

UL Morris County Fair Housing Council

V. Benton

Transcript of Deposition of Alan Mallach

pg. 112

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MORRIS COUNTY
DOCKET NO. L-6001-78 P.W.

MORRIS COUNTY FAIR HOUSING
COUNCIL, MORRIS COUNTY
BRANCH OF THE NATIONAL
ASSOCIATION FOR THE ADVANCE-
MENT OF COLORED PEOPLE and
STANLEY C. VAN NESS, PUBLIC
ADVOCATE OF THE STATE OF NEW
JERSEY,

DEPOSITION OF:
ALAN MALLACH

Plaintiffs,

v.

BOONTON TOWNSHIP, CHATHAM
TOWNSHIP, CHESTER TOWNSHIP,
DENVER TOWNSHIP, EAST
HANOVER TOWNSHIP, FLORHAM
PARK BOROUGH, HANOVER TOWN-
SHIP, HARDING TOWNSHIP,
JEFFERSON TOWNSHIP, KINNELON
BOROUGH, LINCOLN PARK BOROUGH,
MADISON BOROUGH, MENDHAM
BOROUGH, MENDHAM TOWNSHIP, MONT-
VILLE TOWNSHIP, MORRIS TOWNSHIP,
MORRIS PLAINS BOROUGH, MOUNTAIN
LAKES BOROUGH, MOUNT OLIVE TOWN-
SHIP, PARSIPPANY-TROY HILLS
TOWNSHIP, PASSAIC TOWNSHIP,
PEQUANNOCK TOWNSHIP, RANDOLPH
TOWNSHIP, RIVERDALE BOROUGH,
ROCKAWAY TOWNSHIP, ROXBURY TOWN-
SHIP and WASHINGTON TOWNSHIP,

Defendants.

KNARR - RICHARDS, ASSOCIATES

CERTIFIED SHORTHAND REPORTERS
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Morris Township, New Jersey
Thursday, April 19, 1979

B E F O R E:

MARK SCHAFFER, a Certified Shorthand
Reporter and Notary Public of the State of New
Jersey, at the Morris Township Municipal Building,
50 Woodland Avenue, Convent Station, New Jersey,
on Monday, April 19, 1979, commencing at 10:00
o'clock.

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

THE PUBLIC ADVOCATE

BY: CARL C. BISGAIER, ESQ.,
For the Plaintiff Morris County Fair
Housing Council.

MESSRS. SACHAR, BERNSTEIN, ROTHBERG, SIKORA
& MONGELLO

BY: DANIEL S. BERNSTEIN, ESQ.,
For the Common Defense Committee and
Chatham and Mendham Townships.

MESSRS. CLAPP & EISENBERG

BY: ROGER S. CLAPP, ESQ.,
For the Defendant Harding Township.

ROBERT S. GOLDSMITH, ESQ.,
For the Defendant Rockaway Township.

KARL Z. SOSLAND, ESQ.,

BY: BERNARD P. BACCHETTA, ESQ.,
For the Defendant Pequannock Township.

MESSRS. MC CARTER & ENGLISH

BY: CLAUDIA B. WILKINSON, ESQ.,
For the Defendant Chester Township.

MESSRS. YOUNG, DORSEY & FISHER

BY: JAMES H. MAC DONALD, ESQ.,
For the Defendant Hanover Township.

MARK SCHAFFER, C.S.R.

I N D E X T O W I T N E S S E S

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WITNESS

DIRECT

Alan Mallach
By Mr. Bernstein

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I N D E X T O E X H I B I T S

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>FOR IDENT.</u>
D-5	Copy of Computer Output	95
D-6	Letter Report dated March 16, 1977	97
D-7	Letter Report dated March 19, 1979	98
D-8	Draft Copy of Musto Commission Report entitled Planning for Future, Volume 1	98
D-9	Draft Copy of Musto Commission Report entitled Planning for Future, Volume 2	98
D-10	The Housing Crisis in New Jersey, 1970	98

1 A L A N M A L L A C H , previously sworn.

2 CONTINUED DIRECT EXAMINATION BY MR. BERNSTEIN:

3 Q Mr. Mallach, at the end of the last
4 deposition, I was asking you about various
5 provisions in the defendant municipalities' multi-
6 family provisions which you consider to be
7 exclusionary. And we had gone over a number of
8 different criteria.

9 Now, do you feel that there are certain
10 maximum sizes for garden apartment projects which
11 would be improper or for townhouse projects for
12 that matter where the municipality says the pro-
13 ject can only embody X number of units and will
14 you give your view on that restriction?

15 A Well, again there is no rational basis in
16 my judgment for any such restriction. And certain-
17 ly if there is a need for a given number of units
18 either within the low and moderate income popula-
19 tion or generally, those units should be provided.
20 And there is no inherent difference with whether
21 they are provided in one project or a number of
22 projects from the standpoint of health, safety and
23 welfare.

24 If there is a limit on the number of units
25 in a single development, depending on land

1 availability, land configuration and the like,
2 that could restrict the amount of units provided
3 altogether and would not have any basis in health
4 or safety or general welfare that I am familiar
5 with. Furthermore, certain limits, of course,
6 where they're made low or particularly stringent
7 could severely hamper the development of housing
8 under subsidy programs.

9 Q As a housing consultant, would you
10 see any harm resulting to any of the defendant
11 municipalities if a project embodying a thousand
12 multi-family units was developed in that municipi-
13 pality, assuming there was a need, rather than
14 having these units dispersed throughout the
15 municipality?

16 MR. BISGAIER: The question is a
17 thousand in one place as opposed to a
18 thousand scattered in some way?

19 MR. BERNSTEIN: That is the question.

20 Q Do you, as a housing consultant,
21 see any problems with having that thousand units
22 concentrated on one tract?

23 A There are no intrinsic problems to such a
24 thing. There may be specific fact situations
25 where in such-and-such a location, to have an

1 increment of a thousand units in that location may
2 be undesirable in terms of the surfaces or access
3 and transportation system or what have you. But
4 as a general principle, there would be no inherent
5 problem with that.

6 Q How about minimum number of units?
7 Do you see any justification for that?

8 A No.

9 Q You would have no problem then in a
10 multi-family project having six or eight units if
11 that was all that the lot area would support?

12 A Precisely.

13 Q And how about a multi-family
14 ordinance which restricts bedrooms to a certain
15 density per acre? What is your feeling on that?

16 A That is a restriction on the number of bed-
17 rooms that I believe in the Mount Laurel decision
18 specifically has language condemning. I think any
19 restriction on bedrooms which restricts the ability
20 of the developer or sponsor to respond to what he
21 perceives of as the need is inconsistent
22 with least cost housing.

23 Q How about a height restriction for
24 either townhouses or garden apartments? Would you
25 see any applicability to such a limitation in any

1 of the defendant municipalities?

2 A I can't think of any. I think in almost
3 all parts of the country among virtually everybody
4 which I'm familiar the idea of walking two flights
5 of stairs either within a unit or between units is
6 considered acceptable. So that three-story build-
7 ings without elevators are a generally accepted
8 type of housing.

9 By restricting the height to only two
10 stories, you restrict the number of units that can
11 be put on the site, prevent such things as the
12 townhouse duplex housing type that I mentioned
13 earlier and generally speaking restrict housing
14 opportunity. I can think of no particular justifi-
15 cation for having height limitations, especially
16 the typical height limiting between two stories or
17 35 feet.

18 Q Would you see any rational basis in
19 any of the defendant municipalities for having a
20 height restriction of not more than three stories
21 since you have talked about three stories? Is that
22 a reasonable cutoff point for the defendant
23 municipalities or should the ordinances have
24 absolutely no height restriction?

25 A There is--It's a reasonable cutoff point to

1 a point as it were. For the standard townhouse
2 and garden apartment housing types, three stories
3 represents a reasonable ceiling.

4 However, it is appropriate that some
5 opportunity to provided also for elevator apart-
6 ments, which would have either no height limit or
7 a significantly higher height limit in order to
8 provide particular housing opportunities for
9 senior citizens housing.

10 Q Would the elevator apartments be
11 restricted in your viewpoint to senior citizen
12 housing or should elevator apartments be provided
13 for all citizens?

14 A In principle, elevator apartments could be
15 provided for all citizens. Certainly you have the
16 apartments in Fort Lee and places like that that
17 are not senior citizen housing.

18 In terms of those populations that are most
19 addressed in terms of fair share housing needs,
20 low and moderate income populations, certainly
21 senior citizens are the only group for whom the
22 elevatored buildings are particularly desirable.
23 I think certainly low income families with small
24 children are as a general rule not particularly
25 suited to elevator buildings.

1 Q How about the low and moderate
2 income people that are singles or divorced or the
3 childless couples? Wouldn't they be appropriate
4 for the high-rise buildings?

5 A Yes, they would be. And I think the
6 combination of a, for example, high-rise building
7 in which you had principally one-bedroom and some
8 two-bedroom units and was perhaps assigned
9 principally for senior citizens but also contained
10 a mix of other people would probably be the best
11 use of high-rise as a part of the least cost
12 housing total.

13 Q Is it your belief, Mr. Mallach, that
14 each of the defendant municipalities should
15 provide in their zoning ordinances for high-rise
16 apartments without restrictions as to the height
17 of the apartments?

18 MR. BISGAIER: What do you mean by
19 should?

20 MR. BERNSTEIN: Mr. Mallach is the
21 housing consultant and he is telling us
22 where our ordinances have failed. And he
23 is the one who should tell us what is
24 exclusionary and what is not. He is the
25 one who has.

1 MR. BISGAIER: Should from a non-
2 exclusionary point of view?

3 MR. BERNSTEIN: Should from the
4 Public Advocate's standpoint.

5 A I would say yes, as a general rule, though
6 if a community had no locations within the
7 community which had reasonable access either to
8 shopping community facilities or to public trans-
9 portation services, I think it could be argued
10 that such housing would be less appropriate there.

11 Q You had mentioned shopping community
12 facilities and transportation; was it?

13 A That's right.

14 Q Now, you feel that shopping and
15 community facilities and transportation would be
16 advisable adjuncts to high-rise apartments; correct?

17 A Designed principally for senior citizens.

18 Q Well, how about high-rise apartments
19 which would service non-seniors? Would they have
20 to be close to shopping community facilities and
21 transportation?

22 A Well, there are
23 different kinds of high-rising apartments. If
24 somebody, for example, were to build luxury high-
25 rise apartments a la the Fort Lee-type housing,
those are occupied by highly affluent people who,

1 if they want to move there, they will use cars
2 pretty much in the same way as they would if they
3 lived in single-family houses. So the concern is
4 less.

5 If you are building housing, for example,
6 that would be least cost or, say, subsidized
7 housing with a priority for senior citizens, how-
8 ever, which would be the principal reason for
9 building high-rise housing as a part of the least
10 cost picture, then the accessibility of facilities
11 is more important.

12 Q Are shopping, community facilities
13 and transportation three important criteria that
14 one would look for when planning the location of
15 all multi-family units?

16 A They're criteria, yes. They're more
17 important, however, with regard to the high-rise
18 than with regard to others, multi-family types.

19 Q Can you give us other criteria
20 other than proximity to shopping, proximity to
21 community facilities and proximity to public
22 transportation which you feel are relevant when
23 planning multi-family dwelling unit sites?

24 A I believe if you look back in the transcripts,
25 I think I've discussed that point at considerable

1 length previously. And at the risk of being
2 repetitive, I think we have talked about the need
3 to have water and sewer service either already in
4 place or providable as part of the development.
5 We talked about desirability where possible of
6 having sites--and this is with particular regard
7 to least cost housing, sites that can be developed
8 without extraordinary expenses in terms of site
9 preparation.

10 Q Anything else that comes readily to
11 mind?

12 A Well, I think sites that
13 provide attractive residential environments
14 generally as would be the case with single-family
homes.

15 Q Anything else you can think of, Mr.
16 Mallach?

17 A I think those are the
principal ones.

18 Q Now, to get back to my question with
19 regard to high-rise, are you willing to condemn
20 some of the defendant municipalities that does not
21 provide for mid-rise apartments in their zoning
22 ordinance?

23 A Condemn?

24 Q Criticize the zoning.

25 A Yes.

Q And you feel that mid-rise apartments

1 should be permitted in each of the defendants'
2 zoning ordinances? A Yes.

3 Q And could you tell us what you con-
4 sider a mid-rise apartment to be in number of
5 stories and height? A Mid-rise is

6 basically, you might say, the first subset of high-
7 rise. These are elevator apartments with at least
8 four stories and up to--Now, in this case people
9 differ, but say between seven and nine stories.

10 Q And it is your testimony that each
11 of the defendant municipalities' zoning ordinances
12 should provide for mid-rise apartments starting at
13 four stories and going between seven and nine
14 stories? A Yes.

15 Q I assume that you would regard high-
16 rise apartments as those of more than between seven
17 to nine stories? A That's correct.

18 Q Would you criticize each of the
19 defendant municipalities who have not so provided
20 for having high-rise apartments as permitted use
21 in their zoning ordinances?

22 A But would for argument's sake permit mid-
23 rise apartments?

24 Q Well, what I am specifically looking
25 for here, Mr. Mallach, is the following: Would

1 the zoning ordinances of each of the defendant
2 municipalities be improper if the ordinance did not
3 permit high-rise apartments?

4 A But did permit mid-rise apartments?

5 Q Well, say first that did permit mid-
6 rise. A Not necessarily.

7 Q How about if they did not permit mid-
8 rise? A Then, of course, as I said

9 before, they would be failing to provide that
10 housing opportunity.

11 Q You would feel that the mid-rise are
12 appropriate, but are not sure about high-rise
13 apartments? A The point is it's not

14 that they're not appropriate, but from a least
15 cost standpoint, the housing need that is at issue
16 is provided principally through mid-rise rather
17 than through significantly higher buildings in
18 areas where land costs are not so overwhelming as
19 to require the higher buildings as they might be
20 in some central city areas. So that if mid-rise

21 housing is provided, then there would be--it would
22 be unlikely that any additional least cost needs
23 would be met by additional high-rise zoning over
24 and above the mid-rise.

25 Q Would you, as a housing consultant,

1 have any problem with putting mid-rise apartments
2 in a residential zone? A No.

3 Q That is one-family residential zones?

4 A No.

5 Q Assuming a community had a very
6 exclusive one-family residential zone with minimum
7 lot sizes of one acre and expensive homes. Would
8 you have any problems with locating a mid-rise in
9 such a zone?

10 (A discussion is held off the record.)

11 (The last question is read.)

12 A No.

13 Q Mr. Mallach, some ordinances require
14 a mix between one, two and three-bedroom apart-
15 ments. You are familiar with such a criterion?

16 A No.

17 Q Is there a generic name we can apply
18 to this criterion other than the 80/20 which it is
19 known as in the trade?

20 A That's the only sort of catch phrase I'm
21 familiar with to describe that whole line of
22 ordinance provisions.

23 Q And would you explain for the record
24 the 80/20? A The 80/20 comes from

25 the fact that the majority of such provisions

1 specify that 80 percent of the units must be one-
2 bedroom units, 20 percent may be two-bedroom units
3 or no more than 20 percent and no units may have
4 more than two bedrooms.

5 Q As a housing consultant, do you feel
6 that the 80/20 is a proper zoning tool?

7 A No, the 80/20 is perhaps one of the most
8 classic examples of fiscal zoning.

9 Q And you would regard it as being
10 exclusionary? A Yes.

11 Q Is there any ratio that you as a
12 housing consultant would find to be reasonable
13 that could be placed in a zoning ordinance to
14 limit certain types of bedroom units but being
15 less restrictive than the 80/20?

16 A Obviously many provisions could be designed
17 that would be less restrictive than the 80/20
18 standard, but--

19 Q Could any meet with your approval?
20 That is what I am looking for.

21 A No, I believe the idea of regulating and
22 limiting bedroom mix is unacceptable.

23 Q Mr. Mallach, would you find it to
24 be permissible if a zoning ordinance were to
25 permit one-family homes, but was to limit all

1 multi-family units to those that were subsidized
2 units so that the developer was given the choice
3 of providing market housing or subsidized housing
4 for low and moderate income persons, but not for
5 the construction of multi-family dwelling units
6 that might be sold to the middle class?

7 A No, because subsidized units are not the
8 only multi-family units that are needed by the
9 housing market or even by the least cost housing
10 market. There's a large population that may be
11 higher income than the subsidy programs provide
12 for, but nonetheless, could not afford typical
13 suburban single-family homes.

14 Q So that you would regard a zoning
15 ordinance that required subsidies before multi-
16 family housing units were permitted as being
17 unreasonable? A Yes, although it
18 would be a step in the right direction.

19 Q How about a zoning ordinance that
20 ~~was~~ a certain area where multi-family units are
21 permitted to senior citizens only? Is that rea-
22 sonable? A As long as other hous-
23 ing needs are amply provided for in the community
24 and that area had particular characteristics, I
25 could see that as being usable. I think, however,

1 that such an ordinance provision is in direct
2 contradiction to the language of the Land Use Law.

3 Q In that--

4 I forget the exact phrasing. Do you have
5 a copy here?

6 Q Oh, where it says that the senior
7 citizens can be built with same or similar
8 density?

9 A Or conditions as
other units or something to that effect.

10 Q Would you have any problems if a
11 town had a single multi-family district restrict-
12 ed to seniors from a housing standpoint rather
13 than from a legal standpoint?

14 A If they had a single multi-family district
15 and that multi-family district was limited to
16 senior citizen housing?

17 Q Yes. A I think that
18 would be very inappropriate.

19 Q Mr. Mallach, do you approve of
20 provisions in a zoning ordinance which require a
21 storage area to be provided for each unit?

22 A I think it's probably a desirable matter
23 in moderation.

24 Q Could you give us what you would
25 consider to be the largest size storage area for

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an apartment unit which you would regard as

reasonable?

A

I really don't have

a specific standard.

Q

Well, what would you consider to be

unreasonable? I am looking at your comments with

regard to Madison Borough where you mention that

the multi-family district requires a storage area.

And I assume that this is what you consider to be

unreasonable since it says, "Examples of land use

provisions considered exclusionary." So that if

you could give us some idea--

MR. BISGAIER: Excuse me. Could

you state what document you are referring

to?

MR. BERNSTEIN: Certainly, unmarked

document as far as this deposition is

concerned, January 30th, 1979, a letter

from you to all counsel enclosing a copy

of, among other things, an evaluation of

each of the municipalities' zoning ordin-

ances.

MR. BISGAIER: Okay. For the

purposes of clarifying the record on this,

the document being referred to was one

prepared by the attorneys at the Public

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Advocate's Office without the assistance or as far as I know to the knowledge of Mr. Mallach.

MR. BERNSTEIN: Well, will any witness, Mr. Bisgaier, be testifying as to the document that I am referring to? Because if it is not Mr. Mallach's work product, I should not refer to it as such. But will there be a witness who, in fact, will be discussing these items mentioned or will Mr. Mallach be the principal witness?

MR. BISGAIER: Mr. Mallach and Mr. Heackel I believe will be our only witnesses. Actually, I believe Mr. Mallach will be the only witness who will specifically address the specific land use controls of each of the defendant municipalities. He will do that based on his own analysis and his own report, which you have already received, and subject to its potential for being updated.

MR. BERNSTEIN: Are those the documents with two or three pages stapled together?

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3 RABAI
4 ATTORNEY

MR. BISGAIER: Right. Now, the document you were referring to previously was an attorney work product in aid of a motion for a more specific statement. I think that probably is best read by you as if it were an addendum to a complaint.

MR. BERNSTEIN: I appreciate that. Let me paraphrase the question then.

Q Would it be a fair statement, Mr. Mallach, that you have not set a cutoff point whereby a zoning ordinance might be unreasonable if it required an overly large storage area and conceptually you oppose an overly large storage area per unit, but you are not sure of the dimensions of such an area?

A That's correct.

Q Well, as long as we are talking about elderly, is there a recommended density that you have for senior citizen housing? I had asked you the same question about the maximum which you felt were reasonable for garden apartments and townhouses. And I believe you came up with estimated maximums of 15 and 18 units for townhouses and--

A No.

Q --I believe it was 25 units to the

1 acre for garden apartments. I wonder if you could
2 give us-- A No, those are not
3 figures with which I'm familiar. The figures in
4 my report are that a minimum would be no less
5 than ten to the acre for townhouses and no less
6 than 15 to the acre for garden apartments.

7 Q I am talking about maximum figures.

8 A Oh, the maximums could be, yes, 15 to 18
9 and perhaps up to 20 to 25 in the latter case.

10 Q I wonder if you could give us first
11 maximum figures for senior citizen housing?

12 MR. BISGAIER: You are looking for
13 a maximum density level consistent with
14 health and safety for senior citizen
15 housing?

16 MR. BERNSTEIN: Well, I am looking
17 for a maximum density of senior citizen
18 housing which Mr. Mallach feels is reason-
19 able.

20 A The maximum density is basically a func-
21 tion of the number of stories you want to go up.

22 Q Would it be the same then for senior
23 citizen housing as for townhouses and garden
24 apartments if, in fact, it was limited to two or
25 three stories? A One would not

1 build two or three-story senior citizen housing.

2 Q Why is that?

3 ~~COTTON CO.~~ Because it is generally held to be undesir-
4 able to build senior citizen housing that will
5 require any part of the occupants to have to walk
6 up and down stairs to get to their units.

7 Q So what does the usual senior citi-
8 zen project consist of in stories in developing
9 New Jersey municipalities?

10 A Well, the typical senior citizens develop-
11 ment is a mid-rise development.

12 Q And is there any height that you
13 usually find senior citizen projects at?

14 A Well, they vary within that range that I
15 said, between no less than four and up to six or
16 seven as a rule.

17 Q And-- A They could be
18 anything in there.

19 Q And could you give us any relation-
20 ship as between, say, a four-story project and the
21 density that you would expect? First, the minimum
22 density that you feel is reasonable and then the
23 maximum density.

24 A Well, one advantage is that you can build
25 at extremely high densities generally for senior

1 citizens housing relative to other housing types
2 because, for one thing, the average unit is small-
3 er, being principally one-bedroom units. And for
4 another thing, the parking requirements are less.

5 Therefore, the density of ten units per
6 story, between ten--I would say perhaps higher,
7 as much as 12 units per story is a reasonable
8 minimum standard. Thus, if you were building a
9 four-story building, it would be 40 units; five-
10 story, 50 units and so on.

11 Q Is there a reasonable maximum
12 figure per story?

13 A Well, you could probably increase that by
14 about 50 percent so that the range would be be-
15 tween ten and 15 units per story.

16 Q Is it reasonable to key multi-family
17 units to a certain percentage of overall units in
18 the municipality? A No.

19 Q Why is that?

20 Because that again becomes a function of
21 the marketplace and the extent of housing need
22 and housing demand. The mix of units, single-
23 family, multi-family, high-rise, low-rise, what
24 have you, in the community as a whole should
25 reflect needs and demand rather than an arbitrarily

1 imposed percentage.

2 Q Is it reasonable to limit the number
3 of units in a single multi-family building?

4 A That is another aesthetic regulation that
5 is generally not reasonable. In the extreme case,
6 I can imagine something looking a little out of
7 hand, perhaps, if you had let's say a building
8 that stretched for half a mile or something silly
9 like that. But given normal practices in terms
10 of development, I can see no justification for
11 such a requirement.

12 Q Well, as a housing consultant,
13 would you think it reasonable that a garden
14 apartment or a townhouse development in a develop-
15 ing suburb community in Morris County would be a
16 thousand feet wide and contained a huge number of
17 units, wouldn't you see this as being undesirable?

18 A I think it would be a design question. I
19 assume you mean a thousand feet long?

20 Q A thousand feet long, thank you. I
21 was wrong. It was a thousand feet long.

22 A I think it is basically a design question.
23 I think that developers are unlikely to build
24 anything--It's rare when you get a site which is
25 amenable to a single, undifferentiated thousand

1 foot long building.

2 Q Well, what I am interested in, as a
3 housing consultant, would you be adverse to this
4 thousand foot long apartment being built as being
5 not a reasonable design and require the builder
6 to build a number of smaller buildings? Is there
7 any point at which you would require multi-family
8 dwelling units to have a limitation as to their
9 length?

A I can't think of a
10 specific cutoff point, a mile perhaps.

11 Q You are serious when you speak about
12 a mile?

A No, I was being
13 facetious I'm afraid. Basically, there is no
14 hard and fast standard that can be applied to
15 such a thing.

16 Q Well, would you say that an ordi-
17 nance that imposes a lesser minimum than a half
18 a mile is an unreasonable ordinance?

A It's somewhat academic. I think ordinances,
19 typical ordinances, that pose maximums of eight
20 units per structure, four units per structure,
21 whatever, the typical ordinance, ordinance provi-
22 sions of this sort are in my opinion unreasonable.
23

24 Q What I am asking, Mr. Mallach, is
25 is there a point at which even you would concede

1 that there is some justification in cutting off
2 the number of units per structure?

3 A I can't think of a specific cutoff point.

4 Q Can you give us a range?

5 A No.

6 Q Is there any advantage in having a
7 cutoff point in a zoning ordinance that you can
8 conceive? A I can't think of any.

9 Q In your opinion, would it be impro-
10 per to zone in an industrial or business zone for
11 a mixture of uses, either businesses or industry
12 and multi-family housing?

13 A Not necessarily.

14 Q It would not be per se improper for
15 a town to engage in that practice?

16 A That's correct.

17 Q Is it reasonable, Mr. Mallach, to
18 require multi-family units to have public water
19 and sewers? A No.

20 Q Is it reasonable for a multi-family
21 zoning ordinance to have maximum lot coverage
22 provisions? A There should be a

23 maximum lot coverage standard. It can be accom-
24 plished either by direct coverage requirement or
25 by the net effect of the various other requirements

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governing the development.

Q I would like you to tell us what you would consider to be a reasonable lot coverage provision.

A It varies, of course, with the type of area because the principal purpose for establishing lot coverage standards is to maintain a reasonable ratio, if you will, of pervious to impervious surfaces for purposes of drainage management. Where you have an area with difficult drainage problems, you may have to have a somewhat lower lot coverage requirement.

It strikes me the significant standard is not so much the coverage of the buildings as the combined coverage of impervious spaces. I believe that under a site with relatively few serious development constraints, a building coverage in the area of 30 percent is usually acceptable.

Q And would it be your testimony that an ordinance that establishes a maximum lot coverage of 30 percent would be reasonable?

A Yes, in that units at the densities that I've previously discussed could be constructed without exceeding such a coverage standard.

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Q How about lot coverage for total impervious areas which would include the building, the driveways, the parking stalls, the sidewalks? What would you consider to be a reasonable maximum that might be included in one of the defendant's zoning ordinances?

A As a general rule, I believe 50 percent could be a reasonable standard if one needed such a standard. Again, strictly speaking, given the other standards of the ordinance, you would not necessarily need to have such a standard written in the ordinance since it would be achieved by application of the rest of the ordinance.

Q But you would have no problem with a zoning ordinance which stated the total impervious surface could only cover 50 percent of a site? A That's correct.

Q Now, I believe you testified that in areas of difficult drainage, you feel a municipality would be justified in setting up more stringent standards so that there would be less building and less impervious lot coverage?

A Not necessarily. What would be the most appropriate way to deal with this is for the municipality to look to the developer's engineers

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1 to propose a solution to the drainage problem
2 with the awareness and the understanding that a
3 solution that would not create drainage problems
4 might require less impervious coverage. I don't
5 think that--Well, to back up, scratch that first
6 part.

7 The point here with many other things is
8 that the objective is to achieve performance in
9 terms of this case avoiding drainage problems
10 rather than necessarily imposing arbitrary
11 standards.

12 Q But you would concede that there
13 would be instances where difficult drainage
14 conditions would require less lot coverage than
15 that that you gave us as being acceptable;
16 wouldn't you? A Yes.

17 Q Would it be a reasonable condition
18 that multi-family units be required to be served
19 by either public sewers or by a private sewer
20 system? A Yes.

21 Q And why would that be reasonable?
22 A Because with extremely rare exceptions the
23 densities at which multi-family housing is develop-
24 ed or certainly least cost multi-family housing
25 is developed are not amenable to sewage disposal

1 through the use of a septic tank.

2 Q Now, we covered this area in another
3 ~~vain~~, but what setback figure would you consider
4 to be the maximum allowable? That would be the
5 front, the rear and the side yards. I think you
6 had given a figure of 25 or 35 feet as the figure
7 which you felt was the maximum permissible?

8 A Twenty-five feet.

9 Q So that if a municipality had a
10 front setback, a side yard setback or a rear yard
11 setback in any of the defendant municipalities for
12 multi-family housing that exceeded 25 feet, you
13 would consider that standard to be unreasonable?

14 A Yes.

15 Q Would that same standard apply for
16 one-family homes or would you expect a larger
17 front, rear or side yard setback for one-family
18 homes?

19 A I see no reason for a
20 larger standard when dealing with a one-family
21 ~~home~~ on a small lot. In particular, 25-foot set-
22 ~~back~~-side setbacks at least would clearly be
23 excessive.

24 Q So that your testimony is that the
25 maximum that you could conceive with a one-family
lot as far as the setbacks go, that you would

1 regard as reasonable, would be 25 feet?

2 A And there are certain circumstances where
3 that would be excessive, but I can think of no
4 circumstances where it would be inadequate.

5 Q Would you regard it as reasonable
6 if a multi-family ordinance required surface water
7 rather than wells to service the project?

8 A Surface water?

9 Q Surface water meaning water to be
10 piped in-- A Rainfall?

11 Q --rather than wells on-site? Or
12 do you find no problems with well water for a
13 multi-project? A I think there

14 are circumstances where well water is adequate to
15 serve a multi-family project, yes. It would vary
16 from case to case.

17 Q You would not have any idea of the
18 number of existing apartment units that are served
19 by wells as against the number of existing apart-
20 ment projects that are served by public water in
21 [redacted] County? A No.

22 Q Or anywhere else, for that matter?

23 A That's correct.

24 Q Can you tell us what you understand
25 by the term time development?

1 A Time development is one of a large number
2 of terms used to describe temporal controls over
3 the amount, extent or type of development taking
4 place in a community as distinct from spacial
5 controls such as zoning.

6 Q And what is it generally keyed into?

7 A Well, classically, time development is key-
8 ed into two areas. One is the extent of housing
9 need and demand and the second is a capital
10 improvements program providing for a steady exten-
11 sion of infrastructure and services.

12 Q As a housing consultant, what is
13 your opinion on time development for the defendant
14 municipalities in this lawsuit? Would it be a
15 reasonable approach to providing multi-family
16 dwelling units or an unreasonable one from your
17 vantage point?

18 MR. BISGAIER: Exclusively multi-
19 family as opposed to any other use of the
20 town?

21 MR. BERNSTEIN: I am only interested
22 in multi-families, Mr. Bisgaier, for the
23 purposes of this question.

24 A Well, I should say a time development
25 ordinance or program that deals exclusively with

1 multi-family, not single-family development, is
2 by its nature not a rational time development
3 process.

4 Q Well, the question presupposes an
5 otherwise reasonable time development which
6 includes apartments--I will paraphrase it.

7 Can you conceive of a reasonable time
8 development scheme for each of the defendant
9 municipalities which would include provisions for
10 multi-family housing?

11 A Yes, with difficulty.

12 Q Tell us first why you said yes and
13 then why you said with difficulty.

14 A From a broad conceptual standpoint, the
15 idea of time development as reflected in the
16 Ramapo model has some logic to it. If development
17 can take place over time in an orderly fashion
18 rather than in a matter of peaks and troughs,
19 sudden increases, booms, busts and the like, that
20 would seem conceptually sound. So that would be
21 the reason for the yes.

22 The reason for the reservations or the
23 difficulty is the fact that in practice, it is
24 extremely difficult for a municipality to regulate
25 development in a manner that it becomes orderly

1 without simultaneously stifling development,
2 increasing costs and having a resultant exclusion-
3 ary effect. I think for a municipality to provide
4 time development in a way that might not be
5 exclusionary, the amount of housing that could be
6 provided each year has to be clearly a substantial
7 amount. It cannot be a restrictive amount that
8 has the effect of curtailing development.

9 The capital improvements program must be
10 extensive and carried out on schedule. And the
11 would-be developer, as was the case in the Ramapo
12 ordinance, must have the option to accelerate the
13 timing on his or her land through provision of
14 infrastructure by the developer.

15 Furthermore, I suspect that--and I think
16 the language in the Mount Laurel decision is in
17 support of this line, that if there were such an
18 ordinance, that the provision of low and moderate
19 or least cost housing must somehow be given some
20 of preference or priority so that the
21 ordinance does not have an exclusionary effect.

22 Q So with all those caveats, you have
23 no objection to time development?

24 A No objection in principle. I think there
25 is another difficult aspect which I think was

1 sidestepped by the Court in the Ramapo decision.

2 (A discussion is held off the

3 record.)

4 A The question of confiscation is a kind of
5 a due process, a kind of a grey cloud looming
6 over such ordinances. In any case, in principle
7 it has some positive features, but I am very
8 pessimistic about ever seeing someone come up
9 with an ordinance that will actually accomplish
10 time development without falling into all these
11 pitfalls.

12 Q Is the concept of transfer of
13 development rights or transfer of development
14 credits inherently exclusionary or unreasonable
15 as you view the concept?

16 A I believe it's reasonable to the degree
17 that I'm familiar with the concept in terms of
18 its objective of facilitating the preservation of
19 open space. I think as it does that, it intrin-
20 ically increases the cost of the housing that
21 is built. I mean by definition, by requiring
22 a developer to buy development rights, you are
23 imposing a cost, which means that housing that
24 can only be built through the process of purchase
25 of development rights is not going to be least

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cost housing.

Q Are you saying it cannot be least cost housing? A It can't be

least cost housing because it inherently adds a specific cost external to the housing itself.

Q Even if it is cheaper for the developer to construct this housing in the marketplace because he can buy cheap or marginal land and use that for the clusters and get the higher density on the good land? Aren't there situations that you can conceive of where in reality T.D.R.'s would result in lower costs for construction rather than higher costs?

A No, because in the--If you take the example that there is a piece of land that he can build on and he buys development rights to be able to build at a higher density on that land and by so buying those rights a piece of land elsewhere is kept an open space, if he could have built on the first piece of land without buying the development rights in the first instance at the density that was resultant, the cost would be less. In other words, if you can do X on a piece of land, X number of units on a piece of land by buying development rights, you can do X units on that

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same land without buying development rights for less money because the difference is the development rights.

Q So what you are saying is because you feel T.D.R.'s result in unneeded cost, you really disapprove of the concept?

A No, I don't disapprove of the concept because I think the goal of preserving open space is valuable. I do feel that if a municipality adopts a T.D.R. ordinance, that there should be some provision whereby, for example, a developer of subsidized housing or least cost housing generally would be able to obtain the same densities without buying the development rights. That would require development rights to be bought by other developers. In other words, there has to be some means of protecting least cost housing from the cost-generating effects of

T.D.R.

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Q Would that be reasonable for all ordinances in all the defendant municipalities, if we permitted a higher density for subsidized units than unsubsidized units? Would that be a step that you would regard as beneficial as going toward meeting a municipality's fair share?

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1 A I think there are circumstances under
2 which that would be appropriate and desirable.

3 Q You said that open space was valu-
4 able. Explain what you mean by that, Mr. Mallach.

5 A I think it's generally acceptable--accepted
6 that open space and the preservation of open
7 space is desirable for a number of reasons. First,
8 of course, is the provision of recreation oppor-
9 tunities to people in the community or region.
10 Second is the preservation of various / ^{areas} of particu-
11 lar environmental sensitivity such as floodplains.
12 Third, I think there is a consensus about the
13 beauty of certain natural areas.

14 Q Would you agree with that?

15 A I think obviously there is disagreements
16 about specifics, but I think as a general prin-
17 ciple there is a consensus.

18 Q Do you agree that beautiful natural
19 areas should be preserved in a virgin state or a
20 ly undeveloped state?

21 To a reasonable degree, yes.

22 Q And the other reasons for preserv-
23 ing open spaces? A I think you
24 will find/_{it} perhaps very closely related to the
25 previous two, but it's the desirability of

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1 preserving areas of unique character, ecological
2 habitats, particularly types of wildlife,
3 endangered species and that sort of thing.

4 Q How about the Great Swamp? Do you
5 feel that this or at least parts of the Great
6 Swamp would fit into this unique character that
7 you are speaking of?

8 A I don't know about it in detail, but I
9 gather that's the case.

10 Q And certainly in Morris County, we
11 have got a lot of historical areas, Revolutionary
12 War and other historical areas that should be
13 preserved. You would agree with that?

14 A Yes.

15 Q Any other arguments in favor of
16 preserving open space that you can think of?

17 A Nothing that isn't more or less well-
18 subsumed under those areas, that I mentioned.

19 Q Now, Mr. Mallach, I am referring to
20 what I learned from Mr. Bisgaier is your work
21 product concerning Florham Park. If you do not
22 have a copy--

23 A I do have a
24 copy, yes.

25 Q Now, you have commented that with
regard to garden apartments, you must have two

1 means of access to the outside. Do you see that,

2 Mr. Mallach? A Yes.

3 Q Do you regard that as being an
4 exclusionary provision?

5 A I think it increases the cost of the hous-
6 ing beyond what is generally required for garden
7 apartments.

8 Q But do you regard it as being
9 unreasonable? A Yes.

10 Q Is there any reason that you can
11 conceive of why that was placed in the ordinance?

12 A Why it was placed in this specific
13 ordinance? I have no idea.

14 Q Or in any ordinance, sir.

15 A Well, it is again conceivable that that
16 was placed in that ordinance as a safety standard.

17 Q Are there any other reasons why
18 you can conceive that was placed in the ordinance?

19 A Well, in this ordinance I believe there is
20 possibility at least that the ordinance did not
21 originally envision construction of garden apart-
22 ments in the traditional manner, but was actually
23 seeking to encourage the construction of town-
24 houses rather than garden apartments because a
25 series of provisions more conducive to townhouses

1 was imposed.

2 (A recess is taken.)

3 Q Okay. In your opinion, the require-
4 ment that there be two access doors for garden
5 apartments is an unreasonable condition for a
6 zoning ordinance? A That's correct.

7 Q How about for townhouses? Would
8 that be reasonable? A Townhouses, it
9 is customary. In fact, it is more or less an
10 intrinsic part of a townhouse, to have front and
11 back access.

12 Q Now, there is a second provision of
13 this Florham Park ordinance that indicates a
14 vertical masonry fire wall be installed between
15 all units to the roof rafters. First, would you
16 explain to me what that means?

17 A Okay. A fire wall is a wall that is con-
18 structed out of inflammable material. Nowadays
19 that is generally some form of concrete block.
20 What that this means is that between every unit
21 presumably there be a vertical--a complete fire
22 wall from the foundation or slab of the unit up
23 through the units, through the walls of the--
24 floors of the building and through the eaves up
25 to the roof rafters so it is completely

1 co-terminus with the profile of the building.

2 Q You consider that to be unreasonable?

3 A For garden apartments, yes.

4 Q Well, do you have any expertise in
5 fire safety? A I am familiar in

6 general terms with what are required in such
7 matters by the customary codes. And it is far
8 less stringent than this.

9 Q When you say customary codes, can
10 you tell us what the customary codes are?

11 A There are fire standards in construction
12 codes such as the B.O.C.A. Code and the State
13 Uniform Construction Code.

14 Q You would accept the B.O.C.A. Code
15 as being a reasonable set of standards for fire
16 safety? A Yes.

17 Q And I assume you would accept the
18 New Jersey Uniform Construction Code as being
19 reasonable? A Well, they are essen-

20 tially one and the same thing.

21 Q Since they largely are based on
22 B.O.C.A.? A Almost entirely, in

23 fact, yes.

24 Q Is it reasonable for a municipality
25 to adopt a P.R.D. ordinance which sets a maximum

1 number of units which may be devoted to any
2 specific purpose, such as a maximum for gardens,
3 maximum for townhouses and a maximum for one-
4 family homes?

5 MR. BISGAIER: Could you read that
6 back to me, please.

7 (The last question is read.)

8 A Again, this is a matter not unlike the
9 development timing, where it would appear reason-
10 able in principle, but it is difficult to enact
11 a specific standard that is reasonable in practice.

12 Q Well, could you give us a mix that
13 you would regard as being a reasonable mix for a
14 particular ordinance?

15 A Well, again this is precisely the problem.
16 The justification for having a housing mix
17 generally leaving aside P.R.D. ordinances for a
18 second is that they are responsive to the demand
19 for housing of different types, shapes, sizes and
20 like in the population; and that within a
21 P.R.D., there should be a variety of housing types
22 to make this a kind of an overall community.

23 The problem is in practice the demand
24 keeps shifting. And a P.U.D. ordinance--P.R.D.
25 ordinance, especially one that deals with a

1 development that is likely to be taking place
2 over a long period of years is probably not
3 ~~rationally~~ set up to have a specific mix, say 20
4 percent of this, 40 percent of that, 80 percent
5 of this or whatever. In other words, the only
6 mix I could imagine that could be reasonable
7 would be where the ordinance might say we would
8 like at least some of A, B, C types, for example.

9 Q You are talking about minimum
10 standards you could approve of rather than maxi-
11 mums? A That's correct; and that it
12 was clear in the ordinance that deviations from
13 these over time as the development was developed
14 could be submitted and approved without major
15 obstacles or hurdles.

16 Q But isn't that always true with
17 regard to zoning, where you have the Board of
18 Adjustment to go to if you want to deviate from
19 the required density?

20 No, there's a major distinction. I mean
21 it is always possible to go and apply for some
22 form of various zoning change, amendment to the
23 P.R.D. resolution or the like. It is always
24 possible.

25 It is not always possible without

1 unreasonable difficulty, obstacles, hurdles, what
2 have you. So the point is what I am saying is
3 that there has to be a provision making it clear
4 that this is understood, that these things will
5 take place and that they will on the basis of
6 reasonable justification be approved without un-
7 due delay by the appropriate approval body as
8 distinct from merely being silent and letting the
9 developer take his chances because, as you know
10 very well, Zoning Boards and Planning Boards
11 range from the accommodating to the unaccommodat-
12 ing.

13 Q But basically you have no problem
14 with minimum requirements for different housing
15 types so that you get a variety of housing types
16 in a P.R.D. zone? A Again, at the
17 risk of being repetitive, I have no objection in
18 principle, but I am very wary of such ordinances
19 in practice.

20 Q You regard the requirement of more
21 than 1.5 parking stalls per unit in a multi-
22 family zoning ordinance to be unreasonable?

23 A Yes.

24 Q Is it reasonable to require that a
25 garden apartment which is rented rather than

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condominiumized have a resident super?

A No.

Q Explain why you feel it is not reasonable.

A Because in a small development, a resident super is a difficult proposition. I mean, obviously it's desirable when it's economically feasible to have a resident super in a project.

Q It is desirable to the tenants; right?

A It is desirable to the tenants.

Q Even if they are low income tenants?

A Even if they are low income tenants.

And, in fact, in developments of the size of typical subsidized housing developments, there is almost invariably such a resident super because the size of the development makes it possible to absorb the cost reasonably. But in smaller developments, it's not necessarily feasible and adequate services can be provided through a landlord or somebody in the vicinity with 24-hour emergency service.

Q You would admit that the tenant would be better served if there was a resident on the job who could be approached any time of

1 day or night if there were a problem?

2 A The tenant would be better served, but the
3 tenant would be more than adequately served by
4 alternative procedures, which is the issue.

5 Q But would there not be more problems
6 of a lack of service when you anticipate if one
7 had to call the landlord's office in order to have
8 the landlord contact various contractors to go on
9 the property and fix the problems?

10 A Not necessarily.

11 Q Now, you do not know of any studies
12 which indicate how apartment projects without
13 superintendents are functioning?

14 A No.

15 Q And you have made no such studies?

16 A That's correct.

17 Q Now, is there any size at which it
18 becomes economically feasible for an apartment
19 owner to have a resident super?

20 Well, it depends on the rents being charg-
21 ed by the apartments and the nature of the
22 development. There is no one hard, fast size.
23 The more expensive the development overall, the
24 smaller the number of units in which one can have
25 a resident super. The less expensive, the more

1 the number of units.

2 Now, for example, it seems apparent that
3 in developments with more than 100 units, for
4 example, there seems rarely to be any difficulty
5 in supporting a resident super. The break point
6 then is presumably less than that, but exactly
7 where it would be, I wouldn't know.

8 Q You have no idea?

9 A No, as I say, it would vary depending on
10 the type of units.

11 Q You could not give us any numbers
12 as to a hypothetical if one were paying \$400 a
13 month in rent for efficiencies, how many efficien-
14 cies would it take before one could get a resi-
15 dent super? You could not give us any hypotheti-
16 cals I assume?

17 A Well, I think
18 each one you have to calculate in some detail.

19 I have never seen anybody actually work out a
20 formula for this. It's a function of how much
21 cost of either direct costs or rent forgone
22 of the super as a function of the rents on the
23 remaining building units.

24 Q You would admit that it is a bene-
25 fit to the tenants, though, to have a resident
super?

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MR. BISGAIER: That has been answered already.

Q You can answer the question again. A benefit, but not a necessity.

Q Now, Mr. Mallach, are there any exclusionary zoning tools with regard to multi-family housing that you have found in any of the defendant municipalities that we did not discuss today or in the prior sessions?

MR. BISGAIER: That is pretty hard for him to answer.

A That's what I was about--

Q That you can remember.

A I really cannot remember. We have discussed so many different things over the last few days, some of them more than once. I would not want to say. It's possible, but I certainly can't think of any specific things.

Q Now, with regard to all of the so-called exclusionary zoning practices that we discussed, are you prepared to give any cost breakdown on how any of these zoning tools which you regard as exclusionary, how much they add to the cost of an apartment unit or townhouse unit?

A I think that it's impossible to generalize

1 about them.

2 Q And you cannot generalize?

3 A Not indiscriminately.

4 Q Well, can you generalize about any
5 of the zoning practices and plug in numbers so
6 that we know how much it would cost a prospective
7 tenant, a prospective purchaser of a townhouse
8 for any of these matters that we discussed?

9 A Well, some of them are amenable perhaps to
10 such an analysis. I guess the only one that comes
11 readily to mind is minimum square foot require-
12 ments.

13 Clearly, if one is talking in terms of
14 per square foot construction costs today of in
15 the order of \$25 to \$30 a square foot, then every
16 square foot of minimum floor area required in
17 excess of least cost standards would increase the
18 cost of the units by so much.

19 Q Okay. I understand that example.
20 Now, can you give us a similar computation so we
21 can come up with dollar figures with regard to
22 zig-zag?

23 A I can't give you the
24 exact numbers. The way in which that would be
25 computed would be a function of saying that the
cost of building the wall elements or the external

1 structural elements of the unit is X percent of
2 the total construction cost.

3 Q Well, rather than getting into the
4 formula, can you give us any numbers today so we
5 can walk out of here with some idea how much the
6 zig-zag provision is increasing the cost of
7 apartments, townhouses, rentals for multi-family--

8 A No, and I don't think it has any bearing
9 on the least cost issue.

10 Q I understand your position. But I
11 am just asking you if you can give us any numbers
12 with regard to the zig-zag. And the answer is no?

13 A The answer is no.

14 Q With regard to what you consider
15 excessive parking requirements, can you give us
16 any numbers as to how this increases cost?

17 A No.

18 Q With regard to what you consider
19 to be low density, can you give us any numbers
20 as to how this increases cost?

21 That would vary again from site to site,
22 from community to community. Clearly there is a
23 relationship between the unit land cost and the
24 density, but equally clearly that varies as does
25 the unit land cost from location to location.

1 Q You have not made a single computa-
2 tion with regard to any of the defendant munici-
3 palities as to how the low density, the alleged
4 low density under multi-family districts, affects
5 housing costs; have you?

6 A That's correct.

7 Q And you have not made a study on
8 how the maximum number of units in an apartment
9 or townhouse project would affect costs; have
10 you? A That's correct.

11 Q You have not made a study on the
12 effect of how maximum number of units in a build-
13 ing affects costs? A I made a study
14 on how it affects costs, not a study on the--

15 Q The specific amount?

16 A --on the dollar amounts. That's correct.

17 Q I assume that you have made no
18 study on how the restriction of bedroom density
19 would affect cost? A That does not
20 necessarily affect cost. That respects the
21 responsiveness of the housing to the need of
22 housing--

23 Q You have made no study on how the
24 height restrictions found in some of the zoning
25 ordinances affect costs?

1 A That's correct.

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MR. BISGAIER: You keep saying affects costs. You mean as to the possible amount?

MR. BERNSTEIN: Dollars, right, I am looking for numbers. I am looking for--

MR. BISGAIER: Not percentages, not methodology, just dollars?

Q Do you have any percentages? Since Mr. Bisgaier raised the issue, Mr. Mallach, can you give us any percentages as to any of these tools?

A Not on these things.

Q Fine. And when I ask for amounts, if you can give us percentages or if you had percentages, tell us, Mr. Mallach. It is a valid point Mr. Bisgaier raised.

You do not have any percentages today; do you?

A No.

Q You do not know how the requirement for storage in a multi-family unit directly increases the cost of the unit; do you?

A No.

Q And you made no studies, Mr. Mallach?

A No.

Q You have not made any studies on

1 how provisions for overly restrictive lot cover-
2 age or impervious lot coverage would affect cost;
3 do you? A Not as such, no.

4 Q You cannot give us any dollar figures?

5 A No.

6 Q You have not made any studies on
7 what you would consider excessive setback require-
8 ments for the front, rear and side yard, how that
9 would affect the cost of multi-family development;
10 have you? A No.

11 Q You have not made any estimates of
12 what you would consider the excessive parking
13 stall ratio for multi-family would affect it; did
14 you? A You asked me that one first

15 go-around.

16 Q Okay. So same answer? The only
17 item would be excessive minimum square feet;
18 correct? A That's correct.

19 Q And you have no percentages, of
20 course, as to how any of these so-called exclu-
21 sionary tools increase on a percentage basis over-
22 all cost? A That's correct.

23 Q Now, in a prior case, you had
24 testified that you considered the requirement
25 that there be air conditioning in multi-family

1 units to be exclusionary or contrary to least
2 cost housing. Do you concede that you made that
3 statement? A Yes.

4 Q That was in the Urban League v.
5 Carteret case; correct? A Yes.

6 Q Do you still feel that a require-
7 ment that each multi-family unit be served by air
8 conditioning is an exclusionary tool?

9 A Yes.

10 Q You do not think that it is impor-
11 tant that poor people and low income people have
12 air conditioning in our hot New Jersey summers
13 and that is really a necessity?

14 A It's clearly not a necessity.

15 Q You do not feel it should be a
16 requirement that landlords provide air condition-
17 ing? A No.

18 Q You would not have any idea on what
19 it would cost on a per unit basis to provide air
20 conditioning? A It would vary

21 depending on the nature of the air conditioning
22 system that you were providing.

23 Q What would be the least amount that
24 it would cost to put in air conditioning based on
25 your experience as a housing consultant for a

1 garden apartment project?

2 A If you are talking about a single air
3 conditioning in one room in a sleeve, that would
4 cost a couple of hundred dollars per unit.

5 Q That would be the cheapest?

6 A Most likely.

7 Q And how long would that last?

8 A I don't know exactly. It would presumably
9 have to be replaced during the lifetime of the
10 unit, though.

11 Q What would the lifetime be?

12 A It varies with the unit. Probably five
13 years might be a reasonable figure.

14 Q Five years. So what we are saying
15 is the air conditioner is going to cost other than
16 for installation if you amortize it over five
17 years, it would only cost \$40 a year. Is that
18 right?

19 A Perhaps, of course,
the installation does--

20 Q Assuming it is \$50 for installation,
21 is that a reasonable figure?

22 A I really don't know.

23 Q Let me give you a hypothetical.
24 We will assume a \$50 installation fee. We will
25 take your fee of \$200 for the air conditioning

1 unit. If my mathematics is correct, that would
2 be \$50 a year for the cost of the unit; correct?

3 A Yes.

4 Q Now, do you consider that \$50
5 figure to be so excessive that it would be
6 improper for the municipality to require air
7 conditioning?

8 A I think that
9 you miss the point of the whole essay, if you
10 will.

11 Q Give me the point again.

12 A Okay. The point is that what we are
13 talking about here first is a principle, which
14 is least cost, and second is a cumulative effect
15 of a variety of provisions. And if you say--If
16 you take the term least cost seriously, then you
17 have to see it means least cost, not less cost.

18 And if you start saying that Provision A
19 is not serious enough to worry about, then you
20 have to argue that Provision B is not serious
21 enough to argue about and Provision C and the
22 And the next thing you know, of course, is
23 you have a series of cost-generating factors that
24 have added significantly to the cost of the unit.

25 So the fact that an individual item in
the long list of potentially exclusionary

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1 practices in itself does not add significantly
2 to the cost of the unit is not in any way, shape
3 or form a justification of that provision.

4 Q Well, isn't your theory, Mr.
5 Mallach, that even if this so-called exclusionary
6 tool added a single dollar to the cost of the
7 unit, if you felt that that tool was not warrant-
8 ed on health and safety, you would say that the
9 tool would be exclusionary and violate the
10 principle of least cost housing?

11 A That is a logical conclusion of my theory.
12 I believe that the Supreme Court meant what it
13 said.

14 Q You feel that the principle is
15 important, not the dollar amount?

16 A They're both important.

17 Q But with regard to the air condi-
18 tioning, the \$50 figure you felt was sufficiently
19 exclusionary?

20 MR. BISGAIER: I think this is
21 getting a little argumentative. He said
22 a dollar. He would consider that exclusion-
23 ary.

24 Q Is that what you said, Mr. Mallach,
25 that even if it were a dollar, if you felt it

1 were not substantiated in health and safety, then
2 it would be exclusionary?

3 A Yes.

4 Q Mr. Mallach, referring you to what
5 was marked D-4 for identification, do you have a
6 copy of your March 12th study?

7 A Yes, I do.

8 Q Page 1 of that study, you used the
9 term strong cultural element in the sense that
10 your housing standards of ten dwelling units to
11 the acre for townhouses and 15 for garden apart-
12 ments recognized the strong cultural element.
13 What is that? Page 1, I believe it is.

14 A Can I see your page?

15 Q Here it is.

16 A You have a different pagination system.
17 Sorry.

18 Q That is all right.

19 A This precedes the actual numbering in the
20 manner of the introduction. I'm sorry. What was
21 the question?

22 Q Okay. What do you mean by the term
23 strong cultural element and how does that apply to
24 your report? A Again, as I believe I

25 discussed at some length a week or so ago, there

1 is a very strong cultural element in the accept-
2 ability of different types of housing, different
3 levels of intensity and the like. And if one
4 looks, for example, at housing developed in many
5 other countries, including many countries with
6 standards of living certainly comparable to those
7 of the United States, and in urban settings, one
8 finds a variety of very high density land uses.

9 Q What is very high if--

10 A Well, for example, units that are designed
11 on a walkup basis with densities of 30 or 40 units
12 to the acre, for example, elevator units of
13 densities of well over 100 units to the acre.

14 Q You would have no problem with any
15 of those in our defendant municipalities?

16 A I personally have no problem with them.

17 Q From a housing standpoint?

18 A From a housing standpoint. In phrasing
19 this report, however, I tried to analyze least
20 housing within the established cultural
21 context of suburban America which perceives such
22 things as townhouses and garden apartments as
23 recognized or identifiable housing--and respec-
24 tively speaking, at least non-unique or unusual
25 housing types and in the context of trying to

1 identify what are the lowest densities in recog-
2 nition of the suburban susceptibilities that can
3 be identified were there is still some pretense
4 that these are indeed least cost units.

5 Q So what you are saying is from your
6 vantage point, you are giving very conservative
7 figures? A That's correct.

8 Q But you would also admit that you
9 are out of mainstream of middle America thinking
10 with regard to--

11 MR. BISGAIER: Out of the main-
12 stream of--

13 Q --housing densities?

14 A I'm not sure. Assuming I understand what
15 you are saying, which is highly debatable, I'm
16 not sure. I strongly suspect that given the
17 fact that a smaller and smaller percentage of
18 people can afford the kind of housing that's
19 built in communities such as the Morris County
20 suburbs, that it's them that are out of the main-
21 stream rather than I.

22 Q But you cannot tell us how much any
23 of these exclusionary tools adds to the cost of
24 housing; correct? Other than the excessive
25 minimum square footage.

1 A Not in dollar amounts, that's correct.

2 Q As a housing consultant, would you
3 favor the abolition of zoning requirements in
4 this state and the mere imposition of building
5 code restrictions as an advisable step toward the
6 creation of a larger stock of low and moderate
7 income housing?

8 A It's a diffi-
9 cult question. I think zoning certainly has some
10 very serious problems with it, not least of which
11 has been its use by municipalities as a substitute
12 for planning rather than as a supplement to plan-
13 ning. And similarly, there's the example of
14 communities such as Houston as well as many other
15 less prominent communities that thrive without
16 zoning.

17 I think that if one were to establish--
18 rather to abolish zoning codes, I don't think
19 building codes in themselves would be an adequate
20 substitute. I think certain processes of site
21 plan review and subdivision review would still be
22 necessary. I think maintaining certain nuisance
23 standards would be appropriate to see that uses
24 that don't--to see that uses that directly con-
25 flict in an explicit way inconsistent with health
and safety are not put side by side. On the

1 other hand, in Houston for the most part such
2 regulation is conducted through a network of
3 private covenants.

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4 Q Do you approve of that as a housing
5 consultant? A Generally speaking,

6 yes.

7 Q Do you know whether or not the
8 private easements are more or less restrictive
9 than the standards that you have espoused in this
10 lawsuit? A I think they vary

11 incredibly from one community to the next. I
12 think typically the easements or covenants deal
13 with continued use of an area that's already been
14 developed. So that, for example, if you have a
15 subdivision that's constructed with single-family
16 homes, there will be a covenant prohibiting the
17 re-use of those homes, say, for other than
18 residential or customary home occupation purposes,
19 for example. That was not a restriction on the
20 construction of these units, a restriction on the
21 use, the subsequent use of the units.

22 Q You make the statement in your
23 report on Page 4, "Within the recreational poten-
24 tial of individual house lots below three-quarter
25 acre to one acre is modest in any event." What

1 did you mean by that, Mr. Mallach?

2 A What I mean by that is as one can see in
3 any suburban community, that active recreation
4 activities on the part of older children and
5 adolescents in particular as well as adults are
6 typically not conducted within individual house
7 lots but are conducted in playgrounds, athletic
8 areas, streets, school yards, vacant lots and
9 the like.

10 Q You would concede that it is desir-
11 able for children to play on their own yards?

12 A I think it's academic. Children don't
13 play in their own yards; and it's silly to predi-
14 cate a set of zoning ordinances on that; after
15 they're more than four.

16 Q Mr. Mallach, on Page 6 of your
17 report, you indicate that setbacks of even 100
18 feet from multi-family developments may not
19 significantly increase costs. Explain what you
20 mean by that,

A They may or may
21 not. It would depend again on the specific situa-
22 tion. The principal cost-increasing feature of
23 setbacks has to do with the length of infra-
24 structure extensions to the units themselves.

25 Under many circumstances, if, for example,

1 you have a typical set of systems running along a
2 street right-of-way or the edge of the right-of-
3 way in a public street, the longer you set back
4 or the further you set back the units from that
5 street, the more expensive it will be to provide
6 connections. That is a general practice. And
7 calculating cost is not a difficult matter once
8 you know what the extensions are, what the set-
9 back is and so forth.

10 However, the point here is even where that
11 might not apply, by virtue of different locations
12 of the basic utility lines and such, the fact is
13 that it has an effect on the design and layout
14 and the creation of usable housing independent of
15 the cost.

16 Q Well, you did not answer my question.
17 How would it be that it would not significantly
18 increase cost? A I mean if you
19 had a situation, for example, where, say, in
20 terms of, say, a sewer system, that instead of
21 hooking into a public sewer line, the developer
22 was constructing his own sewage treatment plant,
23 now, in such a situation obviously he could design
24 the location of the plant and the location of the
25 pipe extensions in such a way that it dealt with

1 the setback requirements and was economical with
2 the given set back requirements as with any other.
3 So in such a situation, the cost impact would be
4 substantially less than if its development was
5 looking into a private--sorry, a public sewer
6 system with the lines running along the street
7 right-of-way.

8 Q Is it your contention, Mr. Mallach,
9 that each of the defendant municipalities has
10 space which would be suitable for trailer parks?

11 A Each of the defendant municipalities
12 according to the D.C.A. study--

13 Q No, I am saying according to Mr.
14 Mallach. A Bear with me. Mr.
15 Mallach has not done an independent analysis of
16 development of developable land in the municipa-
17 lities. According to the D.C.A. studies, there
18 is substantial developable land in each of the
19 municipalities.

20 Since to the best of my knowledge, there
21 are no significant features that distinguish land
22 for trailer parks and mobile home parks from land
23 for other medium density or medium intensity uses,
24 it seems a logical conclusion that unless a muni-
25 cipality can prove otherwise, that such land

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exists.

Q Well, from your vantage point, you assume each of the defendant municipalities should have trailer parks provided in their zoning ordinances?

MR. BISGAIER: I should note for the purposes of your information in the record there will be a separate expert witness testifying as to mobile homes.

MR. BERNSTEIN: I appreciate that, but I assume he will not be a planner.

MR. BISGAIER: Why do you assume that?

MR. BERNSTEIN: Well, maybe he will be, but I would like to see what Mr. Mallach will have to say about trailers. I regard him as your most important witness.

A I believe that each municipality--That's a compliment, I guess.

Q A compliment, yeah.

A I believe that each municipality should allow mobile homes.

Q Well, I am talking about trailers.

A No, no, I'm not sure. Here we have a

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1 question of terminology, where it becomes confus-
2 ing. The term I use--

3 MR. BISGAIER: In terms of plain-
4 tiff's case, we are only--

5 MR. BERNSTEIN: Wait. Before you
6 say that, Mr. Bisgaier, I just want to
7 hear what Mr. Mallach has to say about his
8 definitions first.

9 A I wasn't going to make a definition. The
10 term I use is "mobile home," period, end quote.

11 MR. BISGAIER: For your information,
12 in terms of the plaintiff's case, the
13 mobile home parks and the mobile homes
14 we are talking about are those consistent
15 with federal standards under the 1974
16 Housing and Community Development Act.
17 We are not talking about trailers or rec
18 vehicles or the like.

19 Q You are advocating that each of our
20 zoning ordinances should have a provision permit-
21 ting trailer parks or, as you call them, mobile
22 home parks? A No, I did not say

23 that, either.

24 Q No? A I said that
25 each ordinance should permit mobile homes to be

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erected.

Q Well, would you have them erected in one-family residential districts where there are one-family homes side-by-side with trailers?

A Certainly.

Q You see no problem there?

A No.

Q Under your theory then, Mr. Mallach, if a town had an exclusive residential zone again of one acre with expensive homes, you would find no problem in requiring that municipality to permit trailers as a permitted use?

A I have no problem with it.

Q You would regard the ordinance as unreasonable if it did not allow trailers in all one-family residential zones?

A These are not trailers. These are mobile homes.

Q All right, mobile homes. You would regard a zoning ordinance as being unreasonable if it prohibited trailers or as you call them mobile homes in any one-family residential district?

A Well, again unreasonable in the sense that I've been using it all through this lengthy proceeding, yes.

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Q You would see no justification for a town excluding mobile homes from any one-family residential district?

A No rational grounds.

Q Under your theory, Mr. Mallach, there would be no need for trailer parks since you would see trailers or mobile homes as permitted in all one-family residential zones so that there would be no need to bunch them together?

MR. BISGAIER: Could we go off the record for a second.

(A discussion is held off the record.)

Q Mr. Mallach, what do you understand by a trailer park or a mobile home park, excuse me?

A What I understand by a mobile home park is a development in which a single owner develops a site to accommodate more than one mobile home on it, constructs the internal road network, recreational facilities, whatnot, as well as a series of slabs for mobile homes, each of which sits on its own small lot.

Then as a general rule, not invariably, the mobile home park owner then rents these lots with the slabs on them to families who place a

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mobile home that they own on the slab or pad.

Q Would you regard it as being mandatory or obligatory that each of the defendant municipalities' zoning ordinances provide for mobile home parks?

A I think if a municipality amply provides for small lot zoning in which mobile homes can be located, that it may not be necessary to include mobile home parks as well in a zoning ordinance.

Q As a housing consultant, can you give us a recommended density for mobile home parks?

A Densities for mobile home parks typically run in the area of six to nine units per acre. The individual areas around the pads run from approximately three to 5,000 square feet.

Q And I assume you regard these densities to be reasonable?

A Yes.

Q Well, if you had a zoning ordinance which permitted 50-by-100 one-family residential lots, which you apparently espouse--

A I do.

Q --there would be no need to provide

1 a separate ordinance for mobile homes; would
2 there? A If the availability
3 of small lots, single-family units and mobile
4 homes on small lots was ample. This is not to
5 suggest that providing for mobile home parks is
6 not desirable.

7 Q But it would be redundant if a town
8 had substantial amounts of acreage zoned for 50-
9 by-100-foot lots--

10 (A discussion is held off the
11 record.)

12 Q --to specifically zone for trailer
13 parks or mobile home parks at the same density?

14 A Well, it's difficult to say that. I
15 would think that an ideal situation where it
16 would be--where there would be a mobile home park
17 option, perhaps in such an area or in other areas
18 where at the same or perhaps somewhat higher
19 densities, you could have a--you could have the
20 mobile home park developed as a common facility.
21 I think the reason for that--Somewhat higher
22 densities are feasible because the mobile home
23 park layout as a single entity encourages some
24 economies in space such as common parking areas
25 rather than individual driveways and the like.

1 Q Do you know of any disadvantages
2 attached to mobile homes or mobile home living?

3 Do you know any disadvantages attached to mobile
4 homes and mobile home living?

5 A As distinct from--

6 Q One-family homes.

7 A Of similar size and facility and the like?

8 Q Right.

9 A No, no, I do not.

10 Q Mr. Mallach, do you know whether
11 mobile homes traditionally increase or depreciate
12 in value over a period of years?

13 A I believe there's a fairly significant
14 change taking place during recent years in the
15 question of whether mobile homes depreciate or
16 not. I am very much aware that the next witness
17 you are going to depose is one of the most know-
18 ledgeable people in the country on such subjects.

19 Q Right, but I am interested in your
20 thinking, Mr. Mallach.

21 A Well, most of my thinking is derived from
22 familiarity with his work.

23 Q Which is?

24 A Which is that although historically until,
25 say, about five years ago there was a pattern of

1 depreciation, that pattern has significantly
2 changed in recent years. And there is substantial
3 evidence that new mobile home units and develop-
4 ments not only do not depreciate but in many
5 cases appreciate.

6 Q You have not made any studies on
7 this? A No.

8 Q And are there any studies that you
9 are aware of that you can give us the names of
10 that hold this? A Well, I don't
11 know the names of specific studies, but as I said,
12 the individual that has done many such studies is
13 a Mr. Heackel.

14 Q With regard to the densities that
15 you proposed today and in the prior depositions
16 for garden apartments, townhouses and one-family
17 homes, can you tell us what professional planners
18 in the State of New Jersey would support your
19 position on densities?

20 A I have no idea which would or which would
21 not.

22 Q Can you tell us what publications
23 espouse the same densities that you recommended
24 to us in these depositions?

25 A The publications that I cited to you last

1 week espouse such densities. A recent publica-
2 tion I had a chance to look at recently dealing
3 with multi-family housing and published by the
4 Interreligious Coalition for Housing, which is
5 an inter-church organization, in fact, recommends
6 even higher densities in its guide to church
7 organizations concerned with housing.

8 Q Is this subsidized housing?

9 A Yes.

10 Q And this is financed by the F.H.A.

11 or the-- A This would be financ-
12 ed by F.H.A. or another H.U.D. unit or a State
13 agency. The F.H.A. and H.U.D. standards them-
14 selves for multi-family housing allow for den-
15 sities that are significantly higher than the
16 standards I have recommended here. In fact, I
17 have never seen an official document dealing with
18 housing densities that recommended lower densities.

19 Architectural manuals such as, for example,
20 Princeton University Design Workbook, which
21 contains a large number of housing prototypes,
22 recommends densities as high as 30 to the acre
23 for walkup development.

24 Q In suburban areas?

25 A It doesn't distinguish. So that I am not

1 familiar with any authorities that recommend
2 lower densities.

3 Q But you have only mentioned to us
4 one planning authority whose name you could not
5 give us, something that was published by the
6 D.C.A.? You could not give us any planning
7 authorities? A These are all planning
8 authorities.

9 Q An architectural book is a planning
10 authority? A This is a--The
11 Princeton Design Workbook is certainly largely a
12 planning document at a level of considerable
13 sophistication and expertise. The D.C.A. and
14 Koppelman book that I cited previously is a
15 standard planning reference. The H.U.D. Minimum
16 Property Standards are a standard planning as
17 well as construction reference.

18 Q Okay. We are arguing over words.
19 Let me go on to another area.
20 Give us your theory on overzoning for low
21 income housing.

22 MR. BISGAIER: Read that question
23 back.

24 Q Give us your theory on the overzon-
25 ing for low income housing.

1 A Overzoning for low income or for least
2 cost housing is a principle that exists in order
3 to make the housing feasible as distinct from
4 theoretically possible. In other words, if one
5 were attempting to build, say, 100 townhouses at
6 ten to the acre and identified a single ten-acre
7 tract for that housing and one wanted to build
8 such housing and also have it occupied by low or
9 moderate income people, there are a wide variety
10 of things that could take place that would make
11 it either impossible to build on the tract at all,
12 impossible to build least cost housing on the
13 tract or unlikely and even if built and even if
14 least cost, it could still be occupied by people
15 who are not the population in need.

16 So that overzoning refers to the process
17 of zoning more land than is strictly speaking
18 necessary for the units you hope to achieve in
19 order to counteract various factors that work
20 against achieving least cost housing goals.

21 Q Well, how much overzoning would one
22 do assuming you determine that a certain town
23 needed 100 acres of least cost housing at a
24 certain density? What is the multiple that you
25 would recommend between need and zoning?

1 A Since this is not again something that is
2 amenable to precise mathematical definition, an
3 exact number is not possible. I have suggested
4 in my report that the cumulative effect of the
5 factors involved dictates that the multiples
6 should be in the order of three to five times.

7 Q Now, with regard to this overzoning,
8 Mr. Mallach, there is one thing that troubled me
9 that maybe you can help me with. Let's assume a
10 desirable Morris County suburban community such
11 as the defendants in this lawsuit were to over-
12 zone for lots 50-by-100 feet. How could they
13 ensure that least cost housing would be built and
14 not merely more middle income housing on postage-
15 size lots?

16 A This is part of the
17 whole point of overzoning. And one of the argu-
18 ments that I make, one of the key issues in over-
19 zoning, indeed is that if the cumulative effect
20 of exclusionary zoning and other factors has
21 created a situation whereby there is substantial
22 unmet demand not only for least cost housing but
23 also for more expensive housing, there is a very
24 real possibility that the more expensive housing
25 will drive out the less expensive housing from
the marketplace. So one of the purposes of

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I want to know numbers you can plug into it.

A I suspect it would vary quite widely depending on the individual municipalities. I think the range in some communities, it might be possible to construct such a unit for a price that would be somewhat under \$40,000. In other communities, it might be, say, in the high 40's. The range would be, say, from the high 30's to the high 40's.

Q The range would be from the high 30's to the high 40's?

A Yes.

Q You do not base that on any empirical data that you have gathered from Morris County, but merely from your general knowledge?

A That's correct.

Q Would it make any difference if the cost of this no-frills house was substantially more expensive? Would your principles still be valid as to overzoning?

A Yes.

Q Would it make any difference if you could not build such a house for \$80,000 in these towns?

A Of course, you could build such a house for \$80,000. It's an academic

1 overzoning is to create enough land available at
2 these standards so that you can do, in essence,
3 both.

4 Q But you see no problem with middle
5 income housing being constructed on 50-by-100-
6 foot lots? A Not at all.

7 Q You do not think it would be more
8 desirable if you built middle income housing on
9 larger sized lots?

10 A I think that is a judgment for the middle
11 income people who are in the market for housing
12 and the people who are building the housing to
13 determine. If the people want to build small
14 lot middle income housing and middle income people
15 want to buy it, I see nothing pernicious about
16 that.

17 Q You have no idea what a thousand-
18 square-foot home, no-frills home, would cost on a
19 50-by-100-foot lot in any of the defendant municipi-
20 ties? A Well, it would depend
21 on the cost of the lot.

22 Q Obviously. I am just asking you if
23 you have any idea of the numbers, not the concept.
24 We can all figure out if you add the lot cost
25 and the building cost, you have got the numbers.

1 question.

2 Q I would submit that your whole
3 exclusionary zoning argument is academic. But
4 assuming I were to prove to you that in at least
5 some of the towns you could not build for less
6 than \$80,000 on this 50-by-100-foot lot, would
7 you still say it would be desirable to overzone
8 for this type of lot size?

9 A Yes, I mean clearly the principle still
10 applies. Now, it's conceivable that one could
11 develop a mathematical formula which based on
12 rock bottom cost of the unit relative to the
13 amount of demands that could be met with those
14 units, that would dictate that somehow the extent
15 of overzoning would vary to some degree. But the
16 principle would certainly remain the same.

17 Q In your opinion, as a housing con-
18 sultant, should the town overzone for not just
19 small lots which I assume you propose, but also
20 for multi-families and townhouses as well?

21 A Yes.

22 Q And trailers, mobile homes, over-
23 zoning for mobile homes as well?

24 A Well, I believe we talked about using a
25 single type of zoning for mobile homes as small

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lots and single-family units.

HEMILY

Q Well, didn't you also want to have special mobile home zoning?

PROPERTY

Yes.

Q And you would like to overzone for that, I assume? A Certainly.

Q Wouldn't the cumulative effect of all this have a great potential for diminishing the value of residential properties in the community that did this overzoning?

A Not if it was done intelligently.

Q You do not feel that there would be any danger of diminution of residential home values if the municipality went about overzoning in a studious way? A That's correct.

Q And in going about it in a studious way, where would the municipality put this low income housing? Would it be interdispersed among the existing housing? Would it be concentrated? What standards and principles would you give the town fathers who wanted to overzone for low and moderate income housing?

A I think that they should do a serious planning study. They should first do a serious fair share analysis to determine what the amount

1 of overzoning, the amount of housing that they're
2 seeking should be. And then they should do a
3 **COTTAGE** serious planning study to determine what the most
4 suitable areas are.

5 And I think you have to bear in mind that
6 even with overzoning, the total acreage at issue
7 is relatively modest, relative to the amount of
8 acres that appears to exist in most of these
9 municipalities.

10 Q Well, could you give us some num-
11 bers? You talk about being modest. How much is
12 modest if it--

13 A Well, let's
14 say hypothetically a municipality had a fair
15 share goal of some 3,000 units of least cost
16 housing. Now, if you are assuming that that over-
17 zoning--Scratch that.

18 If you are assuming that those units will
19 be developed at an average density of roughly ten
20 to the acre, assuming some apartments, some
21 single-family houses, some mobile homes, some
22 townhouses and the like, then the total acreage
23 that's required to accommodate those units is
24 300 acres.

25 So if you overzoned by a factor of three
to five, the total acreage that would be rezoned

1 for all of these uses in the municipality would
2 be between 900 and 1500 acres. Now, in a large
3 municipality that would not be a substantial
4 amount of the community.

5 Q Can you tell us--

6 A We are talking about something in the
7 area of one-and-a-half to two square miles.

8 Q Can you tell us which of the muni-
9 cipalities that are defendants you feel that this
10 900 to 1500 acres of low and moderate income
11 housing would not have a considerable impact?

12 A I have not done a specific study on that.
13 But since land availability is a significant
14 factor in the fair share process, clearly the
15 size of the fair share and therefore the amount
16 of land that would be made available would vary
17 depending on the amount of land that was avail-
18 able to begin with in the municipality.

19 Q You would not believe that the
20 existence of substantial amounts of land zoned
21 for low and moderate income housing in close
22 proximity to expensive existing one-family homes
23 would tend to drive down the price of the latter?

24 A Not necessarily.

25 Q When you say not necessarily, you

1 are saying that you do not think as a general
2 rule substantial areas zoned for low and moderate
3 income housing in close proximity to this higher
4 priced housing would drive down the price of the
5 latter? A We are not talking
6 about low and moderate income housing here. We
7 are not saying the only thing that can be built
8 here is public housing or subsidized housing.
9 We are talking about land zoned at least cost
10 standards for multi-family small lot single-
11 family and the like. I don't see that it would
12 necessarily drive down the price of single-family
13 housing.

14 Q Now, can you point to any examples
15 where this overzoning that you speak of has work-
16 ed and has created low and moderate income hous-
17 ing? A I'm not familiar with a

18 municipality in New Jersey at least that has
19 applied overzoning in the manner in which the
20 Supreme Court has called for it in the Madison
21 Decision.

22 Q Do you know of any community in
23 the United States which is overzoned for low and
24 moderate income housing and, in fact, has had
25 that result?

1 A I suspect there may be. I'm not familiar
2 with such. In any event, we are talking about
3 least cost and not low and moderate income hous-
4 ing.

5 Q Okay. Are you familiar with any
6 community in New Jersey that is overzoned for
7 least cost housing? A I believe I
8 answered that. No community in New Jersey to my
9 knowledge is overzoned for least cost housing in
10 the manner called for in the Madison decision.

11 Q That you are aware of?

12 A To my knowledge, yes.

13 Q Do you know of any community in the
14 United States that is overzoned for least cost
15 housing?

16 MR. BISGAIER: You mean other than
17 urban areas? You mean developing munici-
18 palities that Mr. Mallach is familiar with?
19 Not in the sense--Not explicitly in the
20 that the term is used here.

21 Q So essentially you're hypothesizing
22 as to the effect on overzoning and cannot give
23 me an empirical example of where it has worked?

24 A I think the concept of overzoning is a
25 concept that has come into being specifically to

1 try to remedy the effect created by exclusionary
2 zoning. For example, all--

3 Q Wait. That was not my question,
4 Mr. Mallach.

5 A Well, it's an intro-
6 duction to an answer to your question. Of course,
7 it was not your question. You ask your question
8 and I answer it. It was, however, my answer.

9 Now, the point is that there is abundant
10 empirical evidence. And one can look at the
11 production of 236 housing as one example during
12 the late '60's and early 1970's to the fact that
13 the existence of zoning regulations reduced the
14 feasibility of building subsidized housing in
15 this case and reduces the amount. The number of
16 such units that were constructed in New Jersey
17 were significantly less than their proportion of
18 New Jersey's population, stock housing or any-
19 thing else relative to the national total. And
20 the number of such units that were constructed
21 in suburban areas in New Jersey all during the
22 period of that program can be virtually counted
23 on the fingers of one hand.

24 At the same time, throughout large parts
25 of the South and Southwest where zoning is not
customary, these units were provided in

1 considerable numbers in suburban areas. So that
2 there is abundant evidence that the zoning--
3 existence of exclusionary zoning restricts.

4 Now, overzoning is a tool that has been
5 developed and developed recently as a conscious,
6 explicit approach to counteract these effects.
7 It is grounded in the economics literature,
8 which, to the degree that it exists, demonstrates
9 mathematically that zoning limited amounts of
10 land for multi-family housing tends to increase
11 their price. But by virtue of its being a new
12 tool as such, it does not have an explicit track
13 record that can be pointed to.

14 Q Mr. Mallach, you still have not
15 answered the question. You are only proposing
16 the concept of overzoning, but cannot give me an
17 empirical example of where it worked; can you?
18 Can you give me an empirical example, yes or no?

19 A I am not proposing. The Madison Court is
20 proposing the concept of overzoning. I am mere-
21 ly trying to explain here why, from an economics
22 or planning standpoint, they did so and what
23 that may translate out to in practice.

24 In answer to the second part of your
25 question, as I did say very explicitly at the

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end of the previous question, the answer is no for all of the reasons that I cited.

Q Are you proposing in your report, Mr. Mallach, that two-family homes be constructed on 4,000-square-foot lots with 40 feet of frontage?

A That's correct. We are talking here about the individual units of the two-family home be constructed on 4,000 square feet and 40 foot frontage.

Q Would that mean that both units together would be on an oversized 8,000-square-foot lot with 80 foot of frontage?

A Oversized?

Q By your concept. I am curious. How much land would both units take up? Would each unit be on 4,000 square feet giving a total of 8,000 square feet or would the total be 4,000 square feet?

A I don't understand what you mean by my concept of oversized.

Q Mr. Mallach, one of the advantages attorneys get is to ask the questions. If you had a two-family home, what would be the total lot area that you think would be appropriate?

A Well, 8,000 square feet, of course.

Q And the total frontage?

1 A Eighty feet.

2 (The luncheon recess is taken.)

3 Q Mr. Mallach--

4 A Yes, sir.

5 Q --we discussed overzoning for least
6 cost housing; correct? A Yes.

7 Q Industry and commerce are required
8 in all communities; correct?

9 A Not necessarily.

10 Q Okay. Industry and commerce, well,
11 why do you say not necessarily?

12 A Because I can imagine there are communi-
13 ties that are purely or nearly purely residen-
14 tial with minimal nonresidential uses.

15 Q There is a regional need for
16 commercial and industrial development; isn't
17 there? A Overall, yes.

18 Q And would you say that there is a
19 problem in New Jersey today in attracting
20 sufficient jobs for its inhabitants?

21 A I'm not sure the problem is so much in
22 attracting jobs so much as a much more complicat-
23 ed one having to do with maintaining existing
24 jobs in the area, generating growth within the
25 sectors of the industry that dominate the New

1 Jersey economy. Certainly there is a problem
2 with the level of employment, but it's a very
3 complicated problem.

4 Q Would you favor overzoning for
5 industry so that we may be able to attract
6 increasing amounts of industry to New Jersey in
7 order to cure our unemployment problems and in
8 order to stem the tide to the Sun Belt?

9 A New Jersey has overzoned for industry in
10 innumerable cases. In fact, virtually every
11 exclusionary zoning decision I'm familiar with
12 has pointed out in passing that the municipality
13 in question was overzoned for industry.

14 So it seems readily apparent that the
15 economic problems of New Jersey are a function
16 of other factors. I'm not sure exactly what they
17 are. That's again a complicated matter. But it
18 doesn't seem to relate to overzoning.

19 Q Well, are you opposed to overzon-
20 ing for industry? A Well, again,

21 it's a question of degree. I believe that to
22 the degree that there is reason to believe that
23 there is a demand for industrial land, which is
24 again what we are talking about with housing, we
25 will--we are talking about the level of demand

1 and the level of need, to the degree that there
 2 is reason to believe that there is a demand,
 3 that land should be available and there should
 4 reasonable margin of overzoning again so
 5 that the demand for industrial land can be met.

6 In the case of industrial lands, the over-
 7 zoning margin most likely need be substantially
 8 less than for housing or for least cost housing
 9 as distinct from housing generally because cer-
 10 tain of the factors do not apply. But within
 11 reason, I think overzoning for industry is appro-
 12 priate. The overzoning might be at a factor of
 13 two times perhaps the demand. The point is the
 14 kind of overzoning for industry that appears to
 15 take place very frequently is along lines of 50
 16 times or 100 times rather than two times.

17 Q Is it your concept, Mr. Mallach,
 18 that all residential zoning which is not consis-
 19 tent with least cost housing is unreasonable
 20 zoning?

21 A Well, in many ways,
 22 yes. Again, in the sense that it is not particu-
 23 larly rationally grounded. After all, if a site
 24 is zoned for 5,000-square-foot lots, somebody in
 25 the market that dictates people are interested in
 having that sort of housing can certainly come

1 along and build 10,000-square-foot lots, half-
2 acre, one acre, two-acre lots. You can always
3 build larger based on the marketplace.

4 Q The only rational basis for resi-
5 dential zoning is to provide least cost housing?

6 A No, as I understand it, the rational basis
7 for residential zoning is to provide for the
8 health, safety and general welfare of the popula-
9 tion.

10 Q And in every instance the maximum
11 which you find to be acceptable would be least
12 cost housing?

13 A Well, now,
14 there are exceptions, of course, as we have dis-
15 cussed before in terms of the questions of septic
16 tanks and so on. But leaving that aside, the
17 term I used was reasonable.

18 Now, in terms of rational grounding, there
19 is no rational grounding, leaving aside certain
20 specialized environmental concerns, for a lot
21 being perhaps one acre in one area, two acres in
22 another, five acres in still another. Now, as
23 to whether it's acceptable, which means as to
24 whether I would tolerate its presence, now, my
25 reading again of the court decisions are that if
ample land is provided for least cost housing,

1 then what's left over can be zoned more or less
2 anything the town wants.

3 And so what the Courts say as it were is
4 what I accept. But I nonetheless personally
5 find no rational grounding for such large lot
6 zoning.

7 Q So that aside from your interpre-
8 tation of court decisions as a housing consul-
9 tant, you see no rational reason for residential
10 zoning having higher standards than that requir-
11 ed for least cost housing?

12 A Again, with the exception of certain
13 specific environmentally--environmental require-
14 ments in certain areas, that's correct.

15 Q Did you do a study in Cranbury
16 Township for townhouses?

17 A Yes.

18 Q And did you support a proposed
19 project for 850 units on a hundred-acre site?

20 I did a housing market study for such a
21 development.

22 Q And did you describe the townhouses
23 as being in the moderate cost range?

24 A That is correct.

25 Q And you stated that the project

1 would meet at least some of Cranbury's fair share
2 of least cost housing?

3 A That it might, yes.

4 Q And the multi-family townhouse
5 project was at the density of 8.5 units to the
6 acre? A Yes.

7 Q So that there are instances in
8 which townhouses at a density of less than ten
9 dwelling units to the acre could support least
10 cost housing?

11 A It's possible. As I think one can infer
12 from the statement, the units would not neces-
13 sarily all be least cost or indeed depending on
14 what the developer built, they would--none of
15 them might turn out to be least cost. But it
16 was at least a reasonable possibility that some
17 of them could be.

18 Q But even at a density of ten units
19 per acre, there is no guarantee that any of the
20 units will be least cost?

21 A That's correct. That's one of the reasons
22 for overzoning.

23 Q Right. Now, with regard to your
24 testimony in the Urban League of Greater New
25 Brunswick vs. Carteret, et als, did you prepare

1 studies showing the income range of the popula-
2 tion in the various defendant municipalities?

3 A I cited census data on that point. I
4 did not do a separate study.

5 Q And I show you what we will mark
6 as D-5 and ask if you can identify it.

7 (Copy of Computer Output marked
8 D-5 for identification.)

9 Q Can you identify the document I am
10 showing you that has been marked D-5?

11 A This is a copy of the 1970 census print-
12 out tape showing income distribution of families
13 in the municipalities in Middlesex County.

14 Q And this was prepared by you?

15 A This was referred to by me.

16 Q And in the Urban League case, did
17 you not recommend that each municipality had the
18 obligation of having the same number of low and
19 moderate income families as a percentage of their
20 population as existed in the entire county?

21 I wouldn't say they had an obligation to
22 have that number. I would say--And this again I
23 was taking a lead from Judge Furman which has
24 subsequently been confirmed by the Court in
25 Madison, that such a goal would be a legitimate

1 goal of a fair share plan and indeed would be a
2 criterion of a fair share plan, that it moved--
3 that it took the maldistribution of incomes into
4 account and moved the community towards relative
5 parity between the income distribution of the
6 county or region as the case may be.

7 Q Now, Morris County is a more wealthy
8 county than Middlesex County; isn't it?

9 A That's correct.

10 Q If you were to do a similar study
11 for Morris community, I suspect that each county
12 would have a far smaller burden because the over-
13 all percentage of low and moderate income fami-
14 lies in Morris County is smaller; correct?

15 A Well, it's precisely for that reason that--
16 at least in that regard one could not treat
17 Morris County as a region for fair share purposes.

18 Q Because it does not have enough
19 poor people? A Well, because it
20 clearly, by virtue of a whole lot of things, not
21 least of which I'm sure is exclusionary zoning,
22 has far less, far fewer poor people than areas
23 to which it's economically linked.

24 Q So you are saying that you cannot
25 create a fair share region out of affluent

1 regions? A If the affluent
2 region were geographically isolated to the
3 degree that it had no links of significance with
4 other less affluent regions, perhaps. But when
5 you look at northeast New Jersey and you see
6 Morris County affluence within that context,
7 it's clearly that it's not a region. It's mere-
8 ly an affluent part of a region.

9 Q Is Middlesex County isolated?

10 A No.

11 Q But you took that as a region?

12 A No, I did not.

13 Q You accepted that as a region?

14 A As a region, but not necessarily and in-
15 deed not the best or most appropriate region for
16 the purpose.

17 MR. BERNSTEIN: I would like to
18 have this document marked for identifica-
19 tion.

20 (Letter Report dated March 16,
21 1977, marked D-6 for identification.)

22 Q I ask if you can identify what has
23 been marked as D-6. A Yes.

24 Q And what is it?

25 A This is a letter written by me nearly in

1 1977 to Round Valley, Incorporated, dealing with
2 their litigation in Clinton Township.

3 MR. BERNSTEIN: I would like to
4 have this marked for identification.

5 (Letter Report dated March 19,
6 1979, marked D-7 for identification.)

7 MR. BERNSTEIN: Three more things
8 marked for identification. Put them in a
9 circle because these have been marked in
10 other cases and put the date in.

11 (Draft Copy of Musto Commission
12 Report entitled Planning for Future,
13 Volume 1; Draft Copy of Musto Commission
14 Report entitled Planning for Future,
15 Volume 2; and The Housing Crisis in New
16 Jersey, 1970, marked D-8 through D-10
17 for identification, respectively.)

18 Q Okay. I ask you if you can iden-
19 tify D-8 and D-9.

20 A These are the two volumes of a draft
21 report entitled Planning for the Future that I
22 directed for the County Municipal Government
23 Study Commission during principally 1975.

24 Q You were the principal author of
25 both these documents?

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A That's correct.

Q And D-10?

A This is a report publication entitled The Housing Crisis in New Jersey, 1970, of which I am the principal author and which was prepared under my direction at the New Jersey Division of State and Regional Planning during 1969.

Q Thank you.

Now, to get to D-7, which is your March 19, 1979 report, do you have that in front of you?

A Yes.

Q Mr. Mallach, in the report you used the concept of a land unit intensity--

A Land use intensity.

Q --land use intensity, thank you, which you discussed. Could you give us the concept of L.U.I.?

A Okay. This is a very elaborate formula H.U.D. has developed to use to evaluate building plans. And, in essence, it represents a way of factoring in parking, unit floor area, certain open space and relating them to the total site area in order to arrive at a conclusion as to the permissible density on the site.

Q Now, on Page 5 and 6 of your

1 report, you have scales or tables which show
2 the floor area ratio as contrasted or I shouldn't
3 say contrasted, the floor area ration in concert
4 with the L.U.I.? A I should say
5 this is not my report. These are pages directly
6 copied out of the H.U.D. Manual of Acceptable
7 Practices.

8 Q Fine.

9 A So it's their report.

10 Q I assume you have adopted the
11 findings of the H.U.D. report?

12 A I have.

13 Q You had adopted the concept?

14 A I wouldn't say adopted. I'm saying what
15 I have done and the purpose of this memo was to
16 document the overall consistency between my
17 report, which was previously prepared, and the
18 standards that are used by H.U.D.

19 Q But don't you accept the H.U.D.
20 standards? Didn't you tell us previously you
21 accepted it?

22 A Oh, yes, I accept
23 their standards, the results. It's somewhat
24 different than adopting it I believe.

25 Q Now, with regard to the L.U.I.'s--

A Yes.

1 Q --what are the numbers that H.F.A.
 2 found to be reasonable for garden apartments and
 3 townhouses? A. H.F.A.?

4 Q H.U.D., I am sorry about that.

5 A H.U.D., they allow for a range, of course.
 6 And, for example, if you turn to Page 8 of the
 7 excerpt, it would say there, for example, that
 8 a two-story garden apartment can be acceptable
 9 to H.U.D. at a land use intensity ratio of 3.9
 10 to 5.0. When you then turn to Page 12 and if
 11 you take, for example, a typical apartment unit
 12 size for garden apartments--

13 Now, in the example I gave, I believe I
 14 used an average unit of 750 square feet. Now,
 15 in that case, you take 750, which in this case
 16 is halfway between 700 and 800 in this scale,
 17 and you would find that the minimum of 3.9 is
 18 slightly below the scale. It would correspond
 19 to somewheres between 9 and 10 units to the acre,
 20 which is the minimum acceptable level and maximum
 21 of 5.0 would lie somewheres in the area of 20 to
 22 25 units to the acre, about 21 or 22 units to
 23 the acre, which is the maximum.

24 Q What was the minimum figure? I am
 25 sorry. I missed it.

1 A Roughly somewhere between nine and ten.
2 It's not quite on the scale, but say just below
3 ten.

4 Q So H.U.D. would accept less than
5 ten units to the acre, marginally less, for a
6 750-square-foot apartment unit?

7 A Or up to 22 or 23 per acre. This is for
8 two-story garden apartments.

9 Q Two-story. Now, before you go on,
10 can you give me the acceptable range for H.U.D.
11 for a thousand-square-foot apartment unit,
12 assuming that each unit was going to be a thou-
13 sand square feet?

14 A If you were building a two-story apart-
15 ment for a thousand square feet, with the
16 average unit of a thousand square feet, the
17 bottom again does not appear on this scale, but
18 it would be somewhere in the area of seven and
19 the top would be 15.

20 Q So that the prime variables as
21 far as H.U.D. is concerned, maybe the prime
22 variable, is the size of the apartment unit?

23 A That's the significant thing, yes,
24 because basically these things are triggered by
25 floor area ratio.

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1 Q Now, is there any chart that you
2 have given us, and you have given us the chart
3 on Page 12, that applies to two-story apartments
4 I assume or three? A Two or three-

5 story.

6 Q Two or three for the chart on top
7 of Page 12? A You use a different
8 range for three-story buildings.

9 Q Well, is the chart on top of Page
10 12 of D-7 specifically geared to two-story
11 apartments? A No, no, it's geared
12 to any--You see, you go back to Page 8 of D-7.
13 Now, there they have land use intensity ranges
14 for two, three and four-story apartments, all
15 walkup apartments, all of which apply to this
16 table.

17 Q I understand.

18 A So you go back to the same table, but you
19 use a different range. So, for example, if you
20 are using a three-story apartment and you have
21 the same thousand-square-foot standard apartment
22 in it, your range would be from 14 to 30 units
23 to the acre.

24 Q You are looking at the L.U.I.'s
25 between 4.9 and 6.0?

1 The purpose of the very wide range is because
2 they have to apply to a very wide range of hous-
3 ing, of which not all is, of course, least cost.

4 Q They also would have to apply to
5 a very wide range of areas I assume?

6 A That's correct, too.

7 Q These standards are the same for
8 urban and rural areas? A Yes.

9 Q Now, would you explain to us the
10 reduction in the area for steep slopes that we
11 see on Page 2?

12 A This is a formula that reduces the amount
13 of land use that is factored into the total
14 site area for steep slopes, so that--The point
15 is that you only take out steep slope areas, in
16 this case areas with slopes over 20 percent.
17 You take off one percent of the land area of the
18 site for every percent over 20 percent in the
19 steep sloped area.

20 And the example, of course, shows this.
21 you have--In this case, it's a 45,000-square-
22 foot site. And 26,250 square feet have a 30 per-
23 cent slope. You multiply that 26,250 square
24 feet by 30 percent to get 7875, which you
25 subtract from the 45,000 to give you a net site

1 A That's correct.

2 Q So that all types of walkup apart-
3 ments would be covered by the chart on the top
4 of Page 12? A That's correct.

5 Q Now, with regard to elevator
6 buildings, all of those parameters would be
7 taken care of by the chart on the bottom of Page
8 12 in D-7? A That's correct.

9 Q Now, with regard to one-family
10 homes and townhouses, is that chart on Page 9?

11 A That's correct.

12 Q Now, let us assume we are looking
13 for a two-story townhouse with each unit having
14 a thousand square feet.

15 A Okay. The land use intensity range is
16 3.7 to 4.8. 3.7 would be at seven units to the
17 acre. 4.8 would be at 15 units to the acre.

18 Q And let's assume that our town-
19 houses were to be at 1200 feet as an average
20 figure.

21 A Then your 3.7 would
22 be just under six. Let's say about 5.8 or 5.7.
23 And your 4.8 land use intensity would be at 12.

24 Q I assume that you accept these
25 figures as being reasonable figures?

A I think they're reasonable in context.

1 area which you then use to factor on your land
2 use intensity table.

3 In other words, this only applies where
4 ten percent of the site area has a slope of
5 more than--rather 20 percent or more. It's a
6 way of factoring in an adjustment for that.

7 Q Would you consider a site having
8 more than a ten percent slope as being desirable
9 for least cost housing?

10 A Quite possibly.

11 Q Do you feel that it is reasonable
12 to assume that anything up to, but not including
13 20 percent should be included as total develop-
14 able area without any diminution in the density?

15 A I think it's not unreasonable. I think
16 there is obviously a certain judgment call here
17 as elsewhere as to whether the figure should be
18 15 or 18 or 20 or whatever, but this is within a
19 plausible range.

20 Q Are the standards that we see that
21 H.U.D. has set up that you have illustrated in
22 D-7 for subsidized housing?

23 A Subsidized and unsubsidized.

24 Q Well, can you give us examples of
25 unsubsidized housing where H.U.D. would control

1 anything? A H.U.D. is responsible
2 for providing mortgage insurance as well as in
3 many cases direct mortgage lending for a variety
4 of unsubsidized housing programs, single-family,
5 multi-family.

6 Q The standards you have given us
7 apply to H.U.D.'s insurance programs? I guess
8 through the F.H.A. would that be?

9 A That's right, yes.

10 Q As well as their subsidation pro-
11 grams? A Yes.

12 Q How would we know at what range
13 they would permit their mortgage insurance to
14 play and at what range they would agree to a
15 subsidized project?

16 A They don't distinguish.

17 Q And aren't the ranges that are
18 given here the ranges that they regard the most
19 efficient for good utilization of property?

20 They consider this the full range, yes.

21 Q Giving the minimum and the maximum
22 standards? A That's correct.

23 It provides a great deal of flexibility, of
24 course, because of the amount of non-least cost
25 housing they do provide mortgage insurance for.

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Q But they regard this as the range of good land development?

A From a practical standpoint, when subsidized--A subsidized application will be expected by H.U.D. to be closer to the maximum of this range than the minimum of this range unless there are exceptional features because of the cost factors.

Q I assume that housing that's built by the private market would tend to be toward the minimum rather than the maximum end of the range?

A In practice, the private market, conventional or non-least cost housing, under H.U.D. mortgage insurance is likely to lean somewhat towards the lower side and the subsidized housing towards the higher side.

Q You would regard all of the ranges mentioned in D-7 to be reasonable?

A Generally speaking, yes.

Q Is there any that you can point to that you would regard as being unreasonable?

A I believe that the three and four-story walkup apartments may go up a little on the high side for what the standards that I would consider reasonable, I think particularly in terms of the

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amount of parking that may be required. I think some of these may be assumed that the parking may be provided in a deck or underground or some fashion.

Q Any other standards that you would regard as unreasonable that are in D-7?

A No.

(A recess is taken.)

MR. BERNSTEIN: That terminates my questions on behalf of the Common Defense Committee.

* * *

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MORRIS COUNTY
DOCKET NO. L-6001-78 P.W.

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MORRIS COUNTY FAIR :
HOUSING COUNCIL, et al, :

Plaintiffs, :

vs. :

CERTIFICATE

BOONTON TOWNSHIP, :
et al, :

Defendants. :
- - - - -

I, MARK SCHAFFER, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, certify the foregoing to be a true and accurate transcript of the deposition of ALAN MALLACH who was first duly sworn by me at the place and on the date hereinbefore set forth.

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

Mark Schaffer

A Notary Public of the State of New Jersey

Dated: 4/24/79

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