

ML-Morris County Fair Housing Council  
v. Beenton Twp

5/29/79

Deposition of Mary E. Brooks

P65

ML0008955

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

ML000895S

Plaintiffs,

v.

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

DEPOSITION OF:

MARY E. BROOKS

----- Defendants. -----

Morris Township, New Jersey  
Wednesday, May 23, 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, Morris Township, New Jersey,  
on Wednesday, May 23, 1979, commencing at 9:15 A.M.

**KNARR - RICHARDS, ASSOCIATES**

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

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THE PUBLIC ADVOCATE  
BY: PETER A. BUCHSBAUM, ESQ.,  
Attorneys for the Plaintiffs.

MESSRS. WILEY, MALEHORN & SIROTA,  
BY: FREDERIC J. SIROTA, ESQ.,  
For the Common Defense.

MARK SCHAFFER, C.S.R.

ER  
CO

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I N D E X   T O   W I T N E S S E S

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WITNESS

DIRECT

CROSS

Mary E. Brooks

Mr. Sirota

Mr. Buchsbaum

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EB  
CO

1 M A R Y E. B R O O K S, previously sworn:

2 CONTINUED DIRECT EXAMINATION BY MR. SIROTA:

3 Q Good morning, Ms. Brooks. This is our  
4 fifth day of depositions and I trust the last. May I  
5 assume that you recall all the statements I made at the  
6 beginning of this deposition, that is, calling to your  
7 attention that you are under oath and, of course, you  
8 still are under oath. You understand that; don't you?

9 A Yes, I do.

10 Q And Mr. Buchsbaum is here today rather  
11 than Mr. Bisgaier, but the same suggestions with respect  
12 to any objections they should make continue to be in  
13 effect. Do you understand that?

14 A Yes.

15 Q In other words allow them to make their  
16 objections and be heard before you answer any questions.  
17 And again, and this is always true, if you do not under-  
18 stand any questions that I pose, tell me that you do not  
19 understand it and I will reframe it in a way that is  
20 comprehensible. Do you understand what is happening or  
21 do you consider yourself an expert in making testimony?

22 MR. BUCHSBAUM: I assume we are under the  
23 understanding that objections will be reserved  
24 until trial?

25 MR. SIROTA: Mr. Bisgaier has made that

1 statement.

2 Q Miss Brooks, I am referring to DB-3 for  
3 identification, specifically Page 12, which is your dis-  
4 cussion of the adjustments to the allocations. And  
5 though I recognize that at the end of I believe the  
6 second day of depositions you explained the process of  
7 developable limits, I would ask you to explain that  
8 again.

9 A New Jersey  
10 D.C.A. makes an adjustment to its allocation based on a  
11 development limit within the jurisdiction which it  
12 calculates as being the number of acres in vacant  
13 developable land times four dwelling units per acre.

14 Q And the vacant developable land is as  
15 defined previously in our discussions. Is that correct?

16 A That's correct.

17 Q And there is no allowance in that figure  
18 for roads? It is simply a raw figure, four times vacant  
19 developable land? A That's correct.

20 Q And the term of art vacant developable  
21 land has no component of which would eliminate land,  
22 for example, which would have to be used for roads or  
23 open spaces in any particular development?

24 A That's true.

25 Q Do you think the definition of vacant  
developable land is faulty because of that?

1 A No.

2 Q Why not? A In identifying  
3 vacant developable land that element is not normally  
4 included. And as New Jersey D.C.A. identifies in this  
5 instance, the four dwelling units per acre is not what  
6 they are recommending as a density and is applied to  
7 all vacant developable land, not just land that is  
8 either zoned or would be used for residential use.

9 MR. SIROTA: Would you read the answer  
10 back, please.

11 (The last answer is read.)

12 Q Why isn't that element normally included?

13 A In an identification of vacant developable land?

14 Q Yes. A Because in most  
15 instances the estimates of vacant developable land are  
16 made either at such a scale or over areas where it would  
17 be difficult to estimate the land that has been devoted  
18 to or may, in fact, be devoted to roads.

19 Q You mean it is because they do not look  
20 at any particular land and the particular conditions  
21 of specific land? A That's not

22 exactly true in that as you know from the definition of  
23 vacant developable land they look at some of the quali-  
24 ties of that land.

25 Q Over and above the 12 percent slope and

1 the other concerns in that definition, they do not go  
2 out and look at a particular piece of land in any given  
3 municipality and say this is what the unadjusted housing  
4 allocation is for that particular piece of land; do  
5 they? A I don't believe  
6 New Jersey D.C.A. did that, no.

7 Q And the reason they did not is because it  
8 is impracticable based upon the amount of land that is  
9 relevant to their study? A I believe that  
10 would be the case.

11 Q Is that a sensible position from your  
12 point of view? A Yes.

13 Q Have you considered a definition of vacant  
14 developable land which would include more elements in  
15 its composition? A No.

16 Q Do you think it is in the same sense im-  
17 practicable when you are discussing a finite number of  
18 communities, 27 or even Morris County?

19 A I don't understand the question.

20 Q Well, did you not state that it is im-  
21 practicable to actually look at the land when you are  
22 doing a report like the D.C.A. report in order to deter-  
23 mine development limits? A Yes.

24 Q Is it also impracticable to look at the  
25 land, the actual land, when you have a finite, small or



1 finite group of communities such as the defendants in  
2 this action? A Well, it may or  
3 may not be impractical. I also indicated that it's not  
4 customary to do that.

5 Q Is it impracticable?

6 A It would certainly be difficult and time consuming  
7 and costly.

8 Q Is it impracticable?

9 A That depends on how much time and how much money  
10 you have.

11 Q How much time would it require?

12 A I don't know.

13 Q How costly would it be?

14 A I don't know.

15 Q Have you considered doing it?

16 A No.

17 Q Have you done it?

18 A No.

19 Q How involved is it to do it for one

20 municipality? A It would depend

21 on the amount of vacant land. It would depend on the  
22 amount of roads.

23 Q Well, if you were doing a report in order  
24 to determine development limits of a particular munici-  
25 pality, would you consider looking at the land

1 important? A You mean a  
2 visual inspection of the land?

3 Q Yes.

4 MR. BUCHSBAUM: You are talking about  
5 development limits now, not an overall fair share  
6 study?

7 MR. SIROTA: My question relates to develop-  
8 ment limits.

9 A I think for most purposes it's sufficient to make  
10 use of the data collected and identifying characteristics  
11 of the land rather than a visual inspection.

12 Q For what purposes is it not sufficient?

13 A I can't identify purposes for which I think that  
14 would not be sufficient.

15 Q Are you saying it is not useful to actually  
16 look at, see the land in order to determine development  
17 limits? And obviously I am referring the development  
18 limits, not the definition provided by D.C.A., which,  
19 of course, does not include that, but a lay understanding  
20 of development limits.

21 MR. BUCHSBAUM: Of course, elucidate that  
22 lay understanding a little bit?

23 MR. SIROTA: All right.

24 Q I mean limits on the development of the  
25 land, whatever you may consider to be limits upon the

1 development of the land.

2 A Well, it is useful to inspect land visually. It  
3 does not always tell you even everything you want to  
4 know about that land. There are many qualities to land  
5 that one cannot identify visually. It's helpful. It's  
6 not always necessary.

7 Q But are there qualities of the land that  
8 you cannot identify other than visually?

9 A Well, that depends on how sufficient your raw  
10 data is.

11 Q But the D.C.A. report takes into account  
12 only those characteristics which form the definition of  
13 vacant developable land?

14 A That's correct.

15 Q Do you think there are any other character-  
16 istics that should be or need be included in order to  
17 have a realistic and practical view of how much land in  
18 a municipality is developable and in what manner?

19 A I think their definition is sufficient in that  
20 regard. As I've already indicated, I think it's a con-  
21 servative estimate itself.

22 MR. SIROTA: Could you read the question  
23 back. I do not believe it was responsive.

24 (The last question and answer are read.)

25 MR. BUCHSBAUM: The answer seems

1 responsive.

2 MR. SIROTA: It does not to me.

3 Q Is your answer no? Can I interpret your  
4 answer as being no? In other words, you said that the  
5 characteristics that they include in their definition  
6 are sufficient. May I assume that that means that no  
7 other characteristics, the addition of other characteris-  
8 tics are not essential, necessary or useful?

9 A For the purposes of this plan I believe that's  
10 true.

11 Q For any other purposes?

12 A Well, if I were making an assessment of land for  
13 another purpose, I might look at other qualities of the  
14 land.

15 Q For what purposes?

16 A Wild life protection.

17 Q What about for housing?

18 A As I've indicated, for the New Jersey D.C.A.  
19 Housing Allocation Plan I think it was sufficient.

20 Q Well, what about some other plan or your  
21 contemplation of a plan directed towards housing?

22 A I think this is sufficient.

23 Q That means you would add no other character-  
24 istics or elements to the definition?

25 A In this instance, no.

1 Q Why did they choose four as a multipli-  
2 cation element factor?

3 A They don't indicate that in very much detail.  
4 I think they consider that an average or an overall  
5 density figure.

6 Q An average density figure where?

7 A Evidently statewide in that it's a statewide plan.

8 Q An average desired density figure?

9 A No, they indicated as I stated earlier that it  
10 was used for the purposes of identifying a development  
11 limit. It was not a recommendation by the State for the  
12 density at which land should be developed.

13 Q Then why did they use it?

14 A They wanted to incorporate a development limit  
15 concept into the Housing Allocation Plan and they used  
16 four dwelling units per acre as a guideline or a rule  
17 of thumb or, in fact, a limit that they could use in  
18 identifying the development capacity of the vacant  
19 developable land in the jurisdiction.

20 Q Do you agree with the use of the multiple  
21 of four? A I think it's  
22 acceptable.

23 Q And on what do you base that decision,  
24 that it is acceptable? A Well, in that

25 they are identifying a development limit for the

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1 purposes of the Housing Allocation Plan.

2 Q Why do you determine that the number four  
3 is acceptable? A I did not con-

4 duct an analysis of the D.C.A.'s selection of that limit.  
5 Based on residential densities that are either average and/  
6 or reasonable, I think it's an acceptable one. I mean,  
7 as I have indicated in my report, it is obvious that  
8 areas that are developed residentially will not all  
9 develop at four dwelling units per acre, but New Jersey  
10 D.C.A. also indicates that that is not the case and they  
11 are simply using it for the purposes of incorporating  
12 the limit, development limit concept into the Housing  
13 Allocation Plan.

14 Q I am afraid I still do not understand where  
15 it comes from. Is that because you do not know where it  
16 comes from? A As I indicated,

17 they do not identify as I recall specifically why they  
18 selected four dwelling units per acre.

19 Q And your acceptance is based on the fact  
20 that they used it, not an independent appraisal on your  
21 part? A As I indicated,

22 I did not make an independent appraisal. I do not  
23 think it sounds unreasonable.

24 MR. SIROTA: Could you read the answer  
25 back, please.

1 (The last answer is read.)

2 Q Do other fair share plans have development  
3 limits?

4 A That concept  
has been incorporated in other fair share plans, yes.

5 Q And is four a common multiplication factor?

6 A Well, the development limits is not also in-  
7 corporated in the same way the New Jersey D.C.A. has done  
8 it here. Sometimes it's incorporated in a later stage  
9 of the allocation method. And I don't now recall the  
10 density figures used in other plans.

11 Q Do you recall with respect to plans which  
12 utilize it in the same manner as the D.C.A. plan what  
13 multiplication factors they use?

14 A No.

15 Q With respect to the third paragraph on  
16 Page 12 in your explanation of unadjusted housing allo-  
17 cation, the second part of the formula is the difference  
18 between the present housing need allocated to a munici-  
19 pality and its present housing need. Would you explain  
20 those two phrases to me, please?

21 The New Jersey D.C.A. identifies a present housing  
22 need for each municipality as we have discussed earlier  
23 based on delapidated units, overcrowded units and needed  
24 vacant units. They then allocate present housing needs  
25 to jurisdictions. Those two numbers may or may not be

1 different.

2 Q Well, didn't you testify earlier that one  
3 of your criticisms of present housing need allocation  
4 is that it was based upon present housing need in the  
5 particular municipality exclusively?

6 A The allocation of present housing need is based  
7 on the present housing stock in the jurisdiction. And  
8 my criticism was directed to the fact that that would  
9 probably result in a greater number of the allocations  
10 going to those jurisdictions that had greater housing  
11 stock already.

12 Q But it would not necessarily be precisely  
13 the same? That is, the allocation would not necessarily  
14 equal the need in the particular community?

15 A That's true.

16 Q Now, your criticism of the four multipli-  
17 cation factors is not of that factor but of what it is  
18 applied to. Is that correct?

19 A I don't understand that.

20 Q Well, you are saying it should be applied  
21 to residentially developable land as opposed to vacant  
22 developable land. Is that accurate?

23 A I propose that as an alternative.

24 Q What is residentially developable land as  
25 opposed to vacant developable land?



1 A Well, the fact that that distinction is not made  
2 is I guess the reason I identified it as an alternative  
3 rather than a criticism.

4 Q What is the distinction?

5 A The phrase refers to--

6 Q Which phrase?

7 A Well, or the paragraph that you are referring to  
8 refers to the fact that the way in which a municipality  
9 may develop residentially may be substantially different  
10 than would be reflected by the development limit concept  
11 as employed by New Jersey D.C.A. And I'm not really  
12 drawing a distinction between developable land and  
13 residentially developable land as a definition. That  
14 may be unclear in the statement there.

15 Q As I read it it would appear that what you  
16 are saying is that four times vacant developable land  
17 would render a different result than four times resi-  
18 dentially developable land?

19 A That's not what's implied by that sentence.

20 Q Could you explain the sentence again? I  
21 just do not understand the sentence I assume.

22 A I thought I just did.

23 Q I did not understand your explanation then.

24 A That's all right. The point is that using a  
25 development limit concept for vacant developable land

1 very well may not actually reflect what would, in fact,  
2 happen with developable land that is developed resi-  
3 dentially. And it would be reasonable to expect that in  
4 many instances that land might be developed at a much  
5 higher density than four dwelling units per acre.

6 Q Well, vacant developable land includes  
7 land other than that zoned residentially; doesn't it?

8 A That's true.

9 Q So are you saying that examination should  
10 be made specifically of that land which is suitable to  
11 be zoned residentially and that a higher factor than  
12 four may be appropriate?

13 A That would be an alternative. I think that would  
14 be difficult to do and I did not recommend that.

15 Q And you really do not know whether that  
16 would produce a conclusion which is greater or lesser  
17 than four times vacant developable land. Isn't that  
18 correct?

A That's true.

19 (A discussion is held off the record.)

20 Q Why didn't they redistribute allocations  
21 which would have been made to those municipalities  
22 placed in the deferred category?

23 A They don't indicate one.

24 Q Is there a presumption in the D.C.A. report  
25 that it will be revised from time to time?

1 A Yes.

2 Q So one might assume that they will re-  
3 examine the municipalities that are in the deferred  
4 category?

A I assume so.

5 Q And at some time presumably if all looks  
6 right make the allocation to that particular municipality?

7 A Yes.

8 Q Isn't that a reason why they may not have  
9 allocated them now?

A Possibly, yeah.

10 Q Have you made the determination whether  
11 any of the present housing need identified as of 1970  
12 has been met by any of the defendant municipalities  
13 since that date?

A I made an  
14 attempt to identify governmentally assisted housing that

15 had been provided by jurisdictions since 1970.

16 Q And does your report provide a munici-  
17 pality breakdown of those units?

18 A I believe it's identified in the third report  
19 that I submitted on the demographics.

20 Q Is that report identified as DB-4 entitled  
21 Preliminary Report on Demographic Characteristics of  
22 Morris County, New Jersey, April of 1979?

23 A Yes.

24 Q Could you tell me where in that report  
25 that information is provided?

1 A Page 39. And it's by county, not by jurisdiction.  
2 The source that's indicated on that page does identify  
3 that by jurisdiction.

4 Q That is the New Jersey Directory of Sub-  
5 sidized Rental Housing, January of 1978?

6 A Yes.

7 Q Was it your position that the D.C.A.  
8 allocation for each defendant municipality should be  
9 adjusted to reflect the actual construction or present  
10 existence of assisted housing in that particular municipi-  
11 pality as of 1979?

12 A I think that's  
13 reasonable.

14 Q But you have not broken the county figure  
15 down into a municipal figure?

16 A I don't need to break it down. As I indicated,  
17 it is provided in that report. And as I make that ad-  
18 justment, I will do that, yes.

19 Q You say as you make that adjustment?

20 MR. SIROTA: Mr. Buchsbaum, do you have a  
21 question or a comment?

22 MR. BUCHSBAUM: Maybe I missed something,  
23 but the adjustment was from 1970 to '78. Is this  
24 data accumulative public housing construction  
25 since the beginning?

THE WITNESS: Yes.

1 MR. BUCHSBAUM: Okay. So all the units  
2 in here might not be incorporated into an adjust-  
3 ment then?

4 THE WITNESS: That's correct.

5 Q In other words, some of it may have been  
6 taken into account in 1970 figures?

7 A That's correct.

8 Q Well, does this document permit you to  
9 divide that which was in existence as of 1970 and that  
10 which came into existence after 1970?

11 A It only does in part. Any assisted unit provided  
12 with State funds, New Jersey collects that information  
13 with the dates included. The Federal government does  
14 not provide data that indicates the date of the con-  
15 struction of the units.

16 Q Well, how would you make the adjustment  
17 then?

18 A In this instance  
19 I made several assumptions based on the initiation of  
20 the program, which is identified. For instance, Section  
21 was in existence in--

22 Q That is an easy one.

23 A That's true. Section 236 as well, which largely  
24 replaced 221 and Section 202.

25 Q Well, this shows no units for Morris  
County for 236?

A That's correct.

1 Public housing is the most difficult one in that public  
2 housing has been in existence since the 1930's. And as  
3 I indicated to you the other day, I called the public  
4 housing authorities in Morris County and asked them  
5 specifically about the construction of the units and  
6 their dates.

7 Q But you did not call the Morris County  
8 Housing Authority? A I don't recall.

9 MR. BUCHSBAUM: Well, that was not in  
10 existence prior to 1970.

11 MR. SIROTA: But it is in existence sub-  
12 sequent to 1970.

13 MR. BUCHSBAUM: Yes.

14 MR. SIROTA: Well, actually I do not know.  
15 I do not mean to suggest that it is.

16 Q Do you know that it was in existence prior  
17 to 1970? A No, I don't.

18 Q Do you know which housing authorities were  
19 in existence prior to 1970 and after 1970?

20 A No.

21 Q And that is the only change you intend to  
22 make, is it not, in the allocation of prospective needs?

23 A Yes.

24 Q That is only to make an adjustment for  
25 what the municipalities have done since 1970?

1 A Yes.

2 Q What about on subsidized low and moderate  
3 income housing in the municipality? How do you take  
4 that into consideration?

5 A I did not have data that permitted me to do that.

6 Q So that you made no consideration of low  
7 and moderate income housing or least cost housing  
8 existing in the municipality presently?

9 A That's true.

10 Q Is that a serious defect?

11 A I don't believe so.

12 Q Why not? A One, New Jersey  
13 D.C.A. didn't consider that factor at all. And my in-  
14 corporation of the provision of assisted units is an  
15 improvement over their plan. And there is not to my  
16 knowledge any reasonable way to identify any other  
17 units to make that adjustment. I can't identify--

18 Q But isn't that of serious concern because  
19 of the possible result of an allocation of least cost  
20 housing to a municipality which is composed wholly or  
21 largely presently of least cost housing?

22 A Well, if that were true the New Jersey D.C.A.  
23 might be responsive to a jurisdiction that could in-  
24 dicate it had substantially met its allocation since  
25 1970 by the provision of such housing.

1 Q You say since 1970. I am sorry. Did I  
2 cut off your answer? A That's okay.

3 Q You say since 1970. Does D.C.A. take  
4 into account the existence of least cost housing in a  
5 particular municipality as of any date?

6 A In the sense that it is identified as of 1970 by  
7 virtue of the fact that New Jersey D.C.A. only identifies  
8 the housing needs that exist as of 1970 and that is the  
9 beginning point.

10 Q But a municipality's housing allocation is  
11 not based exclusively on its own housing need. Is that  
12 correct? A That's correct.

13 Q So that presumably you could have a municipi-  
14 pality that is ten percent developed, that ten percent  
15 is entirely mobile homes, and yet because of its large  
16 remaining land it would receive a very large allocation  
17 for least cost housing. Is that correct?

18 A Well, there are a number of factors that go into  
19 the allocation in a jurisdiction. The vacant developable  
20 land is not the only factor, but it is, in fact, true  
21 that the need for additional housing still exists and  
22 the housing allocation plan is directed to an allocation  
23 which will result in meeting that need.

24 Q Well, in that sense then does it address  
25 the need of the individual municipality to have a



1 balance of the types of housing in that particular  
2 municipality? A It does not  
3 treat that item specifically, no.

4 Q It does not address that at all; does it?

5 A No.

6 Q So then is it fair to say that if a  
7 municipality comes to D.C.A. or comes to you in court  
8 and says it is true we are 20 percent developed, but  
9 the 20 percent we have developed is all least cost  
10 housing, we are not a wealthy town, our houses are not  
11 developed on ten-acre lots, would your reply be that  
12 that is not relevant?

13 A As I indicated to you, the allocation by New  
14 Jersey D.C.A. is done on a variety of factors and  
15 vacant developable land is only one of those. They look  
16 at four factors. They look at employment growth. They  
17 look at fiscal capacity and they look at the income of  
18 the jurisdiction as well, which by an indirect way takes  
19 into account some of the concerns I think you are asking  
20 about.

21 Q You can have least cost housing with people  
22 who are not low and moderate living in there. Isn't  
23 that correct? A That's true.

24 Q And is it the case that that type of  
25 housing would not be taken into account in order to

1 meet an allocation? A That's correct.

2 Q Is that right?

3 A I believe it's correct, yes.

4 Q But is it a sensible conclusion?

5 A Yes, as I indicated when you first asked the  
6 question, the fact that housing need still exists in the  
7 State of New Jersey is what is being directed in the  
8 development and implementation of a housing allocation  
9 plan. The fact that the City of Newark has a substantial  
10 amount of lower cost housing and does, in fact, have low  
11 and moderate income people does not reduce the existence  
12 of housing needs in the State of New Jersey.

13 Q So that the amount of least cost housing  
14 as opposed to housing being utilized by low and moderate  
15 income persons is totally irrelevant with respect to  
16 meeting the housing needs which you are addressing and  
17 would form into an allocation?

18 A That's correct.

19 Q So is it the case that you would propose  
20 that the municipality continue to zone for least cost  
21 housing and if, in fact, that housing that is built as  
22 a result of that zoning and change in the zoning ordinance,  
23 if that housing is not actually utilized by low and  
24 moderate income persons, in that event the municipality  
25 has made no dent in its allocation?

1 A No, as I indicate, as New Jersey D.C.A. updates  
2 its housing allocation plan, it may very well want to  
3 take into account the provision by a jurisdiction of  
4 least cost housing.

5 Q But it has not presently?

6 A In its current plan, no.

7 Q And you do not make a modification to that  
8 plan or you do not suggest a modification which would  
9 have that effect. Isn't that correct?

10 A Not beyond looking at assisted housing, that's  
11 correct.

12 Q Well, assisted housing would presumably  
13 be least cost housing actually used by low and moderate  
14 income persons? A That's correct.

15 Q So that a municipality could zone for  
16 least cost housing based upon the current plan, include  
17 your modifications to it, and make no dent at all in its  
18 allocation? A No, you just

19 asked me that question and as I indicated New Jersey  
20 D.C.A. may very well select in updating its plan to give  
21 credit to jurisdictions where they have provided least cost  
22 housing.

23 Q I carefully worded my question so that it  
24 related to the plan which you were addressing yourself  
25 to and that plan as modified by you, not what they may

1 do in the future. A I've answered  
2 that question also. They do not take that into account  
3 in the plan.

4 Q And the answer is no, that that particular  
5 municipality would not make a dent in its allocation?

6 A As I indicated, if a municipality--New Jersey  
7 D.C.A. has not incorporated that factor in this plan.  
8 New Jersey D.C.A. may be responsive to a jurisdiction  
9 if they want to indicate the number of least cost units  
10 that they have provided since 1970.

11 Q But with respect to the present plan and  
12 with respect to the present plan which you have modified  
13 in your report? A That is not  
14 incorporated.

15 Q So that a hypothetical municipality in  
16 accordance with these plans would not make a dent in its  
17 application by zoning least cost housing which was built  
18 and not used by low and moderate income persons?

19 A Not the way the plan is designed as written in  
20 this document.

21 Q And not as you modified it?

22 A That's correct.

23 MR. BUCHSBAUM: You are talking about  
24 actually development once the land is zoned or  
25 are you talking about credit for past development?

1 MR. SIROTA: I was talking about both.

2 MR. BUCHSBAUM: Okay.

3 MR. SIROTA: I was talking about least  
4 cost housing not used by low and moderate income  
5 persons.

6 MR. BUCHSBAUM: Either presently or in  
7 the future?

8 MR. SIROTA: That is correct.

9 MR. BUCHSBAUM: Did you understand the  
10 question that way?

11 THE WITNESS: Yes.

12 MR. BUCHSBAUM: I will state for the  
13 record we have the depositions of Mr. Mallach,  
14 who discussed the question of overzoning which  
15 deals with the concept or the problem of land  
16 zones for least cost housing not being occupied  
17 thereby.

18 Q When was the first time you were in Morris  
19 County? A I don't know.

20 Q Well, when was the first time you were in  
21 Morris County and concerned yourself about the housing  
22 situation in Morris County?

23 A I don't really know the answer to that either.

24 Q Is the question unclear?

25 A No, I don't recall all the times I've been to

1 New Jersey.

2 Q Well, each time you come to New Jersey  
3 have you been concerned with the housing situation in  
4 Morris County?

5 A Most of the  
6 times I've come to New Jersey it's been relative to my  
7 concern about housing.

8 Q You do not remember the first time you  
9 were in Morris County other than just driving through  
10 on the way to someplace else?

11 A No.

12 Q Before your involvement with this lawsuit  
13 did you come to Morris County to review and consider its  
14 housing needs and situation?

15 A Not specifically, no.

16 Q How unspecifically?

17 A I had looked at the New Jersey D.C.A. allocation  
18 map prior to my involvement in this case.

19 Q And did you come to Morris County to  
20 compare that plan with the reality or with a view of  
21 Morris County, an actual view?

22 A Not specifically, I don't think so.

23 Q I want to know when you first came here  
24 to take a look at the land and the housing stock in  
25 Morris County?

A In preparation  
for this case?

1 Q Well, in preparation for any other case.

2 A Then my answer is the same. I don't remember.

3 Q Okay. How about in preparation for this  
4 case? A I believe April

5 1979.

6 Q You had not come to Morris County for that  
7 purpose before rendering your March 1979 report?

8 A I don't believe so.

9 Q How about before rendering your April 1979  
10 reports? A Yes.

11 Q And were the observations you made during  
12 that trip or trips reflected in the April 1979 reports?

13 A No.

14 Q Did you come to Morris County to consider  
15 its land and housing stock prior to April 1979?

16 A In preparation for this case?

17 Q No. A You have asked  
18 me that already and I don't remember.

19 Q Well, I have asked you when it was and you  
20 said that you did not remember when. I asked you whether  
21 you did or not at this time.

22 A I had been to Morris County prior to that date,  
23 yes.

24 Q For that purpose?

25 A Not for the purpose of preparing for this case.

1 Q For the purposes of considering housing  
2 stock or land in Morris County?

3 **REASABLE**  
4 **CONTENT**

3 I don't quite know what you mean by for the  
4 purposes.

5 Q Well, did you make during that trip or  
6 trips any observations that are relevant to the concerns  
7 of this lawsuit? I'm not suggesting that that trip had  
8 to relate to this lawsuit directly, but I am asking  
9 whether you made any observations which would within the  
10 ambit of concerns of this lawsuit.

11 A Not specifically.

12 Q Well, what unspecific observations did you  
13 make?

14 A That's im-  
15 possible for me to identify. I mean driving through the  
16 county I would have made a lot of observations as a  
17 person who is concerned about housing and would have  
18 looked at any area with that concern.

18 Q You mean driving through on Route 80?

19 A Yes.

20 Q Would that have been the trips you have  
21 made to Morris County prior to April of 1979?

22 A Would what have been?

23 Q Driving through Route 80?

24 A I have driven through Route 80.

25 Q Have you made any trips to Morris County



1 prior to April of 1979 where Morris County was where you  
2 were going as opposed to driving through Morris County?  
3 A I believe so, but I don't remember specifically.

4 Q You mean you came to Morris County for a  
5 specific purpose prior to April of 1979, but do not  
6 remember the purpose?

7 A No, my answer was I believe I have been to Morris  
8 County prior to April of '79 and I would have made such  
9 observations.

10 Q All right. My memory, and correct me if  
11 I am wrong, is that your testimony is that you have been  
12 prior to April of 1979 to Morris County, the situation  
13 where Morris County was your intended goal, that is,  
14 where you just were not driving through Morris County.  
15 Is that accurate? A Not that I  
16 recall.

17 Q All right. So that your memory is that  
18 your only activity in Morris County was in traveling  
19 through prior to April of 1979?

20 A Or coming to a jurisdiction in Morris County, but  
21 it was not for specific purposes of studying Morris  
22 County.

23 Q What jurisdiction did you come to in  
24 Morris County? A I really don't  
25 remember.

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1 Q Do you remember the purpose of your trip?

2 A No.

3 Q So then you have no specific memory at all?

4 A That's what I've indicated.

5 Q Other than having possibly been here prior  
6 to April of '79? A That's correct.

7 Q How many trips did you make in April of  
8 '79? A One specifically  
9 for the purpose of this court case.

10 Q Any other trips to Morris County in April  
11 of '79? A I don't believe  
12 so.

13 Q So then there was only one trip in April  
14 of '79 to Morris County?

15 A I believe that's correct.

16 Q And when was that?

17 A I'm hesitating now because I don't really remember  
18 whether it was April or May. I'm sorry.

19 Q Well, you testified that it was prior to  
20 the rendering of your April 1979 reports. Is that

21 accurate or inaccurate? A That is accurate.

22 Q So that presumably it would have had to  
23 be in April of 1979? A Yes. Let me

24 explain that because that sound funny.

25 Q It does sound funny.

1 Q What was the general development pattern  
2 in Chatham Township? A I would not be  
3 able to identify anything very specific for you. I mean  
4 other than noting its relative intensity of development  
5 to other areas. And I cannot give you specifics.

6 Q What is its relative intensity of develop-  
7 ment to other areas and what other areas?

8 A Well, I indicated as I could recall a number of  
9 areas that we drove through.

10 Q Is it fair to say that you have no memories  
11 which you can identify in any municipality of that trip  
12 that you made, but rather a sort of aggregate memory of  
13 the day and housing stock you observed on that day?

14 A That's largely true. As I indicated, I was making  
15 observations for the purposes of verifying within my own  
16 mind the statistical analysis that I had performed and  
17 during the course of that day I did do that. That does  
18 not permit me at this time to give you a very accurate  
19 description of my observations on that day.

20 Q Well, to what extent is it not true?

21 I don't understand the question.

22 Q You said my statement was largely true.  
23 To what extent is it not true?

24 A To the extent that I just described to you.

25 Q Would you repeat that?

1 A The reports were completed and, in fact, typed  
2 in April. And I can't remember the date on which I made  
3 that trip, although I can look it up for you. But the  
4 trip was made in the interim of the completion of the  
5 reports and the submission of the reports--

6 Q So you are going off on my word reuder?  
7 Is that causing the confusion?

8 A I want to make it as clear as I can what the  
9 dates were because my memory is not exact.

10 Q All right. That is fair. Was your trip  
11 to Morris County subsequent to the completion of your  
12 work on the April 1979 reports as opposed to the typing  
13 of the reports and their being mailed or however they  
14 were delivered to Mr. Bisgaier?

15 A I believe so.

16 Q Did you come on a Saturday? Was it a  
17 weekend? A No.

18 Q It was a weekday?

19 A Yes.

20 Q How did you come here? Was it by train  
21 or car, trolley, horse?

22 A I took a subway, the Path, and the Erie  
23 Lackawanna train.

24 Q To where? A To Morristown.

25 A And you were met here by whom? You have a

1 a tendency to be very-- A I am hesitating  
2 because I really am not now sure that I came to  
3 Morristown. This sounds awful. I was met by Mr.  
4 Bisgaier and Alan Mallach. That I do remember.

5 Q And that was in Morris County. And you  
6 are saying now you are not sure if it was Morristown?  
7 All our municipalities look the same?

8 (A discussion is held off the record.)

9 A I honestly don't remember. I believe they picked  
10 me up some place other than Morris County and we drove  
11 into Morris County.

12 Q And you took the train to--

13 A And I took the train back.

14 Q You came out into New Jersey by train or  
15 to be specific you took the Path and took the Erie  
16 Lackawanna? A No, I am

17 correcting that now.

18 Q I see. A I believe that  
19 Mr. Bisgaier met me some place else in New Jersey and we  
20 drove into Morris County.

21 Q How did you get to New Jersey?

22 A It would have been by train.

23 Q Okay. Where did you enter Morris County?

24 A I don't remember.

25 Q What was your first destination?

1 A I don't remember the order in which we drove  
2 around. We visited a number of jurisdictions.

3 Q What jurisdictions did you visit?

4 A As I recall--

5 Q You are referring now to a map of Morris  
6 County? A Yes, Chatham,

7 Madison, Florham Park, Morris Township, Morristown,  
8 Hanover, Parsippany-Troy Hills, Randolph, Chester, Mount  
9 Olive, Roxbury, there may have been others.

10 Q Why did you make this trip?

11 A So that I could observe various portions of the  
12 county.

13 Q Is that necessary to your report?

14 A I think it's helpful.

15 Q How? A In that it was  
16 possible for me to observe the various jurisdictions.

17 Q Why is that helpful?

18 A The type of development that has occurred there,  
19 the vacant land.

20 Q But your report does not reflect this;  
21 does it? A No.

22 Q How is it helpful? I mean is it that you  
23 are referring specifically to your own personal satis-  
24 faction or understanding? Is it in any sense helpful to  
25 your role as an expert in this matter?

1 A It's helpful to me in that I have prepared for  
2 the Court a report on demographics, the demographic  
3 characteristics of the jurisdiction, and in that I had  
4 based that report primarily on statistical data it was  
5 helpful to observe the jurisdictions relative to my  
6 knowledge of those statistics.

7 Q Well, you said the report on demographics  
8 is based primarily on statistical data. In what sense is  
9 it based on something other than statistical data?

10 A I said it is based on statistical data.

11 Q You said primarily, but, in any event,  
12 you do not mean primarily. Your report on demographics  
13 is exclusively based on statistics. Is that correct?

14 A That's correct.

15 Q So that your observations in Morris County  
16 did not play a part in that report or any of the other  
17 reports? A That's correct.

18 Q You did not make any changes in the reports  
19 or modifications or any input into the report as a  
20 result of your trip to Morris County?

21 A I don't believe so.

22 Q Or any other trip to Morris County?

23 A That's correct.

24 Q So I am trying to understand why it was  
25 important for you to come.

1 A As I indicated, it was useful to me to observe  
2 the jurisdictions having made the statistical analysis.  
3 If I had observed something that made me think that  
4 statistical analysis was inaccurate, then that would be  
5 reflected in the report.

6 Q Did you? A No, I did not.

7 Q How long did you spend in Morris County?

8 A That entire day.

9 Q What time did you enter Morris County?

10 A It was in the morning.

11 Q Ten o'clock approximately?

12 A I think between 9:00 and 10:00.

13 Q And what time did you leave Morris County?

14 A Between 4:00 and 5:00 I believe.

15 Q Did you stop for lunch?

16 A Yes.

17 Q About an hour?

18 A Approximately.

19 Q What did you observe in Chatham? By the

20 **CONFIDENTIAL** it Chatham Borough or Township that you were

21 **CONFIDENTIAL** in? A Township.

22 Q What did you observe in Chatham Township?

23 A In any of the jurisdictions that I was in I made  
24 no notes or specific observations other than noting the  
25 general development patterns.



1 A Well, as I indicated, the purposes of the trip  
2 for me was to enable me to verify within my own mind the  
3 relevance or accuracy of the statistical analysis that I  
4 performed on the jurisdictions.

5 Q Could you be at all site specific with  
6 respect to your observations?

7 A At this time, no.

8 Q Well, at some future time you may be able  
9 to be? A I don't intend  
10 to, no.

11 Q Why do you say at this point in time, no?  
12 Will there be another point in time which you will be  
13 able to be site specific in respect to your observations  
14 on that trip? A No, as I in-  
15 dicated to you, on that day my intent was to make ob-  
16 servations as to the statistical analysis I had per-  
17 formed on that day. I was being site specific. It was  
18 not my intent to be able to recall all the observations  
19 that I made on that day.

20 Q Did you make notes?

21 **LOG** indicated to you, no, I did not.

22 Q Any memorialization of your observations  
23 of that day? A No.

24 Q Well, are you saying that you were site  
25 specific with respect to your observations on that day,

1 but have no memory of site specific observations at this  
 2 time? A I think I've  
 3 made that clear, yes.

4 Q Well, what were your general observations?

5 A That the statistical analysis that I had per-  
 6 formed at that point were not called into question by  
 7 the observations I made during the day.

8 Q Well, that was your conclusion, but what  
 9 did you actually observe that was relevant?

10 A I indicated to you looking at the nature of  
 11 development that had gone on in the jurisdiction and the  
 12 amount of vacant land.

13 Q What jurisdictions?

14 A Jurisdictions that I indicated to you we drove  
 15 through.

16 Q In the aggregate?

17 A No, we drove through specific jurisdictions and  
 18 I made observations of specific jurisdictions.

19 Q Well, what is it that you observed? Do  
 20 you have any memory? I mean did you observe a certain  
 21 number of apartment buildings, certain types of housing  
 22 predominating?

23 A I don't under-  
 24 stand why you are asking me the same question over and  
 25 over. I have indicated to you why I made the trip, the  
 observations I made on that day, the relevance it had

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1 to the reports I prepared and the amount of specific  
2 memory that I can make available to you today. I have  
3 no other answer other than those answers.

4 Q Do you remember seeing any mobile homes?

5 A Yes.

6 Q Well, you did not mention that; did you?  
7 That is what I am asking. What observations can you  
8 recall at this time? You are telling me now that you  
9 remember seeing mobile homes?

10 A I did identify to you that I made observations  
11 as to the type of development that had occurred. Mobile  
12 homes were included in that.

13 Q What types of observations had you made as  
14 to the types of development that had occurred?

15 A The observations that I made, as I have indicated,  
16 are that there were not inconsistencies with the data  
17 and analyses that I had prepared at that point.

18 Q Physically what did you see when you drove  
19 through Morris County? A I saw--observed  
20 development that had occurred of a variety of types.

21 Q What types? A Residential.

22 Q What type of residential? Could you  
23 characterize it any more specifically than residential?

24 A You mean within the county?

25 Q Within the areas you drove through.

1 A Obviously we observed single-family residential  
2 areas, we observed some multi-family development, I re-  
3 call looking at a couple of mobile home parks and nothing  
4 more specific than that.

5 Q Do you remember where the mobile home  
6 parks were that you observed?

7 A Not at this time.

8 Q Do you have any specific memory of those  
9 mobile home parks, that is, did you judge them to be  
10 good mobile home parks or bad mobile home parks or in-  
11 tensely settled mobile home parks or too spread out  
12 or anything of that nature?

13 MR. BUCHSBAUM: It is not really what this  
14 witness is asked to testify about. She is being  
15 asked to testify about fair share plans. I think  
16 she has given you her observations and the answer  
17 she just gave you set forth the range of her ob-  
18 servations. I think beyond that we are just  
19 beating a dead horse. Let's go on to something  
20 else.

21 MR. SIROTA: That is not my conclusion.  
22 You may see that this witness is directed to her  
23 specific goal, however, for the purposes of dis-  
24 covery I do not choose to limit myself to that  
25 particular goal, that is, that this witness has a

1 fair share--

2 MR. BUCHSBAUM: Then you are asking ir-

3 relevant questions. If you want to waste every-

4 body's time and your own money doing that, I

5 suppose I cannot stop you. But I wish we would

6 not go in that direction so we could save all our

7 time.

8 Q Would you answer the question, please?

9 A I did make observations on all of the development

10 that I saw. I recall there being a difference in the

11 mobile home parks that I viewed.

12 Q What were the differences?

13 A One was maintained better than the other.

14 Q Differences in density?

15 A One was more dense than the other.

16 Q Which was better maintained, the one that

17 was more dense or least dense?

18 A The one that was more dense.

19 Q But you do not remember where either mobile

20 home park was?

A Not at this

21 time.

22 Q How many different multi-family housing

23 developments did you see?

24 A A number.

25 Q And do you remember which municipalities

1 they were located in? A No.

2 MR. SIROTA: Could we go off the record  
3 for a second?

4 MR. BUCHSBAUM: Yes.

5 (A discussion is held off the record.)

6 (A recess is taken.)

7 Q Did you make any observations on that trip  
8 with respect to the situation relating to sewers?

9 A No.

10 Q Septic? A No.

11 Q Soil conditions?

12 A No.

13 Q Any environmental conditions?

14 A No.

15 Q You have quoted Oakwood and Madison  
16 numerous times in the report. Isn't that correct?

17 A A few times, yes.

18 Q I accept a few times, as many times as are  
19 provided in the reports. And they will speak for them-  
20 selves.

21 My question is does that indicate you are generally  
22 familiar with Oakwood and Madison?

23 A We have talked about that before. I have read  
24 the opinion.

25 Q And do you know Oakwood and Madison

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1 requires that the planner considering a fair share plan  
2 takes into account all the environmental concerns?

3 A I'm not sure.

4 Q You mean you do not know?

5 A I don't know.

6 Q Have you done or read any studies on  
7 transportation affecting Morris County?

8 A Nothing other than the Morris County master plan.

9 Q You have not made any studies of your own?

10 A No.

11 Q How about studies which either you have  
12 made or read relating to the labor force or job availa-  
13 bility or projected growth in either of those categories?

14 A No information other than what would be available  
15 in the data and reports that I provided to you on that  
16 long list.

17 Q Which long list was that?

18 A I gave you I think three pages of reports and  
19 data that I had used.

20 Q Is that DB-12 for identification?

21 A Yes, it is.

22 (A discussion is held off the record.)

23 Q What do you consider reasonable travel  
24 time for commuting? A I don't think  
25 there is a standard for reasonable commuting time in

1 that reality is that persons select a wide range of  
2 travel times that they will undertake to get to and from  
3 work.

4 Q But can't you draw conclusions, generalized  
5 conclusions, for the purposes of planning?

6 A One could observe the patterns and identify what  
7 is characteristic of the population.

8 Q Do you think those have changed since  
9 1970 or 1976?

10 A The amount of  
11 travel time that the population is willing to spend in  
12 getting to and from work?

13 Q Yes. A I don't know.

14 Q Is that important to know for the purposes  
15 of the dispersion concept which is built into the D.C.A.  
16 report and the D.C.A. report since you have modified it?

17 A I don't believe so.

18 Q What about the economics of commuting?  
19 Have they changed since '70 or '76 or even '78?

20 A Transportation generally is more expensive.

21 Q But it is greatly more expensive; isn't it?  
22 Aren't the costs of transportation, at least by automobile,  
23 hasn't that gone up by a much greater rate than the  
24 C.P.I.?

25 A I wouldn't be  
surprised to find out that that is true.

Q How does that affect the allocations that



1 are made by D.C.A. and the allocations that you will  
2 make to these defendant municipalities? If the cost of  
3 commuting is more, isn't it less likely that a low or  
4 moderate income person can live distant from a job?

5 A That would make it less desirable.

6 Q Is it less likely that they would choose  
7 to do so? A Probably.

8 Q Well, does that affect the amount of  
9 allocation you are making from the central city areas  
10 out to the suburbs? A Well, in fact,  
11 it does not. In the New Jersey D.C.A. plan, as I have  
12 described it to you, it indicates that that does not  
13 happen. The allocation is based on, in part, as I have  
14 indicated, a factor for employment growth which does  
15 treat the concept of the ability to choose a housing  
16 location close to employment.

17 Q Well, that is correct in part. But, for  
18 example, the present need of Jersey City is not intended  
19 to be met by Jersey City, is it, exclusively?

20 A Probably not.

21 Q It is allocated out?

22 A I think so.

23 Q Now, isn't where that is allocated out to  
24 affected by the cost of commuting and transportation?

25 A Not in the New Jersey D.C.A. plan, no.

1 Q Shouldn't it be?

2 A I don't believe so.

3 Q Why not? A I think that's  
4 a factor of personal choice.

5 Q But you said people are influenced by the  
6 cost of commuting. Isn't personal choice going to  
7 change as a result of this huge increase of the cost  
8 of commuting by automobile?

9 A It may.

10 Q Shouldn't that be a factor or consideration?

11 A As I indicated, I don't think so.

12 Q Why not? A Because it's  
13 a factor of personal choice.

14 Q But presumably this is designed so that  
15 the housing will be where people want it. Is that fair  
16 to say? A It's an approxi-  
17 mation of that, yes.

18 Q So that if the desire of people change,  
19 doesn't that affect where they desire housing to be  
20 located? A That would be

21 true. The New Jersey D.C.A. incorporated, as I indicated,  
22 a factor for employment growth.

23 Q No, but I am being specific now. I am  
24 talking about that one little sector, the present need  
25 of Jersey City that has been allocated out. And I am

1 saying, I am asking, isn't where you allocate it out  
2 to which presumably reflects where those people presently  
3 in Jersey City would like to live affected by the in-  
4 crease in the cost of commuting?

5 A I guess I don't really understand your question  
6 because I don't really know another way to answer it.

7 Q Well, you are saying that as a result of  
8 the increase in the cost of commuting, you are saying  
9 that that affects people's choice of habitat?

10 A It might.

11 Q And you are also saying, are you not, that  
12 the allocation takes into account people's probable  
13 choice of habitat? A That's correct.

14 Q So aren't you saying that the allocation  
15 should be adjusted to reflect the probable effect of  
16 the cost of commuting on people's choice of place of  
17 habitat? A No, I'm not.

18 I said that a factor for employment growth was incorpor-  
19 ated and I think that's sufficient.

20 Q Well, that is saying the work is going to  
21 go out and meet the people in the areas where you have  
22 allocated it. Is that correct?

23 A No, that's saying that the housing units are  
24 allocated to a jurisdiction based on, in part, the em-  
25 ployment growth that has occurred there.

1 Q Correct. I understand that. And I am not  
2 disputing that. Are you saying that the dispersion is  
3 only based upon the growth in jobs in the municipalities  
4 in which you are making the allocation?

5 A You know the answer to that question. As I have  
6 indicated, there are four factors that they have used  
7 in the allocation of prospective housing need. Employ-  
8 ment growth is one of those.

9 Q But isn't it true that an element of the  
10 allocation, if not an element, a concern would have to  
11 be how willing people are to commute and how far they  
12 are willing to commute?

13 A I think I have answered that. I do not think  
14 that is a factor that is incorporated into the housing  
15 allocation map and to the extent that the relationship  
16 between jobs and housing is a concern, New Jersey D.C.A.  
17 has incorporated that factor as one of four in its  
18 allocation of prospective housing need.

19 Q And it is your opinion that the way that  
20 they have incorporated it is sufficient and acceptable?

21 A That's correct.

22 Q What do you perceive to be the goals of  
23 zoning and planning in general?

24 A Zoning is a mechanism employed by a jurisdiction  
25 to regulate the development and use of land.

1 Q What are legitimate goals of zoning and  
2 planning?

A Well, I believe  
3 it's stated within the State enabling act that there are--

4 Excuse me for a second. Did you say goals of zoning?

5 Q Yes. A They identify  
6 I suppose objectives of zoning such as the protection  
7 of health and safety and general welfare of the public.

8 Q Have you ever testified in a proceeding  
9 on behalf of a municipality?

10 A No.

11 Q And you advised previously that you had  
12 never done a plan or worked for a municipality except  
13 one I believe? A No.

14 Q Have you done a market demand study?

15 A No.

16 Q Do you know if D.C.A. ever did one?

17 A I don't.

18 Q Have you read a housing demand or market  
19 demand study for Morris County?

20 A No.

21 Q Does D.C.A. take into account the type of  
22 job growth, the type of industries that are either  
23 presently in a given area or projected to come into an  
24 area? A No.

25 Q So that presumably the growth that they

1 project could be the firms composed entirely of nuclear  
2 physicists? A That would be  
3 unlikely.

4 Q But it could as well be that as anything  
5 else. Is that correct? A Well, the em-  
6 ployment growth factor is all that employment covered  
7 by the New Jersey Unemployment Compensation Law.

8 Q Well, they do not identify the particular  
9 kind of employment growth that they perceive to be  
10 coming into a particular area?

11 A That's true.

12 Q Can you envision environmental constraints  
13 on growth of the infrastructure in a particular munici-  
14 pality? A Yes.

15 Q Such as what?

16 A I don't know.

17 Q You can envision it, but you do not know--

18 A I know that there are environmental constraints to--  
19 at times to the provision of public water and sewer.

20 Q Such as what?

21 A I don't know specifics.

22 Q What about with respect to the growth of  
23 the road network? A That could be  
24 possible.

25 Q And none of this is taken into account in

1 the New Jersey D.C.A. report or the report as modified  
2 by your critique? A Not other than  
3 in its identification of vacant developable land.

4 Q Do you have any feel or can you reply to  
5 a question which is essentially what are the numbers of  
6 low and moderate income persons who would move to the  
7 defendant municipalities absent all zoning?

8 A No, I cannot.

9 Q Is that important to know?

10 A I don't think so.

11 Q Why not? A Well, as I have  
12 indicated, the housing allocation plan itself attempts  
13 to incorporate factors that approximate what would  
14 happen if low and moderate income persons could choose  
15 where they wanted to live. And I believe that the  
16 housing allocation plan is the most accurate way we have  
17 of identifying that to date.

18 Q There are other ways of attempting to  
19 identify that; are there not?

20 A I'm not sure what you mean.

21 Q Well, aren't there studies or surveys as  
22 to where people would move just based upon their choice  
23 and not based upon availability of housing?

24 A Yes, we talked about those surveys and they have  
25 been done. They tend to be much more general in that

1 would a household given the opportunity select to live  
2 outside a central city as opposed to inside a central  
3 city. And I cannot recall a survey that is specific  
4 as to jurisdiction that a household would select.

5 Q First, with reference to the ones that  
6 you say are very general, that is, would you live in a  
7 central city or outside, do you feel those surveys are  
8 useful? A I think they  
9 are useful to the extent that they support generally the  
10 objective of a housing allocation plan in that households  
11 should be given a choice in the opportunity that they  
12 have for selecting the location of a housing unit. The  
13 surveys are probably not particularly reliable beyond  
14 that point.

15 Q Why is that? A It's very  
16 difficult to develop a survey that asks hypothetical  
17 questions to the extent that that type of survey must do.

18 Q Do you think it would be valuable having  
19 a site specific survey? A Not particularly.

20 Q Why not? A For the most  
21 part planning is not done that specifically and that  
22 kind of a survey would be extremely costly and time  
23 consuming.

24 Q Well, absent the problem of cost and con-  
25 sumption of time, what would your concerns be with the



1 survey? A I don't think  
2 it would be particularly useful.

3 Q Why not? A As I have in-  
4 dicated, planning is not usually undertaken at that  
5 scale. We don't do those kinds of surveys at any income  
6 level.

7 Q But if one were done, your answer seems to  
8 be that we do not usually do that kind of survey--

9 A I don't see what purpose it would serve.

10 Q Would it show where people want to live  
11 absent the restrictions which you allege exist and which  
12 are the central concern of this lawsuit?

13 A To the extent that a survey can identify that,  
14 which I think is questionable. Secondly, it is difficult  
15 to ask questions on a survey--It would identify the  
16 choice that a household might make at that point in time  
17 given the knowledge that a household may have at that  
18 point in time. It may or may not reflect what may happen  
19 in reality and it would be indicative only of the  
20 selection made by the households at that time.

21 Q We spoke earlier about the completion of  
22 your report and I believe you advised that you will be  
23 making no more adjustments to the D.C.A. report than  
24 those in your present reports, but that you would likely  
25 carry that through to presumably arrive at a different

1 allocation than that assigned by the D.C.A. report.

2 Is that accurate? A That's correct.

3 Q So that we can then depend on the fact

4 that the additional work you will be doing will be

5 strictly mathematical? A That's correct.

6 Q So that theoretically I could get out my

7 little pocket calculator and do the same thing?

8 A That would save me a lot of time.

9 Q Happily for me my pocket calculator isn't

10 that accurate. As a matter of fact, it's broken down

11 completely.

12 Do you have a projected date of completion?

13 A I don't.

14 MR. SIROTA: Do you understand, sir, that

15 we reserve the right to ask additional questions

16 based upon any completion of the report?

17 MR. BUCHSBAUM: Yes.

18 MR. SIROTA: Can you state for the record,

19 Mr. Buchsbaum, whether this witness will be a

20 witness at the minitrials or whether the witness

21 will be a witness only at the maxitrials?

22 MR. BUCHSBAUM: Could we go off the record

23 for a second?

24 MR. SIROTA: Surely.

25 (A discussion is held off the record.)

1 MR. BUCHSBAUM: It is my present under-  
2 standing that Miss Brooks will be used only at  
3 the maxitrial.

4 MR. SIROTA: You say it is your present  
5 understanding?

6 MR. BUCHSBAUM: Correct.

7 MR. SIROTA: Therefore, presumably--

8 MR. BUCHSBAUM: If there is any change in  
9 our view, you will be notified, but that is our  
10 intention.

11 MR. SIROTA: And if there is a change in  
12 that we will be notified in time to take  
13 additional depositions of the witness?

14 MR. BUCHSBAUM: That is correct.

15 MR. SIROTA: And to obtain whatever expert  
16 testimony we would need in reply?

17 MR. BUCHSBAUM: We do not anticipate any  
18 change in that position.

19 MR. SIROTA: But is my statement correct?

20 MR. BUCHSBAUM: Your statement is correct.

21 MR. SIROTA: Is it also fair to say that  
22 this witness's testimony is not site oriented?  
23 That is that the witness will offer no specific  
24 testimony as to any particular municipalities?

25 MR. BUCHSBAUM: The witness's testimony

1 will be as outlined in the report and will be  
2 specific as to municipalities with respect to  
3 allocations as she just indicated.

4 MR. SIROTA: No, she has not done that  
5 yet. I assume she will complete the work she  
6 just said she will be doing and that will result  
7 in some municipal numbers.

8 Q Is that correct?

9 A That's correct.

10 Q What information, Miss Brooks, do you  
11 have about the Township of Rockaway?

12 MR. BUCHSBAUM: Outside of statistical  
13 data?

14 Q Well, you have some statistical data in  
15 DB-4. Is that correct? A Yes, all the  
16 information I have about the Township of Rockaway would  
17 be indicated in these reports.

18 Q These reports meaning DB-4?

19 A Is DB-4 the demographic one? Yes.

20 Q That is the April '79 report.

21 A That's correct, plus the data that I indicated  
22 may be used in the New Jersey D.C.A. report.

23 Q Okay. Did you make any specific ob-  
24 servations of the Township of Rockaway? You indicated  
25 previously that on your April 1979 trip to Morris County

1 you were not in the Township of Rockaway. Is that  
2 accurate? A Yes.

3 Q Have you made any trips subsequent to the  
4 trip we discussed in April of 1979 to Morris County  
5 other than these depositions?

6 A No.

7 Q Do you intend to make any more trips to  
8 Morris County for the purposes of this case?

9 A That decision has not been made.

10 Q Well, do you anticipate the need to make  
11 additional trips for the purposes of this case?

12 A I don't anticipate the need. I can anticipate  
13 deciding to do that.

14 Q Well, why would you decide to do that?

15 A I might be interested in doing so.

16 MR. BUCHSBAUM: You are, in effect, asking  
17 her whether she is going to stay out of Morris  
18 County before the trial. And she, of course, will  
19 not commit herself to that. And I think her  
20 answers flow from wanting to retain that discretion.

21 Q No, my question relates to whether you  
22 think there is a need or you can anticipate a need to  
23 come back into Morris County to make observations relating  
24 to this lawsuit. And you said that that could happen?

25 A I could make additional trips. I do not anticipate

1 the need to do that in order to alter or add to any  
2 report that I've submitted to the Court.

3 Q Do you anticipate the need to make such a  
4 trip to bolster or affect in any way your testimony in  
5 this matter? A I don't think  
6 so.

7 Q Okay. Would you agree that if, and I  
8 allow Mr. Buchsbaum to consider this, too, that if you  
9 do make such a trip in a manner which relates to your  
10 testimony, to advise us of what you have done?  
11 Apparently you have advised us that you have no site  
12 specific information other than statistical. Is that  
13 accurate? A That's correct.

14 MR. SIROTA: My concern is, Mr. Buchsbaum,  
15 that she come in and obtain site specific in-  
16 formation other than statistical. At that point  
17 I would be concerned and would like to ask about  
18 what information she retained.

19 MR. BUCHSBAUM: I think if there is any  
20 oral or written report beyond what she already  
21 outlined with respect to mathematical work our  
22 obligation to inform you of that report would  
23 flow from your rights to amended interrogatories  
24 and right to discovery. That will flow from the  
25 existing discovery law in the case.

1 MR. SIROTA: Does that mean you are  
2 obligated to advise us?

3 MR. BUCHSBAUM: If there is an additional  
4 report oral or written based on observations, we  
5 will so advise you.

6 MR. SIROTA: But couldn't you see that she  
7 would comment in and make site specific obser-  
8 vations and not make a report either oral or  
9 written?

10 MR. BUCHSBAUM: I think that would be un-  
11 likely in preparation of trial.

12 MR. SIROTA: If she does do that, will you  
13 let us know?

14 MR. BUCHSBAUM: If she simply makes a trip  
15 to the county?

16 MR. SIROTA: No. My concern is that in  
17 the event Miss Brooks makes observations in the  
18 county site specific either to the municipalities  
19 or to the defendants or the county which would  
20 affect her testimony at trial, whether or not she  
21 renders an oral report or not. You advised that  
22 that is extremely unlikely. My concern is that  
23 if it does occur, that we be advised. I do not  
24 want to show up at trial and have a situation  
25 where Miss Brooks knows absolutely every grain of

1 sand in every individual municipality.

2 MR. BUCHSBAUM: If there is going to be  
3 anything which would supplement her testimony  
4 that we anticipate beforehand, it will be fair  
5 to so inform you.

6 MR. SIROTA: So your agreement is con-  
7 tingent upon your anticipating that it will  
8 affect her testimony beforehand?

9 MR. BUCHSBAUM: Yes, I cannot anticipate  
10 that she goes into the county, sees something,  
11 does not include it in her direct testimony and  
12 somehow it comes out on cross. I cannot see we  
13 can possibly anticipate that.

14 MR. SIROTA: Okay. That is your position.

15 MR. BUCHSBAUM: Yes.

16 MR. SIROTA: I have no further questions  
17 at this time. I thank you very much for your  
18 patience for a rather extended period.

19 Do you have any questions Mr. Buchsbaum?

20 (A discussion is held off the record.)

21

22 CROSS-EXAMINATION BY MR. BUCHSBAUM:

23 Q Miss Brooks, earlier in the deposition you  
24 were asked where your trip to Morris County in April of  
25 1979 originated and where you were met by Mr. Bisgaier.



1 Have you refreshed your recollection as to that?

2 A Yes, that was in Trenton, New Jersey.

3 Q That you were met by them?

4 A Yes.

5 MR. SIROTA: I just want to explain to  
6 you, Miss Brooks, that I am one attorney and that  
7 there are a whole bevy of defendants in this  
8 lawsuit. And they will likely have questions with  
9 respect to their own situations or general  
10 questions so that you should not consider this  
11 deposition completed.

12 As I advised earlier, it's not even com-  
13 pleted with respect to me in that I reserve the  
14 right to ask additional questions when you com-  
15 plete your report. But you should also under-  
16 stand that there are other defendants and other  
17 attorneys. Thank you.

18 MR. BUCHSBAUM: We all should understand  
19 that we retain the right to seek a protective  
20 order should things get unduly repetitious.

21 (The witness is excused.)

22 \* \* \* \* \*

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

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MORRIS COUNTY FAIR HOUSING :  
COUNCIL, et al,

Plaintiffs,

vs.

CERTIFICATE

BOONTON TOWNSHIP, et al,

Defendants.  
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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 MARY E. BROOKS, 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.

1516  
CO

*Mark Schaffer*  
A Notary Public of the State of New Jersey

Dated: 5/29/79

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