

ML - Morris Canty Fair Housing Council

9/26/79

v. Baenton Twp

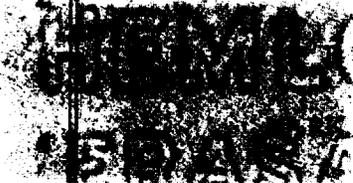
Deposition of Alan Mallach - direct
exam by Ms. MK Dermott

P-131

ML 000905 S

Morris Township, New Jersey
Tuesday, August 28, 1979

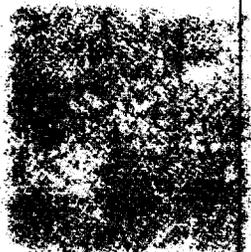
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



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 Tuesday, August 28, 1979,
commencing at 1:15 o'clock.

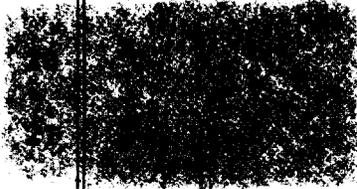
A P P E A R A N C E S :

THE PUBLIC ADVOCATE
BY: KENNETH E. MEISER, ESQ.,
For the Plaintiff.



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

MARK SCHAFFER
CERTIFIED SHORTHAND REPORTER



I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



DIRECT

CROSS

Ms. McDermott 3

E X H I B I T S

NUMBER

DESCRIPTION

DP-1

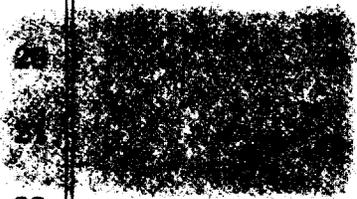
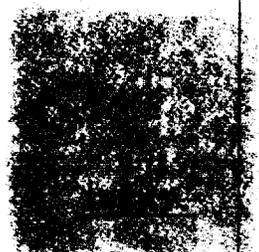
Allan Mallach Report
on Passaic Township

55

DP-2

Letter dated June 5, 1979

55



1 A L A N M A L L A C H , previously sworn testified
2 as follows:

3 EXAMINATION BY MS. MC DERMOTT:

4 MR. MEISER: I assume we have agreed the
5 compensation will be as it has been on all the
6 other depositions?

7 MS. MC DERMOTT: Right.

8 MR. MEISER: And he will get his pro rata
9 share of transportation between the two people
10 participating today?

11 MS. MC DERMOTT: That is right
12 agreed, too. Okay.

13 Q Mr. Mallach, are you familiar with Passaic
14 Township? A In general, yes.

15 Q What is the basis of your knowledge, your
16 familiarity, with that Township?

17 A Well, I have traveled through the Township. And
18 I have reviewed, although not in great detail, the
19 Master Plan and the Master Zoning Ordinance of the
20 Township.

21 Q When you say that you traveled through
22 that Township, do you remember on what occasion you
23 were there? A I believe I've passed
24 through the Township on a couple of occasions. I made
25 a specific visit to look at the Township in connection

PENGAD CO., BAYONNE, N.J. 07002 FORM 2046

1 with this litigation. I believe it would have been
2 late spring or early summer of this year.

3 Q Okay. Did you make any particular
4 observations of the Township at that time?

5 A Well, I made a number of, not written
6 observations, mental notes, certainly.

7 Q Could you explain?

8 A Well, I was keeping myself open and looking as
9 I went along.

10 Q What did you notice about Passaic
11 Township? A Well, Passaic Township

12 essentially a suburban township with a set
13 pattern, I guess it's characterized by the
14 stations on the railroad line and suburban growth
15 sort of growing outwards from them. I guess the housing
16 seems to be predominantly single-family detached houses.
17 There seems to be a fair amount of small scale sub-
18 division and construction activity under way. There are
19 fairly intensive commercial uses, I guess in the
20 [redacted] area principally; a fairly large scale
21 [redacted] commercial center; and a fair amount of vacant land
22 around the central, more developed part of the Township.

23 Q Okay. You said there was intensive
24 commercial uses? A Yes.

25 Q Could you explain what you mean by

1 intensive? A Well, on I think it's --
2 yes, Valley Road in the Stirling area, there are a
3 [REDACTED] of shopping centers with quite a large number of
4 [REDACTED] a wide variety of different types of shopping
5 goods available, capable of serving a fairly large
6 population.

7 Q Did you make any observations regarding
8 any industry in Passaic Township?

9 A As I noted there is a great deal of commercial
10 activity. I think there is some light industry inter-
11 spersed with it along Valley Road, but I didn't observe
12 any major industry.

13 Q Could you tell me what portion of
14 Township did you observe the vacant land that is
15 available in the town?

16 A Well, there is vacant land along -- Let me
17 remind myself of what some of these streets are. There
18 is vacant land along Long Hill Road. There is vacant
19 land on the other side from Stirling along Valley Road.
20 [REDACTED] just a general impression rather than trying to
21 [REDACTED] specific parcels.

22 Q You did not travel all around the
23 Township? A No.

24 Q Okay. Could you tell me what part of
25 Morris County Passaic Township is located?

1 A Southern.

2 Q Okay. Do you know what towns border
3 [REDACTED] Township?

4 [REDACTED] Well, it's on the edge of the county. It's
5 near -- I guess Harding Township is the principal other
6 township in the county that it bordered and I guess it's
7 Union County that it tends to border for most of the rest.

8 Q Do you know what Passaic Township's
9 relationship is to any particular central city?

10 A Well, Passaic Township is clearly within
11 overall New York Metropolitan area. And it's part of
12 an overall network that I guess you could say connects
13 Newark as well as to New York City by virtue of its
14 transportation and its location.

15 Q When you say by virtue of its transporta-
16 tion, are you referring to any particular means of
17 public transportation or road system?

18 A Well, the thing I had specifically in mind was
19 the railroad system which I believe does run into that
20 [REDACTED]

21 Q That's the Erie Lackawanna?

22 A Yes, I guess that goes eventually to Hoboken and
23 from Hoboken connects into New York City. And also the
24 overall road and highway network in that region
25 generally is radial relative to the New York-Newark

1 area.

2 Q Are you familiar with the particular road
3 within that Township itself?

4 I haven't done a study of them.

5 Q Do you know whether any interstate high-
6 ways go through Passaic Township?

7 A Through Passaic Township? I believe Interstate
8 78 comes extremely near Passaic Township. I don't
9 recall whether it actually comes inside the borders of
10 the Township or not.

11 Q On that trip that you made in
12 of this year, did you make any observations
13 roads within the Township other than the int

14 A In what regard?

15 Q Whether they were two-lane, four-lane?
16 I mean how easily could you get around in that Township?

17 A Well, the roads seem principally to be two-lane
18 roads. There seems to be no difficulty getting around
19 in the Township. They did not appear to be particularly
20 ed.

21 Q Do you know whether there was any major
22 road that connected Passaic Township with its
23 surrounding communities?

24 A I don't know the specific road. There are
25 county roads that connect.

1 Q But you are not aware of any particular
2 road? A No, I don't know the numbers.

3 Q Do you know the size of Passaic Township
4 as acreage or square miles?

5 A Not offhand. I'm sure I read it, but it didn't
6 stick.

7 Q You have not done any studies regarding
8 the area? A No, I reviewed, as I
9 mentioned, Master Plans. I'm sure it was in there.

10 Q Do you know whether Passaic Township is
11 considered to have a large or small gross acreage?

12 A I would probably describe it as being
13 medium, not especially large or small.

14 Q Perhaps you could tell me what you would
15 consider a large gross acreage for a township in New
16 Hersey? A Okay. Now, you have to draw

17 a distinction here because there is a usage in the
18 Mount Laurel decision in terms of sizable land area, and
19 certainly my reading that is not the same as large.

20 land area simply means that there is ample land
21 development. A large municipality might be one of,

22 I really don't know, 10, 20, 30 square miles. I find
23 the whole notion of trying to put numbers and percentages
24 on these things to be essentially meaningless.

25 Q Except everybody seems to do it?

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 A Actually only one person really does it. And,
2 unfortunately a lot of people pay more attention to his
3 [REDACTED] than it deserves.

4 Q Okay. What would you consider a small
5 acreage, a very small town?

6 A One square mile, two square miles.

7 Q Okay. A Typically the
8 boroughs, villages.

9 Q Are you familiar with the topography of
10 Passaic Township? A Again in [REDACTED]

11 general way.

12 Q Okay. Could you tell me what [REDACTED]
13 know about this community?

14 A Well, generally speaking Passaic Township is at
15 least in part on a slope area. In fact , when you go
16 along Long Hill Road you are very much aware that there
17 is a general, what would it be, northwest to southeast
18 slope in that part of the Township. Then it tends to
19 level off slightly below that in the area around the

20 [REDACTED] -- The area that's generally more developed,
21 [REDACTED] road, is a flat area. And then I believe some
22 point beyond that, still going in the general south-
23 easterly direction, that tends to be another dip of
24 sorts. And then there is either a flood plain or marsh-
25 land. I think it's flood plain.

1 Q You observed this slope on Long Hill Road?

2 A Yes.

3 Q Could you characterize that slope in
4 terms of its developability?

5 A No, I really couldn't. My impression was that it
6 varied quite widely. And so there are undoubted areas
7 in it that are more developable and those that are less.
8 You would really have to do a much more site specific
9 study.

10 Q And you have done no studies
11 particular slopes in Passaic Township?

12 A No.

13 Q Do you know the present population
14 Passaic Township?

15 A I believe it's in
16 the area of 10,000 people.

17 Q What do you base that figure on?

18 A That's my recollection of what I read. I do
19 have some of those numbers around here somewhere.

20 No, I seem to have over-estimated it. According
21 to the 1970 census, the population of the Township is
22 about 7400 people.

23 Q Are you aware of any growth in population
24 in that Township during the past ten years?

25 A Well, there has been ongoing construction, not
of a massive level, but ongoing. I haven't done any

1 analysis as to what population increase might have
2 resulted from it.

3 Q You mentioned the ongoing construction.
4 the basis of that knowledge?

5 A Well, let me see. I think I had a table.

6 Well, it's based first on having seen a number
7 of houses under construction driving through the town.
8 And secondly, the statistics indicate that there have
9 been about 200 building permits issued since 1970 in the
10 Township.

11 Q What statistics are you referring to?

12 A These are the building permit reports from the
13 Department of Labor and Industry.

14 Q So you would not have any kind of percentage
15 as to a population change in this particular Township?

16 A No.

17 Q Okay. Could you explain for me again the
18 term that you used before for light industry that was
19 in Passaic Township?

20 Yes, this would be small plants doing things of
21 electrical or mechanical nature.

22 Q Okay. Did you observe many of these?

23 A I really don't recall.

24 Q Okay. Are you familiar with the number of
25 people who are employed in Passaic Township?

1 A I have a statistic on that somewheres. In 1977
2 there were approximately 1400 of what are known as covered
3 [REDACTED] Passaic Township. These are jobs that are
4 [REDACTED] under the Unemployment Security System, which
5 usually accounts for something like 70 to 80 percent of
6 the total in any area.

7 Q Okay. And these are jobs of people who
8 worked within the confines of Passaic Township?

9 A That's correct. So the total would probably be
10 somewheres close to 2,000.

11 Q Okay. Do your statistics or do you know
12 what types of employment are existing in Passaic Town-
13 ship? A No.

14 Q Okay. Would you know the number of Passaic
15 residents who are employed outside of the Township?

16 A No.

17 Q Would you know any percentage of the
18 residents that are employed outside the Township?

19 A No.

20 [REDACTED] Okay. I believe in your depositions by
21 [REDACTED] Non Defense Committee, you mentioned or stated
22 that you did some vacant developable land studies. One
23 I think was Mahwah, Mahwah Township.

24 (A discussion is held off the record.)

25 MS. MC DERMOTT: For the record, I just

1 referred Mr. Mallach to a section of his
2 deposition of April 9, 1979 by the Common Defense
3 Committee which dealt with on Page 1.3 with
4 whether he has ever made a study as a consultant
5 or in any other capacity to determine if a
6 municipality was developed. I had used the term
7 "vacant developable land," but I was specifically
8 referring to that line of questioning in the
9 deposition.

10 Q Has your memory been refreshed?

11 A Yes, yes.

12 Q When you did the study to determine whether
13 the community was developed, did you look to
14 there was vacant land within that community?

15 A Yes.

16 Q Could you define what vacant land is?

17 A Well, this --

18 Q Excuse me. As opposed to vacant developable
19 land.

20 A I see. Vacant land refers to all
21 that does not have a building or something of a
22 developable nature on it.

22 Q Okay. Could you clarify that a bit?

23 For example, if you had a single-family house on a two-
24 acre lot, would any portion of that lot be considered
25 vacant land? A It could be. There are

1 differences of opinion. There is really no strong rule
2 about where you draw the line.

3 [REDACTED] For example, certainly most people in looking --
4 [REDACTED] example, if you are trying to do a vacant land
5 analysis of a town and you saw a ten-acre lot with a
6 single-family house in one corner, I think most people
7 working in the field would consider the bulk of that lot
8 to be vacant land. If it was a five-acre lot or two-acre
9 lot, some people consider for the purpose of analyzing
10 land that you sort of give up to one acre for a house
11 and then consider everything else vacant. [REDACTED]

12 Q When you are talking about people [REDACTED]
13 these types of studies, could you refer me to any
14 specific source or any person who has done studies under
15 one particular method or the other?

16 A Well, I don't know that there's a standard source.
17 I mean everybody who works in planning, land surveying,
18 and similar areas does this kind of thing from time to
19 time. So you use your judgment basically.

20 [REDACTED] Q Do you in your opinion is any one
21 particular methodology better than the other?

22 A No, we are just talking about this question of
23 where you draw the line in terms of acreage or parcels.
24 I believe you have to look -- The ideal thing is if you
25 look at the specific parcel and look at where the house

1 is located on the parcel, perhaps even the kind of house
2 it is.

3 Q Okay. In doing this type of vacant land
4 study, would it be possible just to use the tax assessment
5 maps of a community?

6 A You could get a pretty good idea from the tax
7 assessment maps, yes.

8 Q Okay. A You might have to
9 refine it a little, but it would be a pretty good idea.

10 Q For example, if there was a particular
11 large lot, then you would go out and examine
12 particular site? A Yes, exact

13 Q I see. Okay. Could you define
14 what you would consider vacant developable land?

15 A Okay. I have not given a hard-and-fast definition
16 of that because I think developability is by its nature
17 not a hard-and-fast kind of thing. Now, the stage, for
18 example, when they did their housing allocation study,
19 they defined vacant developable land as vacant land
20 land in public ownership, land with developers or
21 slope, land in wetlands, and land that was
22 categorized as qualified farmland.

23 Now, certainly the farmland category is in-
24 appropriate at that place -- in that context.

25 Q Could you explain why?

1 A Well, the issue is whether the land is
2 developable, whether it can or cannot realistically be
3 developed. And farmland, almost by definition, is as
4 developable if not more so than most non-farmland.
5 So I think what they're doing is trying to confuse a
6 policy choice with an objective judgment.

7 Q Would you deal with qualified farmland
8 in another manner in determining what was vacant,
9 developable land? A I would consider it to
10 be developable unless there is a particular [redacted] with
11 a particular parcel to feel otherwise.

12 Q Would you in any way deal with [redacted]
13 farmland perhaps in making a fair share allocation
14 whatever? Would it enter the picture at all?

15 A I have not done so when I have considered fair
16 share issues. I would not say it's absolutely out of
17 the question, but it seems a little strained.

18 Q Do you know, are you familiar with, what
19 is considered wetland in reference to that D.C.A. Study?

[redacted] No.

20 Q What about land that is by public owners?

22 A Well, that is an all inclusive listing. It
23 includes land that is owned by an entity of local,
24 county, state, or federal government.

25 Q Does it include land perhaps that is tax

1 exempt by virtue of being owned by a church?

2 A No, well, I shouldn't say so quite so definitively,

3 as far as I know it does not.

4 Q You have given me the definition of vacant
5 developable land in reference to the D.C.A. Study. When
6 you have done these vacant land developable land studies,
7 have you used a different criteria?

8 A I've never -- And certainly if the discussion in
9 the deposition is meant to suggest that, it should be
10 qualified. I have not done firsthand, independent studies
11 to arrive at specific figures of vacant developable land.
12 I've relied wherever possible, and I think that's good
13 practice, on the data that's produced by official
14 governmental bodies as much as possible, sometimes
15 adjusted with the farmland, which is also officially
16 documented information.

17 So, for example, in the Mahwah examples that I
18 cited, there was reviewing information both prepared
19 by the State and the County, as well as by the Township
20 Planning Consultant. In the West Milford situation, the
21 same is true.

22 Q When you say you referred to State material
23 in finding out what land was vacant and developable, did
24 you make use of the D.C.A. Study?

25 A The D.C.A. Housing Allocations?

1 Q Yes. A Yes.

2 Q At any time did you refer to or see any
3 [redacted] the raw data that was used by the people at the
4 Department of Community Affairs to come up with their
5 figures for vacant developable land?

6 A No, with regard to the Morris County data.

7 Q With reference to Mahwah or West Milford,
8 did you ever see any raw data for, you know, compiling?

9 A No.

10 Q Do you know whether such raw data [redacted]

11 A I certainly hope so.

12 Q Would you know who would happen to have
13 possession of that material?

14 A It would be either the state division of State
15 and Regional Planning of the respective county planning
16 boards.

17 Q Would you happen to know the method that
18 the Department of Community Affairs used to compile the
19 raw data for determining vacant developable land?

[redacted] No.

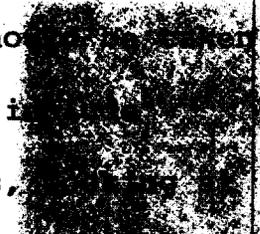
20 Q Whether the communities of Mahwah and
21 West Milford were developing, did you have any other
22 criteria in addition to vacant developing land?
23

24 A Oh, certainly; vacant developable land is only
25 one of a number. In essence, what I tried to do in each
case was to apply to availb

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 case was to apply to available factual data the clear,
2 straight-forward language of the Mount Laurel decision
3 at this point.

4 Q Did you have to conduct any other kind of
5 studies, field studies or whatever to, you know,
6 evaluate those criteria of Mount Laurel?

7 A I believe they deal with principally with general
8 characteristics. So field studies are handled so.
9 In both cases I made observations of the characteristics
10 of the community, which is one fact that should be taken
11 into consideration. I think other factors include
12 looking at their population growth patterns, 
13 the question of land availability, looking at their
14 location within a regional setting; all of those.

15 Q When you are evaluating the population
16 growth, is there any criteria for the amount of popu-
17 lation growth which would indicate a town was developing?

18 A Well, the principal criteria -- And I should
19 stress at this point, that even though as I mentioned
20  there is an undeserved prominent commentator
21  in for this kind of statistical nit-picking,
22 it seems quite clear to me and I think to any thoughtful
23 person that the Supreme Court was not looking for
24 statistical nit-picking. They were looking for an
25 intelligent common sense judgment made of a municipality

1 taken in its entirety. They were not looking ~~for~~ box
2 scores or cut-off numbers or anything of the sort. And
3 ~~to suggest~~ that they would be to argue that the
4 ~~Supreme~~ Court of New Jersey is a body engaged in trivial
5 nonsense. And I do not believe that that is the case.

6 So in that context I think if you look at the
7 question of population growth, the question is -- I
8 think the phrase is great population increase since
9 World War II or something to that effect, is this a
10 municipality that has essentially stayed flat in terms
11 of its population. In other words, not part of
12 what you could call the wave of growth that ~~is~~
13 in this state starting right after World War II, or has
14 it shown a level of growth commensurate with being part
15 of that wave? Now, that could be a doubling of popu-
16 lation. It could be a 50 percent increase. The exact
17 amount is not important. The question is has it grown
18 or has it not grown in essence?

19 Q Would the fact that a community's
20 ~~population~~ has, say, for example, since 1960 started to
21 ~~decrease~~ or evidenced a sharp decrease in population,
22 would that indicate whether it is developing or
23 developed or whatever position you would take?

24 A It might. You would have to look at it in
25 context. One of the interesting things about Madison or

1 or now Old Bridge is that Madison Township started around
2 1970, its population growth leveled off dramatically,
3 perhaps declined in the past few years. And that's
4 not because it's a developing municipality. It
5 has to do with a lot of other factors among which was
6 the fact that in 1970 the Township adopted a zoning
7 ordinance that essentially prevented development for
8 all practical purposes. So you have to look at it in
9 context.

10 Now, if a municipality's population growth dropped
11 off dramatically or started to lose population, and
12 was no housing being built, and yet that municipality
13 was located in an area where from all accounts there was
14 strong housing demand, strong suburbanization pressure,
15 and that municipality had enough vacant land to
16 accommodate continued housing development, then you
17 would have to look at other factors.

18 Q Okay. A On the other hand, it
19 might be, as was the case with some of those Bergen
20 municipalities that were the subjects of liti-
21 gation a couple of years ago, it might be the fact that
22 essentially there is very little land left.

23 Q When you looked to the area to see the
24 growth patterns in other areas, how big an area are you
25 talking about, towns around the community or county or--

1 A Well, really the overall region. Now, if you
2 look at a place like Mahwah, West Milford, Passaic,
3 [REDACTED] these places, they're all part of this overall
4 [REDACTED]-Newark, northeastern New Jersey region.

5 And so even though there are variations within
6 that region, what happens in any one of those towns can
7 not really be separated out from what's happening in
8 the region as a whole.

9 Q When you speak of region, are you referring
10 to the eight-county region that's set forth in the
11 D.C.A. Study? A That's one definition
12 of it. I should say the region as Judge Furber
13 said at one point is fuzzy at its edge. And that eight-
14 county region that the D.C.A. uses is a very good short-
15 hand for the region. You can argue about whether certain
16 things should be added to it. It's certainly a good
17 minimal definition of what's in the region.

18 Q Now, when you look to compare the growth
19 within these communities, I am sure there are probably
20 [REDACTED] within that region that are not continuing to
21 [REDACTED] this growth within those eight counties?

22 A Right.

23 Q Do you look at the communities that are
24 developing the most, you know, at the fastest rate, and
25 make some kind of comparison or is it just an average

1 throughout that entire region?

2 A Again it's not a matter of making numerical
3 [REDACTED] son. For example, it would not be a matter of
4 [REDACTED] the region is growing at 10 percent, this
5 municipality is growing at 8 percent, therefore, it's
6 out. Or this municipality is growing at 12 percent ,
7 therefore, it's in. It's a matter of sending whether --
8 given that this region is creating all these growth
9 pressures.

10 Here you have this enormous region, with enormous
11 amounts of new housing units, old housing units, [REDACTED]
12 replacement and so forth. Is this municipality [REDACTED]
13 located in such a place where it can realistically be
14 expected to be part of this ongoing dynamic of what's
15 happening in the region?

16 Q My next question regarding the statement you
17 previously made. You mentioned in I don't know whether
18 it is Mahwah or West Milford, that their population had
19 leveled out and part of that was a result of change in

20 [REDACTED] ordinance. A That was in regard to
21 [REDACTED] dge.

22 Q Old Bridge, excuse me. What if a community
23 has maintained basically the same zoning ordinance
24 throughout its period of growth from 1940 on and
25 experienced initially a growth, but then has gone down

1 and no changes have been made in that zoning ordinance.
2 Would that indicate anything to you?

3 Well, it could indicate a number of things.
4 Assuming there was still vacant land available for
5 development, what it would indicate is that that zoning
6 ordinance had become significantly less responsive over
7 time to the realities of the housing market. In other
8 words, the housing market is changing. Costs are
9 changing. Family sizes are changing. Housing demands
10 are changing. All kinds of things are changing. If
11 you have a zoning ordinance that has stayed the same
12 over that long period of time, odds are that
13 it was responsive to what kinds of demands may have
14 existed when it was first adopted, that may no longer
15 be the case.

16 Q Okay. What if the zoning ordinance has
17 been amended throughout this period, but to respond to
18 the needs of the township and surrounding communities,
19 not necessarily the "regional need," and yet it is
20 facing a decline in population? Is that --
21 Well, that's a pretty heavy judgment call as to
22 what are perceived to be the needs and what the nature
23 of the amendments would be.

24 Q Right. Okay. But in certain instances
25 could a decline in population indicate that the
community is

1 community is coming up to its level of development, its
 2 full capacity? A If it were coupled
 3 with an absence of available land, yes. In and of
 4 itself, most probably not.

5 Q Do you know how much vacant land exists in
 6 Passaic Township? A If memory serves,
 7 the Master Plan speaks in terms of there being about a
 8 1,000 acres available for development.

9 Q Do you know when that Master Plan was
 10 drafted? A Not offhand.

11 Q Okay. A I have it

12 Q I believe it is roughly 1972
 13 was. I do not believe they updated that particular
 14 figure since that time.

15 Do you know how much vacant developable land
 16 exists in Passaic Township?

17 A Well, as I understand from the discussion in the
 18 Master Plan, that the 1,000 acre figure is certainly --
 19 It would have to be construed as say the lower part of
 20 of developable land. In other words, that's
 21 that they clearly indicate as being suitable for
 22 future development. So there could be more. One could --
 23 I don't recall the exact way in which they defined it,
 24 but it could be more than a 1,000. It is unlikely to
 25 be less.

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 Q You are assuming that the 1,000 acre
2 parcel figure was land that the Township considered
3 developable? A Correct. That's my reading
4 of the Master Plan.

5 Q The Master Plan. Okay. It is not referring
6 to just what is vacant land?

7 A No, no.

8 Q Okay. In your deposition of April 19,
9 1979, Page 65, you stated that according to the D.C.A.
10 Studies, there is substantial developable land in each
11 of these municipalities?

12 A Yes.

13 Q If you want to refer to it --

14 A No, I don't need to refer to the deposition.

15 Q Are you familiar with the amount of
16 vacant developable land that the Department of Community
17 Affairs found to exist in Passaic Township?

18 A I don't remember the number.

19 Q Okay. If you want, I have the study if
20 I can refer to it.
21 Sure.

22 Q All right.

23 A The D.C.A. Study indicated a figure of 3718
24 vacant developable acres.

25 Q Previously you gave me a definition or

1 methodology that the D.C.A. Study used to determine
2 vacant developable land. From your knowledge, that is
3 the methodology that was used to compute that particular

4 A Yes.

5 Q This may seem redundant, but are you famil-
6 iar with the raw data that was used to compute that
7 final figure for Passaic Township?

8 A No.

9 Q Do you know when the raw data was collected
10 by the D.C.A. for the computation of the vacant
11 figures?

12 A I believe it was

13 Q In your opinion could there be changes in
14 that particular figure due to the lapse of ten years?

15 A Oh, yes.

16 Q Do you know how many acres of public land
17 were found by the D.C.A. to exist?

18 A No.

19 Q Would you know how many slopes or wetlands
20 and by the D.C.A.?

21 This is what would be considered the raw data.

22 Q Raw data, okay. And you have never
23 examined the raw data that was used for Passaic Township?

24 A No.

25 Q Have you ever during your experience with

1 various studies and developing community studies made any
2 evaluations of the D.C.A. Study and the figures
3 contained therein? A I don't know if I
4 would call it an evaluation in a formal sense. I
5 certainly reviewed that information.

6 Q Have you ever, in reference to any of the
7 particular numbers contained therein, not just vacant
8 developable land, have you ever examined any of the raw
9 data and compared it with the figures to see if their
10 conclusions were correct?

11 A Well, if memory serves, most of the data
12 used as the fair share criteria in the D.C.A. Study
13 are, in themselves, raw data or fairly close to it. So,
14 for example, at one point they have tables of increase
15 in covered employment from year A to year B, which I
16 assume is simply a matter of subtracting one from the
17 other. I have not gone back to that data, even though
18 I do have that raw data, to verify those numbers as to
19 their arithmetic.

20 Those would be the numbers that were a
21 available through either the census or the Department of
22 Labor and the State Department?

23 A That's correct. Labor and Industry.

24 Q Labor and Industry, Okay. I guess my
25 primary example then is the vacant developable land

1 figure.

2 You never took the raw data and compared
3 [REDACTED] -- compared the acres that they found for public
4 [REDACTED] wetlands, whatever, and whether this all added up
5 to the final figure that is presented in the D.C.A.

6 Study? A That's correct.

7 Q Do you have a general opinion of the
8 quality of the D.C.A. Study regarding fair share?

9 A Fair.

10 Q Fair. How would you improve the [REDACTED]
11 analysis? I don't want to belabor this, but [REDACTED]
12 getting used to all the different fair share [REDACTED] es
13 that people used to develop it.

14 A I should think that probably the person to ask
15 that of better would be Mary Brooks who has looked at
16 that specific question very directly and in light of
17 this case.

18 Q I realize that, but since you have worked
19 with this document in the past I wanted to know if you
20 [REDACTED] be some sort of opinion based on that particular
21 [REDACTED] because you are an expert or at least have been
22 in other cases on fair shares.

23 A Once an expert, always an expert I guess. Well,
24 I think there are many questions. I have never done
25 an evaluation of this in any kind of detail. I think

PENGAD CO., BAYONNE, N.J. 07002 - FORM 3045

1 there is little doubt in my mind that the overall need
 2 figures are on the conservative side in terms of the
 3 actual low and moderate income housing needs.
 4 have the manner in which the plan deals with
 5 income distribution is weak and could be a good deal
 6 stronger.

7 In other words, there is a goal in this plan which
 8 is consistent with the Court language that one purpose
 9 of fair share is to encourage income redistribution
 10 within a region so that the more affluent municipalities
 11 get a larger fair share, other things being
 12 the less affluent municipalities. The way
 13 about this in this fair share plan tends to
 14 income redistribution effect fairly modest; and in my
 15 judgment, probably should be stronger.

16 I think I have some disagreement with the use of
 17 short term growth in terms of both employment and non-
 18 residential ratables as to the relevant factor as
 19 distinct from dealing with the total base of the
 20 ratio of employment and non-residential ratables.
 21 there are some measurement problems with the
 22 whole idea of using a ratable data in a fair share plan
 23 because, as I'm sure you are aware, ratable data do
 24 not necessarily mean what they purport they mean because
 25 of wide differences in assessment practices, the date

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 of the most recent reassessment, and things of that nature.
2 As I mentioned earlier, I think the inclusion -- the
3 [REDACTED], rather, of farmland from developable land is
4 [REDACTED]istic. So there are a lot of technical questions.

5 Q Perhaps you might be able to help me
6 understand some of this more. In your deposition of
7 April 16, 1979, transcript pages 48 to 49, you stated
8 that you did a separate study on fair share in the
9 Mount Laurel II case. Is that correct?

10 A Yes.

11 Q Could you explain the methodology
12 you employed to determine fair share there? [REDACTED]

13 A Well, in terms of the factors that I used, I
14 look at housing allocation factors as a central element
15 of fair share, the D.C.A. Study used four such factors.
16 One was the vacant developable land as they defined it.
17 The second was short term employment growth. I'll give
18 you the years, between 1969 and 1976. A third was non-
19 residential ratable growth between 1968 and 1975. And
20 [REDACTED]th was a measure of personal income wealth in
21 [REDACTED] community based on the aggregate incomes of the
22 residents of the community.

23 I used three factors in my analysis. One was
24 vacant developable land, which, however, reinstated
25 farmland otherwise suitable. The second was total

1 employment through 1977, not just short term growth in
2 employment.

3 Q How did you compile figures of the total
4 employment? A This was -- Again it was
5 total covered employment.

6 Q Oh, total covered employment. Okay. There
7 are no precise figures for total employment. I just
8 wanted to make sure.

9 A And the third was personal income wealth, but
10 instead of using aggregate wealth, I used specifically
11 the percentages of low and moderate income households in the
12 community, which I believe is more consistent with the
13 thrust particularly of the Madison language. After a
14 great deal of reflection, I decided not to use any
15 ratable measure because, first, it's unreliable
16 statistically. And secondly, between personal income
17 wealth and employment you tend to get pretty much the
18 same impact in your analysis as you would by looking
19 at ratables.

20 Q When you speak of total covered employment,
21 speaking of that employment within the municipi-
22 pality or within the entire region?

23 A Within the municipality. As in the D.C.A. analysis,
24 what goes into the fair share process is that total
25 covered employment in the municipality as a percentage

1 of the grand total within the region.

2 Q After you had defined these three factors,
3 did you do with them to come up with a fair share

4 A Okay. Well, what I did --
5 what you have to do -- And in the case of Mount Laurel
6 it was relatively straightforward. In terms of need,
7 even though the D.C.A. figures are very conservative,
8 the need analysis within its conservative definition
9 is a legitimate one.

10 So I used their need figures. I did, however,
11 adjust -- There is one factor that does affect
12 need. For some reason D.C.A. averaged the percentage
13 of low and moderate income households across the State
14 as a whole. In calculating the prospective housing
15 need, they calculated the total prospective housing
16 need for households of all incomes through 1990 and then
17 took the Statewide average for low and moderate income
18 households and calculated that -- averaged that out
19 across the State. What I did when I was looking at the
20 in South Jersey was adjusted that because a
21 percentage of low and moderate income households is
22 higher in that region than the State as a whole to
23 increase that percentage somewhat. It would probably
24 go down in Northeast Jersey for the same reason.

25 Q So you took the percentage of the total

1 low and moderate income housing in that region?

2 A Within that region, yes.

3 Q As opposed to a Statewide average?

4 A Right. Now, equally in that case the region for
5 Mount Laurel is fairly easily defined, given the very
6 clear spatial relationship of the New Jersey metropoli-
7 tan area, Philadelphia area, so there was no real prob-
8 lem there. What I did do also was after having
9 calculated the fair share based on that need and region
10 is adjust the fair shares on the basis of distance so
11 that you will not get unreasonably large shares
12 allocations for the relatively far removed
13 'Townships'.

14 Q Okay. Just to make this clear.

15 A You take a need figure. You define the total
16 need in the region.

17 Q In the region, right.

18 A Through in this case 1990. This assumes you have
19 also defined the region and you have your need. You
20 locate that region -- allocate that need in the
21 region on the basis of the three factors.

22 Q Did you average these three factors or do
23 any computations? A No, I averaged the

24 first two. What I did was take the land and employment
25 factors, averaged those to arrive at what could be
called

1 called a first-cut allocation. Then I either increased
2 or decreased that number based on the disparity between
3 the percentage of low and moderate income households in
4 the municipality -- No, I'm sorry, between the number
5 of low and moderate income households in each munici-
6 pality and the number that would be in each municipality
7 if they had the same percentage as was true in the region
8 as a whole.

9 Let's say, for example, you have a municipality
10 with a 1,000 households that has 200 low and moderate
11 income households and the regional average is 400,
12 which would be 400. So there would be a disparity of
13 200 which would be added to the fair share.

14 Q How did you find the number of low and
15 moderate income houses that existed in that particular
16 municipality? A Households?

17 Q Households as opposed to houses.

18 A Right, from the census of the population.

19 Q Then you take the first-cut figure and
20 the disparity figure and you add them together?
21 Right, or subtract them.

22 Q Or subtract them, whatever the case may be.

23 A Yes.

24 Q And after you had that figure, did you
25 make an adjustment to that?

1 Q Okay. And is there any particular factor
2 that you used to allocate it to the towns that had
3 the land resources?

4 the same way as the first -- You did it in the
5 first place, except subtracting out -- Leaving those
6 other municipalities now out of the picture.

7 Q Then you go back again and start from
8 point one? A Yes.

9 Q You pull out say those seven communities
10 that do not have land?

11 A Yes.

12 Q And then redistribute it?

13 A Yes.

14 Q I have got it. And that will be the final
15 figure then, after you did the redistribution?

16 A That's correct.

17 Q Wouldn't it have been easier just to keep
18 the developed communities out of it at the first point?

19 A Well, not entirely.

20 Q Okay. A First, as you know,
21 there is certainly no consensus as to where you draw
22 the line.

23 Q That is true.

24 A And secondly, many of the municipalities that
25 might be considered developed if it came to litigation

1 are none the less possessor of at least some few hundred
2 acres of land here, a couple of hundred. And so if you
3 [REDACTED] looking at a fair share approach, in which the idea
4 [REDACTED] fairly equitable and distributed across the
5 board, I guess you assume that this is going to be part
6 of a voluntary effort, or what have you, and you don't
7 really look at whether this municipality would have
8 a fair share allocation practice.

9 Q Just to go back for a moment. Assuming
10 you have a town that has, say again, that 600 allocation
11 figure and you examine the vacant land that [REDACTED]
12 And you make a determination that they could [REDACTED]
13 provide 200 on what is left.

14 A Right.

15 Q Do you give them the 200, pull them out
16 and give the 400 back to the communities that have land
17 and do the redistribution?

18 A That's correct.

19 Q So they would have at least 200?

20 [REDACTED] Yes.

21 [REDACTED] Q Of what they could supply?

22 A Yes.

23 Q But then they are left out for the
24 redistribution? A Yes.

25 Q Okay. I have got it.

1 (A recess is taken.)

2 Q Could you tell me how your fair share
3 [REDACTED] final figure for the Mount Laurel II case,
4 [REDACTED] from the D.C.A. allocation figure?

5 A It was higher. I don't remember the exact amount,
6 though.

7 Q And what would you attribute that to, any
8 particular factor in your methodology?

9 A I can't remember.

10 Q Okay. A It would [REDACTED]
11 separate them out.

12 Q Okay. Are there any factors w [REDACTED]
13 think should appear in any fair share study?

14 A Three: First, obviously, any fair share has to
15 define need in a reasonable fashion and identify a region
16 for starters.

17 Q So need is regional need you are talking
18 about? A Yes.

19 Q Okay. A Then somehow I
20 [REDACTED] and I think there is a general concensus of
21 [REDACTED] that the availability of land for the development,
22 the employment base in the community, and some form of
23 measurement of wealth are the essential factors. in
24 allocating regional housing need.

25 Q And in your fair share for Mount Laurel

1 the measurement of wealth was how many low and moderate
2 income households, the percentage that was in that

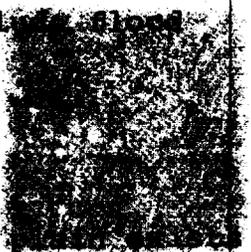


A That's correct.

3 Q Is there any one particular fair share
4 method that is the "accepted" method?
5

6 A No, see, there is a concensus about a general
7 approach, but not about a specific technical method.

8 Q Do you know whether the term wetlands as
9 used in the D.C.A. Study in their determination of
10 vacant developable land, does that term include flood
11 plains and flood fringe areas?



12 A I really don't know.

13 Q Do you know whether any flood
14 in Passaic Township?

15 A I believe there is some flood plain land in the
16 Township.

17 Q Do you know where that is located?

18 A It's in the southern part of the Township.

19 Q Do you know how much land is involved in



A Not really. It's a substantial

plain, but I don't know any acreage figures.

22 Q Would you consider the flood plain area
23 developable land?

24 A That is complex. I

25 believe that the concensus is that limited development
is possible in a flood plain area assuming proper

caution

1 precautions are taken in terms of the siting of the
2 housing and the development and the construction used.
3 [REDACTED] might not be completely barred from development,
4 [REDACTED] certainly would be of a more limited nature than
5 might be possible elsewhere.

6 Q When you say limited development, would
7 that development be restricted to single-family homes?

8 A Not necessarily.

9 Q Would multi-family housing be proper for
10 that type of land? A It could be [REDACTED]

11 know that some of the towns along the Delaware
12 don County area, there has been some multi-family
13 housing built in flood plain areas..Usually what's been
14 involved in the first floor of the housing does not
15 contain any actual living quarters below the flood plain
16 line and in terms of the way the building has developed.
17 I think they use piers and things to allow in the
18 eventuality of a flood that there would be some flow of
19 water through the building, unobstructed flow through
20 [REDACTED] rather than the building bucking a solid
21 [REDACTED] ion to the flow.

22 Q Do you know whether the densities are lower
23 than the densities that you had given for multi-family?

24 A Oh, no, higher.

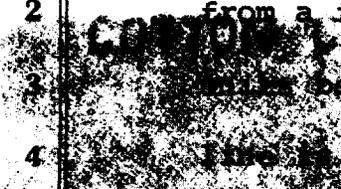
25 Q Higher densities?

1 A Yes.

2 Q Would you explain?

3 [REDACTED] Since you are not building any living quarters
4 on the first floor, what you have is a wonderful
5 opportunity to provide parking there, which is perfectly
6 consistent with the flood plain situation. Which means,
7 first -- Okay. So first you have the parking inside or
8 a large part of it in the same area as the building.
9 Secondly, since you already have one floor there, it
10 makes sense to go up three or four flights, get into
11 elevator structures rather than walk-ups. [REDACTED]
12 more economical to do so. So you are getting [REDACTED]
13 communities in the same land coverage area than [REDACTED]
14 for a two-story building. And, furthermore, because
15 you are getting all or a large part of the parking
16 inside that area which already covered by the building
17 in any case, that means the amount of coverage by
18 parking over and above the building can be reduced. So
19 the net result is you can get perhaps 30 units to the
20 [REDACTED] with the same land coverage, which is the key factor,
21 [REDACTED] would get with 15 units to the acre in conventional
22 garden apartment construction.

23 Q Do you see any problems in requiring in
24 your zoning ordinance that the parking be on the first
25 level and that no developed units are placed on that

1 level? A Well, the key requirement
2 from a flood plain standpoint is that no developing
3  be at the ground level in an area where the flood
4  significantly above the floor of that level.

5 Now, there is no need to require that parking be placed
6 there instead. It could be community rooms, shopping,
7 whatever. It's logical -- From a developer's standpoint,
8 if he knows that he is not going to put any living
9 quarters on that floor, then it logically becomes
10 reasonable to put parking in there.

11 Also if you set that as a condition,  have
12 be no housing on the first floor, then you can
13 establish fairly low land coverage requirements which
14 are consistent with flood plain level development.
15 Then that, too, will more or less dictate to the
16 developer that he use that area for parking.

17 Q Do you know or have any figures for the
18 amount of land coverage in a flood plain area, percentage
19 per acre? A I think -- I really don't.

 that probably would vary depending on some kind
analysis of the flood flow pattern or whatever.

22 Q You do not see any problems in possible
23 flooding and destruction of cars or whatever by having
24 developments within a flood plain?

25 A I think it's a judgment call really. I think if

1 you have ample land that's outside the flood plain and
2 that land has been zoned in such a way that all the
3 for housing can readily be met outside the flood
4 then there is little need and it's probably
5 preferable not to provide for multi-family housing,
6 apartments, whatever in the flood plain, even though
7 it's technically feasible.

8 If that's the only way, though, that it's possible
9 to make ample provision for the amount of housing that's
10 needed, then it's a question of trade-offs and it's a
11 reasonable one.

12 Q When you did your analysis of
13 a developing community, did land that was in
14 plain constitute vacant developable land?

15 A It was not really an issue in any analysis that
16 I can recall doing.

17 Q If you were to do an analysis today of any
18 community, would flood plain be considered vacant develop-
19 able land? A I would think of a flood

20 as a kind of secondary reserve for development.

21 it's an area that you protect assuming that you
22 can do so and meet housing needs at the same time. On
23 the other hand, it is not an area that's barred from
24 housing developments in absolute terms. The engineering
25 solutions are available. So I would probably think of

1 it as a kind of an intermediate category. And that's
2 not entirely answering your question, but I guess I
3 really.

4 Q But if you were going to use a study,
5 would you use that in the computations, what is vacant
6 land, developable land in the community?

7 A I guess I would have to look at the situation in
8 the community and do that one on a case-by-case basis.

9 Q When you do the type of multi-family
10 development as you suggested with the first
11 containing developing units, does that not
12 cost of the housing so it is not least-cost

13 A It depends. It raises it relative to
14 a garden apartment development. On the other hand, if
15 you were trying to build mid-rise houses, which was
16 going to be elevated houses anyway, for example, for
17 senior citizens' housing, it would not significantly
18 affect the cost.

19 Q Would you consider developments of this
20 without the units on the first floor, developing
21 on the first floor, least-cost housing?

22 A It could be. Again in that specific subgroup of
23 elevator or mid-rise housing.

24 Q By mid-rise housing you mean from four to
25 seven? A Four to six stories.

1 Q Could you define for me what you would
2 consider slopes that are too steep for development?
3 [REDACTED] That's another good one. I was in California
4 [REDACTED] few days about, oh, a month and-a-half ago and I
5 was traveling around looking at new developments in
6 Orange County and some of these are built on 20, 25,
7 30 percent slopes and, my God, these houses are selling
8 for hundreds of thousands of dollars. I think it's all
9 relative. Slopes are an engineering criteria. You can
10 build on slopes of 20, 30 percent from a technical
11 standpoint. It becomes more expensive to do [REDACTED]
12 in terms of getting utilities to the site, getting to the
13 site, preparing the roadways, providing adequate
14 drainage systems, and so on. So one were not, for
15 example -- If one were seeking to, say, rezone a
16 municipality to provide for least-cost housing opportunity
17 and the municipality had somehow singled out steep slope
18 areas to rezone for multi-family housing, one could not
19 help but suspect something less than complete good faith
20 [REDACTED] rily.

21 [REDACTED] So it's not necessarily the best land for least-
22 cost housing, but 15 to 20 percent slopes are developable.

23 Q What would you consider the highest
24 percentage of the slope that would be consistent with
25 still providing least-cost housing?

1 Q Again that would vary depending on -- The slope
 2 does not in itself define the terrain and the site
 3 [REDACTED] conditions. I'd say certainly when you're
 4 [REDACTED] below eight percent, for example, difficult site
 5 conditions significantly increase costs and are related
 6 to slope are almost unheard of. Eight to twelve percent,
 7 maybe even fifteen is a borderline area. There may be
 8 areas with those slopes that would be developable with-
 9 out major cost impacts, but, then again, some would not
 10 be.

11 Above fifteen, twelve, fifteen, some
 12 that, the odds are that you would have major
 13 problems, except for rare exceptions.

14 Q Does it make any difference when you are
 15 talking about cost and in relation to slopes the type
 16 of housing that is put on there?

17 A Yes.

18 Q Multi-family versus single-family
 19 dwellings? A Yes.

20 [REDACTED] Which is more appropriate in terms of
 21 [REDACTED] cost? A Multi-family. You see,
 22 this is an important point that is sometimes misunder-
 23 stood. Because your single-family units are separated
 24 from each other, the amount of roads, utility lines,
 25 drainage lines, et cetera, et cetera, et cetera, which

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 are affected by slope is much greater per unit than
2 multi-family. With a multi-family development,
3 particularly where you cluster the units very tightly
4 maintaining a large percentage of the area open, you
5 can maximize all of your economies in terms of road
6 lengths, sewer lines, water lines, and so on, as well as,
7 and this is very important, one of the major reasons
8 why people have difficulties building on steep slopes
9 is because of the interference with the drainage system,
10 the natural drainage system flow, which encourages
11 erosion, flooding downstream, and that sort

12 The more little separate houses dotted
13 landscape and so on you have, the more area you
14 covered with driveways, roads, and so on you have, the
15 more you interfere with the drainage flow.

16 If, for example, you keep your site coverage very
17 limited, you leave large parts of the tract open; but
18 concentrate very high density clusters on small parts
19 of the tract with a very efficient road network that
20 the minimum necessary amount of the site with
21 concrete or asphalt, you minimize the impact on the
22 drainage flow, and thus the potential problems.

23 Q Couldn't be this minimized if you had
24 larger lot sizes required?

25 A Well, obviously if you are not concerned with

1 providing housing or more than a negligible amount of
2 housing, then you can minimize it by requiring very large
3 [REDACTED] but my point is that you can provide a great deal
4 [REDACTED] housing than you would by zoning it large-lot
5 single-family, by zoning it multi-family with the proper
6 planning and development controls and have no signifi-
7 cantly greater environmental impacts.

8 Q Okay. Before you mentioned that a town
9 would look as if it were not acting in good faith. What
10 if the town that had considerable amount of [REDACTED]
11 throughout their community, what if all their [REDACTED]
12 family was zoned for those slopes with the h [REDACTED]
13 densities or the clustering that you mentioned [REDACTED]

14 A If they had no appreciable amount of land that
15 did not have slopes, then obviously one could hardly
16 fault them for zoning slopes in that fashion. If they
17 have ample land that is flat, vacant, then they should
18 zone at least some of that for multi-family as well
19 because it is going to be less expensive. Certainly
20 [REDACTED] at sites are still, when it comes right down to
21 [REDACTED] least expensive sites.

22 Q If you had a mixture, though, and not too
23 much vacant land left, would the use of the areas with
24 the slopes for multi-family be more appropriate?

25 A Well, again you would have to look at the whole

1 context. I mean this is why you have master plans and
2 planning studies and all these things. Certainly, if
3 [REDACTED] choice were for a steep slope area, if the choice
4 [REDACTED] it's say multi-family versus small-lot single-
5 family, there's absolutely no question in my mind that
6 multi-family would be more appropriate in that context
7 and that the small-lot single-family housing that was
8 provided in the community would be more limited to the
9 flat areas. On the other hand, whether it would be
10 appropriate to have multi-family zoning only in steep
11 slope areas, that strikes me as being unlikely [REDACTED]

12 I mean it's conceivable that there would be a
13 community where that would be appropriate, but again
14 it seems unlikely.

15 Q You do not know how many acres or whether
16 there were any acres of slopes that are too steep for
17 development in Passaic Township?

18 A I don't know.

19 Q Are you familiar with the Great Swamp
20 [REDACTED] Wildlife Refuge?

21 [REDACTED] Not in great detail but in general.

22 Q Do you know where it is located?

23 A Well, I believe the southern part of the Great
24 Swamp tends to run along the northern boundary of
25 Passaic Township and part of the Great Swamp is in

1 Passaic Township.

2 Q Do you know how many acres of the Great
3 [REDACTED] are in Passaic Township?

4 [REDACTED] No.

5 Q Would you consider the land in the refuge
6 part of the land that is developable within Passaic
7 Township? A No, no, it's a wildlife
8 refuge.

9 Q Do you know whether the Department of
10 Interior is acquiring further land for the refuge in
11 Passaic Township? A I really [REDACTED]

12 Q Do you know whether there is any
13 park land in Passaic Township?

14 A Let me see. There is some kind of park I notice
15 on the map. I haven't looked at it recently, but there
16 is what appears to be a small park area in the eastern
17 end of the Township.

18 Q Would you know how many acres for that
19 particular land? A No.

20 [REDACTED] Q Do you know whether there are any other
21 [REDACTED] or institutional lands in Passaic Township?

22 A Well, there are a variety of minor ones such as
23 school buildings and public works depots of things of
24 that sort. I know of no other major facilities.

25 Q Those schools, railroad depots that you

1 mentioned, they are not considered lands that are vacant
2 and developable? A No, they are not.

3 Q Could you give me your definition of what
4 a developed community is?

5 A Developed?

6 Q Developed.

7 A One that's full.

8 Q In terms of land, population?

9 A All of it. I should qualify that. Even though
10 I certainly respect the judgment of the Courts in this
11 regard and do my best to apply it objectively, in
12 in terms of general philosophy and in terms of
13 understanding of urban dynamics, urban growth, and in
14 of these things, the dichotomy between developing and
15 developed is not meaningful. It simply does not make
16 sense. It may be useful for legal purposes, but, for
17 example, if you look at what are the municipalities
18 where the largest number of new housing units have been
19 built in the last decade, say, Fort Lee, Hackensack,
20 There is a constant process. Look at Fort
21 where there was no vacant land to speak of in Fort Lee
22 by 19 -- Oh, say sometime in the 50's. And yet, some-
23 how that town has managed to accommodate, I don't know,
24 four, five thousand additional housing units since
25 then through the systematic gradual redevelopment of

1 A I think there is some very interesting ideas
2 about suitable remedies for more heavily developed
3 municipalities that appear in Justice Pashman's
4 concurring and dissenting opinions on the subject.

5 Q Could you briefly explain the methodology
6 that you used to determine whether Passaic Township's
7 ordinance was exclusionary or had exclusionary provisions?

8 A Yes, in a nutshell I attempted to define in
9 operational terms each of the different types of least-
10 cost housing that are discussed or referred
11 Court decisions. And so I arrived at a set
12 cost standards, if you will, for single-family
13 houses, two-family houses, townhouses, garden apartments,
14 and so forth. Then simply stated I looked at each
15 municipal ordinance, matched it up against those
16 standards and let the chips fall where they may.

17 Q This methodology, would it also be
18 applicable to a developed community?

19 A Well, the methodology would be applicable to any
20 ordinance. I guess the distinction between
21 undeveloped and developed might be that assuming that a
22 municipality was found to be wanting, then the
23 disposition would be different if it came to a Court
24 test.

25 Q Your methodology is also applied to

1 communities that have environmentally constrained land?

2 A Yes, that would be for the disposition, how large
3 [REDACTED] the fair share be. What would be the nature of
4 [REDACTED] obligations and so on.

5 Q Before we go any further, I would like to
6 have your two reports identified and then marked for
7 identification.

8 MS. MC DERMOTT: Would you like to mark
9 these first.

10 (Allan Mallach report on Passaic [REDACTED]
11 marked DP-1 for identification. Letter [REDACTED]
12 June 5, 1979 marked DP-2 for identification [REDACTED]

13 Q Could you identify a document that is
14 marked DP-1 for identification?

15 A Yes, this is the initial report I prepared on the
16 Township of Passaic Zoning Ordinance.

17 Q And could you identify this, which is
18 marked DP-2 for identification?

19 A Yes, this is memorandum that I wrote amplifying
20 [REDACTED] final report after the passing of Ordinance 11-79
21 [REDACTED] Township.

22 Q If you choose to refer to them, please
23 note which you are referring to. Before I go on to that,
24 I have just a couple of questions which I want to clear
25 up.

1 In your deposition of August 19, 1979 at page 42
2 of the transcript, you stated that in the Round Valley,
3 [REDACTED] incorporated versus Clinton Township case you found
4 [REDACTED] the five-county region used there for Clinton Township
5 to be a minimal region, although not the most appropriate
6 in your opinion. A That's correct.

7 Q Is that correct?

8 A Yes.

9 Q Do you ~~think~~ think that any of the municipalities
10 involved in this case could have a region some-
11 different than the eight-county region described

12 A Well, all of them could, but none of [REDACTED]
13 be in different regions from each other. You [REDACTED]
14 earlier about the eight-county region. I referred to
15 it as a minimal region for the Northeast New Jersey
16 area. Now, it's clear that all of the Morris County
17 municipalities are within Northeastern New Jersey,
18 metropolitan region overall. The only question is how
19 much area over and above those eight-counties might be
20 [REDACTED] within that region. As I testified in the Clinton
21 [REDACTED] think, that there is sound basis for considering
22 part of Hunterdon County to be part of that region.
23 There is equally sound basis to considering part of
24 Monmouth and Ocean County for that region. So the
25 region could be expanded.

1 Q Is it possible that a region could be
2 defined for a community that would include part of the
3 county region and yet other areas that are not
4 in those eight counties?

5 A You are presumably referring to what some people
6 have called , erroneously, a "journey-to-work region,"
7 where people have said let us draw a hypothetical line
8 around the municipality at a distance of a 30 or 35
9 minute journey into that region. That region makes no
10 sense.

11 Q Can you explain why?

12 A Yes. Journey to work is a relevant factor
13 delineating or evaluating regions. But journey to work
14 is the actual journey to work pattern of the people who
15 who live in a community. Not a hypothetical pattern
16 defined by drawing lines on the map.

17 So let's take hypothetically a region like a --
18 A township like Passaic Township. If you draw a line
19 that shows 45-minute travel times all around Passaic
20 Township, you will take in part of Somerset County,
21 Sussex County, perhaps part of Warren County --
22 Areas that there are no people or an insignificant number
23 of people actually going back and forth between Passaic
24 Township and those communities. My guess is that if you
25 looked at the statistics, you will find that a great

1 majority of people in Passaic Township when they commute
2 to work go to the other parts of Morris County or to
3 Newark, Essex County, or Union County and those.

4 Those are the relevant journeys to work, the actual
5 journeys. Hypothetical journey-to-work patterns are
6 meaningless.

7 Q If you are using the actual journey-to-
8 work patterns of that community, if no one from that
9 community is going to one of the counties designated in
10 the region, isn't that county inappropriate,
11 inappropriate part of the region?

12 A You mean isn't that municipality --

13 Q No. If you have an eight-county region,

14 A Right.

15 Q And the people who live in say Passaic
16 Township only go to six of those counties for their work.
17 is it proper to include those other two counties in the
18 region? A Oh, absolutely. Because

19 Passaic County's journey to work is not its dispositive

20 The thing about this large region is that this

21 region in which things such as transportation
22 systems, journey to work, et cetera, are so interwoven
23 within the region that it is impossible to draw a hard
24 line and say these are two separate regions.

25 For example, if you take a town in the northern

1 end of this region, Mahwah, West Milford, any of these
2 places, clearly its people are a lot more likely to
3 work in the northern part of the region, than they are
4 in the southern part of the region. If you take a
5 town in the opposite end of the region like East
6 Brunswick, the opposite will be true. But within the
7 region as a whole, there is a complete interweaving of
8 work patterns, transportation systems, regional
9 relationships, and so on. So that you could not say
10 that here is where -- Like a line between Newark and
11 Elizabeth is where one region starts and another region
12 stops.

13 Q Then what is the justification for
14 individual county regions in the southern part of the
15 State? A The justification for them
16 would be -- And if you look at an area like say,
17 Cumberland County, and I haven't studied this in any
18 great detail so I am more or less guessing at what it
19 would be, is that this county to a large degree is
20 contained in respect to those economic relation-

22 For example, Vineland, Millville, and Bridgeton,
23 those are the three major communities that relate prin-
24 cipally with each other; and most of the other areas of
25 the county relate within the same county. And most of the

1 services are provided within the same county so that it
2 can be considered a self-contained region. That's
3 generally true of Cumberland. It may or may not be true
4 of some of the others.

5 Q Do you think it would be more appropriate
6 in a planning sense that each county attempted to make
7 a determination of what their region is?

8 A No.

9 Q Why not?

10 A Because the fact is that counties are linked to
11 one another and if you look at, for example, [REDACTED]
12 share issue and the question of the regional [REDACTED]
13 this is particularly important in the northeastern part
14 of the State, you have clearly far more housing need
15 generated -- Particularly low and moderate income
16 housing need, being generated by Essex County, Hudson
17 County, Union County, than be Morris County or Somerset
18 County, for example.

19 On the other hand, if you are talking about
20 [REDACTED] to meet needs, wealth, whether personal or
21 [REDACTED] al, employment growth, land availability, these
22 are far more ample in Morris and Somerset Counties than
23 in Hudson or Essex Counties, for example, where the
24 number of jobs is dropping rapidly in both of those
25 counties, land availability is very limited, physical

1 resources are strained to the hilt, and so forth.

2 So from an equitable standpoint, a fair share
3 [redacted] to make sense, must combine those counties that
4 [redacted] the needs with the counties that have the
5 resources. Now, if you left it up to an individual
6 county to delineate its region, without wanting to impute
7 the motives of anybody, it's quite possible that say the
8 freeholders or the planning board in Morris County might
9 choose to come up with a region that somehow left Newark
10 out, which would really make a bad joke of the whole
11 concept of region. [redacted]

12 Q Do you think any region could [redacted]
13 for [redacted] any of the Morris County municipalities that
14 did not include the entire part of the eight-county
15 region? A No.

16 Q Okay.
17 (A discussion is held off the record.)

18 Q Could you state what your -- the least-
19 cost standard that you have for minimal lot size for
20 [redacted] family detached homes?

21 [redacted] 5,000 square feet.

22 Q That means you would not approve of the
23 three acres minimum lot size in the R-1 Zone?

24 A I would not consider it least-cost housing.

25 Q Least-cost housing. Could you find any

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 justification for that minimum lot size?

2 [REDACTED] Frankly, I can't think of any explicit
3 [REDACTED] justification for a three-acre lot size. I think there
4 [REDACTED] change in the Court decisions and I recall that if
5 a municipality provides least-cost housing, that they
6 are more or less free to have a three-acre zone else-
7 where. But I know of no explicit justification that
8 would serve as a justification for three-acre lots.

9 Q I ask the same question with reference
10 to the 45,000 square foot minimum lot size [REDACTED]
11 Do you believe that is a valid lot size?

12 A It's not least-cost housing.

13 Q Not least-cost. Any justification for that
14 particular lot size?

15 A I know of none.

16 Q Do you find any justification for either
17 the 45,000 square foot lot size of the three acre lot
18 size if it is in reference to combined use to farmland
19 and residential? That is, in order to have a farmland

20 [REDACTED] residential, you would have to have that size of

21 [REDACTED] A Well, does that mean the only
22 permitted use in the zone is a combined farm and
23 residential, that you are not allowed to live in that
24 zone unless you are also engaged in the practice of
25 farming?

1 Q For the purposes of this question, I mean
2 it would be your farmland zone.

3 That doesn't make any sense, though.

4 If you are required to engage in farming in a
5 condition of that zone, if you are talking about being
6 at all serious about farming, you have to have 50 acres
7 or a 100 acres. You can't have a three-acre farm and
8 call it a serious farm.

9 Q All right. You also disapprove of the
10 3,000 square foot minimum lot requirement in

11 A 30,000?

12 Q 30,000, I am sorry.

13 A Well, it's not least-cost housing.

14 Q And the same for 20,000 square foot in R-4?

15 A Right.

16 Q Could you give me your opinion on the
17 density modification provisions in the residential zones
18 of Passaic Township? Do they help in any way to
19 create least-cost housing?

20 They make no difference.

21 Q Can you explain why?

22 A Well, because even if they are taken maximum
23 advantage of, the smallest lot permitted with the
24 density modifications are still not least-cost
25 standards. And since the overall density is not

1 increased, the effect of reducing the lot sizes is
2 limited, in any event.

3 Q Could you give me the least-cost standard
4 minimum lot width for single-family residence?

5 A Probably 50 feet.

6 Q 50 feet. You say approximately?

7 A Yes.

8 Q Is there variations in that figure?

9 A Well, I guess established 50 feet as my standard
10 for this -- In this report. I said approximately
11 I guess to suggest that these things are not absolutely
12 precise mathematical formula. But for the purposes
13 this analysis I used the figure of 50 feet.

14 Q Using the criteria, that means you do not
15 approve of 250 foot lot width in R-1. Is that correct?

16 A It is not least-cost.

17 Q And the same for the 150 foot minimum lot
18 width in R-2 and R-3?

19 A That's correct.

20 Q And you also do not approve of the 100 foot
21 lot width in R-4?

22 A Well, again it's not a matter of approving. It's
23 simply that it is not least-cost housing.

24 Q That it is not least-cost. Okay. What is
25 your least-cost standard for minimum floor area for

1 single-family residences?

2 A I think -- Okay. The minimum floor area, as I
3 [REDACTED] the Courts held in a recent decision, should
4 [REDACTED] clearly linked to the occupancy or at a minimum to
5 the number of bedrooms involved. I think, for example,
6 as I cited in my report, if you are having a one-bedroom
7 unit, certainly floor area requirements in the area of
8 550 to 600 square feet would be ample; just as something
9 of an order of 660 to 720 square feet is ample for a
10 two-bedroom unit and so forth.

11 Q Do you approve in terms of least-cost
12 housing, the requirement that the floor area be a
13 minimum of 1500 square feet on each story of a split-level
14 level as set forth in R-1 and R-2?

15 A It's not -- 1500 square feet total for a one-
16 story house or a split-level house. And then it's
17 1200 square feet on the first floor for a two-story or
18 colonial. No, those are clearly not least-cost
19 standards.

20 [REDACTED] Q Would you also take objection to the
21 [REDACTED] that 50 percent of the minimum first floor
22 area be the minimum floor space for a second floor of a
23 split level? A Well, again it's clearly
24 unnecessary, clearly serves no purpose that bears any
25 relationship to health and safety that I am familiar

1 with. So it is clearly inconsistent with least-cost
2 standards.

3 Q Even for the small minimum floor space
4 that you recommended?

5 A I think there is an exception here. It is not
6 necessary. It does not serve health and safety
7 purposes. Now, from a practical standpoint, if you
8 are a developer and you are building a two-story house,
9 you would most likely provide at least 50 percent of the
10 first floor area on the second floor. So from a
11 practical standpoint it may tend to happen, but by
12 definition it is not a least-cost -- It is not consistent
13 with the fundamental premise of least-cost housing.

14 Q So even if Passaic Township had the 500
15 square foot minimum for one-bedroom, if they had any
16 requirement regarding the second floor, that would not
17 be least-cost? A That's correct.

18 Q I assume that you do not find the minimum
19 floor areas for R-3 and R-4 to be least-cost?

20 A That's correct.

21 Q Can you give me the least-cost standard
22 for maximum height for a single-family residence?

23 A I did not, if memory serves, speak to that in my
24 report.

25 Q You did not?

1 A No.

2 Q Would you find as being not least-cost a
3 requirement for two and-a-half stories or 35 feet for the
4 minimum height on a single-family residence?

5 A I think from a practical standpoint, having such
6 a requirement for single-family residences would have
7 no bearing on least-cost.

8 Q It would not affect the cost either way?

9 A That's correct.

10 Q Can you give me the least-cost standard
11 for minimum front yards for single-family re

12 A Certainly from a -- It should not be
13 than 25 feet. It could easily be less.

14 Q Are there any factors which would justify
15 having a greater front set back, having greater than
16 25 feet? A I can't think of any.

17 Q Any environmental type of factors that
18 would justify it? A I can't think of any.

19 Q So under that standard you disapprove of
20 foot minimum front yard in R-1 and R-2. Is that

21 A That's correct.

22 Q And also the 50 foot front yard minimum
23 in R-3 and R-4? A That's correct.

24 Q What is the minimum least-cost standard
25 for minimum side yards for single-family residences?

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 A Well, I believe I've suggested that it need not
2 be any more than 10 feet.

3 Q And that is on both sides?

4 A On either side.

5 Q Would you find it or would you object to
6 a provision that you had to have two side yards?

7 A Well, if you are saying a -- You are constructing
8 detached single-family housing having two side yards is
9 more or less inherent in the housing type.

10 Q Unless your house is built right
11 border line?

12 A That's true, what
13 zero-lot line housing. I see nothing object
14 about that.

15 Q Do you have objections to provisions for
16 an aggregate width of the two yards equaling a percentage
17 of the lot width?

18 A Well, again so long
19 as it does not reduce the ability of someone to construct
20 least-cost housing on the lot. I would have no
21 objection to that. The thing with things like that is

22 you have to look at their impact because they're

23 Q I guess under this standard you object to
24 the two side yards of 25 feet for minimum side yards in
25 R-1, R-2, and R-3. Is that correct?

A Yes.

1 Q With reference to R-4, the minimum side
2 yard is 10 feet with an aggregate width equaling at
3 ~~ERASE~~ percent of the lot width. Is that --
4 ~~COTTON~~ Now, there you get into an interesting situation
5 because you have a requirement in that zone that you
6 have 100 feet frontage; and generally speaking, the
7 frontage of the lot is equal to or if anything less
8 than the width of the lot at the set-back line.

9 So if your aggregate is 35 percent, that means
10 that from a practical standpoint in lots on straight
11 streets, you will have to have a total of 35 feet. In
12 lots on cul-de-sacs and curves in streets, you
13 probably have to have an aggregate of 40 to 50 feet
14 your side yards. So even though one of them can be ten
15 feet, the other one will have to be 25 to 40 feet. So that
16 the overall effect is not least-cost.

17 Q And under the sensity modifications in
18 R-4 with the two side yards, it still would only be
19 reduced to 30 percent of the minimum lot width and that
20 ~~ERASE~~ still not be least-cost?

21 ~~ERASE~~ It does not have a substantive impact.

22 Q What is your least-cost standard for
23 minimum rear yards for single-family residences?

24 A Well, again I did not propose a specific
25 standard in the hypothetical house on a 50 X 100 lot

1 that I described in my report. The rear yard resulted
 2 in a 35 foot depth. I don't know that that's required.
 3 ~~if the front yard need not be any more than~~
 4 ~~there is no reason why a rear yard exceed 25~~
 5 feet either.

6 Q So you would disapprove of the 50 foot
 7 minimum rear yard requirement in R-1 and R-2?

8 A Again they're not consistent with least-cost
 9 standards.

10 Q Even if you had a least-cost minimum
 11 front yard?

12 A Well, you see, if you had
 13 25-foot front yard and you were putting a typical
 14 Say a typical ranch house on that yard, and you had
 15 40 or a 50-foot rear yard, the next thing you know your
 16 total yard would be a good deal bigger than a least-cost
 17 standard. So the question is the overall effect of
 18 these different requirements in terms of what you can
 19 and cannot do.

20 Q Would it be better that they eliminated
 21 ~~set-backs and just dealt in terms of the actual~~
 22 ~~minimum lot size?~~

23 A I think set-backs serve some purposes. I think
 24 people believe that there should be some distance
 25 between the house and the passage of the public, at
 least from the standpoint of privacy or noise impact.

1 But I think from a practical standpoint, if you are
2 building a house that's on just a minor subdivision
3 where there is no significant through-traffic,
4 vehicles or pedestrians, there is no compelling
5 reason for a significant set-back. I think in many
6 urban setting you have zero set-backs of houses, like
7 the one I live in. The 25-foot set-back I suggested is
8 certainly a very ample set-back that's consistent with
9 the general visual character, if you will, of suburban
10 communities.

11 I believe from a health and safety standpoint
12 it's arguable that you could provide a 10-foot set-back
13 just to provide spacing between the spacing
14 structure and leave it at that.

15 Q Okay. Fine. You would agree that the
16 25-foot then in the R-4 zone, the minimum rear yard, is
17 least-cost? A Well, it's not inconsistent
18 with least-cost. In other words, you don't need a
19 25-feet rear set-back, but if you do have one for some
20 reason in your ordinance, it does not act as
21 a barrier for construction of least-cost housing.

22 Q With reference to the parking requirements
23 in Passaic Township, for single-family residential zones
24 and these I believe are applicable to all zones, R-1
25 through R-4, can you tell me what your opinion is of the

1 requirement that each space not be less than 200 square
2 feet in area exclusive of access drives and isles?

3 [REDACTED] That is a -- 200 square feet for the actual
4 [REDACTED] space is a more or less standard requirement.

5 Q Is that consistent with least-cost
6 housing? A Yes.

7 Q What about the requirement that each parking
8 space measure 10 feet in length?

9 A That logically follows from the other.

10 Q And that is fine. That is consistent with
11 least-cost housing? A Yes.

12 Q What about the provision in the [REDACTED]
13 requirements that parallel parking spaces are permitted
14 measuring no less than 8 feet in width and 24 feet in
15 length. Is that consistent with least-cost housing?

16 A I haven't studied that specifically.

17 Q I believe that was in the new zoning
18 ordinance. A All right.

19 Q So you have no opinion on that particular --
20 [REDACTED] That's correct.

21 Q What about the requirement that there be
22 two parking spaces per dwelling unit in all residential
23 zones. Is that consistent with least-cost housing?

24 A No.

25 Q Why not?

1 A Because there are many types of housing which,
 2 depending on the nature of the housing built, can be
 3 [REDACTED] served by less parking. The excess parking
 4 [REDACTED] clearly increase the cost. In fact, it's
 5 recognized in the ordinance where at one point in the
 6 Passaic Township ordinance, the ordinance provides for
 7 1.5 parking spaces per dwelling units for apartments,
 8 which is a reasonable requirement, even though it's
 9 contradicted by a number of other parts of the ordinance.

10 Q Is this consistent with least-cost housing
 11 if applied just to single-family residences? [REDACTED]

12 A If the single-family -- Scratch that. [REDACTED]
 13 standard clearly provides both that there is [REDACTED]
 14 for a garage, which is clearly cost generating, and,
 15 secondly, that the parking spaces can be front to back
 16 rather than side to side, it's not inconsistent with
 17 least-cost housing.

18 Q When you say front to back, would that also
 19 necessitate that the parking would be in the required

20 [REDACTED] yard? A I have no -- Can't imagine
 21 [REDACTED] should be a problem. I mean it would be on the
 22 driveway. You won't have to park on the grass.

23 Q There is a provision in our ordinance that
 24 says that no parking can be in the minimum required
 25 front yard of the house.

PENGAD CO., BAYONNE, N.J. 07002 FORM 2046

1 A That is purely and simply cost generating.

2 Q What is your opinion of the requirement
3 [REDACTED] parking should be located in places generally
4 [REDACTED] particular to driveways or roads?

5 A Yeah, from a practical standpoint that really
6 makes little difference. I'm not sure why it's there,
7 but it doesn't have any significant cost impact that I
8 am familiar with.

9 Q Okay. In the single-family residence
10 in Passaic Township a garage is required.
11 inconsistent with least-cost housing?

12 A Yes.

13 Q You would recommend no garages?

14 A That's right.

15 Q This is for single-family detached homes?

16 A That's correct.

17 Q Is that also true with any type of housing
18 that you would not recommend a garage?

19 A That's correct.

20 [REDACTED] You mentioned previously in your report
21 [REDACTED] the fact that Passaic Township has the no-
22 lookalike provision within their zoning ordinances.
23 I specifically refer you to Section 95-21 of Passaic
24 Township's Zoning Ordinance, which I am not certain that
25 you specifically address yourself to in the report. And

1 I ask you to read this over and give me your opinion of
2 the no-lookalike provision and the problems inherent
3 in that section. A Well, I believe it
4 tends to strongly encourage, if not absolutely dictate,
5 more expensive housing than what the explicit standards
6 of the ordinance require.

7 Q Would you know the costs involved generally
8 with no-lookalike provision?

9 A No-lookalike provisions are somewhat different
10 than say frontage and set-back requirements where you
11 can calculate a specific dollar cost. No-lookalike
12 provisions act as a general tendency to increase the
13 costs of the unit by making the unit generally more
14 elaborate, by reducing efficiencies and economies in
15 construction. They do not have an exact dollar cost the
16 same way that other provisions do.

17 Q Is there any type of no-lookalike
18 provision that is consistent with least-cost housing?

19 A No.

20 Q No? A By definition no-
21 lookalike provisions have nothing to do with health
22 and safety, and only the most marginal relationship to
23 the general welfare.

24 Q Okay. Did you find any other cost-
25 generating or exclusionary provisions in Passaic

1 Township's ordinances with reference to single-family
2 residences? A Not to the best of my
3 recollection at this time.

4 Q The last few questions I have deal with
5 the multi-family provisions in Passaic Township's
6 ordinance. I note for the record that presently there
7 are no zones designated on the zoning map for such
8 housing. A That makes the provisions
9 somewhat academic.

10 Q I realize that problem. Although, by the
11 time this goes to trial we may, in fact, have such
12 zones designated. They are in the process of discussing
13 the proper locations for such zones. So we would like
14 to know the problems inherent with the present require-
15 ments.

16 First, I guess we will look at the R-MF Zone,
17 which is the multi-family residence zone. This would
18 be not a conditional use as exists in the other section
19 of the zoning ordinance. If it would be easier for you --

20 know if you want to go 'til when you find the
21 or if I should go through the specific areas.

22 A Why don't you, because of the two memos, the
23 sequence is a little screwed up.

24 Q Okay. Under the R-MF Zone there is a
25 minimum lot size of five acres. What is your opinion

1 of that particular provision?

2 A Well, it's not necessary again in terms of health
3 and safety. And it can have the effect of reducing the
4 feasibility of construction or the amount of units
5 constructed if the land in the zoning district is at
6 present divided into ownerships of less than five acres.
7 I think if the ownerships are five acres or more in the
8 zone, then the impact would probably not be significant.

9 Q If the ownerships were in five acres or
10 more presently, would you have a problem in least-cost
11 terms with this provision? five acre minimum lot size?

12 A Yeah, it's still not necessary. It has no health
13 and safety basis that I'm familiar with. I'm saying
14 that under those circumstances, its tangible impact
15 would be negligible.

16 Q Would you find any rational basis for a
17 smaller minimum lot size for multi-family development?

18 A I think from a practical standpoint if you define
19 multi-family development, say, as something that has
20 two or more units in it, any lot that's capable of
21 meeting the specific requirements for those units should
22 be buildable.

23 Q Okay. And this minimum lot size does have
24 a cost-generating effect?

25 A It can again to the degree that it reduces the

PENGAD CO., BAYONNE, N.J. 07002 FORM 2046

1 availability of land for development.

2 Q The new ordinance that was recently passed
3 by Passaic Township added a provision with reference to
4 the R-1F Zone for a minimum lot width of 300 feet.

5 What is your opinion of that particular provision?

6 A Again that has exactly the same effects. It
7 reduces the amount of land potentially available or
8 would if there was some land potential in the first
9 place, and has no health and safety basis.

10 Q Do you have a minimum lot width that would
11 be acceptable? A Again a minimum

12 lot width should be dictated by the configuration of
13 the unit and the set-back requirements. So if you
14 would -- Let's say if you required say 20 foot side
15 set-backs, for example, for a multi-family structure,
16 and you had say four townhouses that were 16 feet wide
17 each, that would give you in that case your -- You
18 could have a perfectly acceptable development with a
19 little over a 100 feet in width.

20 Q So this particular provision has no
21 justified basis? A That's correct.

22 Q All right. We have minimum floor areas
23 that are listed. It is in Section 95-55(B) of the new
24 ordinance. It is 95-8.4(C) in the old ordinance, which
25 was readopted. A Yes.

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 Q Which gives the minimum floor areas. What
2 is your opinion of those? They are listed according to
3 ~~under~~ under apartments and townhouses with areas
4 ~~relating~~ relating to the numbers of bedrooms.

5 A The requirements for apartments are not
6 unreasonable, though the requirement for efficiency
7 units could be substantially smaller, could be at least
8 no more than 400 square feet instead of the 500 that
9 appears in the ordinance.

10 Q Okay. A The requirements for
11 townhouses are substantially higher than those for the
12 apartments; and thus excessive in as much as they are
13 much higher.

14 Q Okay. By that do you mean that they are
15 not consistent with least-cost housing?

16 A That's correct.

17 Q Okay. What areas would you recommend for
18 the townhouses? A Same as the

19 apartments.

20 Q Same as the apartments.

21 The apartments could be slightly lower. But
22 they are within the range that I indicated in my report.

23 Q So you would not object to those
24 particular provisions in the ordinance?

25 A That's correct.

1 Q There is a maximum height on the multi-
2 family dwellings of 35 feet or two and-a-half stories.

LOOK
SECRET

3 provision objectionable as not being consistent
4 with least-cost housing?

5 A There are two points there. First, in terms of
6 garden apartments, if I read the two and-a-half story
7 requirement correctly, that it permits a total of three
8 units on top of each other, which I'm not certain I
9 do. But read that way --

10 Q This is under the R-MF Zone?

11 A That's correct.-- Then it's not unreasonable
12 with regard to garden apartments. It does prohibit,
13 however, mid-rise housing, which is a desirable least-
14 cost housing type.

15 Q Is it your opinion that all towns have
16 to provide for mid-rise housing, even if they have
17 provided a fair share through the use of apartments,
18 townhouses? A I think it's desirable for

19 them to do so, particularly if they have public
20 transportation services and commercial centers which
21 are locations desirable for senior citizens and
22 handicapped people.

23 Q If they do not have the commercial centers
24 and transportation? A Then it's arguable
25 that it may not be necessary.

PENGAD CO., BAYONNE, N.J. 07002 FORM 2045

1 Q But would you object to a zoning ordinance
2 that provided a fair share of housing in garden
3 apartment, single-family small size lots, and townhouses,
4 but did not have these mid-rise apartments?

5 A I don't know. I would have to look at it
6 specifically and look at the specific conditions in
7 the community.

8 Q Do you have any objection in least-cost
9 terms to a minimum front yard of 50 feet?

10 A Yes.

11 Q Actually that minimum is for ~~set-backs~~
12 on multi-family developments. What is your ~~objection?~~

13 A It is greater than is necessary and ~~increased~~
14 costs.

15 Q What set-backs would you recommend?

16 A I think the 25 feet that I mentioned in terms of
17 two-family --

18 Q For all set-backs, front, side, and rear?

19 A I think that would probably be reasonable.

20 Q We also have a requirement in R-MF Zone
21 ~~the~~ minimum building coverage of 15 percent. What is
22 your opinion of that particular requirement?

23 A Well, that's a low requirement. I think from a
24 practical standpoint, the key factor in terms of least-
25 cost at the density, which relates directly to the

maximal building requirement.

Q So this is a figure that is too low for
the maximum?

A That's correct.

Q What would you recommend?

A Well, certainly I think it's quite customary
in ordinances to see a figure of 25 percent. And that
would --

Q Would anything higher than that be least-
cost?

A Well, again I have not in
my report developed or analyzed a specific coverage
standard, but I focus on density standards.

Q Are you going to develop any
regarding maximum building coverage?

A Only in the context of what would or would not
interfere with the densities that I am recommending.
In other words --

Q You say that the 15 percent maximum
building coverage would interfere with the densities
recommended for apartments and townhouses?

A That's correct.

Q What about the maximum hard surface coverage
of 40 percent in the R-MF Zone. Is that consistent
with least-cost housing?

A Well, it's an extension of the previous one.
Certainly additional hard surface coverage of 25 percent

1 over and above what's covered by the building is not
2 unreasonable. But clearly if you are going to increase
3 the building coverage amount, you would have to
4 proportionately increase the hard surface coverage.

5 Q So if we had a 25 percent maximum building
6 coverage, a maximum hard coverage of 50 percent would be
7 consistent with least-cost housing?

8 A Yes, from a practical standpoint I doubt that it
9 would be necessary to reach that high a level of hard
10 surfact coverage in practice.

11 Q Would 40 percent still be consistent with
12 least-cost housing, assuming here that the maximum
13 building coverage is 25 percent?

14 A No, I suspect the results would be somewhere
15 between 40 and 50.

16 Q So a 40 percent maximum hard surface
17 coverage is not consistent with least-cost housing?

18 A That's correct.

19 Q All right. On the parking requirements
20 in this particular zone, it is required that we have
21 a minimum of all parking lots larger than 60 spaces are
22 prohibited. Is that consistent with least-cost housing?

23 A Again that's another provision that has no
24 particular basis in health or safety, but is not likely
25 to have a practical impact on the least-cost character

1 of the ordinance.

2 Q So you would not object to that particular

3 [redacted] itself? A That's correct.

4 Q Okay. What about the requirement that no
5 unroofed parking space shall be closer than 10 feet to
6 any dwelling unit? Does that have any effect in terms
7 of least-cost? A Not likely.

8 Q What about the requirement for two off-
9 street parking spaces for each apartment and or town-
10 house? A As I stated prev [redacted]
11 that is excessive.

12 Q Your recommendations were 1.8
13 townhouse? A And 1.5 per apartment.

14 Q What about the requirement that there be
15 no parking in the 50 foot yard set-backs or in the
16 recreational space? A Well, clearly one
17 should not use parking for recreation purposes. There
18 is no reason why you need to have an additional 50 feet of
19 [redacted] space beyond the parking area. So that is clearly
20 [redacted] ve. The recreation space -- The recreation part
21 [redacted] is understandable.

22 Q Absolutely.

23 A The other part of it is not.

24 Q There is no parking in the 50 yard set-
25 back? A That's excessive.

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 Q What if it was the 25-foot yard set-back?

2 A Well, I think if you created -- Had a provision
3 for example, a backyard set-back could be
4 on either side of the parking so that you didn't
5 have to have a 25-foot clear area, that could be done.
6 So, for example, you would have the building, a ten foot
7 space, your parking area, and an additional 15 feet or so.
8 That would be reasonable.

9 Q Okay. A To require -- See,
10 you would have a space between the parking and the
11 building, then the parking. Then the entire
12 area is not -- It's excessive.

13 Q All right. On the densities
14 eight apartments per acre and six townhouses per acre.
15 I assume from what you said this is not consistent with
16 least-cost housing? A Won't do.

17 Q And am I correct, your figures for least-
18 cost densities are ten townhouses per acre and fifteen
19 apartments per acre?

20 That's correct.

21 Q We also have in this ordinance a combination
22 requirement that developments of more than 45 units
23 shall have a minimum of 60 percent townhouses and the
24 remainder in apartments. What is your opinion of that
25 requirement? A I cannot think of any

1 justification for such a requirement.

2 Q Is this also a cost-generating factor?

3 A Well, it's hard to say. It's a factor that
4 tends to -- Well, certainly it reduces the efficiency
5 of the use of your larger parcels because it means that
6 you get to provide fewer units. Your overall density is
7 reduced. The unit sizes are increased. So particularly
8 given the fact that, for whatever reason, the ordinance
9 has provided differential floor area standards for
10 apartments and for townhouses, it would appear to be
11 pushing the cost of the units up, resulting in a
12 preponderance of the units be larger rather than smaller
13 units, which means by definition more expensive
14 than less expensive units.

15 The point is it tends to encourage that more
16 expensive units rather than less expensive units be
17 built, because under the standards of the ordinance, the
18 townhouses must be built larger and more expensive than
19 garden apartments providing the same number of bedrooms.

20 Q What if the requirements regarding the
21 floor space, whatever, were the same as the
22 requirements for the apartments?

23 A Well, --

24 Q Would that have any affect on your
25 opinion?

A That would eliminate the

1 specific objection. The fact would remain that there is
2 no justification that I am familiar with -- These kinds
3 of ordinance provisions from my experience serve no
4 purpose except to aggravate would-be developers. And so
5 even though not explicitly violative of a least-cost
6 standard or measure of a least-cost standard, it tends
7 to have the effect of discouraging use of its zone
8 provisions.

9 Q So even if we had the minimum least-cost
10 requirements in all the other provisions, this would
11 make our multi-family zone not least-cost?

12 A Again I do not want to sound like I'm
13 know, irrationally nit-picking, but the point
14 time you require a provision of this sort, you are
15 providing certain types of mixes which are selected
16 arbitrarily with no relationship to market demand or
17 what have you. You are throwing in a reason why
18 somebody would be more reluctant to or less willing to
19 build under the ordinance than if it wasn't there. And
20 off to my judgment has no justification and just
21 not be in an ordinance.

22 Q With reference to the requirement of
23 recreational space of 400 square feet per dwelling unit,
24 what is your opinion in terms of least-cost housing of
25 this provision?

A That is not an
unreasonab

1 unreasonably high figure.

2 Q So that would be consistent with least-
3 [redacted] housing? A Yes.

4 Q What about the requirement that there be
5 separate recreational areas for each five units which
6 shall be equipped with active and passive recreational
7 activities? A That strikes me as being

8 unnecessary and cost generating. If you are going to
9 set up a facility -- The idea of having to duplicate a
10 complete range of recreational facilities for
11 five units in the development is clearly unnecessary
12 and cost generating.

13 Q Would you have one separate recreational
14 area for a multi-family development, regardless of how
15 large it was? A You can. Well, I

16 think there's a point -- Once you have 800, 1,000, or
17 1500 units or something in that area, the reason why
18 you would want separate recreational facilities as your
19 unit size increased was if the distance between the

20 [redacted] and the recreational facilities became so great

21 [redacted] became not feasible or it would significantly

22 reduce the attractiveness of those recreational facilities
23 in terms of their use.

24 Except for distance and accessibility of the
25 facilities to the residents, I can think of no health

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2048

1 and safety justification or general welfare justification
2 for this requirement. Now, clearly what is a legitimate
3 [REDACTED] will vary depending on the type of facilities.
4 [REDACTED] For example, if you are talking about to the lots, a
5 development of a given size that could easily have a
6 single-~~adult~~ recreational facility, might justifiably
7 have more than one to the lot because you want those to
8 be located in much more immediate proximity to the
9 dwelling units themselves. While things like tennis
10 courts could be quite some ~~removed~~ and the ~~people will~~
11 still use them as intensively. [REDACTED]

12 Q Would you recommend provisions
13 ordinance which differentiated them between [REDACTED]
14 recreational space and the number of recreational spaces
15 provided each unit?

16 A I don't know that I would recommend it
17 affirmatively; but I would not find it as objectionable
18 as long as it was reasonably framed.

19 Q If it was in terms of distance and,
20 [REDACTED] re, numbers according to the type of recreational

21 [REDACTED] A If it was in terms of distance and
22 if it was firmly grounded in reasonable standards, and
23 I don't think planning boards should be in the business
24 of sort of brainstorming on the basis of no particular
25 expertise what their gut instincts tell them is

1 reasonably standard. If they can't come up with a
2 [REDACTED] that they know makes sense, then it shouldn't
3 [REDACTED] ordinance.

4 Q Would this provision be acceptable in
5 terms of least-cost if the number of units was higher?
6 For example, if you had separate areas for recreation
7 for each 100 units? A Again I'm saying it
8 makes no sense to sort of set an arbitrary number and
9 make this -- If they have a firm justification, and I
10 think that would have to be framed in terms of [REDACTED]
11 and that was firmly grounded in terms of some [REDACTED]
12 objective standards, research, whatever, the [REDACTED]
13 of that nature would be legitimate.

14 Q Okay. A I doubt very much
15 that it would be a function of the number of units
16 because the distance -- If you set it according to dis-
17 tance, then the design and the layout of the units
18 would determine the number of facilities rather than
19 [REDACTED] number of units.

20 Q Do you have any objection to the provision
21 [REDACTED] recreational space may be provided in the yard
22 areas? A Yes, same reason. It's
23 not necessary. There is no reason why it should not
24 be provided and it is simply just a matter of increasing
25 the land consumption.

1 Q So that is not consistent with least-cost
2 housing? A That's correct.

3 Q All right. We also have in this
4 [redacted] a density increase option which I believe
5 you noted in your report whereby you could increase the
6 density be 10 percent, but not more than 20 units in
7 more than one development. And then it has if the
8 added units are for low and moderate income residences
9 and fully subsidized and meets established township
10 requirements; what is your opinion of this [redacted]
11 terms of least-cost housing?

12 A Well, it's a very good thing in terms [redacted]
13 principle. I had some specific objections to [redacted]
14 one thing, of course, that concerns me was that I could
15 find the established township requirement that reference
16 is made to, nowhere else in the ordinance. I don't
17 know what that reference to is and that was a question
18 mark.

19 Q If that was cleared up with a specific
20 [redacted] reference to zoning, whatever the general zoning
21 [redacted] requirement is, would you still have objections?

22 A No, if those requirements were consistent with
23 the other requirements that we have been discussing.

24 Q Okay. A The other question is
25 I believe, unless there is something here I do not

1 understand, the term "middle" is used which should be
2 moderate. It says low and/or middle income residence
3 in the ordinance.

4 Q And you object to the term "middle"?

5 A Well, it's not object. I'm not clear what the
6 ordinance has in mind. The usual formulation is low
7 and moderate. It's kind of a term of art. Middle
8 income is another term which is a much vaguer -- It
9 does not have the same kind of meaning, but is usually
10 held to mean families who do not need subsidization to
11 be housed. So that was why I had a -- I'm assuming that's
12 probably a typo, but it should be corrected.

13 Q Wouldn't that, in fact, implicitly be
14 corrected by the fact that the units have to be for
15 low and middle income people and be fully subsidized?

16 A It would seem so, but again the word "middle"
17 income is too vague. It doesn't have a clear meaning
18 to be contradicted.

19 Q And you believe moderate --

20 Is probably the correct word in the context of
21 programs. Yes, it has a much more clearer
22 meaning.

23 Q You believe, though, the concept of a
24 density option increase is consistent with least-cost
25 housing? A Yes.

1 Q Okay. Do you have any objections for the
 2 requirement that all multi-family developments be
 3 provided with approved public water and sewer facilities?

4 A Okay. Here is a question about the meaning of
 5 the word public. If it refers to a system that has
 6 been established by an M.U.A. or another designated
 7 governmental sewerage agency, then I do object. If it
 8 refers to simply a sewer system that is public in the
 9 sense that it is other than a single-unit septic tank,
 10 and clearly permits the provision of a package system
 11 by a developer subject to meeting official standards,
 12 then I would have no problem.

13 Q Do you have any objection to the require-
 14 ment that screening be required around the perimeter as
 15 is necessary consisting of evergreens, shrubs, trees
 16 or other combinations thereof?

17 A As is necessary, no.

18 Q Is there any objection to the requirement
 19 that the landscaping be preserved in its natural state
 20 as is practical?

21 A No. I think all of these terms, of course, have
 22 as necessary, in so far as practicable and so on,
 23 assuming they are reasonably interpreted by the planning
 24 board.

25 Q What about the requirements that

PENGAD CO., BAYONNE, N.J. 07002 · FORM 2048

1 pedestrian and bicycle paths be incorporated in the
2 overall site design. Does that cause problems in terms
3 of least-cost housing?

4 Well, it doesn't cause problems particularly in
5 terms of least-cost housing. From a practical stand-
6 point, if you are doing a small scale development of
7 only a handful of units, to incorporate pedestrian and
8 bicycle paths into such a site is rather difficult.
9 So I think this is a somewhat unrealistic requirement
10 except when you are dealing with a large development.

11 Q So if this were applied to a small
12 development, it would be cost generating?

13 A Yes. It would perhaps not be possible.

14 Q Not be possible. But if it was in terms
15 of a large development, it would still be consistent
16 with least-cost housing?

17 A I believe so.

18 Q I would also like your opinion on the
19 maximum units per structure which are set forth in this
20 ordinance as eight townhouses per structure and
21 four apartments per structure.

22 A Those are again too low. They are not consistent
23 with least-cost housing.

24 Q What figures would you recommend?

25

1 A I am hesitant to recommend figures there because
2 there is no hard and fast line. I mean clearly the
3 this is not least-cost is because it increases the
4 of exterior space, exterior wall area per unit,
5 construction costs; as well as by requiring a larger
6 number of separate buildings with distances between them,
7 increasing the cost of utility lines and services.

8 Clearly I can imagine no reason why something
9 in the area of 15, 20, 25 townhouses, 40, 50, 60, perhaps
10 even 100 or more apartments would not be perfectly
11 consistent with any reasonable design standards
12 could be established.

13 Q You would have 100 apartments
14 structure?

A I see no reason why not.

15 Q A two-story structure?

16 A Sure.

17 Q This also has a no-lookalike provision
18 which is referred to in I believe you have the old
19 zoning ordinance, 95-8.4(H)?

20 Yes, these are all incorporated by reference if
21 serves me correctly.

22 Q Right. Can you tell me your opinion
23 regarding each townhouse being distinct with design

24 features? A Again it has the same effect
25 as a no-lookalike standard for single-family houses.

1 The explicit cost increases literally are not significant.

2 The effect on encouraging more expensive units can be.

3 Assuming that our densities and minimum
4 face and whatever, all the other provisions were
5 consistent with least-cost housing, would this provision
6 alone make the housing not least-cost?

7 A I think it would be undesirable to retain it.
8 Again it's a provision where you can argue legitimately
9 that the provision does not explicitly preclude least-
10 cost housing. It does discourage it, however
11 serves no useful purpose.

12 Q What about the provision that
13 two ground level apartment entrances shall be
14 in the same plane of any one building facade. Does this
15 cause problems? A Same thing, yes.

16 Q Would this provision alone in and of itself
17 cause the housing to be --

18 A Again it's a cost-generating provision, though,
19 interestingly enough, this ordinance unlike most
20 ordinances of this sort, this ordinance does not specify
21 the distance of planes. Usually the distance will say
22 they may not be in the same plane and each set-back
23 of each plane must be two feet or four feet different
24 from the previous one. This one you could have a two-
25 inch separation of planes and meet the letter of the

PENGAD CO., BAYORNE, N.J. 07002 - FORM 2045

1 ordinance. So from that standpoint, it might have a
2 minimal cost impact, but again it's not necessary.

3 [REDACTED] But this provision itself with its
4 [REDACTED] cost effect, would that invalidate this
5 particular zone as not being least-cost?

6 A I think again my same feeling about this as
7 with the no-lookalike's. It serves no useful purpose,
8 and is discouraging of least-cost housing.

9 Q Okay. We also have a requirement in this
10 zone for front and rear access for each townhouse

11 A That's customary.

12 Q Is that consistent with least-cost housing?

13 A Yes.

14 Q What about the requirement for separate
15 front entrances for each apartment?

16 A That I find quite hard to understand. Of course,
17 I read that to assume that what that says is front
18 entrances to the outside; and since you are having
19 second story apartments, that means you are requiring
20 [REDACTED] of apartments which will have their entrances
21 [REDACTED] landing with exterior staircases or some such
22 thing. If you mean -- If this is to be construed as
23 separate front entrances to a hallway or corridor or
24 lobby, then it is not a necessary standard, because it
25 is obvious that any apartment unit is going to have

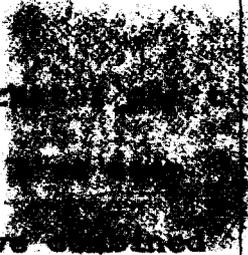
PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 a front door to something. So I'm somewhat mystified
2 by the provision.

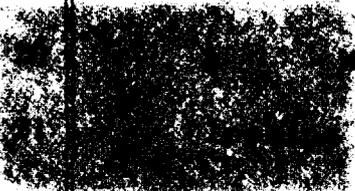
3 Q So whether this was least-cost or not
4 really on how --

5 A How one reads it.

6 Q How one reads it and how it is applied.
7 Okay. We also have a restriction in the ordinance that
8 apartment units and townhouse units shall be in the
9 same structure. Does this cause problems in terms of
10 least-cost housing?

11 A Again it has no -- It's a provision that I don't
12 understand the justification for. In fact, 
13 some extremely attractive buildings that have contained
14 apartments and townhouses in the same structures. It
15 has no particular bearing on whether the units are or
16 are not least-cost. But it seems gratuitous.

17 Q Is there any problems in terms of least-
18 cost housing with the prohibition against cellar or
19 basement apartments?

20  Well, actually not in itself. What it does,
21 back to 95-8.4(B), this -- which is the height
22 requirements, looking at them in context, it seems clear
23 that the ordinance would not allow for a three-story
24 garden apartment structure. So in that sense it's not
25 objectionable in itself. However, the fact that the

1 ordinance does not allow for three-story apartment
2 structures I think is objectionable.

3 Q Finally, in this zone there is a require-
4 ment that a master television antenna be provided for
5 each building to serve the units therein. Is this
6 inconsistent with least-cost housing?

7 A I don't believe this provision is necessary.

8 Q By that do you mean that low and moderate
9 income housing does not have to have T.V. antennas?

10 A I think you can get reasonably good reception with
11 a television unit without a master antenna.

12 Q So this would be a cost-generat[redacted]?

13 A I mean it's really not a major factor, but if it
14 seems to be required to get adequate television
15 reception, what the hell, poor people do watch television
16 as often as anybody else, as far as I know.

17 Q The last thing I would like you to review
18 is the zone which you said appears to be least-cost --
19 Oh, wait, before I go on. Is there any other provision
20 in the R-MF Zone which you find objectionable within terms
21 of least-cost housing?

22 A No, I don't believe so.

23 (A recess is taken.)

24 Q We are on the conditional use multi-family
25 zone. The conditional use zone.

1 A Okay.

2 Q It is found in Section 95-39.

3 A 95-40.

4 Q 40, yes, 40.

5 A Right.

6 Q I am looking where the use is authorized.

7 A Yes.

8 Q Again there is no designation as yet for
9 this conditional use to the best of my knowledge at
10 this point. You are familiar that this conditional use
11 as the ordinance stands now is authorized in
12 R-4(A) Zone and B-2(A) Zone?

13 A That's correct.

14 Q Do you have any problems in terms of
15 least-cost housing with the use in this zone which is
16 limited to apartments, townhouses, and accessory uses?

17 A Do I have any --

18 Q I mean that it is just limited to those
19 two types of housing?

20 A No.

21 Q Okay. The minimum lot area in this zone is
22 2,000 square feet per multi-family development --

23 A 20,000.

24 Q 20,000. Is this consistent with least-
25 cost housing? A From a practical

PENGAD CO., BAYONNE, N.J. 07002 FORM 2046

1 standpoint that's a reasonable size.

2 Q The density requirement here is 30 units
3 per development --

4 A Wait a second. That's the maximum number of
5 units.

6 Q Oh, maximum number of units.

7 A Okay.

8 Q Does this cause a problem in terms of
9 least-cost housing? A Well, yes. It acts

10 as a fairly severe upper limit on the number
11 that can be built. I mean if no development
12 30 units, that's a limiting factor. It's not
13 necessarily cost generating, but it certainly
14 amount of opportunity that is available.

15 If the opportunities are desirable under these
16 provisions and somebody assembles a site capable of
17 accommodating more than 30 units, they should be able to
18 build more than 30.

19 Q Would this limitation be justified if
20 termination was made with reference to the amount
21 of land existing in the community?

22 A Well, again there is no need for an arbitrary
23 determination. Obviously, the town has the right to
24 select the sites which it is going to zone for this
25 particular use. And if it turns out that it's impossible

1 to build more than 30 units on any site, then so be it.

2 It means the town has acted reasonably in
3 selecting those sites. But there is no reason that I
4 could imagine for putting in something like this, which
5 is patently on its face arbitrary.

6 Q You would still find this unjustifiable
7 even if those people who write the zoning ordinance
8 knew that there was no vacant land capable of supporting
9 more than 30 units for development?

10 A Okay. Here you have a question. Now, ~~the~~
11 the other multi-family provisions have no such ~~restriction~~.
12 In fact, they require quite a large minimum ~~lot size~~,
13 which requires, in effect, that you build no ~~lower than~~
14 30 units, because it's five acres and sixteen units to
15 the acre.

16 So if there is no vacant land for this use, but
17 there is vacant land for that use, it doesn't make sense
18 because they are essentially the same use.

19 Q But this provision is not in itself cost
20 ~~limiting~~? A No, but it acts as a limit
21 amount of housing which is as serious.

22 Q In this zone there is also the requirement
23 that the development must have approved public water
24 sewerage and drainage systems. Does this cause problems
25 in terms of least-cost housing?

1 A Well, this again is the same as the comment I
2 made earlier. If it precludes the developer providing
3 acceptable systems, then it is a problem.

4 Q By acceptable systems, you mean the package
5 treatment --

6 A Yes, that meets the State Health standards.

7 Q Do you find the townhouse density of
8 twelve units per acre to be acceptable in terms of
9 least-cost housing?

10 A Yes.

11 Q Do you have any problems in terms of
12 townhouse height maximum of 35 feet or two
13 stories? A No.

14 Q Is there any problems in terms of least-
15 cost housing with the townhouse lot width?--

16 A Yes --

17 Q -- Of less than 25 feet and individual
18 lot minimum of 25 feet?

19 A 22 feet.

20 Q 22 feet.

21 A Yes, that is clearly excessive.

22 Q What would you consider to you --

23 A Oh, perhaps for individual lots I should say there
24 should be no difference between the individual lot
25 width and the average lot width.

1 There is no reason why certain units should be
2 required to be larger than the minimum. That is clearly
3 consistent with least-cost standards. A reasonable
4 might be 16 feet, certainly no more than 18
5 feet.

6 Q You would not have then any average lot
7 width whatsoever? A Absolutely not.

8 Q Absolutely not?

9 A Because if you have established a least-cost
10 standard for individual lot width, if you have a higher
11 average width required, you are essentially
12 only a modest percentage of units in the development
13 be least-cost. And what you really want is
14 majority of the units be more expensive ones.

15 Q Okay. The townhouse minimum front yard
16 requirement is 25 feet. Is this acceptable in terms of
17 least-cost housing? A I think so.

18 Q The townhouse minimum lot depth is 80 feet.
19 Is that acceptable in terms of least-cost housing?
20 that should be reasonable, yes.

21 Q The townhouse minimum side yard is one
22 side yard on the end units of only 15 feet. Does that
23 have any problems in terms of --

24 A That's 15 feet on either side.

25 Q Right. Is that acceptable?

1 A I think so.

2 Q The townhouse minimum rear yard require-
3 25 feet. Is that acceptable in terms of least-
4 housing? A Yes.

5 Q Under the parking and garage requirements
6 for townhouses, this ordinance requires an off-street
7 open space parking space and a garage space, that is a
8 single garage space. Is this acceptable?

9 A No.

10 Q Why isn't it?

11 A There is certainly no need for a garage
12 all and the total number of spaces need not
13 per unit.

14 Q You would object even if it was 1.8 spaces
15 in a combination of garage and open parking spaces?

16 A That's correct. The garage itself does not increase
17 the amount of parking and is cost generating. It costs
18 a great deal more to build a garage than to blacktop
19 the same amount of space.

20 Q Okay. Could you explain then before when
21 discussed the flood plains with the mid-rise
22 apartments and the garage parking, would not that be
23 cost generating? A Yes, except what I

24 said is that it would be cost generating certainly
25 relative to townhouses and garden apartments. It would

1 not be particularly cost generating relative to a mid-
2 rise structure where your basic elevator unit and your
3 ~~elaborate structural system for the building would~~
4 ~~be required in any event.~~

5 Q But if we just had townhouses and garden
6 apartments in the flood plain and used your plan with
7 the first floor having no dwelling units, that would
8 cause problems?

9 A That would be an unworkable housing-type because
10 you would be building a floor without dwelling units and
11 you would only have one floor for occupancy.

12 Q Well, assuming it was three stories and
13 two floors for occupancy?

14 A Well, again it would be substantially more
15 expensive in that case because you would just have to
16 build your deck and have very little housing over it
17 relatively.

18 Q Would that provide least-cost housing in
19 that instance? A It would not be

20 ~~least-cost housing. If a community had no alternative~~
21 ~~in which multi-family housing could be built, it~~
22 may be justifiable, but it would not be least-cost.

23 Q Under the conditional use provision of
24 Passaic Township's ordinance, the apartment density is
25 listed in terms of 2,500 square feet per apartment unit.

1 Is that consistent with least-cost housing?

2 A Yes.

3 Q Do you have any problems with the
4 apartments of maximum height of 35 feet or three stories?

5 A No.

6 Q That is consistent?

7 A That's fine.

8 Q What about the apartment minimum lot
9 width of 100 foot? Does that cause any problems in
10 terms of least-cost housing?

11 A Again from a practical standpoint, it
12 imagine any garden apartment building being
13 on a significantly smaller lot, so this would have no
14 significant impact.

15 Q Okay. A The same would be
16 true with the depth.

17 Q Same with the depth. What about the
18 apartment minimum front yard of 25 feet? I mean actually
19 that applies to all set-backs.

20 That's not unreasonable.

21 And I believe you would find acceptable
22 the apartment parking requirement of 1.5 spaces per unit?

23 A That's correct. I should just comment that that
24 context, however, that the -- There is a section under
25 the general parking discussion of the ordinance which

1 states that all dwelling units, all new dwelling units,
2 have two parking spaces. So there is that.

3 Q There is a conflict?

4 A Yes.

5 (A discussion is held off the record.)

6 Q The minimum floor areas for apartments are
7 listed in Section 95-8.4(C).

8 A Yes, my comments on those are the same as previous.

9 Q These are still not consistent with least-
10 cost?

11 A Well, the apartment floor
12 areas for the one and two bedrooms specified
13 reasonable. The efficiency --

14 Q Could be 400?

15 A Could be 400.

16 Q Okay. What about the minimum floor areas
17 on the townhouses?

18 A Well, as I think I said, there is no reason why
19 those should be any higher than the ones for the
20 apartments.

21 Q So they should be the same. You see no
22 difference in floor areas, minimum floor areas, regard-
23 less of the housing type?

24 A Well, from a practical standpoint, sometimes
25 townhouses of a given number of bedrooms will be larger
than the garden apartment development of the same number

1 of bedrooms. But that again first should not be built
2 into the requirements since it has no health and safety
3 relationship and, second, is a function of the discretion
4 of the developer or the architect. It's the by-product
5 of the space required for the stairwell in a two-story
6 unit.

7 Q These minimum floor area requirements, are
8 they also applicable to single-family detached houses?

9 A Should be, certainly.

10 Q Okay. A In fact, with
11 single-family detached house you don't have
12 problem that you would in most townhouses because
13 are spreading it out a little bit more and you can use
14 as a ranch more efficiently.

15 Q Do you have any problems in terms of least-
16 cost housing with the screening requirements of fencing,
17 evergreens? A The design standards?

18 Q Right.

19 A Again my comment is --

For the other ones are applicable --
for the other ones apply.

22 Q Okay. Your comments on the parking lots
23 regarding a no larger lot than one of 60 spaces, that is
24 also applicable? A In this case since

25 the maximum number of units is 30 --

1 Q It has very little effect?

2 A Right.

3 Q And the same comments regarding no unroofed
4 [redacted] spaces being closer than ten feet to any dwelling
5 unit? A That's correct.

6 Q The conditional use zone also limits the
7 maximum number of townhouses per structure to eight and
8 the maximum number of apartments per structure to eighteen.
9 Are these consistent with least-cost housing?

10 A Where does it do that?

11 (A discussion is held off the [redacted])

12 A Having found where it does that, my [redacted]
13 that are the same as earlier, that they are [redacted]
14 consistent with least-cost for the reasons expressed.

15 Q Okay. Are your opinions with reference
16 to the multi-family zone, R-MF, the same in reference
17 to conditional use for the combination restrictions --

18 A Yes.

19 Q -- for the townhouse access?

20 [redacted] Again, the combination restriction, that one I
21 [redacted] believe is applicable any more because that's not
22 part of the '69 standards.

23 Q Okay. A The access
24 requirement -- My comments about access are the same.
25 Those are part of the design standards.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q The no-lookalike provision?

A The same.

Q And the apartment design requirements
reference to the apartments --

A The same.

Q And also the TV ~~van~~ ~~sh~~ ~~an~~ ~~in~~ a requirement?

A Yes, that's correct.

Q Okay. What is your general opinion in
reference to the multi-family conditional use in
Passaic Township? A That the

in terms of the physical standards, bulk req
and the like, for townhouses ~~are~~ clearly not
But for apartments are within reasonable lea
perimeters.

The statement of objectives that have to be met
for approval as well as general standards for additional
use do impose some serious questions, which given the
uncertainty of the conditional use process generally,
means that even if there were sites zones for this in

~~S~~ nance, I would place little or no weight on
being a means of producing least-cost housing in
Passaic Township.

First, because it is a conditional use rather
than a use by right. Second, that the standards set for
meeting the conditional use standard and general

1 objectives are stringent requiring things that are not
 2 arbitrary for multi-family developments; And thirdly,
 3 they are framed in general ways as to be almost
 4 limited exercise of discretion by the planning
 5 board, which in my judgment is, in turn, totally
 6 inconsistent with the land use law provisions governing
 7 conditional uses.

8 Q What conditions would you add to the
 9 conditional use provision to make it not so arbitrary?

10 A I would strike all of the objectives with
 11 possible exception of No. 3, which I would retain
 12 the light of the master plan language. I would
 13 under general standards 1, 5, 7, and 8, and reframe 6
 14 clearly to reflect my earlier comment about developer-
 15 provided sewer and water systems. Even though it is not
 16 necessary, I believe that for a conditional use
 17 language to be a meaningful vehicle for least-cost
 18 housing, it should be in addition to deleting these
 19 negative requirements that I've just outlined.

20 There should also be a positive provision
 21 perhaps in the objectives which would make
 22 clear that it is the policy of the Township to encourage
 23 this conditional use as a means of providing least-cost
 24 housing, and that the Township will act affirmatively
 25 on properly framed proposals meeting the explicit

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 standards in the ordinance.

2 Q Do you think that the use in a town is
3 [REDACTED] ed where the land within that municipality has
4 [REDACTED] environmental constraints?

5 A Oh, I have no objections to the use of conditional
6 use as a planning tool. I believe it has certain
7 positive aspects to it from a planning standpoint. I
8 believe, however, that the reasons for the conditional
9 use should be made clear and the basis on which an
10 applicant can get his conditional use made clear.
11 To me, this is the clear intent of the Land Use Ordinance, that
12 a conditional use is something very different from a
13 variance where there is clear discretion in the hands of
14 the appropriate body. A conditional use is something
15 which there is if not a right, at least a presumption of
16 some sort that if the person meets the conditions and
17 presents a reasonable proposal, it is given.

18 And that has to be made very clear in the
19 language of the ordinance. And provisions that strongly
20 [REDACTED] that the planning board could exercise more or
21 [REDACTED] bridled discretion are inconsistent with the
22 conditional use approach. And if there are environmental
23 criteria that the planning board is concerned about,
24 those should be spelled out in the conditional use
25 language so the applicant knows why it is a conditional

1 use and what he has to do to satisfy the planning board.

2 Q Do you have any objections to this
3 [REDACTED] lar zone?

4 [REDACTED] I don't believe so.

5 Q Okay.

6 (A discussion is held off the record.)

7 Q Okay. In page two of DP-1 for
8 identification, you list seven types of housing and
9 your comments in reference to Passaic Township. Is that
10 correct? A Yes.

11 Q Is it your opinion that all se [REDACTED]
12 housing have to be provided in a township in [REDACTED]
13 its ordinance is not exclusionary?

14 A It's my position, and I think I may have stated
15 this in earlier depositions, that six of the seven, and
16 to borrow some legal terminology, presumptively should
17 be provided. The seventh, which is planned unit develop-
18 ment, it is not inherently a least-cost housing type,
19 but it is in some cases a vehicle through which least-
[REDACTED] housing is provided so it is listed here.

20 [REDACTED] My feeling about the first six is that they
21 should be provided unless the Township has a compelling
22 reason why it is inappropriate to provide them in that
23 municipality.
24
25

1 Q Do you know whether any small lot single-
 2 family detached houses consistent with your definitions
 3 of least-cost exist now in Passaic Township?

4 A No.

5 Q Do you know where any two-family houses
 6 exist? A I believe I noticed a couple
 7 in some of the -- I guess in Stirling.

8 Q Do you know whether presently they have
 9 any townhouses or garden apartments?

10 A I didn't notice any. There may be some.

11 Q Do you know whether they had any mid-rise
 12 apartments? A No.

13 Q And did you see any mobile homes?

14 A I didn't see any. I note here -- I have a
 15 statistic that as of 1970 there was one mobile home
 16 counted by the census in Passaic Township. I didn't see
 17 it though.

18 Q Did you see any planned unit or planned
 19 residential developments within the Township?

20 A No.

21 Q Could you define what you mean by mobile
 22 home as opposed to a trailer? I noted in your report,
 23 DP-2, that you made a comment regarding the prohibition
 24 of trailers as used for a dwelling and you said that the
 25 term mobile home is not used. Could you make a

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 distinction between the terminology?

2 [REDACTED] Okay. The terminology is fussy like somany things.
3 [REDACTED] The difference is not substantive so much as stylistic.
4 [REDACTED] In other words, trailers was the term used most widely
5 from the 50;s throughout the 60's, until some point
6 where mobile homes gradually came into usage to describe
7 what were essentially the same things. There is a
8 stylistic difference in that when a person uses the
9 word "trailer" in conversation, for example, ~~something~~
10 knowledgable, it is usually used to mean the [REDACTED]
11 smaller, less elaborate, less well furnished [REDACTED]
12 of the structural type. And that mobile home [REDACTED]
13 refer to the more substantial, more elaborately furnished
14 or equipped ones. But essentially it means the same thing
15 except where somebody has gone out of their way to make
16 a difference.

17 Q So you would read the prohibition against
18 trailers coaches used as a dwelling to also prohibit
19 mobile homes? A That's correct.

20 [REDACTED] What type of mobile home is consistent
21 with low-cost housing or are all types permitted?

22 A Well, most mobile homes generally are constructed
23 to be sold at relatively modest cost, outside or a
24 couple of fairly unusual situations. Well, they're
25 not that unusual perhaps. There are examples of

1 expensive mobile homes and expensive mobile home
2 developments, but those are the exceptions. A mobile
3 [REDACTED] typically would be twelve or fourteen feet wide
4 [REDACTED], seventy feet long, providing somewhere in
5 the area of 700 to 900 square feet floor area in a
6 single-wide unit. This would be a representative
7 least-cost mobile home.

8 Q And would this representative least-cost
9 mobile home fit on to your small size single-family
10 lot? A Yes.

11 Q It would comply with all the [REDACTED]
12 requirements for your least-cost single-family [REDACTED]

13 A Yes, though in practice since a mobile [REDACTED]
14 longer and narrower than, let's say, a typical stick-
15 built single-family home with roughly the same number of
16 square feet, you could have and it probably would be
17 appropriate to have ordinance provisions that would
18 provide for narrower lots, but with longer -- Narrower,
19 but deeper lots, say, for a situation where a mobile
20 [REDACTED] is planned to be put on the lot within the same
21 [REDACTED] of square footage.

22 For example, the 50 X 100, 1,000 square foot lot
23 that I mentioned is best tailored, say to a house that
24 would say be in the area of 24 X 40. That's about 900
25 to a 1,000 square feet, two to three bedroom ranch, a

1 basic unit. If you had a lot and you wanted to put on
2 a 14 X 70 mobile home, which would give you about the
3 amount of square footage, you might want to instead
4 change it 50 X 100, you could have it say 40 X 120.
5 That would give you the same set-backs and yards, the
6 same amount of total lot area.

7 Q In providing for a variety of housing
8 with the different types which you listed in your report,
9 do you find it mandatory that an ordinance provide for
10 a mobile home park or can this type of housing be
11 provided on the single-family, small sized lots?

12 A I think the mobile home parks serve a
13 purpose in terms of a particular housing type
14 of providing relatively lower income people with the
15 opportunity to just buy the unit instead of having to
16 buy a package that includes land and improvements and
17 so forth and then pay a pad rental.

18 So I think the opportunity for mobile home parks
19 is certainly a desirable thing. I do not know that that
20 is an important difference that it would be
21 possible to mandate that there be mobile home parks in
22 addition to the opportunity for mobile home subdivisions
23 or mobile homes in a conventional subdivision in a
24 municipality.

25 Q Do you know the cost difference or

1 whether it is substantial between a mobile home in a
2 mobile home park as opposed to the mobile home on a
3 [REDACTED] family small sized lot?
4 [REDACTED] mean the costs are not very different. But
5 it's the method of payment and the structure of it which
6 is different.

7 Q Is the mobile home plus the land on which
8 it is placed in a single-family small sized lot
9 together that is till least-cost housing?

10 A Yes, it's not as cheap as one might want, but it
11 is as cheap as it can be now-a-days. If you [REDACTED]
12 mobile home, a substantial mobile home, for, [REDACTED]
13 something in the area of 16 to \$18,000 for the [REDACTED]
14 you can prepare a lot, a 5,000 square foot lot with
15 curbs and what-not for another 10, \$12,000. You have got
16 a very inexpensive unit compared to what else is available.

17 Q Do you have any comments with reference
18 to the standard for developing apartments over the stores
19 in the B-1-5 and B-1-20 Zones?

20 [REDACTED] As I understand it, there is a minimum lot size
21 [REDACTED] 10 square feet in the B-1-5 , and 30,000 square
22 feet in the B-1-20 Zones for any structure that includes
23 a dwelling unit and an additional 10,000 feet for each
24 additional dwelling unit, so these lot sizes are clearly
25 substantially greater than least-cost standards. The

1 unit size requirement of 650 square feet is also above
2 least-cost for one bedroom units. The public sewer
3 [REDACTED]ment that exists is again ambiguous. And my
4 [REDACTED] comment would apply to that as well.

5 Q Do you have any comments?

6 A Not at this time. Of course, it would appear
7 that two parking spaces per unit are required here
8 as well.

9 Q And that would be not consistent with
10 least-cost housing?

11 A That is correct.

12 Q That's all we have. I just have a couple
13 of questions more.

14 In order to provide an inclusionary type of
15 zoning ordinance, do all the exclusionary provisions
16 which you state in the reports and depositions have to
17 be removed? A That's the first step, yes.
18 Now, that does not necessarily mean, if I read the
19 language of the Court decisions correctly, that they
20 [REDACTED] be removed from every zone in the Township.
21 [REDACTED] as ample land is provided and with overzoning
22 and everything for all of the least-cost uses, there
23 can be other zones that are not least-cost. But
24 certainly the provision of ample land for least-cost
25 housing in its variety is the minimum condition.

1 Q These are just some questions that were
2 proposed by our planner.

3 [REDACTED] Are you aware that there are some H.U.D.
4 [REDACTED] projects in townhouse projects that have densities of
5 under ten per acre?

6 A I'm aware it's quite possible. H.U.D. does not
7 require a fixed density standard for its developments.
8 It provides a range and the standards that I have pro-
9 posed tend to be on the lower rather than the higher
10 side of that range. Under unusual circumstances [REDACTED]
11 you have particularly low land costs or par [REDACTED]
12 environmental characteristics, perhaps they [REDACTED]
13 units with lower densities, but this is the [REDACTED]
14 rather than the norm and a zoning ordinance should not
15 be predicated on these exceptions being made.

16 Q Are you aware that there is new subsidized
17 townhousing now under construction in Trenton that has
18 the zig-zag provisions?

19 A Again it's the same point. I have not argued
20 [REDACTED] is impossible to get approval for subsidies with
21 [REDACTED] provisions or these densities because certainly
22 the position that H.U.D. and the New Jersey H.F.A.
23 often take with regard to such standards is if we can
24 make it work in terms of our cost ceilings, then we have
25 no objection to it.

1 My point is that these things do not belong in
2 ordinances that are trying to provide least-cost housing.
3 [REDACTED] it becomes possible to provide amenities without
4 [REDACTED] the cost ceilings, then there is no reason
5 why they should not be provided. But the ordinance
6 should not dictate them.

7 Q Do you feel that residents of least-cost
8 housing should live in unattractive surroundings?

9 A No, I don't.

10 Q Okay. If the answer is no, then why do
11 you oppose esthetic regulations?

12 A If memory serves, I went over that one [REDACTED] about
13 two hours with Dan Burnstein and the Common [REDACTED].
14 And my point in a nutshell was that the provisions that
15 I am attacking in my judgment do not achieve esthetic
16 equality and are based on a specious theory that con-
17 fuses beauty with difference.

18 In other words, for example, in townhouses,
19 the strict application of the no-lookalike ordinance of
20 [REDACTED] Township regarding townhouses in my judgment
21 [REDACTED] create and where it's been applied has created
22 esthetic monstrosities .

23 Q Okay. Are you aware that site plan review
24 ordinances can require zig-zags and related design
25 improvements even if they are not required by the

1 zoning ordinance?

2 A A rose by any other name. Exclusion is exclusion.

AVILE
CONTENTS

3 [REDACTED] is a respectable body of opinion that argues that
4 [REDACTED] should not single out the zoning ordinance, but
5 look at all the municipal ordinances in toto. However,
6 an exclusionary provision is unjustifiable whether it
7 appears in the zoning ordinance or the site plan ordinance
8 or as some municipalities have done adopted completely
9 separate regulatory ordinances to deal with things like
10 mobile homes or whatever. So that does not ~~discriminate~~
11 a municipality.

12 Q What if the zoning ordinance was
13 inclusionary, but yet the site plan review added cost-
14 generating factors were added into it?

15 A I would consider it outrageous and an example of
16 bad faith of the municipality.

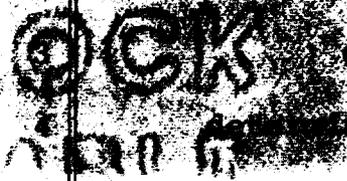
17 Q Are you aware that the Passaic zoning
18 ordinance permits housing on substandard lots?

19 A It is customary where there are older areas to
20 [REDACTED] housing in substandard lots in those areas as to
21 [REDACTED] a hardship on owners of individual lots
22 surrounded by development. From a practical standpoint,
23 this adds very little to the amount of housing
24 opportunity, a unit here, a unit there, a little more.

25 Q And do you know how many of these

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 substandard lots are available in Passaic Township for
2 housing? A No.



3 Q Do you take into account variances in your
4 determination of whether least-cost housing can be

5 provided? A Absolutely not, the
6 variances as Court after Court have stated in far
7 better language than I am capable of are a discretionary
8 matter that no reliance can be place on they're being
9 granted when and if reasonable proposals are presented.

10 Q Okay. A The woods are full
11 of multi-family housing applications that variances
12 have been denied for for the most ludicrous reasons.

13 Q Are you aware that a four-family
14 apartment was just approved by the Board of Adjustment
15 in Passaic Township?

16 A No.

17 Q Do you recommend mid-rise housing for
18 Passaic Township? A Again I am not
19 making any specific recommendations for the Township,
20 [redacted] being done that amount of study. But I certainly
21 [redacted] they should consider it.

22 Q Do you recommend multi-family housing in
23 Passaic Township's industrial areas?

24 A I really don't know. I haven't studied that
25 question.

1 Q You would have to make a further study?

2 A I would have to look at what those areas were
3 whether they appeared suitable for multi-family

5 Q Do you recommend mobilehomes in all of
6 Passaic Township's zones?

7 A Generally speaking, I know of no reason why a
8 mobile home unit should not be permitted in any place
9 where a conventionally constructed single-family unit
10 is permitted.

11 Q If Passaic Township has a need for mobile
12 units, for example, how many should it then have?

13 A Again I discussed this somewhat in my general
14 report and stressed that it will vary. As a kind of
15 rule of thumb I think a ratio of three to five times the
16 number of units appears to be justifiable which can
17 then be refined on the basis of a detailed analysis of
18 the municipality.

19 Q I note that in your discussion in the
20 Defense deposition that in your discussion of
21 zoning, you said that the fair share depends upon
22 the amount of land available.

23 A That's one factor, yes.

24 Q Could you explain that statement?

25 A Well, I don't know the context, but I would

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 assume that I was speaking to the point that the
2 availability of land is one of the fair share criteria.

3 Q Is that also a criteria in the overzoning?

4 Well, it can become a limiting factor. I mean
5 clearly one cannot zone more land than there is.

6 Q That's true. Do you feel that the repeal
7 of all zoning regulations would benefit the construction
8 of least-cost housing?

9 A Well, in and of itself, yes, there is no question
10 about it. Whether the price that you will
11 it, it can be argued.

12 Q What is the prices that you
13 repealing all zoning ordinances?

14 A Well, it depends. If you had no zoning ordinance,
15 I think if you have adequate building codes, which you
16 do in New Jersey, if you had adequate nuisance
17 regulations, reasonable subdivision and site plan
18 review standards, you could possibly -- And reasonable
19 environmental regulations, you could possibly do away
20 zoning ordinances without major harm done.

21 Q Would you believe --

22 A That to the best of my knowledge is not an issue
23 in this litigation.

24 Q Would you believe that the repeal of all
25 zoning regulations would then serve the general welfare?

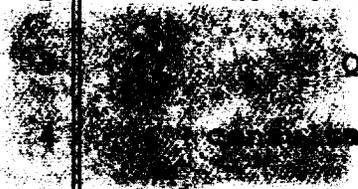
1 A I believe a legitimate case could be made to that
2 effect. I'm not quite ready to argue either side of it
3 at the moment. But it's not out of the question.

4 Q Do you believe that any time planned
5 development could be used by Passaic Township in
6 providing least-cost housing?

7 A I think it's possible, certainly.

8 Q Could you explain what you would find
9 acceptable? A Well, that's a very compli-
10 cated kind of thing because there is all kinds of
11 different approaches to timing development. It certainly
12 in terms of a fair share goal, for example, that could
13 be done in terms of increments, for example, in six-year
14 increments to correspond to the six-year periods of master
15 plan updating and so on. I think if Passaic Township is
16 thinking in terms of some kind of an overall growth
17 facing, growth management ordinance, I think such
18 ordinances by their nature are likely to increase housing
19 costs to some degree by just restricting the amount of
20 that could be built and slowing down the process.
21 if that is what the Township has in mind, then
22 they have to frame it extremely carefully to see to it
23 that low and moderate income housing opportunity is
24 still served, perhaps by mandating some type of a
25 percentage of low and moderate income housing into all

1 development that takes place in the community or some
2 such thing.



3 Q Do you know who the Township planning
4 consultant is of Passaic Township?

5 A Well, I did not know up to now, but I gather it is
6 Carl Linbloom.

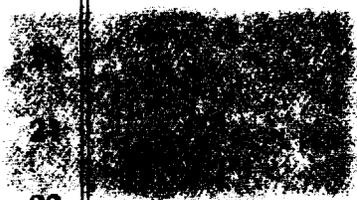
7 Q Do you think he is a knowledgable manager?

8 A Tell Carl that I will take the fifth on that.

9 (The witness is excused.)

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

* * *



PENGAD CO., BAYONNE, N.J. 07002 FORM 2046

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MORRIS COUNTY FAIR HOUSING
COMMITTEE, et al, :

Plaintiffs, :

vs. :

CERTIFICATE

BOONTON TOWNSHIP, CHATHAM :
TOWNSHIP, et al, :

Defendants.

I, MARK SCHAFFER, a Certified Shorthand Reporter
and Notary Public of the State of New Jersey, certify
the foregoing to be a true and accurate transcript of
the depositions of ALLAN MALLACH, who was first
sworn by me, at the place and on the date hereinafter
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 these depositions were
taken, and further that I am not a relative or an
employee of any attorney or counsel employed in this
action nor am I financially interested in the action.

Mark Schaffer

A Notary Public of the State of New Jersey

Dated: 9/26/79