

ML-Morris County Fair Housing Council
v. Boerten Trwp

4/12/79

Deposition of Alan Mallach

P 164

ML000879S

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

ML000879S

MORRIS COUNTY FAIR
HOUSING COUNCIL,

Plaintiff,

vs.

BOONTON TOWNSHIP, et als,

Defendants.

DEPOSITION OF:

ALAN MALLACH

Morris Township, New Jersey
Monday, April 9, 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 9, 1979, commenc-
ing 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.

KNARR - RICHARDS, ASSOCIATES

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

1
2 MESSRS. SACHAR, BERNSTEIN, ROTHBERG,
SIKORA, & MONGELLO

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

5 MESSRS. WILEY, MALEHORN & SIROTA
6 BY: FREDERIC J. SIROTA, ESQ.,
For the Defendant Township of Rockaway.

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

9 MESSRS. HASKINS, ROBOTOM, HACK, WINTER,
PIRO & O'DAY

10 BY: JAMES J. MC DONALD, ESQ.,
For the Defendant Township of Hanover.

11 MESSRS. EINHORN & HARRIS
12 BY: GARY R. PLATT, ESQ.,
For the Defendant Denville.

13 MESSRS. MC CARTER & ENGLISH
14 BY: CLAUDIA B. WILKINSON, ESQ.,
For the Defendant Chester.

15 MESSRS. CLAPP & EISENBERG
16 BY: ALFRED C. CLAPP, ESQ.,
For the Defendant Harding Township.

17 MESSRS. MATTSON, MADDEN & POLITO
18 BY: MARY LYNNE MC DERMOTT, ESQ.,
For the Defendant Passaic Township.

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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

2

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

EXHIBIT

DESCRIPTION

FOR IDENT.

D-1

Book titled Housing and Suburbs

21

D-2

Study

127

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1 A L A N M A L L A C H , having been duly sworn
2 according to law by the Officer, testified
3 as follows:

4 DIRECT EXAMINATION BY MR. BERNSTEIN:

5 MR. BISGAIER: We have agreed to
6 the standard waiver of objections.

7 MR. BERNSTEIN: For the record,
8 the first series of questions that I will
9 be asking will be on behalf of the Joint
10 Defense Committee.

11 Q Mr. Mallach, what is your occupation?

12 A I am the president of a consulting firm
13 named Alan Mallach Associates.

14 Q And the work that Alan Mallach
15 Associates does? A It is consult-
16 ing in a variety of areas, including principally
17 housing, urban and community development,
18 economic and social research.

19 Q And with regard to that corporation,
20 what are the specific tasks that you do?

21 A I direct all of the work of the corporation,
22 supervise the personnel and am responsible for
23 the final work product of all pieces coming out
24 of the firm.

25 Q What do you consider your areas of

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1 expertise? A Well, they range very
2 broadly. Clearly everything that I do in the
3 corporation I would consider something that I am
4 expert in. This would certainly include the areas
5 of housing, planning and land use, zoning. It
6 would also include a fairly wide spectrum of
7 areas in terms of economic and social research
8 and social and community issues generally.

9 Q When you speak of housing, what
10 areas of housing do you consider yourself an
11 expert in?

12 A I would say virtually
13 all, certainly the land use aspects, economic and
14 physical aspects, social aspects, governmental
15 programs and regulations affecting housing.

16 Q And when you talk about planning
17 and land use zoning, in what phases of this work
18 do you consider yourself an expert?

19 A I believe I am an expert on the process of
20 land use controls as applied by local government
21 on general principals of planning and particularly
22 as they apply to housing development.

23 Q And can you tell us what in your
24 background would qualify you first as an expert

25 in housing? A I think the profession-
al experience that I've had over the past

1 approximately 12 years working in the field of
2 housing.

3 Q Well, I would like you to be
4 specific. Rather than going into your work
5 experience, I would like you to tell me what in
6 that experience has qualified you as an expert in
7 housing. We can go through the whole litany if
8 you would be more comfortable with it, but I
9 would like to know specifically what you have
10 done that has made you in your opinion a housing
11 expert.

12 A Well, it would be
13 difficult to get into too much detail without, as
14 you put it, going through the whole litany. But
15 let me give you some things and see if this is
16 what you need, if you will.

17 In the area of housing, I have done, work-
18 ing more or less chronologically, housing need
19 analysis, including housing condition studies,
20 housing need studies, studies of financial need
21 of people in their housing. I have done on be-
22 half of the New Jersey Housing Finance Agency--I
23 have been involved in developing regulations and
24 procedures for housing programs.

25 I have conducted over the past years many
housing site inspections, both for existing

1 housing and proposed housing development. I have
2 developed housing development standards for
3 construction and rehabilitation of housing. I
4 have done housing market studies for housing,
5 including P.U.D.'s, multi-family development,
6 senior citizens housing and the like. I've done
7 housing need studies, housing condition studies.

8 I have acted as a developer of housing,
9 albeit without success in terms of tangible units
10 to date. I have acted as a loan consultant on
11 housing being processed by the New Jersey Housing
12 Finance Agency.

13 Q Is that it?

14 A There are probably more, but I'm sure that
15 conveys the sense.

16 Q And can you tell us who you have
17 performed these tasks for? You mentioned the
18 Housing Finance Agency I believe?

19 A Yes.

20 Q Your role with that agency was--
21 I was--My title was Special Assistant to
22 the Executive Director.

23 Q And you did what when you were work-
24 ing for them? A I did--There's
25 three principal activities. One had to do with

1 developing a data base about housing needs, hous-
2 ing conditions, housing programs and the like.
3 The second had to do with developing procedures,
4 standards, forms and the like for the agency.
5 And the third had to do with site inspections of
6 proposed housing developments.

7 Q And the years when you did this?

8 A '67 and '68.

9 Q Now, you spoke of a number of other
10 studies that you had done. I wonder if you could
11 tell us the context in which you had done the
12 other work? A Well, I can give some
13 examples. In terms of housing need analysis, I
14 have done--did housing need studies in New Haven,
15 Connecticut, when I was with the Community Action
16 Agency there. I did from mid-1968 through late--
17 mid-1970 in my capacity as head of the Community
18 Development Planning Program in the New Jersey
19 Division of State Regional Planning--

20 Q That was then the Department of
21 Conservation and--

22 A No, that was already a part of Community
23 Affairs. I was responsible for all of the hous-
24 ing research planning analysis, what have you,
25 being conducted by that department including

1 responsibility for producing what is known as the
2 State Housing Element under the annual State
3 Planning Program and acting as the State coordi-
4 nator for activities under the H.U.D. Operation
5 Breakthrough program.

6 Q Can you give us a time frame for
7 the years you were working with D.C.A.?

8 A Yes, including the H.F.A. work, this was
9 from 1967 through early 1971.

10 Q Was there more work that you had
11 done for either H.F.A. or D.C.A. that I may have
12 interrupted your colloquy on?

13 A Colloquy?

14 Q Your discussion.

15 A Well, there was a great deal more. In
16 terms of the area of housing specifically, as I
17 mentioned, as part of the overall housing research
18 program and housing development, we did a wide
19 variety of studies of housing needs, housing
20 programs, projections and the like. We also did
21 a variety of special studies working with local
22 government agencies on problems such as urban
23 renewal, housing rehab, relocation and the like.

24 Q Is that it?

25 A Yes.

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MR. BISGAIER: Are you looking for an exhaustive list of the work Alan did with these agencies or are you looking for examples of it?

MR. BERNSTEIN: What I am trying to find, I have cross-examined Alan twice before on this, I am looking for the basis of Mr. Mallach's expertise.

MR. BISGAIER: I know that. I am not being petty here. Do you want the whole answer?

MR. BERNSTEIN: No, Mr. Mallach answered just as I anticipated. If he left out one or two items, he has listed the thrust of what he has done.

MR. BISGAIER: Okay.

MR. BERNSTEIN: And his answers are satisfactory. I have no complaint about that.

Q Mr. Mallach, you listed other studies that you had done in the field of housing. And I would be interested who else besides H.F.A. and D.C.A. and the City of New Haven have you performed these studies for?

A Well, since the period that I worked for

1 D.C.A., I've done studies for a large number of
2 organizations, corporations, agencies and the like.
3 I don't know that I can give you a complete list,
4 but I can give you a representative list at least.

5 Q Well, were all these studies done
6 under the aegis of Alan Mallach Associates since
7 you left governmental employment?

8 A No--Well, since I left any form of govern-
9 mental employment, yes. Since 1975, between 1971
10 and 1975, they were performed under various aegises.

11 Q Could you give us the organizations
12 that you were employed by prior to forming your
13 own organization?

14 A Yes, between 1971--Well, from 1971 through
15 1973, I was a member of the faculty and administra-
16 tion at Livingston College, Rutgers University.

17 Q You were a lecturer I believe?

18 A I was a lecturer in Community Development
19 and Assistant Dean of Academic Affairs of the
20 college. From 1973 through late 1975, during the
21 first part of that, 1973, '74, I was Assistant
22 Professor of Administrative Studies at Stockton
23 and part-time research associate with the County
24 and Municipal Government Studies Commission, also
25 known as the Musto Commission. From '74 through

1 late '75, I was Director of Research for the Musto
2 Commission.

3 Q And it was after you left the Musto
4 Commission that you organized Alan Mallach
5 Associates; correct?

6 A That's correct.

7 Q And most of the studies that you
8 discussed previously were performed under the aegis
9 of Alan Mallach Associates; correct?

10 A Most of them, though my work with the Musto
11 Commission and to a lesser degree the other places
12 did involve housing research activities and the
13 like.

14 Q Is there anyone else that you are
15 aware of in the state that you would say possesses
16 comparable expertise to yours who is involved in
17 a comparable occupation?

18 A That's very hard to say. I mean I've never
19 engaged in a kind of matching effort to see whose
20 was longer as it were. There are many people
21 who have specific expertise in certain aspects of
22 housing.

23 Q I am thinking of, is there anyone
24 who has the range that you feel you have in this
25 state or anyone who is comparable?

1 A No, not in this state.

2 Q Not in this state. Anyone out of
3 ~~state~~ that we could say would be the Alan Mallach
4 of Rhode Island or the Alan Mallach of Pennsyl-
5 vania? Is there anyone who has similar qualifi-
6 cations that you are aware of?

7 A I am now the Alan Mallach of Pennsylvania.

8 Q Okay. So you are not aware of any-
9 one who you could tell me would have similar
10 qualifications?

11 A Oh, yes, certainly, certainly, ~~there are~~
12 many people.

13 Q Could you give me a list of a few
14 people I would be interested in?

15 A Well, one person who in some degree I
16 consider my mentor in many of these areas is a
17 man called Ralph Brown.

18 Q From where?

19 A He is now in Chicago. He is president of
20 ~~the~~ Technical Assistance Corporation for Housing.

21 Q And other people besides Mr. Brown?

22 A I believe Peter Abeles, with whom you are
23 familiar, is extremely capable in this field.

24 Q He is from New York?

25 A Right.

1 Q But does some work in New Jersey?

2 A He does some work in New Jersey.

3 Q Who else?

4 A These are two people whom I am reasonably
5 acquainted on a reasonably extensive basis.
6 There are many other people who I'm familiar with
7 by reputation, I would say people or organizations,
8 but not on a personal basis.

9 Q Who, by reputation?

10 MR. BISGAIER: Are you asking him
11 to speak from his own knowledge?

12 MR. BERNSTEIN: By reputation this
13 would be.

14 Q Who would possess comparable quali-
15 fications, do comparable work?

16 A There are a group of people in New Haven
17 under the aegis of a firm that at least the last
18 time I knew of it, which was sometime ago, was
19 known as Cogen-Holt Associates, C-o-g-e-n, H-o-l-t
20 Associates, who were extremely good. There are
21 various organizations that in terms of the public
22 sector are extremely effective in housing develop-
23 ment.

24 Again these things tend to come and go.
25 For example, when I was first working in the

1 housing field, the New York City Mitchell-Lama
2 Program had an extremely impressive, capable team
3 of housing professionals.

4 Now, the National Housing Partnership in
5 Washington has a sound professional team. There
6 is--I forget the name of the individuals. There
7 was an organization in New York that was a spinoff
8 of the Amalgamated Clothing Workers Union, the
9 group that developed Co-op City and Rochdale
10 Housing in Queens.

11 Q Is there any other organizations
12 that you believe would perform similar functions
13 to Alan Mallach Associates?

14 A I'm sure if I dredge my mind I could think
15 of others, but those do not come readily to mind.

16 Q Now, does your organization have
17 any literature or brochures or any other written
18 thing that you give out to prospective clients?

19 A Yes.

20 Q Could you arrange through Mr.
21 Biglier to send me a copy of whatever literature
22 your organization gives to prospective clients?
23 You will do that, Mr. Mallach?

24 A Certainly.

25 Q Now, you have given me the base of

1 your qualifications in the field of housing. I
2 would like to know what your qualifications are
3 in your opinion for your expertise in the field
4 of planning and land use zoning. And I would ask
5 if you believe it is the same experience, you can
6 list that. If there are additional areas which
7 you feel qualify you in zoning and planning, I
8 would like to know them.

9 A Yes, the first is the experience I receiv-
10 ed while working in the Division of State and
11 Regional Planning, working on--with a variety of
12 land use projects and studies with other parts of
13 that division, including analyses of zoning
14 ordinances, preparation of zoning ordinances. At
15 the time the division was still involved in
16 preparing zoning ordinances for some municipalities.

17 Q You were preparing zoning ordinances,
18 Mr. Mallach? A I did not. I did not
19 prepare the zoning ordinances, but I did advise
20 from time to time on certain aspects of them and
21 did follow some of the work being done by other
22 people.

23 Q Well, who were you working under
24 at that point?

25 A Sidney Willis.

1 Q And who was in charge of reviewing
2 your work while you were reviewing zoning
3 ordinances?

A Sidney Willis.

4 Q Is this really the work of a
5 professional planner, Mr. Mallach?

6 A Well, isn't what the work of a professional
7 planner?

8 Q Reviewing ordinances and writing
9 provisions and zoning ordinances. Isn't this
10 what we would normally consider to be the work of
11 a professional planner?

12 A Writing provisions in zoning ordinances
13 under contract for a municipality I think is the
14 purview of a professional planner, at least the
15 final version of such an ordinance. I think
16 reviewing the zoning ordinances is certainly not
17 the purview of a professional planner, though I
18 would admit that a professional planner may be
19 capable of reviewing zoning ordinances.

20 MR. BISGAIER: For the purposes of
21 this question, we are talking about a
22 licensed planner in the State of New Jersey?

23 MR. BERNSTEIN: That is correct.

24 MR. BISGAIER: It is a term of art.

25 Q Am I correct that you both reviewed

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zoning ordinances while working for the Department of Community Affairs and, in fact, wrote provisions of zoning ordinances?

A No, I did not write provisions of zoning ordinances.

Q You merely reviewed zoning ordinances?

A That's correct.

Q And gave your comments to whom?

A I provided written comments, some of which appear in the housing element documents and provided verbal comments I assume to whomever might be in the agency at that time.

Q Well, in other words, you would analyze an ordinance and give written comments to someone in the Department of Community Affairs; correct?

A I assume so. The specific written comments, written reactions if you will, that I remember were those that were included as parts of the New Jersey Housing Element reports.

Q Your comments then were limited to the housing elements as you saw it, found in the zoning ordinance?

A Well, the particular interest I had in the ordinances dealt with their effect on housing.

1 Q And we know that there is no section
2 of a zoning ordinance titled housing element, so
3 I am interested what sections of the ordinance
4 did you key in on in order to give your comments
5 to the others in the Department of Community

6 Affairs? A Principally the
7 residential zoning provisions.

8 Q You would look at the zoning
9 ordinance and see what standards applied in the
10 residential zoning; correct?

11 A That's correct.

12 Q And was there anything in your
13 training that would specially qualify you to
14 review provisions in a zoning ordinance as they
15 apply to residential standards?

16 A Yes.

17 Q What? A My familiarity
18 with housing development standards and housing
19 development controls.

20 Q Now, you looked at the zoning
21 ordinance in a vacuum? You did not consider what
22 was developed in the municipalities; did you?

23 A Oh, I may have.

24 Q Well, do you remember any of the
25 towns whose ordinances you reviewed while working

1 for the Department of Community Affairs?

2 A I think there was Cranbury, for some
3 reason Cranbury Township.

4 Q That would be in Middlesex County?

5 A That's correct.

6 Q Any other municipalities whose
7 ordinances you reviewed?

8 A Nothing specifically comes to mind.

9 Q Well, would this mean that the only
10 ordinance that you reviewed while working for the
11 Department of Community Affairs was Cranbury or
12 would this mean that you have forgotten
13 ordinances that you have reviewed?

14 A It would mean I've forgotten. This was not
15 a major part of my work.

16 Q Would you say there was less than
17 five ordinances you have reviewed? I am interest-
18 ed in the number of ordinances you reviewed while
19 working for the Department of Community Affairs.

20 A I'll say probably between five and ten,
21 but I'm not certain.

22 Q Fair enough. It has been a number
23 of years. Now, how much time did this task take
24 in toto, to review these five to ten ordinances?

25 A It was not a separate task. It was bits

1 and pieces. I would not be able to guess how
2 much time.

3 Q Would you say it was less than one
4 day per ordinance? Would that be a fair estimate?

5 A I really don't know.

6 Q Was it less than a month that you
7 spent?

8 MR. BISGAIER: That has been
9 answered twice.

10 MR. BERNSTEIN: Not in this form.

11 MR. BISGAIER: New form here.

12 A Less than a month per ordinance?

13 Q Less than a month for all ordinances.

14 A Common sense would dictate that that's the
15 case. And clearly, as I have told you, I have no
16 recollection of the amount of time involved, so I
17 am only answering that question on the basis of
18 general common sense principles with no actual
19 knowledge.

20 Q I accept that. Now, do you remember
21 doing any field work as a part of analyzing these
22 zoning ordinances?

23 A I have no recollection one way or the other.

24 Q So that you do not recollect doing
25 any field work? A No.

1 Q Now, you mentioned to me that you
2 analyzed between five and ten zoning ordinances
3 for the Department of Community Affairs and report-
4 ed to other men in the department. And this work
5 took you believe less than one month.

6 Is there anything else that you had done
7 which you feel was the basis of your expertise in
8 the area of zoning and planning other than the
9 housing work which you had already testified to?

10 A Okay. Dealing with the question of zoning,
11 during the past, let's say, eight years I have
12 analyzed generally in considerable detail probably
13 something in the order of--It's hard to tell
14 exactly, but somewhere between perhaps 70 and a
15 hundred different zoning ordinances, often in
16 conjunction with Master Plans and other official
17 documents of the municipality. In addition, I
18 have directed research projects which included
19 studies for the County and Municipal Government
20 Commissions. They included extensive stu-
21 dies of land use controls and land use procedures
22 dealing with multi-family housing, a study--

23 Q Which was the study dealing with
24 the multi-family housing?

25 A Okay. The overall study was published

1 under the title of Housing and Suburbs. One
2 section of that study dealt with explicitly the
3 land use regulatory practices that were used to
4 deal with multi-family housing. I believe it's
5 Chapter 6.

6 MR. BERNSTEIN: I would like to
7 have this booklet marked for identifica-
8 tion.

9 (Book titled Housing and Suburbs
10 marked D-1 for identification.)

11 Q I show you, Mr. Mallach, what has
12 been marked D-1 for identification and ask if you
13 can identify this booklet.

14 A With the qualification--

15 Q Of the book markers?

16 A --of the book markers, yes, this is the
17 report to which I made reference.

18 Q And can you tell us who wrote this
19 report which is titled Housing and Suburbs?

20 A With minor exceptions, I wrote it.

21 Q And would you say that this report,
22 which apparently was published in 1974, represents
23 your thinking of the housing situation in New
24 Jersey at the time? A Yes.

25 Q And is the book still valid?

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A In part.

Q Well, what parts I would be interested in are not valid if you can tell us?

A Well, the book deals with a large number of different areas. It deals with social issues, fiscal issues, land use controls and the like. The general discussion of social and fiscal issues is still valid, although certain changes in recent years such as the changes in the school aid formula, municipals caps and a variety of technical changes in the fiscal picture in New Jersey would affect a lot of the very specific technical aspects of that analysis.

The discussion of attitudes and values relating to low and moderate and/or multi-family housing generally, I can't say that it's still valid. But I have no reason to believe that it wouldn't be. The land use procedural discussion, of course, has been modified to some degree by the workings of the Municipal Land Use Act, so that the procedures that we analyzed that were really a product principally of land use controls as they worked in New Jersey in the 1960's for the most part would not necessarily apply to how land use controls are operated today.

1 As far as the recommendations are concern-
2 ed, these, of course, represent a balancing
3 process with the concerns of the Musto Commission
4 and the like. I'm not sure that I would be as
5 strong on them now as I may have been at the time.

6 Q Well, what you are saying then is
7 the only use of the book where you may have some
8 difference of opinion today would be with regard
9 to procedures which might have been changed in
10 the land use process through the Municipal Land
11 Use Law and some of the conclusions which were
12 reached as a consensus by you and the members of
13 the Musto Commission; correct?

14 MR. BISGAIER: I think he answered
15 that question. I do not see why there is
16 a need to rephrase his answer. We can
17 have it read back.

18 MR. BERNSTEIN: I would like to see
19 if my statement was correct.

20 MR. BISGAIER: Would you like your
21 answer read back so you can see if his
22 rephrasing of it was correct?

23 THE WITNESS: It wasn't entirely
24 correct. It was close.

25 Q Tell me how it was wrong.

1 A Well, I did cite one other area, which is
2 the fiscal changes which do affect quite a bit in
3 the first couple of chapters. Secondly, the
4 differences in the land use regulatory process I
5 believe are significant. It's not a matter of
6 might have been changed a little, but there are
7 significant changes.

8 Q As it pertains to housing?

9 A As it pertains to housing.

10 Q Okay. Tell me how the Municipal
11 Land Use Law significantly changes zoning and
12 planning as it relates to housing if you can.

13 A I did not say--Let me clear this up. The
14 changes in general practice dealing with housing,
15 zoning and so on have been significant since the
16 late--since the period studies in here. The Land
17 Use Law I believe affects some of those changes,
18 but it does not--but they are changes which have
19 taken place for other reasons as well.

20 Q You are talking about the case law
21 rather than the statutory law?

22 A That, too. There are a whole series of
23 changes in case law that have certainly had a
24 substantial bearing in how municipalities operate
25 as well as some changes that I think you could

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argue are more a matter of changing taste in land use regulation.

Q Okay. So much for Housing in the suburbs for now. Now, Mr. Mallach, can you supply us with a list, and you may have already done this, of your articles, the cases that you have testified in and other publications relating to housing and exclusionary zoning? You will be able to do that through Mr. Bisgaier?

A Certainly.

Q Thank you.

MR. BISGAIER: You want copies of publications he has authored and a list of cases in which he has testified?

MR. BERNSTEIN: That is right. I will be making inquiries of that during the depositions, but I would like to have a list if you have one.

THE WITNESS: Certainly.

Q And lastly, do you have a resume that you could supply to Mr. Bisgaier so that we could get a copy of that as well?

A Certainly.

Q Thank you. Now, are you a licensed professional planner? A No.

1 Q Do you consider yourself to be a
2 professional planner?

3 MR. BISGAIER: Do you mean does he
4 consider himself to be a licensed profes-
5 sional planner--

6 MR. BERNSTEIN: No, sir.

7 MR. BISGAIER: --or does he have
8 some other generic meaning for that word
9 other than defined in the statutes of New
10 Jersey?

11 MR. BERNSTEIN: The latter, I would
12 also like to know how far Mr. Mallach's
13 expertise extends in his opinion.

14 A Well, I have always had difficulties con-
15 ceptually and philosophically with the conception
16 of licensed professional planner as a generic
17 term and the statute that might apply to it be-
18 cause of the nebulous nature of what is called
19 planning.

20 Q Well, do you consider yourself to
21 be a professional planner?

22 A I would not use that term to describe
23 myself because I have difficulty defining such a
24 term in any meaningful sense.

25 Q You have never applied for the

1 license which is issued by the State of New
2 Jersey; have you? A That's correct.

3 Q In fact, you do not have the
4 qualifications which would be necessary in order
5 to obtain a license; do you?

6 A Most probably not.

7 Q Do you know whether or not you
8 possess the qualifications?

9 A I'm reasonably certain that I don't.

10 Q The extent of your formal education
11 in the planning and zoning area was taking one
12 undergraduate course for a half a year at Yale.
13 Isn't that correct? A That's correct.

14 Q Now, owing to the fact that you are
15 not a licensed professional planner, does this in
16 any way restrict your work on behalf of Alan
17 Mallach Associates?

18 A The area in which it would hypothetically
19 restrict my work would be in that the statute
20 requires what one might call responsible charge
21 of preparing zoning ordinances, master plans and
22 related documents for municipalities and counties
23 must be done by a licensed professional planner.

24 Q So that you have been precluded
25 from doing this work; correct?

1 A That's correct.

2 Q In fact, you have never written a
3 zoning ordinance; have you?

4 A No.

5 Q You have never written a master
6 plan; have you? A No.

7 Q You have never written any section
8 of either a zoning ordinance or master plan;
9 have you? A Not for a municipality.

10 Q Well, who have you written--

11 A I mean I have written sections of model
12 zoning ordinance provisions that have not--but
13 not on behalf of a specific municipality.

14 Q Can you point to any provisions in
15 your model zoning ordinance which have been adopt-
16 ed by any municipality?

17 A Not offhand.

18 Q When did you write these model
19 zoning provisions? A I have done
20 on a couple of occasions. As part of some
21 of the work I did with the Musto Commission, I
22 prepared some model provisions dealing with the
23 old question of development timing and growth
24 controls for a report that was not published as
25 it happens.

1 Q Is this regarding the development
2 spoken of in the Golden vs. Ramapo case, this
3 type of controls? A Something along
4 these lines, yes.

5 Q Another model ordinance that you
6 prepared? A Yes, at various times
7 working with the Public Advocate and I believe
8 others, I'm not sure, I have prepared provisions
9 for what might be called model inclusionary or
10 nonexclusionary language for zoning ordinances.

11 Q These are ordinances which you feel
12 would satisfy the dictates of Mount Laurel and
13 the other case dealing with the need for low and
14 moderate income housing I presume?

15 A That's correct.

16 Q Could you make available through Mr.
17 Bisgaier these model zoning ordinances that you
18 have spoken of? A These are in
19 draft form. They're not necessarily any kind of
20 a form--or codified form.

21 Q The purpose is not for publication.
22 I would just like to see what you have recommend-
23 ed in the past dealing with all these areas since
24 I think that each of them, including time growth,
25 are important for this litigation.

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MR. BISGAIER: I can give you that.

Actually, it is already a public record.

MR. BERNSTEIN: Good, thank you.

Q Now, you have indicated you were a loan consultant; correct?

A That's correct.

Q Whom did you consult with?

A Well, consult for I think might be more appropriate.

Q It is all right.

A The term loan consultant is basically the same as what is known more in the vernacular as packager and essentially represents the role of working with a developer or nonprofit housing sponsor in subsidized housing programs. We worked or are working as the case may be with a number of different organizations including, let's see, the Puerto Rican Action Council of Salem County, the Green Valley Land Developers, the Newark Interreligious Coalition on Housing.

Q And are there any others?

A Those are the live ones I guess for the moment.

Q And your job as the packager involves what, getting the financing?

1 A Well, in essence, it involves directly the
2 technical or professional aspects of the housing
3 development. In other words, that includes a lot
4 of things starting with in some cases negotiating
5 for sites. In other cases, the site is already
6 given.

7 It can include retaining the other profes-
8 sional team members such as the architect. It
9 can include working out the financing and the
10 financial pro formas for the development; that is,
11 making sure a particular mix of housing will work
12 financially under whatever the housing program
13 that you are trying to get funds under is.

14 It may involve working at a variety of
15 organizational matters with the developer, the
16 development corporation. It includes all kinds
17 of details such as seeing that utilities are
18 available for the site. It's handling the hous-
19 ing development process from the technical side.

20 Q And have any of these projects you
21 have acted as the loan consultant or packager for
22 been developed? A Not yet.

23 Q Well, how many years have you been
24 a loan consultant or packager?

25 A Well, theoretically, I have been a loan

1 consultant for something I guess between two and
2 three years.

3 Q And how about a packager?

4 A Same thing.

5 Q And you are saying that not a
6 single one of your projects has been built?

7 A That's correct.

8 Q Have any of these proposals receiv-
9 ed full municipal approvals?

10 A Yes.

11 Q That would be the Green Valley pro-
12 ject?

13 A The Green Valley project has
14 full municipal approvals. The Salem project has
15 received full municipal approvals.

16 Q How about the Suffolk project?

17 A That hasn't gotten to that stage. It's
18 still very new.

19 Q If they have gotten the municipal
20 approvals, what can be the holdup?

21 A Oh, it's incredible how many things could
22 hang with a housing project.

23 Q These are all subsidized projects,
24 the things you have spoken of?

25 A Yes.

Q Can you give us a list of the things

1 that have gone wrong with these projects that
2 have impeded the development?

3 A Okay. I will give you some examples.

4 I don't know that a complete list is possible.

5 There are delays. For example, a very lengthy
6 delay was involved in Vineland in getting tax
7 abatements. The Green Valley development is in
8 Vineland. And the process of getting tax abate-
9 ments from the municipality delayed the project
10 incredibly.

11 We have had--There have been hassles deal-
12 ing with the revisions of the architectural de-
13 sign that have delayed the project because of the
14 slowness with which one gets answers from the
15 New Jersey Housing Finance Agency. There have
16 been some difficulties having to do with reaching
17 an agreement on the appraisal, the land appraisal,
18 and the amount of land value that will be calcu-
19 lated in the mortgage. So these are all delay
20 ~~years.~~

21 The Salem project, this is going through
22 the Farmers Home Administration.

23 Q Which community is that in?

24 A Salem City.

25 Q Salem City. And the other one is

1 in Vineland? A Right.

2 Q It is the Puerto Rican--

3 A Action Council. There has been difficulty
4 with the organization, with their own viability
5 as a live project sponsor. There have been
6 difficulties with a kind of a constant juggling
7 act between cost estimates and Farmers Home
8 cielings.

9 Q Any other problems with the Salem
10 City project? A They had some

11 difficulty raising the option money for the site.

12 Q How about the Suffolk project?

13 A That's just getting underway.

14 Q Well, based on your experience,
15 would you say it is very difficult for these non-
16 profit housing corporations to, in fact, build
17 projects after they have to go through the whole
18 procedure with various governmental entities that--

19 A Well, everything is a learning process.

20 you get involved in one thing and you learn
21 things that you better pay more attention to the
22 next time, whatever. And clearly there is no
23 question that building a subsidized housing
24 development through or by a nonprofit housing
25 sponsor is a difficult and time-consuming process.

1 Clearly, there are certain things which one
2 can anticipate in looking at a prospective sponsor
3 or prospective development that can give you an
4 idea whether or not this is going to be just
5 plain difficult or extremely difficult.

6 Q Well, have the government standards
7 anything to do with this difficulty?

8 A Sometimes.

9 Q Would you explain that?

10 A Well, again it depends on the program.
11 Clearly, with the F.H.A., for example, the fact
12 that F.H.A. requires or effectively requires
13 because it's not a statutory requirement, tax
14 abatements, can be a difficulty, not intrinsically,
15 but simply by virtue of the fact that that
16 represents a hurdle that given most municipal
17 governments is an extremely steep hurdle. And
18 usually if it gets granted at all, it only gets
19 granted after an extensive process of negotiation,
20 bussing, pleading, begging and the like. So
21 that would be one example.

22 Q Are there any other difficulties
23 with F.H.A. financing?

24 A Well, F.H.A. in my judgment at least
25 imposes certain standards that are significantly

1 higher than those required by H.U.D. And since
2 the H.U.D. standards are those on which H.U.D.'s
3 ceilings are predicated, it is often difficult
4 to construct a feasible project that meets
5 simultaneously the H.U.D. cost ceilings and the
6 F.H.A. standards. It's usually not impossible,
7 but it's difficult.

8 O Could you give me an example of that
9 since it is an area I do not have any knowledge
10 of?

11 A Well, for example, if you
12 are building a straight H.U.D. project and you
13 wanted to put up a two-bedroom apartment, that
14 unit would probably have, oh, somewhere in the
15 area of 700 and 750 square feet of interior
16 habitable floor space. The F.H.A. looks for
17 such a unit to have 900 square feet of habitable
18 floor space.

19 Q Well, I assume that would be an
20 impediment to development then if it was sponsor-
21 ed under both programs?

22 A Well, if you are going under both programs,
23 which almost all of the Section 8 housing is, you
24 have to, in effect, meet whichever is the more
25 rigorous.

Q Now, can you explain from your own

1 knowledge why H.U.D. would accept one standard and
2 F.H.A. would accept a second standard for the same
3 type of unit? A Yes.

4 Q Would you explain that to us?

5 A Yes, the H.U.D. standards are based straight-
6 forwardly on questions of habitable, human living
7 needs and the like.

8 Q When you say habitable, you mean
9 the minimum habitability?

10 A I don't think they are absolute minimums,
11 but certainly modest; not absolute minimums, but
12 modest standards that have been determined in
13 terms of observation and social needs and the
14 like to be habitable. They approach it from a
15 social behavioral standard. The F.H.A., and
16 there is little mystery about this, the F.H.A.
17 recognizes that the H.U.D. standards are adequate
18 for habitability, but argues, and I believe this
19 is based or I have been told that this is based
20 on advice of bond counsel, that in order to
21 maintain a good market and a good rating for their
22 bonds which are keyed to the revenues from the
23 housing projects, they feel obligated to impose
24 significantly higher standards than are required
25 for habitability.

1 Q Well, let me understand this. You
2 are saying that F.H.A. sets its minimum square
3 foot standards not on habitability, but on
4 standards for their bonds?

5 A That's correct.

6 Q Are you saying that the larger
7 square foot units are more viable in the market-
8 place and that they rent more quickly and that
9 people prefer them? What would be the nexus
10 between the square footage of the unit and the
11 viability of the project?

12 A No, okay. They certainly don't rent more
13 quickly because, after all, under the Section 8
14 program where you have such a deep subsidy, any
15 Section 8 unit that you can provide is rented
16 more or less instantaneously. But the connec-
17 tion between the viability--and to the best of my
18 knowledge there has never been any objective
19 study by F.H.A. as to whether this is true or not
20 and so I think this is purely surmise.

21 Q On your part?

22 A No, surmise on their part. It's an
23 important distinction.

24 Q Go ahead. Continue. I am sorry.

25 A Surmise, parens, on their part, close

1 parens, that the difference in size, the differ-
2 ence in spaciousness and what have you will be
3 conducive not so much to the immediate rent up of
4 the units, but to the long-term viability of the
5 units. In other words, these are 40-year bonds.

6 Q They are assuming that in the
7 future the larger square footage will be import-
8 ant to the tenants and, therefore, requires it?
9 Is that what you are saying?

10 A I don't really know quite how the logic
11 works because I don't see it myself. I think
12 it's that the larger units will be more attrac-
13 tive to tenants presumably and thus will have a
14 more stable tenancy or will motivate the tenants
15 to maintain them better. I can't understand the
16 logic.

17 I don't see any factual basis for it myself,
18 but the bond market you have to understand. The
19 market for tax-exempt revenue bonds is an extreme-
20 ly shaky proposition. It nearly collapsed entire-
21 ly in the United States about four or five years
22 ago.

23 Q That was when money was so tight
24 for everybody? A That was when
25 the D.C.A. went under.

1 Q Mitchell-Lamas was going under and
2 there was a lot-- A Mitchell-Lama
3 is still going under. Be that as it may, the
4 bond market was at the point of collapse. It's
5 been brought back gradually from the point of
6 collapse. It is still extremely shaky, extremely
7 superstitious and extremely speculative.

8 So that there is a great deal where
9 agencies such as the F.H.A. will lean over back-
10 wards, as it were, to make sure that their bonds
11 are salable and are salable at a relatively high
12 Moody's rating.

13 Q So that from what you can gather,
14 the only reason for the difference in F.H.A.
15 standards is to protect the viability of their
16 project as they see it?

17 A That's correct.

18 Q You see it as an unreasonable
19 restriction I assume, the F.H.A. standards?

20 A I see no factual basis for it, no.

21 Q Now, is there any publication that
22 I could get that would first give me the F.H.A.
23 standards and any rationale which they might have?

24 A The only publication--There are two
25 publications. One is a pamphlet entitled

1 Minimum Design Standards. And the other is a
2 pamphlet entitled Recommended--I think it's Floor
3 Area Layouts or something to that effect.

4 Q And who would one purchase these
5 from? A The New Jersey Housing

6 Finance Agency in Trenton.

7 Q And these are the only documents
8 that you are aware of that would give the F.H.A.
9 standards? A That's correct.

10 Those are the two. There are other documents
11 dealing with other matters, but these are I
12 believe the only two that the F.H.A. publishes
13 dealing with this issue.

14 Q Now, with regard to H.U.D., what
15 are the booklets or pamphlets that would give
16 their standards and any booklets or pamphlets
17 that would give their rationale?

18 A The standards are found in a large volume
19 entitled Minimum Property Standards.

20 Q Any other documents?

21 I'm not familiar with any.

22 Q Is there any document that gives
23 the H.U.D. rationale for the square footage that
24 they employ? A I would not be sur-
25 prised if there were, but I don't know of it

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offhand.

Q Well, you assumed that there is a rationale for the H.U.D. standards; correct?

A Yes.

Q Do you know of any documentation, do you know of any studies, do you know of any investigations which have proven that the H.U.D. standards are, in fact, adequate and viable?

A Well, I can't say any formal studies off-hand. I think the fact that literally hundreds of thousands if not millions of housing units have been built under the H.U.D. standards over the last four years, the great majority of which are still sound, viable and attractive housing, I think is more than adequate documentation that they're livable.

Q You are saying because they are in existence, ergo they are safe?

A Not because they're in existence, but because they're in existence and over a long period of time have provided housing that is still clearly of high quality and livability.

Q Well, you can say the same for the F.H.A. aside from the fact that the standards are higher?

A Oh, certainly, that's

1 why I am not saying--That's why I am making an
2 important distinction. I am not saying the H.U.D.
3 standards are absolutely the lowest you can go
4 and still have a habitable unit. It's quite
5 conceivable that you can go lower.

6 But I am saying there is empirical evidence
7 that they are adequate. There is not empirical
8 evidence that they are the absolute minima.

9 Q Now, the projects that you are
10 supporting, however, would be forced to comply
11 with the F.H.A. standards?

12 A If you are building through the F.H.A.,
13 yes, if you are building through the F.H.A.

14 Q Your project, the Green Valley
15 project, will that meet the F.H.A. standards?

16 A Yes.

17 Q Will you still meet the H.U.D.
18 standards? A Yes.

19 Q So it is possible to meet F.H.A.
20 standards and build subsidized units?

21 A Yes, it's much more complicated than that.
22 H.U.D. and F.H.A. have set standards that deal
23 with each different type size unit, efficiency,
24 one bedroom, two bedroom, three bedroom and so
25 forth. The H.U.D. then sets what are known as

1 fair market rents which are your ceiling figures
2 for each type of unit by number of bedrooms, for
3 each type of unit by physical type such as row
4 house, high-rise, whatever, and for each separate
5 housing market area in New Jersey of which there
6 are, if memory serves, about half a dozen.

7 So that what happens, because it's differ-
8 ent in each case, what you find is, for example,
9 you can build a one-bedroom--a development of one-
10 bedroom senior citizen apartments, let's say in
11 Area A. But you cannot build such a development
12 in Area B. You can build a development of two-
13 and three-bedroom townhouses in Area B, but you
14 can't build that in Area A and so forth. So in
15 each case, you are juggling the interaction
16 between the standards and cost ceilings which
17 vary by housing type, unit size and market area.

18 Q Well, do the standards vary for
19 different areas of the state?

20 A F.H.A.'s, no.

21 Q H.U.D.?

22 A The cost figures do.

23 Q The cost figures would vary because
24 obviously you would have different contractors
25 and different material throughout the state?

1 A Yeah.

2 Q With regard to standards, are the
3 standards for H.F.A. the same throughout New
4 Jersey? A Yes.

5 Q Would that mean that the standards
6 in an urban area such as Newark or Elizabeth or
7 New Brunswick would be the same as for a rural or
8 suburban area of the state?

9 A That's correct.

10 Q Now, with regard to H.U.D., would
11 the standards also be the same in all areas of
12 the state in urban, suburban and rural areas?

13 A The standards you are talking about are
14 which?

15 Q Construction standards, not cost
16 standards. A In terms of the floor

17 area requirements, yes, certainly.

18 Q Are there any construction standards
19 that are different for H.U.D. for different parts
20 of the state? A Not for differ-

21 ent parts of the state as such. I'm trying to
22 recall whether there would be any where they would
23 have differences; urban, rural differences.

24 There might be, but I'm not certain on that point.

25 Q You have indicated that you were a

1 loan consultant or packager. Have you ever been
2 a developer or a promoter of housing?

3 A I think in many ways they're the same thing.
4 I'm not entirely sure what the distinction you
5 are making is.

6 Q Okay. Have you ever constructed a
7 housing project yourself or your corporation or
8 have you ever been a member of a corporation or
9 stockholder or member of a partnership that
10 actually constructed housing?

11 A No.

12 Q Other than owning your own resi-
13 dence in Pennington, have you owned any real
14 estate other than your one-family residence?

15 A No.

16 Q Have you ever invested in any real
17 estate companies that were in the development or
18 promotion activities with regard to construction?

19 A No.

20 Q All of the work that you have done
21 in housing has been for subsidized units; correct?

22 A No.

23 Q You have done work in housing for
24 the private market? A Yes.

25 Q Okay. Would you tell us about that?

1 A Okay. I have done, for example, housing
2 market studies for private market developers.

3 Q Could you tell us for whom and
4 where?

5 A Okay. One, for
6 example, was for an organization called Morris
7 Industrial Builders; Morris as in the county, but
8 it actually happens to be the president's last
9 name, so it's a coincidence.

9 Q And which area was this?

10 A This dealt with a tract of land in Cran-
11 bury.

12 Q Okay. Others?

13 A I've done market analyses for Centex
14 Corporation dealing with land holdings in East
15 Windsor Township, New Jersey. I've done market
16 analyses for Kinney Partnership.

17 Q Where at?

18 A Actually that was subsidized. It was a
19 senior citizens' development in Hudson County.
20 I'm negotiating a contract to do another analysis
21 for a partnership dealing with a tract of land in
22 the Catskills. These are also private develop-
23 ments, operations.

24 Q Are there any others that you can
25 think of where you have done studies for private

1 organizations rather than for eleemosynary or
2 quasi-public organizations?

3 (The last question is read.)

4 A I've done a number of studies for Centex
5 besides the--

6 Q Where? A Dealing with
7 their whole East Windsor thing.

8 Q Just in East Windsor?

9 A Yes. I have done work for Johns-Manville
10 dealing with their landholdings in Bedminster and
11 Bernard Township as I'm sure at least one person
12 here is aware.

13 Q Well, with regard to the Johns-
14 Manville, your work was done with regard to the
15 court case; correct? A That's correct.

16 Q You were retained after the suit
17 was filed? A Yes.

18 Q Have you done anything with regard
19 to Johns-Manville property that was not litiga-
20 tion-oriented? A That would be
21 impossible. The litigation began before I went
22 into business and will probably go on long after
23 I leave business.

24 Q But your work for Johns-Manville
25 at least was litigation-oriented?

1 A That's correct. All the others I mention-
2 ed were not.

3 Q Fair enough. Any other consulting
4 that you have done for private developers that
5 come to mind? A I don't know
6 if you would call the Garden Cities Development
7 Corporation. It's a Mahwah venture many years
8 ago, a private developer.

9 Q Okay. The reason it might not be
10 considered that was it was subsidized by S.A.I.?

11 A It certainly wasn't subsidized by S.A.I.

12 Q Was it controlled by S.A.I.?

13 A No.

14 Q It was a nonprofit organization?

15 A I was never quite sure. In any case, it
16 did represent some kind of a hybrid between
17 social and profit-making concerns, in any event.

18 Q Wasn't Paul Davidoff associated with
19 it? A I don't think Paul Davidoff

20 personally was. Neil Gold, who you may recall,
21 was involved with it, however.

22 Q Was he the president of Garden
23 Cities? A I don't know what his

24 title was, but he was certainly very active in it.

25 Q And he was the president of S.A.I.;

1 correct? A That again I don't
2 know, what his title was at that time. He was
3 certainly active in S.A.I. at that time.

4 Q Who else was active in Garden
5 Cities that you are aware of other than Neil Gold?

6 A I can't remember his name. He was a New
7 York lawyer.

8 Q Richard Bellman?

9 A No, no, it was not. Somebody who was not
10 generally associated with the suburban action
11 movement, if you will.

12 Q In any case, they never built any-
13 thing in Mahwah? A No, we did a
14 series of impact analyses for them in terms of
15 physical impact and the like.

16 Q Okay. Any other private developers?

17 A I believe that's probably it.

18 Q Thank you. You are not a real
19 estate broker or salesman; are you?

20 A No.

21 Q Other than purchasing a one-family
22 home, have you been involved directly in any
23 real estate transactions?

24 A Yes.

25 Q Which are?

1 A Well, I've participated--I've been partici-
2 pating during the last few months in real estate
3 transactions in Suffolk County, New York on behalf
4 of the group I mentioned before, the Suffolk
5 Interreligious Coalition.

6 Q I thought you were the consultant
7 there. A Yes.

8 Q You have not purchased it on your
9 own account? A Oh, no.

10 Q You have merely acted as the packag-
11 er? A Or as their agent at whatever.

12 Q I am thinking where you acted for a
13 profit. A As a principal?

14 Q As a principal.

15 A No.

16 Q You have not acted as a principal
17 other than with a one-family home; correct?

18 A That's correct.

19 Q And that home would be your own?

20 A Yes.

21 Q You have not sold property to any-
22 one or purchased property for anyone other than
23 with regard to your packaging activities; correct?

24 A That's correct.

25 Q You would not consider yourself an

1 expert in the field of environment; would you?

2 A Not an expert, I believe I have a reason-
3 able amount of knowledge that a responsible
4 person doing the work I do should have, but I'm
5 not an expert.

6 Q Have you dealt with any parties or
7 organizations that you have considered to be
8 experts in the environmental area?

9 A Yes.

10 Q The organizations or parties are?

11 A Well, I think when you say expert in the
12 environmental area, obviously one individual is
13 not--or even in many cases, one firm is not like-
14 ly to be expert in every issue that is likely to
15 come up under the rubric of environment. So each
16 of these people is expert in some aspect of the
17 environment.

18 Q And if you would, give me a list of
19 these people that you would consider to be expert
20 in one or more areas of environmental studies

21 you have either worked with or are aware of?

22 A Okay. There's the firm of Rogers & Golden
23 in Philadelphia.

24 Q And their expertise is in?

25 A I would guess their expertise is in what

1 one might call environmental planning, which is
2 the assembly and analysis of a wide variety of
3 environmental facts dealing with and affecting
4 land use, site locations and the like. I've
5 dealt with Professor John Sinton.

6 Q Could you spell that?

7 A S-i-n-t-o-n.

8 Q From? A Stockton State
9 College.

10 Q Whose area of expertise is--

11 A He is an ecological biologist in general
12 and perhaps the most knowledgeable person I know
13 of on the ecology of the Pinelands. I have dealt
14 with Mr. Michael Clark, who is an independent
15 consultant.

16 Q From where?

17 A In suburban Philadelphia--who I would
18 characterize as essentially an environmental
19 planner. I've dealt with a number of different
20 people who have specific expertise on the question
21 of coverage treatment. Are you interested in
22 that sort of thing, too?

23 Q Yes, sure.

24 A Well, this includes Russell Bodwell,
25 B-o-d-w-e-l-l, who is president of Henderson and

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Bodwell.

Q From where?

A Long Island.

Robert Hordon, H-o-r-d-o-n, at Rutgers.

Q For sewers?

A Sewers, yeah, sewer people. James Sopher, I think it's S-o-p-h-e-r, who is one of the leading authorities on the subject of spray irrigation of sewage effluent. Why you want to know all this stuff is beyond me.

Q I can learn by deposing you.

A At Penn State, I can't remember the individual I have been working with. I have a blank at the moment.

Q S-o-p-f-e-r was the spelling?

A S-o-p-h-e-r, James I believe.

Another firm is Clinton Bogert in Fort Lee. I can't remember offhand the name of the individual I had dealings with there. There is always the firm of Wallace, McHarg, Roberts & Todd in Philadelphia. They are environmental planners. There is also Jack McCormick, M-c-C-o-r-m-i-c-k, who died very suddenly just a little while ago, who is also a superb ecologist. And I'm sure there are others, but this is a reasonable cross

1 section.

2 Q Are there any that you can mention
3 in New Jersey? Other than a Rutgers professor,
4 you have not mentioned any New Jersey names.

5 A Oh, sure, Clinton Bogert is New Jersey.
6 And then Stockton, Sinton is from New Jersey.

7 Q Okay. Any others that you can
8 mention in the private consulting field that you
9 feel are good environmental consultants?

10 A Oh, I don't doubt that there are. I have
11 never--

12 Q You have not dealt with them?

13 A I haven't sought out people in this field
14 because I have a, you know, relationship with a
15 large number of environmental people that is more
16 than adequate for everything I can think of. I
17 don't know if they are still in business, but
18 there is a group in Trenton known as West, Water,
19 Gaston, G-a-s-t-o-n, & Dunka, which is D-u-n-k-a,
20 that did a good deal of water system planning for
21 as well as did some work for the Musto
22 Commission.

23 Q And this is the list of the environ-
24 mentalists that you would turn to were you to be
25 faced with a problem in this area. Is that

1 correct? A That's correct.

2 (A recess is taken.)

3 Q Do you consider yourself, Mr.
4 Mallach, to be an expert in the field of con-
5 struction? A No.

6 Q I assume that you do not consider
7 yourself an expert as to the cost of constructing
8 buildings, structures, apartments, homes in the
9 State of New Jersey at the present time?

10 A I have general familiarity with that
11 material.

12 Q Is that through your reading?

13 A It's through a combination of reading and
14 conversation on an ongoing basis with people in
15 the field, principally through reading.

16 Q Would you consider yourself, though,
17 an expert in this field as to what it would cost
18 to construct a specific housing type in Morris
19 County today?

20 A With a--Well, I should qualify that. In
21 such analyses, there is a margin of error,
22 but I do feel as a packager, loan consultant,
23 person doing any of these different kinds of
24 analyses and studies and projects that I referred
25 to, it is important to be able to know how much

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development of different types is likely to cost in different situations so the answer is within a reasonable margin of error, yes.

Q But none of your projects have been built? Isn't that true?

A That's correct.

Q And none of your projects are in Morris County?

A That's correct.

Q In fact, none of your projects are in what I would refer to as northern or central Jersey? They are either in south Jersey or New York State. Is that true?

A Well, the ones that I have been a packager for, yes.

Q And I assume you have not been involved in any project in Morris County?

A The actual housing development projects?

Q Housing development projects.

A No.

Q Yet you can tell us that you know the cost of constructing various types of structures in Morris County today?

A I have been involved in different capacities in developments in areas of north Jersey that are quite comparable to Morris County.

1 There is the J.M. in central Somerset County.

2 Q Well, Johns-Manville haven't
3 constructed anything yet? They are still in the
4 going process; aren't they?

5 A Yes, but in order to understand what they
6 are to do, to understand their plans and analyses,
7 they have to keep pretty much up to date with
8 what construction costs are.

9 Q But these are projections that J.M.
10 is making? They are not actual cost; are they?

11 A They are not projections so much as on-
12 going updates. They track developments that are
13 taking place in the area in order to have compar-
14 ables.

15 Q But they are in Somerset County?
16 They are not in Morris County?

17 A That's correct.

18 Q Now, can you tell us what it would
19 cost to construct a certain type of home, a
20 and foot Cape Cod, in each of the defendant
21 municipalities and where the variables would lay
22 and which towns might be more expensive to
23 construct and which towns less or can you merely
24 give us a generalized picture that you feel would
25 be generally correct in all of the municipalities?

1 A It would depend. I mean, certainly certain
2 things are generalizable. For example, the actual
3 bricks and mortar for construction cost of a unit
4 is not going to vary significantly from one
5 municipality to the next in Morris County. The
6 variations are likely to be greater within most
7 municipalities than between municipalities. For
8 example, clearly if you build on a slope, it's
9 going to be more expensive than if you build on
10 flat land.

11 Q Why is it more expensive to build
12 on a slope? A Because of the great-
13 er site preparation costs.

14 Q And is this a significant difference,
15 building on a slope, or is it merely a very small
16 increment? A It--As Mr. Bisgaier
17 pointed out from the background here, it would
18 depend on the slope. Obviously the steeper the
19 slope, the greater the increment.

20 Q Well, can you give me some para-
21 meters since you feel that you have expertise in
22 the field of cost? What would be considered a
23 flat piece of property or a piece that would
24 require no extraordinary site preparation in
25 terms of slope?

1 A Well, again it's not an either-or kind of
2 situation. I mean certainly if you say--And
3 again each of these has to be qualified by the
4 specific situation. There are very few really
5 solid rules of thumb here.

6 But, for example, if you had a slope that
7 was, say, less than four or five percent for the
8 most part, I think you would find that the pre-
9 paration costs would not vary significantly.
10 They would start going up after that point.

11 And they would potentially become quite
12 substantial after 12, 15 percent, something in
13 that area, because at that point you would be
14 getting into situations where you might be rais-
15 ing erosion problems which would require particu-
16 lar drainage treatments. Again each site is
17 unique.

18 Q Obviously. But as an alleged
19 expert in housing, would it be your opinion that
20 in areas with slopes over 12 to 15 percent, that
21 these areas still could support low and moderate
22 income housing, even though they will entail
23 additional site preparation work?

24 A It would depend on other aspects of the
25 site. I mean clearly if you are getting into a

1 site that requires more site preparation costs,
2 you would have to trade off something else. If
3 the raw land price was significantly less expen-
4 site or if it happened to have direct access to
5 sewer and water hookups, while other flatter
6 sites were some distance, then these are the kind
7 of tradeoffs that might make it clearly--

8 Q Well, in your experience as a
9 housing person, you have not found that public
10 sewer and water are usually more accessible to
11 areas with very steep slopes than to flatter areas;
12 have you? Isn't that an unusual situation where
13 you would have terrific slopes and still public
14 water and sewers to the site?

15 A Well, we are not talking about really
16 terrific slopes here. I mean I am not talking
17 about 30, 40, 50 percent slopes.

18 Q What I am asking is would you
19 recommend the building of low and moderate income
20 housing as a general rule in areas where you have
21 slopes of more than 12 percent?

22 A I don't think it's a factor that can be
23 looked at out of context.

24 Q You are saying you cannot make a
25 generalization as to slopes?

1 A That's correct.

2 Q Can you tell us what the increase
3 in cost would be if you had a 12 percent slope,
4 a 12 to 15 percent slope, and you are talking
5 about a 10,000 square foot lot. Can you make any
6 statements as to what the increase in cost would
7 be?

8 A There's the variation from
9 one site to the next that is enormous. It can
10 be anything. If you are talking about a single
11 building lot for a detached house, it can be
12 anything from 1500 or so up to five or \$6,000.

13 Q I assume that you would recommend
14 a lower density on a steeper area than on a flat
15 area as a general rule?

16 A Well, actually one of the things that al-
17 ways amazed me about slopes, if I can digress a
18 second, is that in Israel, for example, which is
19 not as far afield as it may seem, the government
20 land use policy has been consistent for many
21 years to encourage building on slopes as distinct
22 from building on flat land for the rather obvious
23 reason that flat land is significantly more valu-
24 able for agricultural purposes. And their
25 position is that that is a sound tradeoff because
you can build up to extremely high densities on

1 slopes by using tight clustering, multi-family
2 housing types, including high-rise, without
3 creating serious environmental problems.

4 So in terms of building on a slope, I
5 would say, for example, probably the worst kind
6 of development that you can have on a relatively
7 steep slope is a conventional, single-family
8 detached house subdivision because the amount of
9 roads that are involved, the number of separate
10 excavation points that are involved all maximize
11 the potential cost and environmental costs.

12 On the other hand, a carefully sited multi-
13 family development, using very careful clusters
14 and relating the roads to the contours and what
15 have you, could conceivably, quite plausibly,
16 come out with a higher density and significantly
17 less per unit cost as well as environmental damage.
18 So you have got to look at these things from that
19 perspective.

20 Q Okay. When you talk about single-
21 family homes on slopes, you would agree that if
22 you were to construct single-family homes on
23 slopes of more than 12 percent, that you would
24 expect to construct them on larger rather than
25 smaller lots?

A No, what you

1 would first expect to do is whatever the lot size,
2 you would expect to cluster, cluster very tightly
3 so that gross site area or density of development
4 as a whole might be medium, relatively low, but
5 the individual lots may be quite small.

6 Q Have you ever done work for any
7 municipality? A Yes.

8 Q Which municipalities other than New
9 Haven which you have spoken of previously?

10 A Well, starting more or less chronological-
11 ly, when I was with the Department of Community
12 Affairs, one of the major areas of responsibility
13 of my bureau in the State Planning Division was
14 provision of specific technical assistance pro-
15 jects to municipalities dealing with housing,
16 community development and the like. So at that
17 time I worked with varying degrees of intensity,
18 Bridgeton, Newark, Jersey City.

19 Q Any other municipalities?

20 A Well, it occurs to me we have spent some-
21 time with Madison Borough, but I would not call
22 that extensive.

23 MR. BISGAIER: Which Madison?

24 THE WITNESS: In Morris County.

25 Q Do you remember what you did in

1 regard to Madison Borough?

2 A As I remember, we were invited to present
3 to them the different options available for
4 providing low income housing in the Borough and
5 made presentation. And a member of my staff I
6 believe met with them on a follow-up basis on a
7 couple of occasions, but it never became an on-
8 going relationship.

9 Q Was anything consummated as a
10 result of your meetings with Madison Borough?

11 A Not to the best of my recollection, though
12 I really couldn't say.

13 Q Did you make any studies or did the
14 Department of Community Affairs make any studies
15 with regard to Madison Borough which were put in
16 a written form? A No.

17 Q Were there any studies of any type
18 that were made? A Dealing with
19 Madison Borough?

20 Q Yes. A No, as far as
21 I recall, our role was entirely a matter of ver-
22 bal communication, meetings, presentations.

23 Q As to alternative financing programs?

24 A Housing programs, yes.

25 Q Were you present at any of these

1 meetings? A At one.

2 Q When was that, if you can give us
3 an approximate year or give us an exact year.

4 A Probably 1969, I wouldn't want to swear to
5 that, though.

6 Q Do you remember anyone from the
7 municipality that was there? Do you remember who
8 the municipal attorney was? Do you remember any-
9 one else who was present?

10 A I don't remember any of the names, except
11 the person who had originally started this thing
12 going I gather had gotten whomever--formally
13 invited us was a local resident named William
14 Primus, who the last I know of was an employee of
15 the Tristate Regional Planning Commission. That
16 was some years ago.

17 Q Any other municipalities other than
18 Bridgeton, Newark, Jersey City and Madison Borough
19 that you had dealings with?

20 A At that time?

21 Q At any time.

22 A Okay, at any time. I subsequently was
23 involved with working with the Model Cities
24 Programs, which are municipal agencies in Perth
25 Amboy and in Trenton. In my work with the Musto

1 Commission, for example, one of my major areas
2 which continued after I started my firm for some-
3 time was directing the evaluation of the Depart-
4 ment of Community Affairs Neighborhood Preserva-
5 tion Program, which included working with altoge-
6 ther 13 different municipalities. I'm not sure
7 I could name them all, but they included Hoboken,
8 Newark, Trenton, Camden, Burlington City, New
9 Brunswick, Atlantic City, Phillipsburg. That's
10 probably not 13, but--Jersey City. I have since
11 been a consultant in my business to the City of
12 Trenton, Medford Township and the City of Newark.

13 Q And those are the cities you dealt
14 with? A That's correct. Oh, when I

15 was at Stockton, I worked with a consultant to
16 Galloway Township.

17 Q In all of this consulting, this was
18 all in the housing area?

19 A I think it varied. It varies quite a lot.
20 It's not all in the housing area.

21 For example, in the City of Trenton, we
22 act as a consultant to them. We conducted a
23 social and economic assessment study of a particu-
24 lar inner city neighborhood in Trenton and assist-
25 ed the City in designing a neighborhood

1 preservation strategy for that area.

2 We are now on the verge of starting a
3 second contract with the City of Trenton which
4 involves coordinating the public input for a
5 proposed visual arts center that is being
6 developed in that city. We are also conducting
7 a study of social needs, poverty conditions and
8 the like in the old Trenton area, which is the
9 core area of the city. So these are not housing-
10 related activities.

11 In other cases, in Bridgeton, our
12 responsibility was to assist the City to develop
13 kind of a mini-Model Cities Program. It was a
14 coordinated social and economic program for the
15 area known as the Second Ward, which is the south-
16 eastern quadrant of the City.

17 In Trenton previously, we advised them on
18 the planning for a neighborhood health center
19 facility, which has since come into being as the
20 Harry Austin Health Center in Medford. The role
21 did have to do with housing because we were work-
22 ing with the Township Attorney and the Township
23 Planner on questions, advising on matters of fair
24 share, growth controls and the like.

25 Q Which town is this?

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A Medford.

Q Medford. And who was the Town Planner and the Town Attorney?

A The Town Planner, his name was Thomas Scangarello, S-c-a-n-g-a-r-e-l-l-o.

Q And the attorney?

A Thomas Norman.

Q Did Tom Norman call you into that municipality? A No, not originally, Jerry Haukey, he's a former member of the Township Committee.

Q Mr. Mallach, it appears that almost all the work you have done is for cities rather than for suburban or rural communities. Wouldn't that be a fair characterization of the municipalities that you worked for?

A The majority, yes.

Q Have any of these municipalities that you worked for been what you would consider developing municipalities?

A Certainly Medford.

Q Medford?

A And certainly Galloway.

MR. BISGAIER: The question is what Alan would consider to be developing

1 municipalities or what the Supreme Court
2 of New Jersey would consider to be develop-
3 ing municipalities?

4 MR. BERNSTEIN: I do not have the
5 Supreme Court members here. I would love
6 to interrogate them.

7 MR. BISGAIER: Is it Alan's person-
8 al--

9 MR. BERNSTEIN: His understanding of
10 the law of what a developing community is.

11 MR. BISGAIR: In other words, you
12 are using the term as a term of art.

13 Q You understand what I mean by the
14 term developing community, Mr. Mallach, as a
15 quasi-planner and being involved in housing
16 development? A I understand it as
17 Mr. Bisgaier interpreted it.

18 Q Fine. And are there any municipal
19 housing authorities that you worked for directly
20 other than Galloway and Medford Township that
21 you can tell us about today?

22 A We did a fiscal study for Washington
23 Township in Gloucester County.

24 Q Any others? When you say we, you
25 are talking about Alan Mallach Associates?

1 A Actually that particular study was done
2 before the firm in its present existence was
3 constituted. It was done by myself together with
4 a then colleague of mine.

5 Q Who was that?

6 A Mr. Edward Hinden.

7 Q Who is a professional planner I
8 believe? A Yes, he is.

9 Q Who subsequently worked for you in
10 Alan Mallach Associates?

11 A That's correct.

12 Q Can you give us a year on this,
13 Medford, the work you had done for Medford?

14 A Medford was I guess principally in '77,
15 some in '78.

16 Q Galloway?

17 A Galloway would have been '74. Washington
18 would have probably been '75.

19 Q What did you do for Galloway?

20 For this-- A As part of a team from
21 Stockton, we worked on developing environmental
22 inventory and an economic assessment and a plan-
23 ning process for the Township, working for the
24 Township Planning Board, Zoning Board and Town-
25 ship Committee.

1 Q Who was the attorney if you remem-
2 ber for the municipality?

3 A I haven't the foggiest recollection.

4 Q Who was the planner?

5 A At the time, they did not have a planner
6 that I recall, a regular paid consultant.

7 Q Do you know if they have one today?

8 A I'm not sure. They have a professional
9 Township Administrator who has a planning back-
10 ground. I don't know if he's a professional
11 planner.

12 Q Okay. And those were the only
13 developing municipalities that you had worked for?

14 A That's correct.

15 Q Are you a member of any planning
16 organizations, either national or in New Jersey?

17 A No.

18 Q Ever applied for a membership in
19 any? A No.

20 Q Are you a member of any associations
21 which are related to your work?

22 A No.

23 Q Have you ever been in any official
24 capacity either elected or appointed to any
25 position in New Jersey or a municipality in New

1 Jersey? A Yes.

2 Q Which was?

3 A I was for a number of years the--a member
4 and for one year the chairman of the Pennington
5 Borough Zoning Board of Adjustment.

6 Q And the years for that would be?

7 A '75 through '77.

8 Q In that capacity, you reviewed an
9 application for multi-family development in
10 Pennington Borough; correct?

11 A That's correct.

12 Q And that was in '75?

13 A '75 or '76.

14 Q And can you give us any facts about
15 that multi-family development?

16 A Yes. Well, not very many because the
17 applicant was not very willing to give us very
18 many facts. But, in essence, what they had in
19 mind was building a number of very expensive
20 condominium apartments. When I say very expensive,
21 talking about, oh, I think \$80,000 or more
22 condominium units with age-restricted membership,
23 I think 55 and over, on an almost entirely land-
24 locked tract in the Borough about 10, 12 acres.

25 Q What was the proposed density?

1 A Somewheres between six and eight units to
2 the acre.

3 Q And you voted to deny that applica-
4 tion didn't you? A That's correct.

5 Q Pennington has no multi-family
6 housing to speak of? A Pennington has
7 quite a lot of multi-family housing. It has no
8 apartment developments as such, but it has a
9 large number of two, three and four-family units.
10 So that something in the area of 30 percent of
11 the housing stock is rental.

12 Q Do you as one who is active in the
13 housing field, believe that two, three and four-
14 family units may be appropriate for low and
15 moderate income housing as well as least cost
16 housing? A As one part of an
17 overall mix.

18 Q So your answer would be yes, these
19 may be considered low and moderate income housing?

20 A Which, two and three and four-family units
21 generally?

22 Q Yes, yes.

23 A Yes.

24 Q Did you oppose the project that
25 was brought before the Board of Adjustment

1 primarily because of the cost of the unit?

2 A I opposed it for a number of reasons.

3 First, the Borough had zoned--had already zoned
4 a very large part of the remaining vacant land in
5 the Borough for multi-family development.

6 Q At what density?

7 A I believe within six and ten to the acre.

8 Q And what type of units?

9 A Townhouses principally, perhaps garden
10 apartments as well.

11 Q Can you--

12 A That was not the only reason.

13 Q No, no, but I wanted to stop for
14 that reason. Did you feel that that was an
15 appropriate density for the townhouses and garden
16 apartments given the unique parameters of
17 Pennington Borough?

18 A See, I believe it should have been higher
19 given the unique parameters of Pennington Borough.

20 Q Did you make your feelings known to
21 anyone in authority such as the Mayor, the
22 Borough Council, the Municipal Planner, the
23 Municipal Attorney, members of the Planning Board,
24 anyone else? A I may have.

25 Q You have no recollection?

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1 A Not specifically.

2 Q Did you feel that there was any
3 desirability in these multi-families despite the
4 density that you were not happy with?

5 A I believed that the site in question
6 could potentially be suitable for multi-family
7 housing. And upon rejecting the specific appli-
8 cation, I moved a resolution which was subse-
9 quently adopted that the Planning Board and the
10 Borough Council reconsider the zoning for this
11 site and evaluate whether it should be rezoned to
12 multi-family or a higher density single-family
13 use.

14 Q Did you feel that the multi-family
15 zones in Pennington, while not of the density
16 that you would have liked, did you feel that they
17 served any purpose?

18 A Well, the whole thing was academic at that
19 point because there were no sewers in the Borough.
20 The sewer mapping was taking place, but at the
21 snail's pace; and that in the absence of
22 sewers, given the small size of the tract involv-
23 ed and the characteristics of the soil and the
24 like, that it was unlikely in the extreme that a
25 multi-family development would be undertaken.

1 In fact, the multi-family--

2 I asked, very specifically asked the
3 applicant in this particular variance, what his
4 ~~position~~ position was vis-a-vis the sewage, sewerage dis-
5 posal. And after acknowledging that they had
6 absolutely no plans or intentions of building a
7 separate treatment plant, they figured that soon-
8 er or later the sewers would come around and they
9 wanted the variance just in case. It struck me
10 as being on somewhat less than proper grounds.

11 Q You felt they should have sewers in
12 prior to your approval?

13 A Not necessarily, I recognized that from a
14 practical standpoint they couldn't. On the other
15 hand, it was characteristic of the generally not-
16 thought-out character of this proposal.

17 Q When you said it was academic, what-
18 ever density the Town proposed?

19 A No, I didn't say whatever density the Town
20 proposed would be academic. I said the specific
21 density that applied at that time was academic.

22 Q And why was it academic?

23 A Well, first, as I said, there was no
24 immediate plan, there was no immediate plan--
25 There was no immediate development possibility

1 because of the lack of sewers. And secondly, the
2 Town was undertaking a thorough re-evaluation
3 from a planning standpoint of that part of the
4 Borough. And it was anticipated that this whole
5 thing would be reviewed thoroughly between then
6 and the point when the sewers would be available.

7 Q So your testimony is that with re-
8 gard to Pennington Borough, since it had no sewers,
9 it was academic whether there was a low or high
10 density multi-family zone because nothing would
11 be built until the sewers come in anyway?

12 A Not quite.

13 Q You correct the statement I made.
14 You make a summary.

15 A Okay. What I said was not only was there
16 a lag of some years before the sewers would come
17 in, but as I think it is particularly important
18 was the fact that the Borough had undertaken to
19 do a thorough re-examination of the planning and
20 zoning requirements of this area of the Borough
21 between the point of that to which I'm speaking
22 of and the point which the sewers would be avail-
23 able. So, in other words, it was clear that a
24 conscious reappraisal was going to be made of
25 that zoning before the crunch actually came.

1 Q As a consultant, do you consider
2 that a proper tool to make preliminary plans,
3 preliminary plans for zoning, while sewer expan-
4 sion is planned and then to re-evaluate the
5 situation when the sewers, in fact, are finally
6 constructed and available for use?

7 A I think the evaluation should take place
8 prior to when the sewer capacity actually becomes
9 available.

10 Q Would you consider it proper for a
11 municipality to evaluate its situation after it
12 finds out how large a sewer plant it can construct
13 and how much capacity it can get from the para-
14 meters of financing the D.E.P., the environment
15 and whatever other limits there are? In other
16 words, would it be wise for a time to find out
17 the sewer capacity it had prior to making its
18 final commitment in the planning area?

19 A Well, sewer capacity is not an absolute.
20 It's not as if there is a kind of a great big
21 sewer god, you know, up in sewer heaven who turns
22 to each township and, you know, says once and for
23 all the total flow of sewage from your residences
24 will never exceed 4.5 mgd. The sewer capacity is
25 flexible with D.E.P. requirements and federal

1 funding and so forth.

2 It's no longer a simple matter for a
3 municipality to make major changes in its own
4 systems, but one of the interesting things is the
5 increasing degree to which more modest sewerage
6 treatment facilities that provide extremely good
7 effluent treatment quality can be built for
8 specific developments or for smaller areas in
9 order to supplement the public systems.

10 Q Well, do you feel there is any
11 nexus between sewer capacity and zoning for a
12 multi-family development?

13 A Yes.

14 Q What is that nexus?

15 A Well, where a municipality has sewage
16 capacity in its system and where it has a network
17 of pipes that are capable of being hooked into
18 with additional effluent, then those are extremely
19 positive features or characteristics for the pur-
20 pose of evaluating areas, identifying areas that
21 are suitable for multi-family, high density
22 development.

23 Q Now, would the converse be true,
24 that if there were areas that there were no
25 sewers and there were no prospects for sewers,

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that these would be areas that there would be a negative feature as far as multi-family development goes?

HIEM

MR. BISGAIER: He has already answered that in terms of the private capacity.

MR. BERNSTEIN: I do not think so. I would like to hear the witness answer it. Maybe it is no criteria.

A No, not a significant criteria.

Q Absence of sewers you say is not significant? A That's correct.

Q Now, what I would like to know is if the absence of sewers is not significant, as a housing consultant by what factor is the construction cost of multi-families increased if a private developer has to put in his own treatment plant? Is it a significant cost or merely a marginal cost and can one construct a low and moderate income housing project without the availability of public water and public sewers?

A Yes.

Q Okay. Now, can you tell me about how much the cost would be increased? What is the parameter we are looking at if one is going

1 to put up a multi-family development and has to
2 put in his own plant?

3 Well, there are all of the usual factors
4 **HEN** which it varies. And in most of New Jersey,
5 there is not an enormous amount of data. There
6 is, however, substantially more data for Long
7 Island, for example.

8 Q I am not interested in Long Island.

9 A Well, it's not that far. And the systems
10 are basically packaged systems. And they are not
11 going to vary that fundamentally.

12 To construct a system that would provide
13 quality, a quality of effluent treatment with a
14 recharge into the ground water in Long Island
15 that meets the requirements of the New York State
16 Department of Environmental Control and the
17 Suffolk County Board of Environmental Control,
18 and I doubt there would be that much difference--

19 Q But you cannot tell us as an expert
20 the differences in the soil--

21 MR. BISGAIER: He will answer that
22 question as soon as he finishes this one.

23 A Bear with me, Danny. We will get there.
24 In our actual costing of sites, the construction
25 of the plant runs approximately 15 to \$1800 per

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unit.

Q This is in Long Island you say?

That's correct.

HEM

Q And can you tell us where in Long

Island have you been involved when these plants

were built? A This is in Suffolk,

in Suffolk County, principally in the Town of

Brook Haven.

Q This is one particular project?

A No, this is general. This is based on quotes. You see, there is no particular variation from one project to the next. We are talking about putting in a packaged system. And this is based on our meetings principally with the County Department of Environmental Control as well as conversations with a number of developers. There is no significant variation from project to project.

Q Well, your experience is limited

to Brook Haven or are there other areas that you have encountered the same cost?

A Well, we have been with a number of people in terms of the J.M. project in Bedminster where the costs are very much comparable, slightly more, slightly higher. But the effluent standard of

1 the system that's been designed for the J.M.
2 development in Bedminster is as high as the state
3 of art, the art permits. And there their per
4 **HEM** unit costs are I believe still a good bit under
5 \$3,000. Probably somewhere in the area of
6 \$2,000 to \$2500.

7 Q Didn't you say the experience in
8 Long Island was the same as in New Jersey? Didn't
9 you tell us that? A I said the cost
10 would not vary significantly for comparable
11 treatment. The quality of treatment they are
12 talking about in the J.M. plant is higher than
13 the quality of treatment they are talking about
14 in Long Island by the County Board of Environ-
15 mental Control.

16 Q Well, are the standards different
17 in New Jersey than New York that you are aware of?
18 In fact, are you aware of the standards in New
19 Jersey and Long Island for what level of treat-
20 ment must be used in each?

21 A In general terms; I can't quote them to
22 you. I think there are significant differences.
23 If you are talking about recharge into ground
24 water under appropriate circumstances, the treat-
25 ment that the facility provides can be adjusted

1 for a certain amount of filtration. If you are
2 talking about discharge directly into a stream,
3 **HEM** you may have to provide higher treatment
4 directly into the facility because you are not
5 getting any filtration through the ground water.

6 Q Now, is it your testimony that every
7 area in Morris County is susceptible to a package
8 plant? A I would not be a judge
9 of that.

10 Q Isn't it a fact that there are
11 limited numbers of areas that can accept package
12 plants and that there are many areas of the state
13 where it would not be sound from an environmental
14 standpoint to construct one of these plants?

15 A According to all of the competent environ-
16 mentalists that I have spoken to on this point,
17 that is not the case.

18 Q What have they told you about the
19 location of package plants? I would be interest-

20 **HEM** A If you use the different new
21 forms of treatment, --The conventional package
22 plant you are talking about is something that
23 discharges directly into a stream. Now, when you
24 discharge directly into a stream, you have a
25 number of standards that have to be met in terms

1 of stream quality, flow, speed, consistency over
2 time.

3 HEM If you are going to discharge into a
4 stream that is going to run dry three months of
5 the year, you are going to have a problem and
6 things like that. So that has tended significant-
7 ly to limit the utility of package plants.

8 The kind of plants that people are discuss-
9 ing now, and I don't claim to be an expert on
10 them, I just mention them sort of in passing, in-
11 volve different processes such as spray irriga-
12 tion and lagooning, which do not require discharge
13 into a stream and I understand are much more
14 broadly usable than the old style plants.

15 Q Are you saying that you can in any
16 area in Morris County put in either a package
17 plant, spray irrigation or lagooning? Is that
18 your testimony? A No, it is not
19 my testimony.

20 Q Are there any site constraints?
21 Possibly.

22 Q Do you know of any?

23 A No.

24 Q So as you see it as a housing con-
25 sultant, you can put them practically anywhere in

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1 Morris County? I want to know what the constraints
2 are as you see it, Mr. Mallach.

3 HEM No, I think it's pointless. If I were to
4 evaluate this, when it came to the actual siting
5 of a sewage treatment plant, I would be working
6 with a person who is more expert in this area
7 than I am. I am not an expert in the specific
8 constraints that might affect this.

9 I was reacting to your extreme formulation
10 of their limited use, which I understand is not
11 valid. As to how far beyond that the use is
12 feasible, that I couldn't say.

13 Q Here is the problem I have, Mr.
14 Mallach. Some of us represent municipalities
15 that have limited or no sewers. And I would like
16 to know if you have taken into account the fact
17 that some of the towns have either no sewers or
18 limited amount of sewer capacity in making your
19 analysis and in making your studies?

20 A Taking into account towards what end?

21 Q Toward the fair share allocation
22 and toward evaluating the zoning ordinances.

23 A I have made no representations towards the
24 fair share allocation for these townships.

25 Q As to your analysis of the zoning

1 ordinance, have you considered the sewers that
 2 are available in some municipalities, available
 3 to limited extent in some and not available in
 4 others, in your analysis or has it been irrelevant
 5 to you? A It has been irrelevant.

HEM
 FEA

6 Q And do you feel in evaluating--
 7 MR. BISGAIER: Can we break for
 8 lunch?

9 MR. BERNSTEIN: Let me finish this
 10 sewer aspect.

11 Q Is it your sentiment with regard to
 12 multi-family housing that whether or not a
 13 municipality has a sewer plant in existence or
 14 unused capacity or no prospect for sewers is
 15 really irrelevant in evaluating its zoning
 16 ordinance, that a provision must be made and
 17 that you as a housing consultant would not look
 18 at the sewer capacity of the municipality when
 19 evaluating that ordinance?

20 I think there are two separate issues here,
 21 two parallel issues, one in evaluating the
 22 ordinance and the other is subsequently framing
 23 what should be done to remedy it. In evaluating
 24 the ordinance, the answer is the sewerage capacity
 25 or lack thereof is not an issue.

1 Assuming for sake of argument only that
2 some or all of the ordinances in Morris--in the
3 defendant municipalities are held to be
4 exclusionary and at some point down the road
5 people start thinking about, well, what are our
6 fair share goals, what is our immediate housing
7 obligation, what, where, when and how, at that
8 point the nature of the sewer system as well as
9 both the potential and the constraints for sewage
10 plants should be in issue in that process. So it
11 is there that it is significant.

12 Q You are saying for your study it is
13 not relevant? A That's correct.

14 Q And would you admit that if there
15 were areas that, because of environmental grounds,
16 required larger lots, that that would be a factor
17 that the municipality should take into account
18 even though it is something that is beyond the
19 purview of your expertise?

20 A Well, if memory serves, the requirements
21 for larger lots are usually a function of the
22 requirements for septic tanks. So that if you
23 are talking about developing the septic tanks,
24 then large lots are certainly an issue. If you
25 are talking about developing a sewerage system,

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then large lots become significantly less of an issue because you are talking about treating the effluent rather than dumping it into the ground.

HEM
ERA

Q So you would concede that where a municipality had either its entire body or parts of it that were only served by septic, that a municipality might have a valid reason for requiring larger one-family residential lots?

A No.

Q No? A Well, they would have a valid reason or possibly valid reason for requiring one-family larger lots under such circumstances as septic were going to be used. At the same time, it would be perfectly legitimate for them to provide an option that, say, if a developer came in with a plan and a documented sewer system that was capable of meeting State standards and getting D.E.P. approval, say, that then a higher density would be possible. Because if the only justification for the large lots is the septic system, then the developer or the owner of the land should have the option of showing that an alternative is available.

Q Now, would you concede that if there was a limitation in a certain area because of

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potable water and that this section of the municipality was served exclusively by wells, this would be a valid reasoning for requiring larger lots so that the homes had sufficient water to serve the residents?

A Again, it depends on--It depends on the circumstances. Now, you know, potable water, the availability of potable water is a, you know, very complicated thing. You know, you get into situations where people are drawing from such-and-such strata and there are other strata that can be drawn from or the public water system is willing to pipe, extend pipes in a direction.

My experience in some cases has been that the various water companies that serve much of New Jersey are quite willing to extend their lines considerable distances where development is taking place or is likely to take place or at the request of a developer. So again, you can't say this is it here.

Q I am giving a hypothetical, Mr. Mallach. You do not know, by the way, of any public water companies in Morris County I assume?

A I believe Commonwealth is the largest one I assume, but I'm not sure.

1 Q Commonwealth Water?

2 A Yeah.

3 Q And where are they headquartered?

4 A That I don't know.

5 Q But you do not know which municipi-
6 palities they serve?

7 A No, I do not.

8 Q I am giving a hypothetical. Let's
9 assume we have an area where public water com-
10 panies do not want to serve, where there is a
11 limitation to the amount of potable water, that
12 regardless how far you are going to drill, there
13 is only so much you are going to get. Would this
14 be a significant feature? Would this be a legi-
15 timate feature for the municipality to take into
16 consideration and might it be a justification for
17 large lot zoning?

18 A Well, it's an interesting question. I
19 mean let us assume, if I understand your hypo-
20 theoretical, that you are talking about an area, a
21 geographical area, where there is an absolute
22 limitation on the amount of water that is avail-
23 able for all uses within that geographic area.
24 Now, then the question becomes, it really becomes,
25 a question of allocation. And let us say

1 hypothetically--

2 Q That is right.

3 **WILSON** Well, but it's not that simple. It's not
4 **ERAG** matter of saying we will have--Let's say
5 there is enough water in a given area for 750
6 additional households within an overall area and
7 there is, say, a couple of thousand acres of land.
8 And so clearly one answer would be to zone every-
9 thing two-and-a-half acres or two acres and say
10 that water will be available only for people in
11 this area who can afford to buy a house on two
12 acre lots.

13 But it's, you know, possible that you
14 might take the other tack and try to concentrate
15 that development. So that the water capacity
16 that's available is available to people who are
17 perhaps less affluent. So, for example, if you
18 have that same 2,000 acres, you might want to
19 zone 1500 of those acres at five-acre lots and
20 the remaining land for multi-family at five to
21 one acre or ten to the acre or what have you and
22 construct a small number of central wells to draw
23 on that water for the more concentrated develop-
24 ment.

25 So the point is even in a situation, and

1 they're rare, where a piece of land, an area,
2 does have an absolute carrying capacity, the
3 question still remains who shall be carried by
4 that carrying capacity. And it's not by any
5 means a simple matter of we are going to carve
6 up the area in the number of lots that can be
7 carried.

8 Q You would admit as a housing
9 consultant that a municipality and a municipal
10 planner should consider the septic constraints
11 of land and the potable water constraints of land
12 prior to zoning and that these are very important
13 considerations that a municipality and the
14 municipality's planner must take into considera-
15 tion prior to zoning the land? Would you agree
16 with that? A Yes, yes, but it's
17 a question--There's no question that they should
18 take them into consideration. The question is
19 only how they should take them into consideration.
20 And that I'm saying, and this is one of the
21 reasons why I have some question about planning,
22 is this notion that you plug in certain septic
23 constraints or certain potable water limitations
24 into your meat grinder and you have some kind of
25 an automatic formula which says that comes out

1 large lot, single-family zoning, period, at the
2 end. That's not planning. That's witch-doctoring.

WLSM
ERAS

(The luncheon recess is taken.)

3
4 Q Mr. Mallach, to recapitulate, was
5 it your testimony prior to our luncheon break
6 that environmental limitations on development
7 caused by septic constraints and a lack of potable
8 water are considerations that should be consider-
9 ed by a municipal planner and the municipality
10 prior to adopting a zoning ordinance?

11 A Yes.

12 Q Now, you had given me some statis-
13 tics on the costs for putting package plants in
14 New Jersey. And I believe the only project with
15 which you have any familiarity is the Johns-
16 Manville project in Bedminster Township. Is that
17 correct?

A That's the one where
I have reasonably solid cost figures.

19 Q And I believe that your testimony
20 was that the Johns-Manville project would cost
21 between \$2,000 and \$2500 for each unit. Is that
22 correct?

A That's correct.

23 Q Now, I understand that Johns-
24 Manville is looking for one-family homes as well
25 as multi-family homes. Is that correct? Or is

1 it all multitis that Johns-Manville is looking for?

2 A There may be some single-family, but it's
3 usually all multi-family.

4 Q Now, does this \$2,000-\$2500 per
5 unit include the cost of the sewer mains? Does
6 it include the cost of blasting for installing
7 the pipes? Does it include the transmission
8 lines? Does it include the hookups to each
9 individual home? Or is the figure that you have
10 given merely representative of the cost of con-
11 structing the sewer plant itself?

12 A I believe it's for the entire system, but
13 I'm not certain.

14 Q Now, who would be able to tell me
15 what the costs for the sewer plants are for Johns-
16 Manville if you are not? Who would I be able to
17 check with? A Well, I assume the
18 corporate executives of the Johns-Manville
19 Properties Corporation.

20 Q You do not know of the witnesses
21 in the case who would know the answers to these
22 questions?

23 A To the best of my
24 knowledge, this issue is not an issue in the case,
25 so I have no idea if any witness on this issue--
anybody knowledgeable about this issue is likely

1 to be a witness.

2 Q You are saying this is not in issue
3 in the case? A Not at present that

ERA
I know
COTTON

4 of.

5 Q Now, how many units is Johns-Manville
6 looking for in Bedminster Township?

7 A In the order of 1800.

8 Q On how many acres?

9 A I think it's 450-something.

10 Q Now, are these units what you would
11 characterize as least cost housing?

12 A Some would. Some would not.

13 Q How many would be in your opinion
14 least cost?

15 A Well, we have discussed with them and they
16 have made a commitment to seek federal and state
17 subsidy funding to ensure that at least 20 percent
18 of the units would be for low and moderate income
19 households.

20 Q Do you consider the densities that
21 they are seeking to be densities that are compat-
22 ible with least cost housing?

23 A I think it would be difficult for one to
24 build an entire development of least cost housing
25 at that density, but certainly if one had that

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1 density, one might be able to as they are to make
2 part of the development least cost. The net for
3 densities for least cost would be higher.

BRWA
COTTON

4 Q What are they projecting would be
5 the net density for the least cost?

6 A That would not be determined until they do
7 a specific least cost site plan.

8 Q What would you recommend as one who
9 is familiar with the property in Bedminster
10 Township? A Well, it would vary,

11 of course, with different housing types. We are
12 talking about townhouses which might have a net
13 density of 10 to 12 to the acre and mid-rise
14 housing for senior citizens which might have a
15 net density of 30 or more to the acre.

16 Q How about gardens?

17 A I don't think any of those are proposed
18 as part of the plan.

19 MR. BISGAIER: Are you distinguish-
20 ing between least cost units and subsidiz-
21 ed units?

22 MR. BERNSTEIN: I am asking the
23 witness. I am not an expert.

24 MR. BISGAIER: I do not think that
25 has been clear during the course of the

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deposition.

MR. BERNSTEIN: Okay. Fine.

ERAS
CUT TO

Q We are trying to clarify the record for this purpose. Must units be subsidized in order to be least cost housing?

A No.

Q Now, in the event that Johns-Manville received less than 1800 units, I assume that the cost for sewerage each unit would be more expensive? I assume there are economies of scale with 1800 units?

A Interestingly enough, and again this is second-hand, but it is my understanding from the people I have spoken to who are expert in this that there are relatively few economies of scale in sewer treatment construction, that the per unit cost does not vary drastically.

Q Is there any point where one would have to have a minimum? In other words, if there are no economies of scale, I assume you could put in a package plant for a single house, but it would be much more expensive? But more multi-family units, what is the point where it becomes feasible as you understand it to put in a package plant?

A I really don't know.

1 I assume there is such a point, but I really don't
2 know where it would be.

3 **ERA** Q You go into the hypothesis I assume
4 **COTTON** that you could take the same unit cost right
5 down to the smallest apartment unit that you are
6 advocating. Would that be a correct statement?

7 A With relatively minor variation, yes.

8 Q Now, the \$2,000 to \$2,500 figure
9 that you cited, does that include the whole
10 package, namely the engineering studies, the
11 construction costs, the inspections that are
12 necessary, the blasting where it is required and
13 the laying of the sewer pipes? Does the whole
14 package come to between \$2,000 and \$2,500 per unit?

15 A I believe I stated before that that was my
16 impression, but I was not certain.

17 Q Now, would this figure preclude
18 the construction of least cost housing? That is
19 could you build least cost housing if one had to
20 put between \$2,000 and \$2500 extra into the unit
21 for a package treatment plant?

22 A Yes.

23 Q And how would what would appear to
24 me to be relatively nominal sums, \$2,000 to
25 \$2500 per unit, how would this preclude one from

1 constructing least cost housing? Could you
2 explain? A It wouldn't.

3 Q Pardon?

4 It wouldn't.

5 Q It would not stop one from con-
6 structing least cost housing?

7 A That's correct.

8 Q Assuming that the septic treatment
9 for each unit would be raised to \$4,000 a unit,
10 in your opinion would that figure preclude the
11 construction of least cost housing?

12 A I don't think you can set a figure. I
13 think least cost housing, if I remember the
14 language of the Supreme Court in Oakwood, was the
15 least cost housing consistent with a minimum
16 standard of health and safety. Now, clearly the
17 exact dollar cost of that housing is going to
18 vary from community to community, region to
19 region, based on all of these factors.

20 Now, again as I read the Mount Laurel
21 decision, low and moderate income housing or,
22 therefore, least cost housing is a municipal
23 obligation. If it is impossible to construct
24 housing in Municipality X without incurring
25 certain costs, then incurring those costs is part

1 of least cost housing as applies to that municipi-
2 pality. The point is that they be necessary
3 ~~costs~~ as distinct from unnecessary ones.

4 ~~COTTON~~ Q So that you are saying the fact
5 that a private septic plant--

6 A Sewer plant.

7 Q --sewer plant may increase the costs
8 of a multi-family unit, that in itself regardless
9 of the figure, will not preclude least cost hous-
10 ing from being built?

11 A That's correct.

12 Q What you are antagonistic toward
13 are items in the zoning ordinance which you
14 consider to require unnecessary expenditures of
15 money? A That's correct.

16 Now, if I could clarify that, if you have a
17 municipality that has, say, sewer in half of the
18 municipality and no sewer in the other half and
19 for whatever reasons that I can't imagine, the
20 cost of sewerage units in the other half would
21 be exorbitant and the municipality only zones for
22 multi-family housing, say, in the area where the
23 sewers are not, then that would clearly be sus-
24 pect.

25 Q I understand. Now, would the fact

1 that a developer would have to pay between \$2,000
 2 and \$2500 per unit for multi-family housing pre-
 3 **ERA** ~~clude~~ a developer from constructing low or moder-
 4 **COST** income housing? A Not necessarily.

5 It would be a cost that would have to be factored
 6 in.

7 Q Where would the threshold be? How
 8 much would the sewer plant have to cost before
 9 the developer could no longer build low and
 10 moderate income housing?

11 MR. BISGAIER: You mean by that
 12 subsidized housing, low and moderate?

13 MR. BERNSTEIN: Nonsubsidized mar-
 14 ket housing.

15 A You mean least cost housing?

16 Q No, low and moderate income housing.
 17 I am not looking for least cost housing. You
 18 indicated previously that the sewer costs are
 19 irrelevant to least cost housing. Isn't that

20 ~~right?~~ A I wouldn't character-
 21 ~~ize~~ them as irrelevant, but not dispositive.

22 Q Not dispositive. Well, is there
 23 any relevance between actual sewer costs as long
 24 as they are not artificially heightened by a
 25 municipal ordinance? Are they really relevant at

1 all? A If they are an inherent part
2 of what it costs to build housing that is other-
3 wise least cost, higher density housing, multi-
4 family housing, that's true.

5 Q Now, can low and moderate income
6 housing be built by private developers without
7 government subsidies today in Morris County?

8 A Not really.

9 Q Explain that answer.

10 A Okay. Well, if we talk about low and
11 moderate income housing, the housing that's
12 addressed at the populations that are generally
13 considered low and moderate income housing, then
14 with perhaps relatively minor exceptions these
15 populations cannot be housed by housing that does
16 not have some kind of subsidy in it.

17 Q And have you made an estimate as to
18 the cost per square foot of putting up a private
19 home in Morris County today?

20 Just the bricks and mortar?

21 Q The whole package, the bricks, the
22 mortar, the plumbing, the electric, the--

23 A Well, perhaps--When I say bricks and mor-
24 tar, you mean just the straight construction
25 costs or do you mean land and application fees

1 and whatever as well?

2 Q Forgetting the land for a moment,
3 the straight construction costs we will stick with
4 first for the meantime.

5 A The estimates that I've heard regarding
6 straight construction costs in this area, and as
7 I believe I said earlier, they are not specific
8 to Morris County but they are specific to north
9 central Jersey, are in the area of \$25 to \$30 a
10 square foot.

11 Q You have no independent knowledge
12 of that, though; do you?

13 A No.

14 Q You would not consider yourself an
15 expert in determining construction costs for one-
16 family homes; would you?

17 A In determining--

18 Q In verifying this figure of between
19 \$25 and \$30 a square foot, would you consider
20 yourself to have expert knowledge of how that sum
21 is arrived at and--

22 A As a cost estimator?

23 Q As a cost estimator.

24 A No.

25 Q This is through hearsay that you

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1 have heard of these figures?

2 A Through conversations.

3 Q And have you had any conversations
4 that have indicated to you how much multi-families
5 would cost to build?

6 A Somewhat less than that, in the area of
7 22 to 26.

8 Q Would this be for both garden
9 apartments and townhouses?

10 A Slightly more for townhouses than for
11 garden apartments.

12 Q Gardens would be 22 to 26?

13 A Well, let's say that both would fall into
14 that range, but the townhouses would be more
15 likely to fall towards the higher part of that
16 range and the garden apartments towards the lower
17 part.

18 Q Would you consider yourself to be
19 an expert in estimating costs with regard to
20 garden apartments or townhouses?

21 No.

22 Q So that these are figures that you
23 have heard from others rather than established
24 yourself? A That's correct.

25 Establishing costs directly is an extremely

1 specialized and narrow profession which almost
2 everybody in the building industry, in fact
3 literally everybody in the building industry,
4 relies on specialists for that purpose.

5 Q Well, some developers know exactly
6 what their costs will be. We represent developers
7 who hire contractors who purchase raw materials.
8 And they can tell us within a thousand dollars or
9 within \$500 what a home will cost through their
10 past experience. Isn't that true?

11 A Not likely, no.

12 Q You do not know of any developers
13 that can estimate the cost of constructing a
14 house based on their prior experience?

15 A They can make a general estimate, but not
16 a precise one.

17 Q You do not know of any developers
18 that can make a precise estimate?

19 A That's correct.

20 Q But you have considered that you
21 would not be able to make an expert estimate as
22 to construction costs?

23 A Not precisely.

24 Q In fact, with regard to one-family
25 homes, would you be able to break down that

1 \$25 to \$30 a square foot figure and tell us how
2 much of that would be lumber and how much of that
3 ~~could~~ be the electrical fixtures and how much of
4 that would be the plumbing fixtures and how much
5 of that would go toward carpenters and how much
6 toward the other professions and how much toward
7 the Sheetrock men? Would you be able to break
8 down those figures for us on a typical home?

9 A Using the standard references in the
10 profession, I could.

11 Q Well, what you are saying is you
12 could explain to us what someone else has esti-
13 mated. Isn't that true?

14 A Yes.

15 Q You could not go through a house
16 and make that estimate for me based on your
17 visual inspection of the house; could you?

18 A On how much the carpenters cost, how much
19 the Sheetrock cost, et cetera?

20 Q Right, how the costs were arrived
21 at, how would you do it, if I were to take you
22 through a house or I were to show you a set of
23 blueprints? A Not with precision.

24 Q Have you ever made estimates of
25 costs for any projects where your projections

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1 were relied upon without the projects getting
2 other cost estimators? A Yes.

3 COTTO Q Which ones were they?

4 A The project that I believe I mentioned
5 earlier in terms of Green Valley and Salem and
6 Brook Haven.

7 Q You did not have an architect that
8 made estimates of cost?

9 A No, we discussed these things with archi-
10 tects. Obviously these things are discussed with
11 as many people as possible before any firm
12 estimate is made.

13 Q Well, did you make an estimate
14 prior to seeing plans or after seeing plans?

15 A We went over the plans with the architect
16 in one case. In the case of the Salem development,
17 we discussed the costs with contractors and
18 builders in the area.

19 Q You mean you got estimates first
20 and based on your estimates from the various
21 contractors, you came up with the price that you
22 thought the structure could be built for?

23 A That's correct.

24 Q You did not make any estimates
25 prior to going out and getting your bids from the

1 various tradesmen; did you?

2 A No.

3 **COTTO!** Q Now, you are aware, Mr. Mallach, of
4 the distinction between the maxi and the mini
5 trials that Judge Muir has set up in the present
6 case? A Yes.

7 Q You have been involved in a similar
8 trial in Middlesex County before Judge Furman;
9 correct? A That's correct.

10 Q Now, I assume with regard to the
11 mini trials you will be testifying as to what you
12 perceive to be the deficiencies in the various
13 municipal zoning ordinances; correct?

14 A Yes.

15 Q I would be interested, Mr. Mallach,
16 and here you may wish to refer to your studies,
17 as to what the thrust of your testimony will be
18 in the maxi trial.

19 A Well, I have not discussed specific testi-
20 mony. As to the areas that I have prepared, they
21 are the definition of least cost housing, in
22 other words, what types of housing that represents
23 and what the characteristics of that housing are;
24 and secondly the definition of over-zoning as
25 the term is used, as I guess both terms are used

1 in the Oakwood case.

2 Q And were there any other areas that

3 you had anticipated testifying on in the maxi

4 trial?

A Not at present.

5 Q And both of these areas I believe

6 are contained in a single report which you sub-

7 mitted to Mr. Bisgaier; correct?

8 A That's correct.

9 Q Have you done any fair share

10 allocations for this case?

11 A No.

12 Q Do you anticipate doing any?

13 A I doubt it.

14 Q Will you testify on region?

15 A I doubt it very much.

16 Q Have you done any work on region

17 for this case, any studies?

18 A No.

19 Q You had done work on region in

20 other cases; did you not?

21 That's correct.

22 Q If recollection serves me right,

23 didn't you testify on region in the Urban League

24 vs. Carteret, et als case?

25 A No.

1 Q Did you accept the plaintiff's
2 definition of Morris County as a region in and
3 of itself in that case?

4 A Middlesex County?

5 Q Middlesex, excuse me, Middlesex
6 County. A I thought it was
7 reasonable.

8 Q Why did you feel that Middlesex
9 County was a reasonable region for the Urban
10 League suit? A Because Middlesex

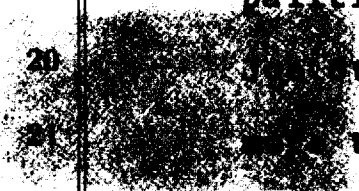

11 County tends to be--to have a central core around
12 its--It's basically New Brunswick, Perth Amboy,
13 that area. And it tends to distribute more or
14 less evenly around that core and tends to be a
15 heavily industrialized county with a great deal
16 of internal journey-to-work movement.

17 Q Well, when you say a central core,
18 is there really much interplay between people
19 living in suburban Middlesex County and the
20 businesses and the people living in either New
21 Brunswick or Perth Amboy? In other words, do
22 they serve as the central cities where people do
23 their shopping, where people do their banking,
24 where people may go to cultural activities or are
25 they really the deteriorating central cities

1 that we really see throughout the northeastern
2 part of the country?

3 A Actually what's happening in Middlesex
4 County, which is interesting, is that they
5 certainly are deteriorating. And what's happen-
6 ing is that an area that is more or less equi-
7 distant from the two, one might call the Wood-
8 bridge-Edison complex, has effectively replaced
9 them as the commercial core of Middlesex County.

10 So the County still has a very strong
11 internal focus to its commercial and business
12 activity as well as the transportation activity.
13 But it has shifted from New Brunswick and Perth
14 Amboy.

15 Q But Woodbridge and Edison are
16 certainly not the core for the towns in southern
17 and western Middlesex County such as Cranbury or
18 South Brunswick or some of these other munici-
19 palities. I am trying to think of the one that
20  Stonaker represented. These towns would look
21  towards Princeton rather than Woodbridge?

22 A There are two answers to that. The first
23 and most significant is what I believe Judge
24 Furman said in his decision on this issue, which,
25 if I remember, is that regions were fuzzy at

1 their edges.

2 Q You agreed with that?

3 A Certainly. The second point, it is
4 interesting that despite this fuzziness, some
5 evidence which I've seen, including one study
6 that we have done ourselves in the Twin Rivers
7 area which is further removed than those, is that
8 the Woodbridge shopping complex is a more signi-
9 ficant major shopping area for that area than
10 Princeton is.

11 Q But other than the Woodbridge Mall
12 and the Bamberger's Mall there, what else do
13 people in Middlesex County, in Cranbury or South
14 Brunswick or the other communities in that area,
15 what other attractions do you know of that
16 regularly bring them to either Edison or Wood-
17 bridge with the exception of the suburban shop-
18 ping malls?

19 A Well, that whole
20 area, Edison, Woodbridge, Perth Amboy, New
21 Brunswick to a degree, Piscataway, that whole
22 central Middlesex area is a major job center
23 for a large part of the region's population,
24 all kinds of employment.

25 Q You have no studies on journey-to-
work that would show that Middlesex County

1 residents are more prone to reside and work in
2 the county than, say, are Morris County residents?

3 A Well, you are asking me to speculate off
4 the top of my head on the reasonableness of a
5 decision by the Court and the plaintiffs on a
6 particular region that I had no direct involve-
7 ment with making. I believe again off the top of
8 my head that it is reasonable, but I have not
9 done a detailed study on this. And I am not
10 suggesting that these opinions are definitive.

11 Q You testified that the county had
12 a great deal of industry. That would make the
13 county in and of itself a region?

14 A It would support a conclusion in that
15 direction.

16 Q Why would the fact that a community
17 had a lot of industry tend to make it a region?

18 A Well, to the extent that that industry
19 tended to encourage an internal journey-to-work
20 relationship, the housing-jobs relationship, that
21 would encourage thinking of it as a potential
22 region.

23 Q Well, didn't the plaintiffs attempt
24 to show--

25 MR. BISGAIER: Could we go off the

1 record a second?

2 (A discussion is held off the
3 record.)

4 Q Okay. To get back to this inquiry,
5 you feel that because a county has a great deal
6 of industry, that would in and of itself be a
7 factor tending to make the county its own region?

8 A It might be.

9 Q Now, you talked about internal
10 journey-to-work. Do you have any comparative
11 statistics between Middlesex County and Morris
12 County showing that there are more residents in
13 Middlesex County residing in Middlesex County
14 than there are residents in Morris County working
15 in their county? A Such statistics
16 exist, but I have not studied them.

17 Q What I am getting at, Mr. Mallach,
18 is do you see any outstanding differences between
19 Middlesex County and Morris County which would
20 preclude one from reasonably using Morris County
21 as its own region?

22 A I haven't studied that matter. I would
23 not want to venture an opinion.

24 Q Do you right now know of any reasons
25 why it would not be proper to make a housing

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region out of the County of Morris?

A I would not want to venture an opinion on that.

Q Have you ever done any studies in order to determine region?

A Yes.

Q Where was that?

A I've studied the region for Mount Laurel Township.

Q No, I am asking where you testified, made a study and testified.

A That's correct.

Q Okay. Any others?

A Bedminster Township.

Q Bedminster, okay. Any others?

A I'm in the process of such a study for West Milford Township.

Q Well, how far has the study for West Milford progressed?

Fairly far.

Q Okay. In Mount Laurel, the region was a circle with the middle being--

MR. BISGAIER: Twenty-mile radius of the City of Camden.

MR. BERNSTEIN: Right.

1 Q Now, what were the areas included
2 within the Bedminster region?

3 A In the Bedminster region, I did not
4 attempt to say this is the region and no others
5 are appropriate. I believe there are some varia-
6 tions, some range of these things. In the case
7 of the Bedminster region, I showed that the
8 region could include four counties.

9 Q Which would be?

10 A Essex, Morris, Union and Somerset or it
11 could include up to I believe eight or nine
12 counties even.

13 Q That would be the D.C.A., northeast
14 Jersey is the alternative?

15 A Right, though it's arguable that one
16 could juggle with the edges of that region, but
17 it is generally consistent with that region.

18 Q Let me ask you a question. If in
19 the Bedminster case, you could consider Essex,
20 ~~Essex~~, Morris and Somerset as a region, could we
21 ~~turn~~ that around and say that a potential region
22 for this particular lawsuit might be the same
23 four counties? A Might.

24 Q Would it not be logical that if you
25 were to make a housing region for one case and

1 Q Do you consider the regions and the
2 subregions that were established by that State
3 agency, the predecessor to the D.C.A., to be a
4 reasonable set of regions and subregions?

5 A Since I have no recollection of what they
6 are, I wouldn't really want to say.

7 Q Fair enough. How do you define a
8 developed community?

9 A Well, I take my cue or try to--

10 MR. BISGAIER: Do not testify. If
11 you are going to give legal interpretations,
12 do not testify. If you have a personal
13 concept of what a developing municipality
14 is as a planner, you may testify. We are
15 not going to have him speculate as to
16 what the Supreme Court of New Jersey means
17 by developing municipality.

18 Q Well, as a housing consultant and
19 housing specialist and one who has testified in
20 more exclusionary zoning cases than probably any
21 other individual in the state, do you have an
22 opinion as to what the term developing community
23 means as that term has been used by attorneys,
24 the Courts, planners and housing consultants?

25 MR. BISGAIER: Are you asking for

1 a legal analysis by Mr. Mallach?

2 MR. BERNSTEIN: Mr. Mallach in his
3 work does not restrict himself to housing
4 consultants' parameters. He certainly
5 gives opinions as to what is exclusionary,
6 what is nonexclusionary, what is least cost
7 housing, what is not least cost housing,
8 and throughout his reports are peppered
9 citations from the New Jersey Courts.
10 The man interprets judicial decisions and
11 based on his interpretation, he analyzes
12 zoning ordinances.

13 Now, you cannot tell me that Mr.
14 Mallach can analyze judicial decisions and
15 can define what is exclusionary and what
16 is not exclusionary in some ambits and not
17 in others.

18 MR. BISGAIER: As far as I am
19 concerned, you can testify all you want as
20 to what you personally consider a develop-
21 ing municipality to be if that is what the
22 question is. It is calling for a legal
23 conclusion. I do not understand exactly
24 what you are asking him to do.

25 MR. BERNSTEIN: The man has

1 place Morris County in that region, that in the
2 second case Morris County would also fit in that
3 ~~area~~ region as being a reasonable alternative?

4 A It would certainly be at least possible,
5 certainly.

6 Q Did you make the region for West
7 Milford? A I have looked at
8 again the same alternatives.

9 Q What are they?

10 A Well, in this case, certainly West Milford
11 is part of the northeast New Jersey region. As
12 to any plausible smaller regions, there is none
13 that is as serviceable as simply being part of
14 the entire northeast area.

15 Q Are you familiar with the study
16 which the Department of Conservation and Economic
17 Development had prepared I believe it was in 1964
18 and 1965 showing various subregions for the State
19 of New Jersey? A I have some

20 recollection of it. I haven't looked at it for
21 ~~some~~

22 Q Had you at any time studied that
23 document? A I wouldn't say studied.

24 Q Have you ever read it?

25 A Yes.

1 testified and the man has made reports
2 that show what in his opinion are exclu-
3 sionary provisions in all of our zoning
4 ordinances. Now, exclusionary is also a
5 legal term. That is not a term that has
6 fallen like manna from heaven. It is a
7 legal term defined by the Courts. And
8 least cost housing is another term that is
9 a legal term.

10 MR. BISGAIER: You want to know
11 what his planning reaction is to the term
12 developing municipality?

13 MR. BERNSTEIN: I want to know how
14 he would define the term a developed
15 community based on the work he has done
16 and the decisions he has read, of course.

17 MR. BISGAIER: All right. I do not
18 care. He can testify to it if he chooses,
19 but I think there are two questions:
20 what a planner might say is a developed
21 community and what the Supreme Court of
22 New Jersey might say would be two entirely
23 different things.

24 Q Do you consider yourself a planner?
25 A I consider myself a planning expert or an

1 expert on planning, but not necessarily a planner,
2 if the distinction is meaningful.

3 Q How would you define the term
4 developed community?

5 A Well, prior to the Mount Laurel decision,
6 if I were to use the term at all, which is unlike-
7 ly, I would have simply referred to it as a
8 community that is no longer growing and does not
9 look like it ever will. And I would have further
10 continued to argue that there is hardly any such
11 thing realistically as a developed community from
12 a planning sense.

13 Q Would New Brunswick or Perth Amboy
14 or Newark be in that definition developed
15 communities? A Not necessarily.

16 If you look at--In fact, I believe there are some
17 statistics in D-1 here. Between 1965 and 1972,
18 for example, there were 3,100 new multi-family
19 units approved for development in the City of
20 Newark. Now, that is development. In addition,
21 the City of Newark has had umpteen development
22 projects of nonresidential sort, Gateway Center,
23 Rutgers, Essex County Community College.

24 This is development. The fact that it
25 took place through the process of reuse and

1 redevelopment and renewal is not at issue in
2 terms of the development. So this is what I
3 would understand.

4 Q Okay. Now, post-Mount Laurel and
5 in view of the Washington Township case and the
6 Demarest case and the various other cases that
7 have been determined by the New Jersey Courts as
8 well as the Cinnaminson case, which I know you
9 are familiar with, and other cases that you are
10 familiar with, what, in your opinion, is the
11 legal and the planning definition that has been
12 accepted by the Courts of the term developed
13 community?

14 A Well, the Mount Laurel decision as I
15 recall has a lengthy paragraph which breaks down
16 a number of characteristics of what they call the
17 developing municipality. And I believe you
18 would find the developed municipality in there,
19 the converse. So, for example, one of them is
20 outside the central cities and older built-up
21 suburbs.

22 So I think by extension, the Court is
23 referring to or by inference perhaps the Court
24 is referring to central cities and older built-
25 up suburbs as being developed.

1 Q I am looking primarily for the post-
2 Mount Laurel cases in the definition of the term
3 developed community as you see it based on the
4 cases that have occurred after Mount Laurel.

5 A Well--

6 MR. BISGAIER: I do not see the
7 probative value of this. If you are
8 asking him if he has done a study of what
9 those cases mean or if he as a planner
10 agrees with the principle in these cases,
11 I can understand that. But as to having
12 him interpret for you what the Supreme
13 Court may or may not have meant, it seems
14 to be drawing legal conclusions.

15 MR. BERNSTEIN: He has testified
16 to legal conclusions in everything he has
17 done. When he testifies that somebody is
18 exclusionary, it means improper zoning
19 restrictions that unduly increase the cost
20 of constructing dwelling units. That is
21 a legal concept,

22 And in order to determine what is
23 exclusionary, one has to have a familiar-
24 ity with the cases. In order to be a
25 planner, you have to know how the Court

1 is interpreting ordinances. And, in fact,
2 that is exactly what Mr. Mallach has done
3 for you. And I am asking to go off into
4 an area that could be helpful for some of
5 our communities.

6 MR. BISGAIER: For the purposes of
7 the record and for your edification, I
8 have never asked him to render a legal
9 opinion about anything, not the least of
10 which is what is a developed municipality.
11 If you think he has studied things that
12 will be helpful to you, you can ask him.

13 Q Do you have an opinion as to what
14 the Courts mean today by developed community or
15 is that something which you have no opinion as
16 to what it means? A I have an
17 opinion, but it is not specifically clear. If
18 you are dealing with a municipality that has no
19 land for development, has been fully developed
20 for sometime, has had no development taking
21 place for sometime or is an older central city,
22 then I think the Courts would characterize that
23 as a developed community. There is a grey area
24 in between.

25 It is interesting, the only analysis that

1 I ever did on this issue, that I believe you are
2 looking at, was done before those cases came out.
3 And I've never been inclined to do a new analy-
4 sis or study of the issue in light of Washington
5 and Demarest.

6 Q You are saying that the study does
7 not include the Demarest case?

8 A Not at the Supreme Court level.

9 Q Did the Supreme Court reverse the
10 lower Court in Demarest or Washington Township?

11 A No.

12 Q I am sorry. In Washington Township,
13 it did. It confirmed the Appellate decision
14 which you were familiar with?

15 A Yes.

16 MR. BERNSTEIN: I would like to
17 have this marked for identification. And
18 if you can, write on the identification
19 Public Advocate vs. Boonton, et al, since
20 there is another case in which it has
21 already been marked.

22 (Study marked D-2 for identification.)

23 Q Mr. Mallach, I show you what has
24 been marked as D-2 for identification and ask if
25 you can identify it.

1 A Yes, sir, this is an article I wrote
2 based on a lecture I gave at the Rutgers Law
3 School in Newark I think in 1975 or '76.

4 Q And did that article in any way
5 touch upon the concept of a developed community?

6 A Yes.

7 Q And is there any mention of any
8 legal opinions in that article?

9 A Yes.

10 Q And was that article written
11 entirely by yourself? A Yes.

12 Q And did you analyze these legal
13 opinions prior to writing the article?

14 A Yes.

15 Q Based on your study of the judicial
16 decisions on what constitutes a developed
17 municipality, do you have an opinion of what the
18 Courts presently mean by the term a developed
19 community? A My study was done

20 before the Courts came out with I guess what one
21 might call a definitive statement on the point
22 and was addressed towards my feeling of the hous-
23 ing and planning implications of where they
24 appeared to be heading at that point, not a
25 study of where they ended up.

1 Q Well, is it your testimony then
2 that you right now cannot tell us what the Courts
3 mean by the term developed community?

4 A I believe I answered that question about
5 ten minutes ago.

6 Q Can you tell us right now what the
7 Courts mean by the term developed community in
8 1979?

9 A The only clear understanding
10 I have is that in a situation where a municipality
11 is a core city or for practical purposes, entire-
12 ly built-up older suburbs such as Demarest would
13 be, that those would be considered developed
14 municipalities. I believe there is clearly a
15 grey area between where a municipality ceases to
16 be developed--to be developing and begins to be
developed.

17 Q Where is that grey area? Can you
18 give us any definition of it, any mathematical
19 figures?

20 A I do not believe that
21 the Court meant the Mount Laurel language of
22 a developing municipality to be read in the form
of precise mathematical formulae.

23 Q Well, can you give us any criteria
24 right now for what the Courts mean by developed
25 community? If we are not talking about precise

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mathematical formulas--

MR. BISGAIER: If you can do that. When is the last time you read the Washington Township decision and the Demarest decision?

MR. BERNSTEIN: I find it amazing Mr. Mallach can be so eloquent as to what he considers exclusionary, what he considers exclusionary to be, and, in fact, relate it to judicial decision. He has written a ten-page document which speaks in terms of all the decisions up to that point, including the trial Court decision.

MR. BISGAIER: What would your interpretation of the content of a developing decision be prior to Washington and Demarest coming down?

MR. BERNSTEIN: The man, though, has given us the Appellate Division decisions which were confirmed by the Supreme Court. And they have been affirmed.

MR. BISGAIER: Without any further language by the Supreme Court throwing any further edification on what might

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have been said.

MR. BERNSTEIN: I find it amazing he cannot give us criteria.

Q Is there any criteria you can give us for what a developing community is in 1979 as enunciated by the Court or is that beyond your knowledge?

A I think you have two Supreme Court cases on this issue, Demarest and Washington, both of which deal with a situation where you have a municipality that is both very small in total area and for all practical purposes, totally built up.

Q What do you mean for all practical purposes? Does that mean every inch is built up?

A That perhaps one percent or two percent of the land in the municipality is even theoretically available for development.

Q Is there any other criteria that you have been able to eke out of these cases other than those two factors?

Not of any kind of a consistent applicability.

Q There have been some trial Court decisions that have gone farther into what a developing municipality is?

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1 A Yes.

2 Q In fact, you cited the Camden
3 National Realty case vs. Cinnaminson where you
4 found that the community developed when, in fact,
5 it had 17.5 percent of the municipality vacant.

6 Is that correct? A That's correct.

7 Q And you are familiar, I presume,
8 with other trial Court decisions that have held
9 municipalities to be developed communities where
10 five or more of their land was vacant?

11 A Yes.

12 Q Is there any formulation that you
13 would give based on all of these decisions that
14 we could follow in determining which of the towns
15 here are developed communities, which of the
16 towns that are defendants in this lawsuit?

17 A I think there's clearly no hard and fast
18 formulation that's available. I mean merely if
19 a municipality is seeking ammunition to argue a
20 point, a case like Cinnaminson could be used.

21 If a municipality is seeking an objective assess-
22 ment, I don't believe the case of Cinnaminson
23 gives much help along these lines.

24 Q You have not studied any of these
25 towns with regard to whether or not they are

1 developed; have you? A No.

2 Q Do you know if any of the witnesses
3 have studied these towns in order to determine
4 if they are developed?

5 A I do not.

6 Q Have you ever made a study as a
7 consultant or in any other capacity to determine
8 if a municipality is developed?

9 A Yes.

10 Q Where have you made such a study?

11 A West Milford Township.

12 Q And I assume you have determined
13 that the town is not developed?

14 A That is correct.

15 Q And what percentage of the land is
16 vacant in West Milford?

17 A Ninety.

18 Q Ninety percent vacant?

19 A Roughly.

20 Q And what criteria did you use in
21 the West Milford case in order to determine that
22 the town was developing?

23 A I took the language from the Supreme
24 Court decision in Mount Laurel and tried to
25 translate each of their phrases, such as outside

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1 the center city and older built-up suburbs or of
2 sizable land area and so forth into some form of
3 what one might call operational term and then
4 presented the available information, either
5 statistical or impressionistic, on the issue and
6 attempted to reach some conclusion.

7 Q Any other towns you have made
8 similar studies for?

9 A Mahwah.

10 Q And your determination as to Mahwah
11 also was that it was a developing community?

12 A That's correct.

13 Q What percentage of the land in
14 Mahwah is vacant? A Altogether I
15 think about 40 percent.

16 Q Forty percent vacant. And is that
17 vacant developable land?

18 A No, the vacant developable land is less.

19 Q What figure is that?

20 Well, approximately 15 percent.

21 Q Is there a cutoff point where we
22 can say that if a town has only five percent
23 vacant developable land, that we can say that it
24 appears to be a developed community?

25 A I don't think there's a hard and fast

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cutoff point. I think, for example, if you say five percent, I think one issue would be if it is five percent of a municipality that is 40 or 50 square miles or is it five percent of a municipality that is one square mile?

Q Is it the smaller the town, the more likely it is to be considered by you a developed community?

A That is one of the things I gleaned from the Court decisions I mentioned.

Q Okay. So we have the size.

Is there any other test other than the vacant developable land and the size of the town?

A Certainly nothing that seems to be consistent. There are glimmers one might say, but nothing solid.

Q Do you want to give us some of the glimmers--

A Well, one thing

Q --that you look for?

A One of the criteria that you look

for is the subjective characteristics

of the community in terms of

development, the economic level

of the community in terms of

development, the economic level

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1 Q What does that mean, the character
2 of the community?

3 A Well, I suggested two things, the density
4 and the economic level. Has the community been
5 developed as a high density urban or semi-urban
6 community? Is it an affluent community or not?

7 Q How do they tie in, though, with
8 whether or not they are developed? In other
9 words, assuming we had a community that was
10 rural in character, it was developed with large
11 lots, but the large lots predominated throughout
12 the community. Would that mean that it had had
13 a character which should continue? I am trying
14 to find out the relevance--

15 MR. BISGAIER: Is that a legal
16 question? Are you asking him would the
17 Courts permit that to happen? How can he
18 answer it?

19 MR. BERNSTEIN: He has testified
20 he made studies in West Milford and Mahwah.

21 MR. BISGAIER: Well, ask him about
22 West Milford and Mahwah where he has made
23 studies.

24 MR. BERNSTEIN: I do not have to
25 ask him about those. I want to know what

1 criteria he uses. And he told me that the
 2 last criteria was character. And he told
 3 me that that keys in. I think it is a
 4 pretty simple question.

5 THE WITNESS: The only area I
 6 studied how that keyed in was--Well, in
 7 the two communities I studied, the ques-
 8 tion of character comes up in terms of
 9 not whether the town is developed or
 10 developing, but rather whether the town
 11 falls at the other end of the spectrum.

12 Q Which is?

13 A Which is the hypothetical case of a rural
 14 municipality that is not yet developing.

15 Q And what characteristics would you
 16 look for in a rural community?

17 A Well, a rural community that was not
 18 developing, and again I am--I have serious doubts
 19 whether any community within--certainly within
 20 the New York metropolitan area, the northeast
 21 New Jersey eight-county area, could be considered
 22 not developing in terms of the Mount Laurel
 23 decision regardless of its present character
 24 because it's still clearly in the path of future
 25 development, which is a significant Mount Laurel

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1 criteria, but assuming you had a municipality,
2 let's say, that was somewhere in the depths of
3 the Pine Barrens and had an extremely low popula-
4 tion, no population growth in recent memory, no
5 expectation of population growth in the foresee-
6 able future as evidenced by any kind of developer
7 activity, land turnover or subdivision, and
8 absence of any commercial activities other than
9 those that are minimum services that serve a
10 small rural population, e.g., no large super-
11 markets or shopping centers, an absence of sub-
12 division activity development, an absence of
13 reasonable quality access to major employment
14 centers, I mean if you had a community with all
15 of these characteristics, then I think you could
16 argue those are the kind of community in the
17 character factors that I was concerned with.

18 Q In determining whether a community
19 is a developed community or a nondeveloped
20 community, you look at the vacant land as one
21 criterion; correct? A Yes.

22 Q And you subtract out land that has
23 environmental constraints; correct?

24 A Well, I think that's another one of those
25 grey areas. I think certain land such as land

1 in floodplains is not particularly developable.
2 But there is obviously considerable disagreement,
3 which I'm not in a position to resolve.

4 Q Do you advocate putting high
5 density housing in a floodplain?

6 A No.

7 Q How about steep slopes?

8 A I believe as we discussed at great length
9 before, that that would be a matter that would
10 have to be looked at in the context of the
11 community and the available land infrastructure
12 and what have you. In other words, all other
13 things being equal, it might not be as desirable,
14 but it wouldn't have in itself the same weight in
15 my judgment as being in a floodplain.

16 Q It would certainly add to the cost
17 if you had to construct a development in steep
18 slopes; correct? A All other
19 things being equal, yes.

20 Q Now, have you made any studies in
21 the slopes of any of the defendant municipalities
22 so that you will be able to give an opinion in
23 court as to whether their topography would pre-
24 clude construction or was that beyond the ambit
25 of your study? A I'm thinking.

1 If I answer yes to that, does that mean it's not
2 beyond the ambit of my study or I have done such
3 a study?

4 Q Have you done such a study?

5 A No.

6 Q Do you know if anyone will be
7 testifying on behalf of the plaintiff as to
8 whether or not the defendant municipalities are
9 developed? A I have no idea.

10 Q You have not embarked on such a
11 study? A I have not.

12 Q When were you contacted with regard
13 to this lawsuit? A I believe in
14 the fall of 1978.

15 Q By whom?

16 A Mr. Bisgaier I believe. It might have
17 been one of his colleagues at the Public Advocate's
18 however.

19 Q And I assume you were asked if you
20 will testify on behalf of the Public Advocate?

21 A That's correct.

22 Q Were you the individual that
23 initially looked at the zoning ordinances prior
24 to the institution of this suit in order to
25 advise the Public Advocate's Office of the

1 potential outcome of any litigation it might
2 bring? A I did not look at
3 the zoning ordinances with the exception perhaps
4 of one or two municipalities prior to the bring-
5 ing of the suit.

6 Q So that you did not give an opinion
7 to the Public Advocate's Office of the validity
8 or invalidity of the ordinances prior to filing
9 the papers? A That's correct.

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

12 Q Let me rephrase the question.
13 Prior to the filing of this suit, was
14 there any documentation you were shown by Mr.
15 Bisgaier or those in his office?

16 A Yes.

17 Q And was this an analysis of the
18 zoning ordinances of the defendant municipalities?

19 A That's correct.

20 Q And did you give an opinion as to
21 the exclusionary or inclusionary nature of these
22 ordinances? A Yes, I did.

23 Q And that was prior to the filing
24 of the complaint? A Yes.

25 Q Did you discuss this with anybody

1 other than people in Mr. Bisgaier's office?

2 Were there other experts you discussed this
3 analysis with? A No.

4 Q And you were retained I assume by
5 the Public Advocate's Office?

6 A That's correct.

7 Q Was it a written agreement or an
8 oral agreement? A I believe

9 there was a written confirmation of the retain-
10 ing. I don't know that there was a formal agree-
11 ment in detail.

12 Q And I assume there was an hourly
13 basis of pay you would be paid for for these
14 efforts? A That's correct.

15 Q Which was?

16 A \$40 an hour.

17 Q And were you hired merely as a
18 witness or were you also hired in order to aid
19 the Public Advocate's Office in the bringing of
20 a lawsuit? You understand the distinction?

21 A No, I'm not clear.

22 Q All right. In the Middlesex County
23 case, you were in court practically every day;
24 correct? A Yes.

25 Q You were advising Mr. Bisgaier and

1 the other attorneys representing the Urban League
2 as to potential strategy, as to the steps they
3 might take and were advising them when, in fact,
4 settlements were entered into with the developed
5 communities. Isn't that correct?

6 A That's correct.

7 Q You had played, in other words, a
8 larger role than that usually played by a mere
9 witness who testifies for an hour and then leaves
10 the courtroom and is never heard from again?

11 A I guess so.

12 Q And, in fact, you were even in
13 court with Judge Furman on some of the confer-
14 ences the plaintiff's attorneys had; weren't you?

15 A Yes.

16 Q Now, is this the role that you
17 have played up till this point with the Public
18 Advocate's Office? A I don't see

19 how I can answer that. The role that you are
20 referring to is very explicitly a courtroom role
21 in a very particular situation.

22 Q Have you advised the Public Advo-
23 cate's Office of the strategy that you feel they
24 should employ in this case?

25 (A discussion is held off the

1 record.)

2 Q Did you advise the Public Advocate's
3 Office of other expert witnesses whom you felt
4 they should retain? A No.

5 Q Did you help in drafting any of
6 the legal papers? A No.

7 Q Are you anticipating being in court
8 on a fairly regular basis as you were in the
9 Middlesex County case or will you merely be there
10 when you are asked to testify and then leave?

11 A Since as I understand my role is in
12 testifying about all 27 municipalities, I think
13 I will be in court on a regular basis even if I'm
14 just asked to testify and leave.

15 Q Well, what I am saying, will you
16 be there on the days when you are not required
17 to testify to view what is said and to make
18 comments for the Public Advocate's Office, which
19 may aid them in the presentation of their case?

20 I have no idea.

21 Q That was not discussed?

22 A No.

23 Q When did you start work on this
24 case? When did you actually start doing your
25 work? A I did a limited amount of

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work I believe in the fall of 1978.

Q That was the analysis of the ordinances I assume or analysis of what Mr. Bisgaier had given you?

A That's correct. I did some work I guess towards the--during the winter and a serious preparation of the expert report starting I guess towards the beginning of 1979.

Q Can you give me an estimate of the hours you put in? You talked first about the fall of '78 and the winter of '78, each of those time frames. A I put in something in the area of 100 hours.

Q That would be in the fall of '78 and the winter of '78?

A No, from--

Q No, I am interested just in the fall of '78, then the winter of '78.

A I don't really know.



MR. BERNSTEIN: I have no problem with certain colloquy, Mr. Bisgaier. When you tell Mr. Mallach you cannot--

THE WITNESS: No, no, he said if you can't, don't.

MR. BERNSTEIN: That is always

... direct understood. Mr. Mallach is certainly not a timid witness.

Q THE WITNESS: But I try to be helpful. Can you tell us the amount of work you did prior to 1979?

A Substantially less than half, but I couldn't guess hours.

Q You could not guess. After 1979, how much work did you do, after January 1st, '79?

A Certainly the majority of the work, but--

Q All you can tell us is the total is approximately 100 hours?

A And that the majority of that total was one since the beginning of 1979.

Q When did you start work on your report?

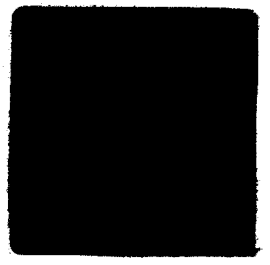
A I would start reports? that time.

Q After January 1st, I believe so. Would you be conducted

A field work. I believe so. field work

And hav

?



1 Q Describe all the field work you
2 have done in this case.

3 A So far I have spent in addition to such
4 general familiarity as I have with Morris County
5 municipalities prior to beginning this work, I
6 have spent two full days doing field work in this
7 case, during which I devoted the bulk of the time
8 towards identifying and looking at specific areas
9 that have been zoned for multi-family use in the
10 different municipalities.

11 Q And why were you checking out the
12 areas that were zoned for multi-families? What
13 relevance would that have?

14 A Well, it would have considerable relevance
15 if a municipality had a provision, let us say, in
16 their zoning ordinance that was if not least cost,
17 perhaps closer to least cost than most zoning
18 provisions. Then it becomes a significant issue
19 potentially as to whether there is indeed land
20 the least putatively developable land in that

22 Q And when you say two full days, do
23 you mean eight-hour days?

24 A Roughly.

25 Q Did you go out with anyone?

1 A Yes.

2 Q Who did you go out with?

3 A Mr. Bisgaier.

4 Q Anyone else?

5 A During the second trip, Mary Brooks was
6 also present.

7 Q Along with Carl Bisgaier?

8 A That's correct.

9 Q And who drove?

10 A Mr. Bisgaier.

11 Q Now, could you tell me--

12 A I sat in both cases in the front seat.

13 Q Fine.

14 Can you tell us when was the first day
15 that you made your field trip?

16 A I don't recall the date. I would say it
17 was about a month ago.

18 Q And which towns did you visit?

19 A Morris Township, Par-Troy, Montville,
20 Lincoln Park, Randolph, Chester, Mendham.

21 Q Which Mendham?

22 A Both. Those are the ones I remember.

23 Q Do you have notes on this?

24 A Not in organized form; they are part of
25 the separate sections of each municipality. But

1 if I can look down the list, I can probably get
2 an idea if I missed any.

3 Q These are all that you investigated
4 first day? A Harding.

5 Q Is that correct, Mr. Mallach?

6 A Yes, I'm referring to the first trip.

7 MR. BISGAIER: For your information,
8 they would probably be reflected in the
9 expert reports on any section referring to
10 the mapping of a site. Those would be the
11 towns.

12 Q Now, the second day, which towns
13 did you visit? First, before we get to the towns,
14 when was the second trip?

15 A I would say it was about a week ago.

16 Q Okay. And the towns were?

17 A Chatham, Florham Park--

18 Q When you say Chatham, Borough or
19 Township? A Township.

20 Q Chatham Township?
21 That's the only one that is in the liti-
22 gation.

23 Q Florham Park.

24 A Madison, Mount Olive, Rockaway, Roxbury
25 and Washington.

1 Q And you spent a full eight hours
2 on both dates? A Roughly, yes.
3 (A recess is taken.)

4 Q With regard to the field work, we
5 have seen the communities that you visited. Now,
6 I would like to know, and I have your reports
7 here, if that is reflected anywhere in your
8 reports, that you visited these communities, and
9 what your findings were. If you have any of
10 the reports, I would like you to refer to them.

11 A The first--The findings of the first
12 visit are reflected in the report that was sub-
13 mitted March 12th. The findings of the second
14 visit have not been, but have been reflected in
15 a memo, a written memo that's been supplied to
16 Mr. Bisgaier for subsequent transmission to the
17 defendants.

18 MR. BERNSTEIN: I see. Mr. Bisgaier
19 has just given me a document and it is
20 entitled Mapping.

21 Q Is that where you made your
22 comments as to what you had seen?

23 A Where there were points that I considered
24 relevant, yes.

25 Q They were all under the heading

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1 Mapping? A Or something similar,
2 under the specific municipality.

3 Q And I notice for Boonton, there is
4 no separate category. Does that mean that
5 Boonton was not visited?

6 A Well, it both means that Boonton wasn't
7 visited and that there was no reason in my judg-
8 ment for the particular purpose to visit Boonton.

9 Q Now, I am holding onto the Chatham
10 Township papers that you prepared. And I do not
11 see any notation of mapping.

12 A Chatham Township was visited in the second
13 trip which is not reflected in this report. As
14 I believe I mentioned, I have prepared a memo
15 which I have submitted to Mr. Bisgaier and which
16 I believe will be forwarded to the defendants.

17 MR. BISGAIER: It already has been
18 mailed. It probably will arrive today.

19 Q Does this second memo involve
20 [REDACTED] exclusively with your second field trip?
21 Exclusively.

22 Q Is there any other reports you
23 have been commissioned to do by Mr. Bisgaier or
24 anyone in his office?

25 A Except for the continuation of the field

1 visits, no, no new reports or new topics, no.

2 Q Will you be making any more field
3 trips other than the two days that you were in
4 the field? A I believe so, yes.

5 Q And how many more field trips will
6 you be making? A That I
7 couldn't say.

8 Q Will we be receiving subsequent
9 reports as to what you found in these field
10 trips? A To the degree that I
11 find out anything that in my judgment of Mr.
12 Bisgaier's judgment is relevant to my testimony,
13 certainly.

14 Q And what will you be looking for
15 that you feel is relevant that you can find on
16 these field trips?

17 A At this point, my interest is to complete
18 the examination of the areas that have been zoned
19 for different kinds of multi-family or high
20 density uses by the different townships.

21 Q That is your sole interest?

22 A That is my principal interest. My second
23 interest is to familiarize myself generally with
24 the characteristics of these municipalities from
25 a visual standpoint.

1 Q But you have not written down any-
2 thing about the general characteristics, have
3 you, in any of your reports?

4 A Not at present.

5 Q Well, did you find anything you
6 considered relevant about any of the towns that
7 you had visited on the first day of your trip as
8 to the general characteristics of the municipality?

9 A Not that at this point has any relevance
10 to the actual testimony. I have no plans at
11 present to testify on these matters. If I do or
12 if Mr. Bisgaier asks me to, then I will certainly
13 supplement materials to the defendant.

14 Q Now, let us assume that your
15 organization was asked to prepare a Master Plan
16 for any of these municipalities. And I assume
17 that you have the capabilities and the staff to
18 prepare a Master Plan. Is that right?

19 A Well, we have no licensed professional
20 planners inhouse, so we would undoubtedly work
21 together with some organization that did and
22 that complemented us in terms of the environment-
23 al resources.

24 Q At one time when Mr. Hinden was
25 employed by you, you, in fact, possessed the

1 license and could make Master Plans?

2 A Yes, ironically our capability in the
3 literal sense was not significantly different,
4 but we did have a license in the house as it
5 were.

6 Q Now, in preparing a Master Plan,
7 do you feel it is important for the organization
8 making that Plan, do you think it is important
9 for the person or organization making that Master
10 Plan, to visit the municipality on various
11 occasions in order to get a familiarity with the
12 municipality? A Yes.

13 Q And if you were preparing a Master
14 Plan, what specific attributes of the municipality
15 would you be keying in on?

16 A Well, there are quite a number of them.
17 And some might be available from existing data,
18 others might require various amounts of field
19 work.

20 One would be the existing land use in the
21 municipality. Another would be the vacant land
22 in the municipality and its physical characteris-
23 tics. A third would be the character and quality
24 of housing in the municipality. A fourth might
25 be the nature of a particular visual, aesthetic

1 or historical features in the municipality.

2 Then there might be very specific things.

3 If, for example, certain kinds of environmental

4 data, soil, water data was not available, one

5 might have to send a team out to gather such.

6 If traffic data was not available, one might

7 have to send a team out.

8 Q And if you were preparing a zoning

9 ordinance, would you examine the same type of

10 data?

A If the Master Plan had been

11 done and you were working from that, the zoning

12 ordinance--

13 Q You would not need to duplicate it?

14 A The great majority of the data you needed

15 would be in the Master Plan or the background

16 documents. You would still want most likely

17 after you had worked out your basic zoning

18 approach to then review it in the light of the

19 physical inspection.

20 Q Now, you listed a number of factors

21 that you would investigate. Would each of these

22 factors be important as input in your preparation

23 of the housing element which is needed in the

24 Master Plan?

A Some of them would

25 be, but others would not.

1 Q What would be important features
2 that you would look into when preparing the
3 housing element of the Master Plan?

4 A Well, I think one feature, the most
5 important feature that would involve field
6 inspection, is the analysis of the existing
7 housing conditions and housing stock.

8 Q Why is that important?

9 A Because it identifies problems, local
10 problems that may have to be addressed.

11 Q Could it also identify local
12 strengths? A It could, though
13 from a practical standpoint, if it's a strength,
14 it usually doesn't have to be addressed. If
15 it's a problem, it becomes of more immediate
16 significance from a practical standpoint.

17 Q You certainly would become aware
18 of it through field work?

19 A Pardon?

20 Q You certainly would become aware of
21 it through field work?

22 A Yes, that may include structure surveys
23 or it may just include general observation.
24 That would vary.

25 Q What else would you investigate

1 when preparing the housing element for your
2 Master Plan? A You would investigate--
3 The second to my mind most important aspect to
4 that is not based on field investigation at all,
5 but the statistical demographic analysis of
6 housing, future housing needs, housing demand,
7 housing market factors, housing costs and the
8 like in order to project what the future housing
9 needs, goals, demands and so on of the munici-
10 pality should be for the--

11 Q Just the municipality?

12 A Well, in the context of the region, of
13 course.

14 Q Okay. A For the dura-
15 tion of the Master Plan.

16 Q Which would be how long?

17 A Well, what you do, given the general
18 thrust, is try to develop something that would
19 be for a--be in six-year increments most likely,
20 for at least two or three such increments at
21 a time so you have at least some sort of a long-
22 term perspective.

23 Q You would plan for 18 years then
24 you are saying? A Generally, 12,

25 18. Eighteen years is valuable, though it

1 wouldn't be as specific and detailed as the first
2 six.

3 Q What other elements would you
4 detail when preparing your housing element?

5 A Well, one would then--Assuming that some-
6 body at the same time is doing certain of the
7 environmental and infrastructure and community
8 facility elements that go in, you would want to
9 I guess touch base or indirectly or whatever and
10 identify any relations between the housing, the
11 housing goals and demand that you are working
12 towards and questions of infrastructure, services,
13 facilities and the like.

14 Q How would these be relevant
15 inquiries? A Well, for example,
16 if you expect that X thousand new housing units
17 are going to be built, this is likely to require
18 demand for a new school, which should be reflect-
19 ed in the community facilities plan or new
20 transit station or whatever. There may be a need
21 for additional facilities.

22 At the same time, you should do some
23 examination in terms of the sewer system in the
24 municipality if it exists to determine what the
25 capacity is there, whether it's appropriate to

1 expand capacity, whether it's appropriate to
 2 ~~make~~ development of private plants part of your
 3 ~~development~~ standards or to have some kind of a
 4 ~~rational~~ idea of how sewerage should be handled
 5 for the future housing development.

6 Q How about potable water?

7 A Potable water as well.

8 Q How about roads?

9 A Roads as well.

10 Q How about slopes? Would that be
 11 of a concern to you in a floodplain?

12 A Not in terms of the initial housing plan.
 13 That would be of concern when you started to
 14 integrate all of these things into an overall
 15 land use plan.

16 Q Are there any other factors other
 17 than the three that we have gone into that you
 18 feel would be important that you look into
 19 preparing the housing element for the

20 ~~plan?~~ A I think the

22 Q Would you

23 Master Plan? A

24 I might as a casual matter

25 Master Plan as a document if

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1 how much I would work with it as part of the
2 planning process would depend on how good it is,
3 how relevant it is, how much information there
4 was when it was prepared and the like.

5 Q You mean you would make the sub-
6 jective judgments as to whether or not you
7 thought the County Master Plan was appropriate
8 for the municipality you were working in?

9 A To a degree it should be taken into
10 consideration. I realize there is general
11 language in the Land Use Law on that point, but
12 from a practical standpoint, the feasibility of
13 taking into consideration the items in the Master
14 Plan will vary from county to county and munici-
15 pality to municipality.

16 Q Any other things you would take
17 into account? A Obviously I
18 would use whatever studies might be available,
19 census documents, state housing studies, things
20 like the D.C.A. Housing Allocation Report, any
21 kind of regional documents that might have been
22 provided.

23 Q Such as, when you talk about
24 regional? A In Morris County, you
25 are within an area that's studied both by the

1 Tri-State Regional Planning Commission and by
2 the Regional Plan Association. And either of
3 those may have relevant data, reports, studies
4 and the like.

5 Q You consider them to be studies
6 that are worthy of study, the Tri-State and the
7 Regional Plan studies?

8 A I think in each case you look at these
9 things. In a first crack you look at everything
10 that may be relevant.

11 Q How about the State Development
12 Guide? A That too.

13 Q You started to say, Mr. Mallach,
14 that at first you would look at each of these
15 studies? A To determine what

16 they had that was valuable input to the process.
17 MR. BERNSTEIN: Okay. This might
18 be as good a point as any.

19 (The witness is excused.)

20 * *

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LAW DIVISION - MORRIS COUNTY
DOCKET NO. L-6001-78 P.W.

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MORRIS COUNTY FAIR :
HOUSING COUNCIL, :
 :
Plaintiff, :
 :
vs. :
 :
BOONTON TOWNSHIP, et als, :
 :
Defendants. :

CERTIFICATE

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: 4/12/79

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