that would make the kind of money that they
10 could not afford to live there as well but, I think we
11 would undertake that kind of a study to come up with some
12 figures.

13 However, I don't think you have to be that sophisti-
14 cated. Frankly, I think what the Planning Board has
15 always been pushing for is a supply of housing and hopefully,
16 other portions, than freeing of other housing in terms of
17 a trickling down effect.

18 Q By the way, of the town houses, were there
19 any projections given at the hearing as to what sale
20 prices they were planning to --

21 A Depending on what they came in for. The Serano
22 tract talked \$80,000 a unit. At the last meeting which
23 is about a year later, they're now talking in terms of
24 120 -- 25,000.

25 Q What about the other two tracts? Have there

1 been any discussions about them?

2 A The Bosko tract, adjacent to Harding Township, is
3 talking in terms of \$175,000 town houses.

4 Q What about the third one?

5 A Punchbowl?

6 Q Yes, yes.

7 A No projection has been given on that but, I suspect
8 it will be in the market for 125,000 and P.S. I suspect
9 you will have a difficult time noting any significant
10 difference between that one and the one at 125,000 and
11 what they're building for in Union, where they are building
12 for 65,000. They're the same town houses. It's a
13 question of location.

14 Q Has there even been any application for any
15 subsidized housing projects in the Township?

16 A To the best of my knowledge, there has not.

17 Q Are any of the apartments constructed through
18 the state FHA program?

19 A No.

20 Q Has the Township taken any position on
21 payment in lieu of taxes for subsidized development?

22 A I don't think -- excuse me, yes. They've come out
23 in favor of it in terms of senior citizen housing.

24 Q The senior citizen housing would be public
25 housing, wouldn't it?

1 A Yes, it will.

2 MR. MILLS: That would be about an additional
3 30 units?

4 THE WITNESS: That would be an additional
5 30 units, that's correct.

6 Q Have you drafted, any new zoning ordinances,
7 which in any way requires the developer to build least
8 cost housing or subsidized housing as a condition of getting
9 high densities, anything like that?

10 A Yes.

11 Q Where has that been?

12 A Bridgewater Township.

13 Q What were the provisions in Bridgewater?

14 A It required -- it was minimum required low, moder-
15 ate income housing requirement.

16 Q What was the minimum required?

17 A I think it was twenty -- I think it was 10 percent
18 low income and an additional 10 percent middle income.

19 Q What was the definition of middle?

20 A Based on the HUD definition of 80 percent of the
21 median family income. You could use any program that was
22 available. The applicant could use any program that was
23 available or devise his own program, as long as the
24 Township was assured that there would be continuity in a
25 long term continuity , I guess.

1 I also directed, in Raritan Township, planned
2 residential development zone, the bonus provision which
3 allowed 10 percent additional bonus for any low or
4 moderate income housing so, the density was -- the density
5 was based on a bedroom -- the amount. The applicant
6 could increase the 10 percent if the 10 percent was used
7 for low or moderate housing.

8 Q Do you know if in Bridgewater, any developer
9 has used the ordinance?

10 A I don't know.

11 Q Are you still involved in Bridgewater?

12 A No, I haven't been involved with them -- they have
13 a full time planner and staff. I have not been involved
14 with them for two or three years, I would say.

15 Q What about Raritan?

16 A No, Raritan, I recommended they hire a full time
17 planner. They hired him about three years ago but, some
18 of the PRD's were coming on stream. The first did include
19 about 90 units of senior citizen housing, although the
20 provision allowed for any -- 10 percent bonus for any
21 low or moderate income housing, not restricted to senior
22 citizen.

23 Q What is the position of the planner on this?

24 A Unfortunately, in the absence of a sufficient
25 number of state and federal subsidy, you have a problem.

1 Let me -- this was in yesterday's New York Times -- excuse
2 me, or earlier this week, an editorial.

3 "The Carter administration has rightly decided that
4 poor families deserve first claim on whatever housing aid
5 Washington can afford. The new federal budget calls for
6 building 42,000 more public housing units and for rent
7 subsidies to 260,000 more poor families."

8 You're talking about 300,000 housing units. I
9 mean, if you were talking about three million and the
10 money was waiting, my position would be, yes, let's make
11 it. Let's provide for that and I like the idea of the
12 bonus as opposed to the minimum mandatory. I think that
13 would make sense but, when you're talking about a total
14 of 300,000 units, forget it.

15 Not only that, let me make a pitch for if somebody
16 reads this deposition. I've worked with the National
17 Kinney Corporation, a housing developer that builds
18 Section 8 and other types of subsidized housing. The
19 amount of red tape and the mickey mousing, as a verb,
20 that you have to do, to justify that kind of subsidy,
21 serves to discourage communities from undertaking this kind
22 of stuff.

23 Q Is there any type of meaningful least cost
24 housing which you feel can be achieved through a zoning
25 ordinance or encouraged?

1 A No, the problem you have is the builders will
2 always build the market. You can eliminate, from your
3 subdivision ordinance, provision for curbs and sidewalks.
4 You can narrow the pavement widths to minimum.

5 Yet, if houses are selling for \$90,000 in that
6 community, they would build -- they would charge \$90,000
7 a house and they would turn around and point to the lack
8 of curbs and sidewalks and narrow streets, as they would
9 call it "rustic." They would use it to their advantage.
10 That's been the problem, I think, in providing this kind
11 of least cost housing.

12 Through zoning, if you up the density, I can show
13 you in a housing magazine out in the west coast where
14 densities of 30 units per acre for condominiums and town
15 houses signed for 150, are selling for 150 and 170. They'll
16 do that here, too.

17 I think the only true way that you can get lower
18 moderate income housing is through an improved federal or
19 state subsidy program. It's the only real way to do it.

20 Q Has there been any study of whether there are
21 any substandard homes in the Township today?

22 A The census study but, to my knowledge, there are
23 no -- if any, there are very few. Housing in the Township
24 is generally well maintained.

25 Q What about vacancy rates for the apartments?

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Do you know?

A Very low, extremely low. Less than two percent.

Q Is there rent control?

A No rent control.

MR. MEISER: That's pretty much it. Do you have any questions you want to ask?

MR. MILLS: No questions.

MR. MEISER: Okay, that's it.

(Whereupon, the deposition was adjourned.)

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C E R T I F I C A T E


I, JILL FRIEDBERG,
a Notary Public and Shorthand Reporter of the
State of New Jersey, do hereby certify that
prior to the commencement of the examination

HARVEY S. MOSKOWITZ

was duly sworn by me to testify the truth, the
whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing
is a true and accurate transcript of the testimony
as taken stenographically by and before me at the
time, place and on the date hereinbefore set forth,
to the best of my ability.

I DO FURTHER CERTIFY that I am neither
a relative nor employee nor attorney nor counsel
of any of the parties to this action, and that I
am neither a relative nor employee of such attorney
or counsel, and that I am financially interest
in the action.



Notary Public of the State of New Jersey

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