

Morris County Fair Housing Council

10/4/79

v. Beonton Twp

Deposition upon oral examination of Roger Davis

ML 000906S

p88

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

MORRIS COUNTY FAIR HOUSING COUNCIL,
MORRIS COUNTY BRANCH OF THE NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE and STANLEY C. VAN
NESS, Public Advocate of the State
of New Jersey,

Plaintiffs,

-vs-

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

Defendants.

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:
:
DEPOSITION UPON
:
ORAL EXAMINATION
:
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OF
:
:
ROGER DAVIS.

B E F O R E:

VICTOR SELVAGGI, JR., a Certified Shorthand
Reporter and Notary Public of the State of New Jersey,
at the DEPARTMENT OF THE PUBLIC ADVOCATE, 520 E. State
Street, Trenton, New Jersey, on Thursday, September 20,
1979, commencing at 11 a.m.

KNARR - RICHARDS, ASSOCIATES

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

CONTENT

THE PUBLIC ADVOCATE
BY: CARL S. BISGAIER, ESQ.
Attorney for the Plaintiffs.

MESSRS. VOGEL, CHAIT & ROETTGER
BY: HERBERT A. VOGEL, ESQ.
Attorneys for the Defendants Madison Borough
and Mount Olive Township.

VICTOR SELVAGGI, JR.
Certified Shorthand Reporter

I N D E X

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WITNESS

DIRECT

ROGER DAVIS

By Mr. Vogel

2

BR

1 R O G E R D A V I S, 2428 Route 38, Cherry Hill,
2 New Jersey, having been duly sworn, according
3 to law, testified as follows:

4 **DIRECT EXAMINATION BY MR. VOGEL:**

5 Q Mr. Davis, I'm Herbert Vogel, attorney
6 for Mount Olive Township and the Borough of Madison,
7 two of the 27 towns originally sued in the subject
8 litigation. I'm going to ask you some questions on
9 depositions. If there is any question that you do not
10 understand, please tell me. It is not my purpose to
11 confuse you, it is my purpose to ask questions that
12 you understand and so that we can get clear answers to
13 the questions.

14 Have you ever testified in depositions before?

15 A Occasionally, yes.

16 Q This deposition may be used in the litigation
17 tion, so that you should know that if there is a ques-
18 tion that you do not understand, if you don't state it
19 now, you may not have that opportunity later.

20 With respect to objections, the attorney for
21 the Public Advocate may well object. If he objects,
22 his objection will be noted in the record. Unless he
23 directs you not to answer, you must answer all questions.

24 MR. BISGAIER: Off the record.

25 (There is a discussion off the record.)

1 MR. BISGAIER: We have agreed to the
2 usual waiver of objections during our off the
3 record conversation and I preserve my right
4 to raise objections at trial to the introduction
5 of evidence that normally would be objectionable
6 in a trial setting. I understand Mr. Vogel to
7 agree to that waiver at this time in order to
8 facilitate the deposition process.

9 Q Mr. Davis, where do you reside?

10 A Cherry Hill.

11 Q What is your address?

12 A 2428 Route 38, Cherry Hill.

13 Q And where is your business office?

14 A Same address. That's the address I give.

15 Q What do you mean that is the address you
16 give? A That's my business address.

17 I live in Cherry Hill.

18 Q And do you reside in the same place as
19 your business office is located?

20 No.

21 Q But they are both in Cherry Hill?

22 A Yes, that's correct.

23 Q All right. Are you associated with any
24 company? A My own company, yes.

25 Q What is the name of that company?

1 A Davis Enterprises.

2 Q Is that a corporation?

3 A No, a partnership.

4 Q Who are the other principals of that

5 company? A The other principal is

6 my father and his name is Harold.

7 Q Your name is Roger?

8 A Correct.

9 Q What is the nature of your business,

10 Mr. Davis? A Among other things, we

11 are land developers and self investors.

12 Q Land developers and what was the other

13 thing? A Self investors.

14 Q Self investors?

15 A Yes, we build incoming producing properties.

16 Q But still with relationship to building,

17 but some units you retain and some you sell. Is that

18 correct? A No. Well, pretty much,

19 yes.

20 Q All right. How long have you personally

21 been in that business? A Since 1962.

22 Q And what did you do prior to 1962?

23 A I was a student.

24 Q Tell me a little bit about your educa-

25 tional background. Where did you graduate high school?

1 A Admiral Farragut High School.

2 Q Where is that located?

3 A Toms River.

4 Q And what did you do after graduation from

5 Admiral Farragut? A I went to the
6 University of Pittsburgh. I graduated in 1962 with a
7 degree in political science and a minor in mathematics.

8 Q Did you take any special courses in
9 building or developing? A No.

10 Q Have you had any further education,
11 formal education? A No.

12 Q So it's just your Bachelor's Degree in
13 political science with a minor in mathematics?

14 A That's correct.

15 Q And thereafter you went into the land
16 development business with your father?

17 A That's correct.

18 Q Have you ever worked with anyone else?

19 A No.

20 Q Can you characterize in a general way
21 the types of buildings that you have built since you
22 have entered the business in 1962?

23 A Initially we built single family housing, a
24 very limited amount. In approximately 1963 we started
25 to build multi-family and I built several thousand of

1 multi-family housing. In the late '60's we started
2 to branch off and not only build multi-family housing,
3 but other income producing properties such as industrial
4 buildings, office buildings and shopping centers.

5 Q All right. And during the time that you
6 were building industrial office buildings and shopping
7 centers, did you also build single family houses?

8 A No.

9 Q During the time that you were building
10 garden apartments or multi-family housing units, did
11 you build single family housing?

12 A No.

13 Q Have you ever built any housing that was
14 factory produced or substantially factory produced,
15 modular housing? A No.

16 Q Have you ever built any garden apartments
17 that were of modular construction?

18 A No.

19 Q And no single family housing of modular
20 construction? A No.

21 Q Have you ever purchased mobile homes and
22 placed them on individual lots?

23 A In Florida, yes.

24 Q And when was that?

25 A 1973 and '74.

1 Q Did you live in Florida at that time?

2 A No.

3 Q Was your work in Florida with your father?

4 A Yes.

5 Q And it was still Davis Enterprises?

6 A That's correct.

7 Q What did you do with the mobile homes in
8 Florida? Did you sell them or lease them or what?

9 A The mobile homes themselves we sold.

10 Q They were sold. Were you involved in
11 the sale of the mobile homes?

12 A That's much too general a question for me to
13 answer. Do I know what's going on, yes.

14 Q Where is this development in Florida?

15 A Pompano Beach.

16 Q And what is the development called?

17 A I don't know now. It's changed ownership.

18 Q What was it called?

19 A Flamingo Gardens, I think.

20 Q And was the ground leased or was the
21 ground sold to the owners of the mobile home?

22 A Leased.

23 Q Leased? A That's correct.

24 Q So that the units were sold to the people?

25 A Yes.

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1 Q But the ground was leased?

2 A That's correct.

3 Q Were you the owner of the ground?

4 A Yes.

5 Q Were the mobile homes placed on founda-
6 tions or were they in some other form?

7 A Some other form.

8 Q What was the other form?

9 A Commonly known as a tie down.

10 Q Tie down? A Yes.

11 Q Can you explain that to me.

12 A It is simply a bar that looks like it has a
13 screw on the end of it. It's about six feet long and
14 by machine it is drilled into the ground and that is
15 clamped onto the bottom rail of the mobile home and
16 that serves as the stabilizing force for the mobile home
17 so it does not move.

18 Q How many units were in Flamingo Gardens?

19 A The project was rather small. I think in total
20 it was 64 units.

21 Q And were you in any way involved in the
22 manufacture of these units? A No.

23 Q These units, they were purchased through
24 Davis Enterprises, though. Is that correct?

25 A They were purchased through me?

1 Q The units. A Do you mean
2 the owners purchased them?

3 Q Yes. A Yes, that's
4 correct.

5 Q The owners purchased the units from Davis
6 Enterprises? A That's correct.

7 Q And Davis Enterprises, where did you
8 obtain the units from? A From various
9 manufacturers.

10 Q Various? A That's correct.

11 Q Not one? A That's correct.

12 Q All right. Did you make a profit on the
13 sale of the units? A Yes.

14 Q And did you also own the ground?
15 A Yes.

16 Q And what were the arrangements between
17 the mobile home owners and the owners of the property?

18 A What do you mean by the arrangements?

19 Q Let me just ask you: Was the owner of
20 the property Davis Enterprises?

21 A Yes.

22 Q And it was also the seller of the units?

23 A Yes.

24 Q That same entity, you didn't have a
25 different corporate entity? A No.

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1 Q Okay. What were the financial arrange-
2 ments between the owner of the mobile home and Davis
3 Enterprises relative to the mobile home park?

4 A A rental for the pad, a monthly rental.

5 Q How much was that?

6 A I believe it varied from \$80 to \$100 a month.

7 Q And how was sewerage treated in the park?

8 A It was township sewerage.

9 Q What about water supply?

10 A Township water.

11 Q And who paid for the sewerage and water
12 charges?

13 A The owner of the mobile
home.

14 Q Who paid for utilities?

15 A Which kind of utilities?

16 Q Electric, telephone.

17 A The owner of the mobile home.

18 Q Okay. What was the dominant type of
19 population at the mobile home park?

20 A I'd say somewhere between the ages of 45 and 65.

21 Q 45 and 65 were the dominant ages. What
22 was the price range? A Middle teens.

23 Q Pardon? A Middle teens.

24 Q What do you mean by that, \$15,000?

25 A Between 13 and 16.

1 Q Do you have an idea of what those mobile
2 homes are selling for now?

3 A No.

4 Q When is the last time you went back to
5 Flamingo Gardens? A Specifically back
6 to it, I haven't.

7 Q You have not? A No. I've
8 driven by it, but not --

9 Q You haven't inquired as to what is in it,
10 the details as to what is going on?

11 A I've driven by it and it looks nice.

12 Q How many units per acre?

13 A It was pretty high density. I would venture to
14 say it was 12 or 14.

15 Q Any children in the park?

16 A Very few. Maybe two or three.

17 Q Were most of the residents people who
18 were retired? A I told you before

19 between the ages of 45 and 65.

20 Q There are people over 45 who work. You
21 are looking at one. A You are right.

22 Q I may not look over 45. Were most of
23 the people in the mobile home park retirees or were
24 they working people? A I have no way
25 of knowing.

1 Q But very few children?

2 A Yes.

3 Q Were there any amenities in the park

4 such as a swimming pool? A No, this

5 particular park did not have amenities.

6 Q And that is your only experience with a

7 mobile home park? A No, I didn't say

8 that.

9 Q Okay. I'm just trying to find out.

10 Have you been involved in the selling of other

11 mobile home units? A Not in the actual

12 selling, no.

13 Q Have you been involved in the processes

14 of development of any other land upon which mobile

15 homes are located? A Presently located,

16 the answer is no.

17 Q Any time in the past other than Flamingo

18 Gardens? A As I said, we have not been

19 involved in any other projects that has had, past tense,

20 mobile homes on it.

21 Q All right. Are you presently involved

22 in the construction or sale of mobile home units?

23 A No.

24 Q Is it fair to say that other than Flamingo

25 Gardens, you have not been involved in either the

1 construction or the sale of mobile home units?

2 A That would be correct if you have not included
3 the word planning.

4 Q You are talking about future development
5 of mobile homes? A That's correct.

6 Q You have some interest in developing
7 mobile home units in the future?

8 A That's correct.

9 Q Is that under any kind of Federal or
10 State subsidy program? A Not at this
11 time, no.

12 MR. BISGAIER: We are narrowing the
13 logical field of discourse here and the report
14 that I submitted to you --

15 MR. VOGEL: I read his report.

16 MR. BISGAIER: He is actively in planning
17 one.

18 MR. VOGEL: I read the report and I
19 appreciate your comment.

20 Q Let's go back to your work on development
21 of properties since 1962.

22 Mr. Davis, tell me about the single family
23 homes in which you have been involved in the development
24 and sale? A All 13 of them?

25 Q Okay. So you have developed 13 single

1 family homes? A Yes.

2 Q Where was this development?

3 A Moorestown and Cherry Hill.

4 Q How many in Moorestown?

5 A Five.

6 Q Was that in a subdivision?

7 A The start of one.

8 Q Or scattered sites?

9 A No, the start of a subdivision.

10 Q How many lots in the subdivision?

11 A Several hundred. I don't know the exact amount.

12 Q Several hundred and you built five. And

13 in Cherry Hill? A 12 or 13 -- eight

14 or nine, I'm sorry.

15 Q And how large of a subdivision?

16 A Eight or nine. Whatever the lots were. I don't
17 recall exactly.

18 Q And in what year were these built?

19 A 1962, I believe.

20 Q Is it correct to say that since 1962 you

21 have not been involved in the construction or sale of

22 single family homes? A Except for my

23 own personal home, that's correct.

24 Q Mr. Davis, what was the price range of

25 the homes that you built in 1962?

1 A Low teens.

2 Q How large were the lots?

3 A I believe they were 70 feet.

4 Q By what? A 100, 125.

5 About that size.

6 Q In the range of seven to 8,000 square
7 feet? A Approximately.

8 Q What were the sewerage facilities?

9 A Public.

10 Q Public sewerage, not septic system?

11 A No.

12 Q And water, also public?

13 A Yes.

14 Q Mr. Davis, have you been involved in the
15 sale of single family houses since 1962?

16 A No.

17 Q So if I understand you correctly, you
18 have not been involved in either the sale or the
19 construction of single family houses or factory built
20 houses since 1962? A That's correct.

21 Q Have you been involved in any residential
22 subdivisions? A Yes.

23 Q In other words, obtaining subdivision
24 approval? A Yes.

25 Q On properties which authorized single

1 family construction? A Yes.

2 Q And where was that?

3 A Cherry Hill, New Jersey, Mt. Laurel, New Jersey,

4 West Palm Beach, Florida, Pompano Beach, Florida.

5 Q Is that it? A Yes.

6 Q In Cherry Hill, New Jersey, when were

7 you involved there? A I don't believe

8 I said Cherry Hill. Yes, that's right, Cherry Hill.

9 Go ahead.

10 Q When were you involved in the subdivision

11 which was not built by you? A 1978.

12 Q 1978? A Yes, sir.

13 Q How many lots? A 32.

14 Q Did you obtain subdivision approval?

15 A Yes.

16 Q Have you since sold that property?

17 A Yes.

18 Q What was the lot size?

19 A Approximately 70 by 125.

20 Q And what was the price that you paid for

21 the tract prior to subdivision approval?

22 A The entire tract?

23 Q Yes.

24 MR. BISGAIER: Off the record.

25 (There is a discussion off the record.)

1 Q Without asking you the specific dollar
2 amounts, how long did it take you to get your sub-
3 division approval in Cherry Hill?

4 A year.

5 Q And when did you acquire the land?

6 A 1963.

7 Q So you held it quite a while?

8 A Yes.

9 Q Okay. Do you have any knowledge based
10 upon your efforts in the market of the value of that
11 land before and after subdivision approval?

12 A I think.

13 Q That is comparing roughly 1977 which I
14 guess would be before subdivision approval and after
15 you got subdivision approval.

16 A It's a very difficult question to answer, but
17 I think I have a pulse on the market, yes.

18 Q All right. I assume that the value went
19 up after subdivision approval.

20 A Not necessarily.

21 Q Is it your position that on this particu-
22 lar tract the value did not go up after subdivision
23 approval? A I would say if it went,

24 it was insignificant.

25 Q So that the value before subdivision

1 approval and the value after subdivision approval in

2 your opinion was approximately the same?

3 That's correct.

4 Q And is this based upon your actual
5 testing of the market before subdivision approval as
6 contrasted to testing the market after subdivision
7 approval? A I'm not sure what you

8 mean by testing.

9 Q Offering the property for sale.

10 A Yes.

11 Q And did you, in fact, offer this property
12 for sale prior to subdivision approval?

13 A Yes.

14 Q And you offered it for sale after
15 subdivision approval? A Yes.

16 Q Is the property sold now?

17 A Yes.

18 Q And did you receive any offers to
19 purchase the property prior to subdivision approval?

20 A Yes.

21 Q And those offers, if I understood your
22 answers correctly, were substantially the same as the
23 actual sales price? A That's correct.

24 Q Okay. Mr. Davis, were the offers to
25 sell this property prior to subdivision approval?

1 A I don't think you said what you wanted to say.

2 You mean offered to buy?

3 Q Right. A Your answer is
4 yes.

5 Q Okay. Did you at any time, say in 1975
6 on attempt to sell the property without subdivision
7 approval and without any conditions?

8 A No.

9 Q Do you have an opinion as to whether
10 the value of the property would have been different
11 had it been sold both without subdivision approval and
12 without the condition that it was subject to subdivision
13 approval? A To some degree, yes.

14 Q And what effect would that have had, in
15 your opinion, on the market?

16 A Well, you would certainly have to give the
17 credit to the engineering cost in order to get the
18 subdivision approval and the time your money will be
19 tied up as being the owner and not being able to use
20 the land. Other than that I don't think there would
21 be any significant change.

22 Q In the market value?

23 A That's right.

24 Q Okay. Now, you indicated that you also
25 obtained subdivision approvals in Mt. Laurel, West

1 Palm Beach and Pompano? A That's correct.

2 Q In Mt. Laurel, when did you get subdivision
3 approval for property which you have not built any
4 homes? A 1977, I think.

5 Q All right. How many lots?

6 A 90.

7 Q What was the lot size?

8 A 70 by 125.

9 Q Was that the smallest lot size for a
10 single family dwelling in Mt. Laurel Township?

11 A To my knowledge, yes.

12 Q Did you object to that lot size as being
13 excessive? A No.

14 Q And do you still own that property?

15 A No.

16 Q You sold it? A Yes.

17 MR. BISGAIER: Off the record.

18 (There is a discussion off the record.)

19 Q Are there single family homes currently
20 being built on that property? A Yes.

21 Q And in Cherry Hill are there single
22 family homes currently being built on that property?

23 A Yes.

24 Q Do you know the approximate price range
25 of the single family homes on those lots?

1 A In Cherry Hill they are about 60 to \$80,000.

2 In Mt. Laurel they are from 90 to \$130,000.

3 Q In either Cherry Hill or Mt. Laurel,
4 do you know of any other developments of single family
5 homes where the price range is lower than those two
6 developments? A Cherry Hill, not to
7 my knowledge. In Mt. Laurel, I really don't think so
8 for single family. There may be a start at fifty-five-
9 nine, but I'm not aware of anything much lower than
10 that.

11 MR. BISGAIER: You are limiting your
12 question to single family detached houses?

13 MR. VOGEL: Yes.

14 THE WITNESS: I assumed that's what you
15 meant.

16 Q In terms of your knowledge, do you know
17 of any developments around those communities which
18 have lower cost single family detached housing?

19 A That's much too general a question for me to
20 answer. I don't know what you mean by around.

21 Q All right. Within 20 miles of each of
22 those communities. A 20 miles takes

23 you almost to the end of the pine barrens. I am sure
24 that there are single family homes being built some-
25 where.

1 Q Just in your knowledge, do you know of
2 any that are currently being built that are being sold
3 for prices lower than, let's take the Cherry Hill one,
4 60 to \$80,000?

5 A I notice in the
6 newspapers people are advertising homes for forty-nine-
7 nine.

8 Q Do you know what size lots they are on?

9 A I don't have the slightest idea.

10 Q Looking at the Mt. Laurel development
11 which are lots of 70 by 125 feet, do you have any
12 explanation of why houses on lots that small would be
13 selling for that high of a price?

14 A I don't even want to speculate. I don't know.

15 Q You don't know.

16 A Are you asking me why 100 versus 60 or 80?

17 Q 90 to \$130,000 homes are fairly a
18 substantial cost to a house and the lot size of 70 by
19 125 feet is a small lot.

A Yes.

20 MR. BISGAIER: Off the record.

(There is a discussion off the record.)

21 Q Mr. Davis, do you think that the lot
22 size in the residential subdivision has something to
23 do with what the cost of the housing would be?

24 A The cost of it, absolutely.

25 Q Absolutely? A Absolutely.

1 Q I was correct or my recollection is
2 correct that you indicated that these lots represented
3 the smallest single family lot zone in Mt. Laurel
4 Township? A To my knowledge, yes.

5 Q So that the houses built on the smallest
6 single family zone in Mt. Laurel Township at 90 to
7 \$130,000? A Say that again.

8 Q Are 90 to \$130,000?

9 A Say the whole question.

10 Q So that the present cost of housing being
11 built within a residential subdivision with lots of
12 approximately 70 by 125 feet is 90 to \$130,000?

13 A No, sir. You are making a supposition that I
14 won't agree with.

15 Q All right. What is that?

16 A Number one, I'm not sure it is the only sub-
17 division being built in Mt. Laurel on their small lot
18 zoning which is 9,000 square foot lots. Secondly, I
19 have no assurance that the owners of this property
20 that I sold them have not gone in and resubdivided
21 this property into larger lots.

22 Q Do you know whether they did that or not?

23 A I know they were talking about it. Whether
24 they did or not, I just don't know.

25 Q But you do know the price?

1 A Yes.

2 Q Do you think, Mr. Davis, that the price
3 that private developers in the private sector of the
4 economy, that is, without Federal or State aid, the
5 price that those developers are going to obtain for
6 houses is a reflection of that segment of the market
7 where they can make the best profit?

8 A Try that one again.

9 Q All right. Do market conditions affect
10 the value of housing that is built by private developers?

11 A Yes.

12 Q And all other things being equal, lot
13 size, improvement requirements, frontage requirements,
14 etc., do you think that the cost of the housing is
15 affected by that segment of the housing market which
16 could produce the greatest profit for the individual
17 developer?

18 A Your question is not
19 specific enough. I can't answer it because there are
20 just too many variables.

21 Q Well, I said other things being equal
22 terms of the zoning requirements, in terms of the
23 building code and, of course, everybody is under the
24 BOCA Code right now, do you think that the cost of the
25 housing will vary based upon the profit that the builder
thinks he can make?

A The problem I

1 A Not necessarily.

2 Q If he makes \$10,000 on one and \$10,000
3 on the other, regardless of the ultimate sale price,
4 wouldn't the profit be the same?

5 A If you are making \$10,000 on both houses, that
6 doesn't necessarily hold true. A builder can sell a
7 house for \$50,000 and make more gross profit than he
8 does on the \$100,000 house.

9 Q In terms of what would influence your
10 judgment as a builder, would you seek to develop the
11 house that would return to you the greatest gross
12 profit?

13 A Again, you are not being
14 specific enough. There are too many variables in
15 order to give you a yes or no answer. You must take
16 into consideration all the market conditions, all the
17 kinds of financing available and how much, over what
18 period of time you want your initial investment tied
19 up to determine what your profit margin should be and
20 what market you want to hit.

20 Q Don't all those factors affect profit?

21 A Yes, but not in the general way you are asking
22 the question.

23 Q Well, let's take those variables. Take
24 for example the availability of mortgage money. That's
25 a factor that influences a developer?

1 have is with your word profit, because it varies.

2 Q You don't know what profit means?

3 A I think I do because we try to live by it, but
4 it varies from builders to builders philosophy. A
5 profit to me might not be profit to you. It's just
6 there are so many variables, you are not specific
7 enough for me to give you an accurate answer.

8 Q Well, let's take this subdivision. Let's
9 take another hypothetical question. Given the same
10 number of lots, given the same zoning requirements
11 and the same building code, do you think that the
12 private developer will seek to build a house that will
13 return to him the greatest amount of profit?

14 A Not necessarily. He's going to play the market
15 as well.

16 Q He's what? A Play the market.
17 Where is the demand.

18 Q What do you mean by that?

19 A As an example, because I can build a house to
20 sell for \$50,000 and make \$10,000 on it doesn't
21 necessarily mean that that's the house a builder should
22 build. He may be better off building a \$100,000 home
23 and make \$10,000 on it because there is more of a demand
24 for the \$100,000 home.

25 Q The profit would be the same?

1 A Absolutely.

2 Q And why is that factor of significance
3 to a developer? A If you are in a tight

4 market condition where I'm confining myself now to the
5 unsubsidized market now, you can only get mortgage
6 money providing you put down 30% of a sales price in
7 cash and if you take a market condition such as we
8 have in our area, probably where the minimum home is
9 being sold for \$60,000, you are talking about a buyer
10 coming up with \$18,000. The market condition may
11 dictate that that is not a ready market, that your
12 ready market right now is for the buyer that can afford
13 a \$100,000 home and does not have difficulty coming up
14 with 30% of the \$100,000.

15 Q And as a builder, which would ^{he} choose then
16 to build? A You absolutely go to the
17 one where you have a market.

18 Q Where you have a market?

19 A Absolutely.

20 Q The market will dictate what the builder
21 would do? A I would think so, to a
22 smart builder, yes.

23 Q Mr. Davis, with respect to the mobile
24 homes that you sold in Florida, can you tell me the
25 term of financing those mobile homes were? How many

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

CONTENT

1 years were they? A 10 or 12 years.

2 Q And is that pretty still much the
3 prevailing market on the financing of mobile homes?

4 A No.

5 Q Tell me what the current market is?

6 A It has changed considerably and you can now get
7 financing as long as 25 or 30 years.

8 Q Is this for mobile homes which are on
9 leased ground? A No, that would be
10 for a mobile home on an owned lot.

11 Q On an owned lot?

12 A Yes.

13 Q A mobile home which is on a lot which
14 is owned by the property owner, you can get a long
15 term mortgage on it? A That's correct.

16 Q All right. Now, but a mobile home on
17 leased property, what is the term of financing of that?

18 A Between 15 and 20 years.

19 Q 15 and 20 years?

20 A Yes.

21 Q All right. Whereas on owned property
22 it would be between 25 and 30 years?

23 A That's correct.

24 Q Now, is a mobile home park a facility
25 that is generally leased land rather than owned land?

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A Either leased or condominium form.

Q When you say condominium form, does the owner of the mobile home own the ground underneath the mobile home?

A Yes, sir.

Q And is that the kind of facility for which he can get a long term mortgage?

A Yes, sir.

Q 25 or 30 years? A Yes.

Q So long as the owner of the mobile home owns the land under it, you are saying it can be a long term mortgage? A Yes.

Q But if it's leased, a shorter term?

A As of now, yes.

Q All right. Do you know whether or not there are mobile homes which comply with the requirements of the BOCA Code? A With the BOCA Code?

Q Are you familiar with the BOCA Code?

A I believe so, yes.

Q All right. You are currently building, are you not, in New Jersey? A Yes.

Q And you utilize the BOCA Code?

A Yes.

Q That is the building code in New Jersey?

A Yes, it is.

1 Q Do we have any difference about that?

2 A No.

3 Q And it applies to all municipalities
4 in the State. Is that correct?

5 A Yes.

6 Q All right. Now, do you know whether or
7 not there are any mobile homes, manufactured mobile
8 homes which comply with the BOCA Code?

9 A I'm really not sure.

10 Q All right. Do you have any question
11 that if there were a manufactured mobile home that
12 complied with the BOCA Code and that was put on a
13 suitable foundation that also complied with the BOCA
14 Code and also placed on a lot that was consistent with
15 the zoning ordinance, the mobile home could be placed
16 on that property in any community in any zone?

17 A Your definition is wrong. The reason it is
18 wrong is because it's now no longer a mobile home, it's
19 a manufactured home.

20 Q How do you define a mobile home?

21 A A mobile home is a building that is put on a
22 frame and has a chassis to it. The kind of home that
23 you just described would be more in the lines of a
24 manufactured home, not a mobile home that was designed
25 specifically to go onto a fixed foundation.

1 Q Are mobile homes ever put on fixed
2 foundations? A They may be.

3 Q They can be? A Yes.

4 Q Are manufactured homes ever placed on
5 fixed foundations? A Yes.

6 Q Now, if a mobile home that complies with
7 the BOCA Code in terms of its construction standards
8 is placed on a foundation which also complies with the
9 BOCA Code, would you then say it is no longer a mobile
10 home? A Well, you are fooling with
11 the definition. You can call it what you want. If
12 you want to call it a mobile home, call it a mobile
13 home.

14 Q Mr. Davis, isn't it true that the price
15 range of mobile homes vary tremendously?

16 A That's true.

17 Q What is the least expensive and the most
18 expensive mobile home that you have ever heard of?

19 A I've seen one -- new you are talking about?

20 Q New. A I've seen them
21 as inexpensive as \$9,000 and I've seen them as expensive
22 as \$200,000.

23 Q \$200,000? A Yes.

24 Q And that's without land?

25 A That's correct. I take it back. The \$200,000

1 one was with the ground.

2 Q And the \$9,000 one, was that with or
3 without? A No, just the home itself.

4 Q Plus the cost of the ground. In the
5 State of New Jersey if a factory built home complies
6 with the construction standards of the BOCA Code and
7 is placed on a foundation which likewise complies with
8 the BOCA Code, isn't it true that that home could go on
9 any lot that otherwise conforms to the zoning require-
10 ments? A I don't see why not.

11 (A lunch recess is taken.)

12 Q Wouldn't the same answer apply given the
13 same circumstances to a mobile home if it, in fact,
14 complied with the BOCA Code requirements?

15 A Say that again.

16 MR. VOGEL: Read the question back.

17 (The Reporter reads back the last
18 question.)

19 Q Mr. Davis, the previous question was
20 directed toward a factory built modular home that
21 complies with the BOCA Code. A Okay.

22 Q Now I'm asking you about a factory built
23 mobile home that complies with the BOCA Code.

24 A Under the same criteria and lot size, yes.

25 Q So that in order to have mobile homes

1 built on lots within the subject communities in this
2 lawsuit, one way of achieving this goal is to have a
3 mobile home that complies with the BOCA Code. Is that
4 correct? A Yes.

5 Q Do you have an opinion as to what
6 constitutes least cost housing? A Yes.

7 Q All right. And what is least cost
8 housing?

9 MR. BISGAIER: Let me just ask a ques-
10 tion here before he answers that. That has
11 been defined by the Supreme Court. Are you
12 asking Roger what that would mean as a --

13 MR. VOGEL: I'm talking about dollars.
14 What dollar range are we talking about given
15 the definition of least cost housing by the
16 Supreme Court.

17 MR. BISGAIER: Are you familiar with
18 that definition?

19 THE WITNESS: Wait a minute.

20 Q Let me withdraw the question and ask it
21 over again.

22 Mr. Davis, as a builder, within your area of
23 expertise and experience do you have an opinion as to
24 the lowest cost of a house built today in the private
25 sector of the economy? A Dollars and

1 cents?

2 Q Dollars and cents.

3 A Lowest cost has to be mobile homes which is a
4 single family unit which can be bought for as little
5 as \$10,000 fully furnished. That would be new.

6 Q All right. Let me take you away for
7 a moment from mobile homes and ask you about conven-
8 tionally built single family dwellings.

9 What is the least cost in today's market?

10 A I don't know. I don't build single family homes,
11 so I really couldn't venture a guess.

12 Q How do you know then that mobile homes
13 would be less than conventional building homes?

14 A The conventional homes that I am familiar with
15 and in pricing out the cost of construction which I
16 am familiar with indicates to me that the least
17 expensive single family home that can be built in the
18 market where I develop is in the vicinity of 45 or
19 \$48,000 and that is really tight.

20 Q Does that include the cost of land?

21 A Yes, it does.

22 Q Improvements? A What do
23 you mean by improvements?

24 Q Sewer, water, drainage, curbing, roads.

25 A Yes.

1 Q 45 to \$48,000? A Yes.

2 Q And given conventional mortgaging
3 practices today, do you have an opinion as to the
4 income level, family income level required to sustain
5 a house of that cost? A No. I would

6 have to figure it out and I don't have charts with me.

7 Q Well, are there --

8 A It would be simple to do if you want to do it
9 right now.

10 Q Yes, go ahead.

11 Maybe I can help you. Are there no standard
12 criteria of certain relationship?

13 A If you use an old standard that I assume is
14 still being used now and that is that your monthly
15 expenses should equal your weekly gross income which
16 is the standard which may or may not still be used.
17 When I was building houses that was the standard that
18 the FHA used.

19 Q That was the standard back in 1962 when
20 you were building houses? A Yes.

21 Q You don't know whether it's still the
22 standard today? A I hear that it is
23 pretty much within a small deviation, but it's pretty
24 much the standard. If that is so and if you took a
25 home of say \$45,000 and you said that the best

1 financing you can get today is 9 3/4%, if you happen to
 2 be lucky, and it was a 35 year mortgage which is going
 3 to give you approximately a 10% constant, let me see
 4 if I have a mortgage chart with me. Yes, I do.

5 9 3/4, 30 years, is a 10-3-1 constant. It is
 6 \$4639.50 --

7 MR. BISGAIER: What, the down payment?

8 THE WITNESS: I'm using a mortgage of
 9 \$45,000, assuming they can probably put down
 10 10%, which means the house is going to sell
 11 for 48, \$49,000. It means the man's weekly
 12 income would have to be \$386.63.

13 Q Can you multiply that \$386.63 times 52?

14 A \$20,104.50.

15 Q All right. And is that your opinion of
 16 the income level that it would take to sustain what is
 17 least cost single family conventionally built housing,
 18 roughly \$20,000 a year? A You are

19 confusing me because I don't recall saying that is the
 20 least cost. I say it's the least cost housing I know

21 of.

22 Q You are correct, that is what you said.
 23 I can't deal in least cost housing that you don't know
 24 of. I assume your opinions are based upon what you
 25 know? A Yes.

1 Q Based upon the housing with which you
2 are familiar, is it fair to say that least cost
3 conventionally built housing requires a family income
4 of approximately \$20,000 a year?

5 A At a very minimum, yes, and the reason I say
6 that is because this type of housing is usually out in
7 the more rural areas and requires a considerable amount
8 of expense for commuting to and from work.

9 Q So it might be more than \$20,000 a year?

10 A Absolutely.

11 Q Now, what about least cost single family
12 housing which is factory built or substantially
13 factory built? A What about it?

14 Q Do you have any knowledge of what the
15 market conditions, that is, what is the lowest cost of
16 that type of housing? A If you are
17 talking about modular housing --

18 Q Yes. A To my knowledge,
19 modular housing in many cases is sold on or off a lot.
20 You own your own lot, for instance and somebody will
21 build it for you. You can buy housing without the
22 lot for as little as \$30,000. However, you then must
23 own the lot and various costs that go with the improve-
24 ment of that lot. I am not aware of any housing in
25 the form of a house, an improved lot being sold,

1 certainly in New Jersey for less than 45 or \$48,000,
2 ~~the~~ the figure that I gave you. In north Jersey it is
3 higher. Metropolitan Philadelphia, it is higher and
4 down around the shore areas and Cape May you will find
5 45, \$48,000.

6 Q How about up in Morris County, do you
7 know what the market value of similar type houses would
8 be? A No.

9 Q Are you in any way familiar with the
10 market conditions for housing in Morris County?

11 A Morris County is a big county. If you are
12 talking about the market conditions in the Chatham
13 area, for instance and Morrisville, I have some idea
14 of the conditions up there because I know builders
15 that build up there or I know builders that built up
16 there. The market conditions are at least in the same
17 category as the metropolitan Philadelphia area or not
18 higher. In the suburban areas of Morris County, I
19 don't have the slightest idea.

20 Q So that in any event, the conventionally
21 built or even the modular factory built single family
22 dwellings in Morris County is, at least the 45 to
23 \$48,000 price range you were talking about?

24 A If you are telling me that I'll believe you.
25 I didn't say that. I didn't say in Morris County. I

1 said in areas I'm familiar with. I'm not familiar with
2 Morris County other than the immediate Chatham,
3 Morrisville area.

4 Q My understanding of what you said on the
5 Chatham area is that the housing is more expensive
6 than that minimum priced housing?

7 A The people that I know building in that area,
8 that is correct.

9 Q Do you know what size lots they are
10 building on? A No.

11 Q Isn't it fair to say you have not made a
12 study of housing costs in Morris County?

13 A That's very fair.

14 Q All right. How about garden apartments,
15 you indicated that you have built several thousand
16 garden apartments. Is that correct?

17 A Yes.

18 Q And does the entity in which you are a
19 principal still own those garden apartments?

20 A Most of them, yes.

21 Q And in what communities are those garden
22 apartments located? A As far north as

23 Neptune City.

24 Q What county is that in?

25 A Monmouth County. As far south in New Jersey as

1 Marlton -- no, Vineland. Also in Florida.

2 Q What is the highest density of garden
3 apartment units in the apartments that you have built?

4 A 30 per acre.

5 Q 30 per acre. Where is that?

6 A Maple Shade, New Jersey.

7 Q And how large of a tract is that on?

8 A An acre.

9 Q One acre. And in terms of garden
10 apartment complexes of five or more acres, what is
11 the maximum density for the apartments that you have
12 built, approximately? A 18 units per
13 acre.

14 Q What is the minimum density that you
15 have built on? A 10.

16 Q Can you give me a ballpark number of the
17 amounts of apartments that you own?

18 A 1100.

19 Q 1100. How many did you build?

20 A About 2500.

21 Q And of the 1100 that you own, can you
22 give me approximate breakdowns of how many are at a
23 density of 10 to 12 units per acre versus how many with
24 densities above 12 units per acre?

25 A Probably 80%, or 10 to 12.

1 Q Units per acre? A Yes.

2 Q And do you have in those that are 10 to
3 12 units per acre, do you have a ratio to one to two
4 bedroom units? A Yes.

5 Q What is that ratio?

6 A Between 20 and 30% two bedrooms to one bedroom.

7 Q Was that ratio imposed by zoning or by
8 choice? A Zoning.

9 Q In all cases? A Yes.

10 Q Now, what is the minimum current rental
11 for any of the garden apartment units that you own,
12 minimum on a one bedroom unit?

13 A \$248, I think.

14 Q In your experience and judgment, what
15 family income is necessary to sustain a rental of \$248
16 a month? A Somewhere in the vicinity
17 of \$240 a week.

18 Q Which on an annualized basis is?

19 \$12,500, roughly.

20 Q \$12,000 to \$12,500?

21 Yes.

22 Q And do any of those apartments have
23 densities between 10 and 12 units per acre?

24 A No.

25 Q All right. With respect to the apartments

1 that have a density of 10 to 12 units per acre, what
2 is the lowest rental currently charged?

3 A I'm struggling because my rents were just raised.
4 I think it's \$280 or something like that.

5 Q And roughly that would mean an annual
6 income to sustain that kind of rent, in your opinion?

7 A Roughly \$15,000 a year.

8 Q You took 280 and multiplied it by 52
9 and got about \$15,000? A I think I did,
10 yes. Fourteen-five-sixty.

11 Q Fourteen-five-sixty?

12 A Yes.

13 Q Those are current rents prevailing in
14 the market without any subsidies. Is that correct?

15 A That's correct.

16 Q Other than the one acre garden apartment
17 complexes, are any of your garden apartments built
18 with three stories? A No.

19 Q In your experience as a builder of
20 garden apartments, Mr. Davis, isn't it fair to say the
21 cost of constructing a garden apartment unit is going
22 up? A Yes.

23 Q And has been for probably the whole time
24 that you were building? A Yes.

25 Q And is it fair to say that over the last

1 three years the cost has escalated substantially to
2 build a garden apartment? A Yes.

3 Q And that same escalation would prevail
4 with respect to building a single family house?

5 A Yes.

6 Q And indeed that same escalation would
7 prevail, escalation of cost does prevail in the con-
8 struction of any kind of houses, whether mobile homes,
9 modular, conventionally. "stick built homes" or
10 conventionally garden built apartments?

11 A No.

12 Q Okay. Is it your opinion that mobile
13 home construction has not gone up?

14 A No.

15 Q All right. Why don't you explain what
16 the negative part of your previous answer was.

17 A The manufactured home community in which mobile
18 homes are a part has over the last several years,

19 several being six or seven, not two or three, become

20 more proficient in its manufacture and has been able
21 to hold its cost of manufacture to realistic increases

22 versus the stick built manufactured housing that has
23 not been able to economize in a great degree in the

24 form of construction.

25 Q When you talk about manufactured homes,

1 you are talking about both modular homes and mobile
2 homes? A Yes.

3 Q And your answer to the extent that it
4 referred to modular homes, I take it you are referring
5 to modular homes that do comply with the BOCA Code?

6 A Yes.

7 Q When you say that the conventionally
8 built homes, the cost has risen far greater in percent
9 than the factory built homes, can you tell me why it is
10 that this has occurred, and in answering that question,
11 if you could pinpoint the factors that have driven up
12 the cost of the conventionally built housing?

13 A You can start very simply by saying your cost
14 of labor has risen substantially. When you couple
15 that with the cost of materials raising, again substan-
16 tially with the criteria that have been imposed upon
17 builders for single family home subdivisions by various
18 townships, such as road specifications that are unreal-
19 istic, without question always insisting upon curb and
20 sidewalk, providing very elaborate recreational
21 facilities, all those costs go to amplify the cost of
22 a single family house today and unfortunately it is not
23 an arithmetic progression which turns out to a geometric
24 progression in cost.

25 Q The cost of municipal requirements, I

1 take it would apply regardless of whether or not it
2 is a factory built home or conventionally built home?

3 A If it were being built on a single family lot,
4 that's correct.

5 Q Well, suppose you have a garden apartment
6 built on a tract, it's obviously not a single family
7 lot, but whatever the municipal requirements are, that
8 would impose a burden of those requirements regardless
9 of whether the garden apartment units were factory
10 built or whether they were conventionally built?

11 A If, in fact, those requirements were stringent
12 as far as a single family house, that's correct.

13 Q There are municipal requirements for
14 garden apartments as far as road network, curb,
15 recreational amenities, are there not?

16 A In most instances, yes.

17 Q Quite aside from municipal requirements
18 or just generally, as a builder is there a certain
19 inflation factor that you can cite which has pertained
20 to the building industry, let's say over the last year?

21 A There is no one specific other than possibly
22 interest rates which, of course, directly affect the
23 carrying cost of the individual.

24 Q But you don't know one generally
25 prevailing inflation factor that applies to the home

1 building industry? A I wouldn't say
2 there is a specific one, just inflation in general.

3 Q Do you feel that the home building
4 industry, that the inflation in that industry is
5 greater than the inflation in the general economy?

6 A I really don't know, to give you an exact answer,
7 I just don't know.

8 Q Would you agree that in addition to the
9 cost of labor and the cost of materials, that also
10 the cost of money is a factor, is one of the infla-
11 tionary factors that pertain to home building?

12 A Yes, but not strictly to home building. It
13 affects every phase of the economy and every phase of
14 home building, whether it's mobile homes or stick
15 built homes.

16 Q Mr. Davis, have you done any specific
17 studies within a specific subdivision of the cost of
18 the improvements that are required by any municipality
19 in the State? A Yes.

20 Q And where have you done those studies?
21 Cherry Hill and Mt. Laurel.

22 Q All right. With respect to Cherry Hill,
23 is that the, as I recall, the 32 lot subdivision?

24 A 30 lots.

25 Q 30 lot subdivision that you were talking

1 about. What were the improvements there?

2 A Storm drainage, street underdraining, water,
3 sewer, retention basin, Green Acres, curb, lighting,
4 landscaping.

5 Q Landscaping of what?

6 A The medial strip. The buffer strip between the
7 house and the single family lot. I think that's all.

8 Q The buffer strip between the house and
9 the -- A The house and the road,
10 I'm sorry.

11 Q Buffer strip between the --

12 A The curb on what would normally be the sidewalk
13 area.

14 Q All right. You mean that that buffer
15 strip within the public right-of-way?

16 A That's correct.

17 Q Do the people maintain that?

18 A Yes.

19 Q Do you consider that a public improvement?

20 A Yes, because it is part of the improvement for
21 the lot, whether you build on it or sell the lot
22 individually, you must put the improvements to the
23 street.

24 Q Did you figure an overall cost of
25 improvements? A Yes.

1 Q And what was that cost?

2 A Per lot total? What kind of figure do you want?

3 Q Broken down per lot.

4 A The per lot cost there I believe was in the
5 vicinity of \$7,000.

6 Q Now, which of those factors do you think,
7 if any, were unduly excessive or erroneous?

8 A In reverse order, the landscaping between the
9 curb and the sidewalk, that area that we just ques-
10 tioned about was unnecessary because it is a treed
11 location and to add more trees, if you could find a
12 spot to put them, was just unrealistic.

13 Q They required trees in that area?

14 A Yes. In addition to that, requiring curbing
15 is not a necessity. To the contrary, in many cases
16 and certainly in this one it's a detriment.

17 Q Why do you say it's a detriment?

18 A If you don't put curbing in you allow water to
19 percolate into the ground rather than being channeled
20 to certain storm drainage run-off, consequently you
21 help alleviate the possibility of flooding. To have
22 curbing in areas, such as the curb on the street to
23 eliminate eroding is a necessity. It's a misnomer to
24 think it is necessary everywhere.

25 Q Doesn't curbing help to preserve the

1 street? A Not necessarily, no. If a
2 street is put in properly, if it is graveled or some
3 other kind of stablization put on the edge of the
4 street, the street will not deteriorate.

5 Q That's your opinion?

6 A It's my opinion and it's the opinion of many,
7 many engineers, including the Federal Government.

8 Q Okay. I don't know what you mean by
9 that, whether you mean President Carter.

10 A No, I'm talking about recent HUD studies which
11 I'll be glad to forward you a copy.

12 Q I would like you to do that.

13 A I will. In addition to that, they arbitrarily
14 have designed a street spec which, regardless of what
15 kinds of test borings you could produce, you must abide
16 by. So that if, for instance, you had a very stable
17 piece of ground that could support a street of say six
18 inches of gravel and two inches of FABC, that doesn't
19 matter. You still had to put in six inches of gravel,
20 five inches of stablized base asphalt and a two inch
21 FABC top. That's well and good if you have a ground
22 condition which is going to require that kind of paving
23 or if you are going to get heavy traffic which requires
24 that kind of paving, but to require it arbitrarily is
25 foolish.

1 Q Okay. A It also applies to
2 underdraining of your street. It's not necessary in
3 all instances.

4 Q Any other requirements that you thought
5 were excessive or unreasonable?

6 A The only other requirement and it depends upon
7 the individual location, is the retention basin. In
8 my opinion you can go retention basin crazy and every
9 subdivision you see there is a retention basin. You
10 end up with mosquito breeding places.

11 Q What is the purpose of the retention
12 basin?

13 A The storm water goes to the
14 retention basin. It's really a depression in the
15 ground rather large, several acres for this site. It
16 was several acres and your water is maintained there
17 in the heavy storm, classically the 100 year flood
18 that we are supposed to get any day now, so that the
19 water is retained there and permitted to drain at a
20 slower rate hopefully to alleviate the flood condi-
21 tions that could happen if we have this hundred year
flood.

22 Q Downstream flooding?

23 A Yes.

24 Q And overloading of existing storm drainage
25 facilities? A In some cases.

1 Q Well, do you think that detention or
2 retention basins are per se unreasonable?

3 A Not in all cases, no.

4 Q Just some of them? A Yes.

5 Q All right. Is there anything else that
6 you thought was unreasonable in this particular
7 subdivision? A No, not really because
8 the only other area would be in question would be
9 Green Acres, and in this particular case it was a very
10 limited piece of ground.

11 Q Were you allowed to cluster your lot
12 sizes and thus dedicate an open space or Green Acres
13 area? A They were as close as they
14 would permit us to get them. As I pointed out, they
15 were, I believe, 70 by 125.

16 Q So you were not allowed to cluster, but
17 you still had to dedicate some Green Acres?

18 A They considered that clustering.

19 Q They considered the 70 by 125 lot to be
20 a cluster? A Yes.

21 Q Okay. Well, do you think that was an
22 unreasonable requirement or trade off?

23 A Not really.

24 Q Clustering is a trade off, is it not?

25 A In some cases.

1 Q Green Acres versus less road improvement
2 requirements? A In some cases it is. In
3 this case it wouldn't have meant much difference one
4 way or the other.

5 Q Why? A Because if you
6 cluster, you would need the same exact road network as
7 you did if you didn't cluster.

8 Q What was the lot frontage without
9 clustering? A At the building line it
10 was 70 feet.

11 Q So whether you clustered or not, there
12 was still a 70 foot frontage requirement?

13 A You asked me what it was if I didn't cluster.
14 If you did cluster it went down to 55 or 60.

15 Q Okay. Mr. Davis, if you consider the
16 \$7,000 per lot improvement cost and you consider your
17 own assessment of what improvement requirements were
18 unreasonable or excessive, can you tell me what amount
19 of savings would be generated?

20 A In that particular subdivision you probably
21 could have saved \$3,000 on the lot. Maybe a little
22 less or little more.

23 Q All right. What are the houses selling
24 for? A As I said, \$60,000 to \$80,000.

25 Q If you take a median of a \$70,000 house,

1 \$3,000 represents what, about 5%?

2 A A little less.

3 Q It would be 5% of a \$60,000 house. How
4 about in the Mt. Laurel situation, is it basically
5 the same kind of numbers? A No. The
6 improvement costs were significantly higher.

7 Q They were higher? A Yes.

8 Q How much per lot?

9 A About \$11,000.

10 Q And without going down in detail, what
11 improvements did you think were excessive?

12 A Besides the ones I already gave you, they
13 happened to have similar requirements. They also had
14 extensive Green Acre requirements and extensive
15 recreational requirements.

16 Q What was in the recreational requirement?

17 A Tennis courts that are built almost to the same
18 spec as the roads I just described, that being five
19 inches of stablized base and a two inch top.

20 Q That's in the dedicated area, tennis
21 courts?

A Yes, swings and ball
22 fields that were quite elaborate, bike riding paths.

23 Q Mr. Davis, if you will take what you
24 consider to be the excessive requirements out of the
25 Mt. Laurel situation, what number would you save in

1 terms of improvement costs?

2 A About \$4500 a lot.

3 Q All right. Now, considering the \$90,000

4 to \$130,000 house cost, what percentage of the total

5 house cost could you save? A Four to

6 5%.

7 Q Okay. Now, are there any other, given

8 those two subdivisions with which you are familiar,

9 are there any other zoning or subdivision requirements

10 in those two subdivisions that you feel drove the cost

11 of the housing upward in a manner that would not have

12 occurred from the free market anyway?

13 A Well, there are criteria. For instance, all

14 wiring must be underground.

15 Q That's a utility? A Yes.

16 Q Isn't that part of the \$11,000 improve-

17 ment cost? A Yes, but it's not one I

18 mentioned.

19 Q I asked you an overall number, what in

20 terms of all the improvement costs that you thought

21 were excessive. A Yes.

22 Q If those were eliminated, how much would

23 you save and I think you said \$4500 and you indicated

24 four to 5% of the cost. I'm trying to get beyond

25 improvement costs now to requirements, other requirements

1 of the zoning ordinance? A They have
2 an arbitrary minimum on the size of a house, for
3 instance.

4 Q All right. Let me ask you about the
5 arbitrary house minimum square footage, I presume.

6 Were the houses built to that minimum size or
7 were they built larger in Mt. Laurel?

8 A Larger.

9 Q So that the arbitrary minimum, at least
10 in the Mt. Laurel development, had no impact on the
11 cost of the housing? A That's correct.

12 Q Okay. Any other factors in the zoning
13 ordinance which you feel drove up the cost of the
14 housing? A I'd have to have the zoning
15 ordinance to go over it to answer you properly. I just
16 don't know.

17 Q Well, will you do that and submit that to
18 me in writing? A If it's required of
19 me, yes.

20 MR. VOGEL: Mr. Bisgaier.

21 MR. BISGAIER: I think it's unnecessary
22 in light of the fact that he did not develop
23 this project. He does not know what additions
24 were made by the local developer. If you are
25 asking him to give you an expert report on Mt.

1 Laurel's zoning and subdivision controls as to
2 where he believes they are excessive as minimum
3 standards, that's not within the scope of how
4 he's been retained by the Public Advocate's
5 Office and it's up to him if you want to pay
6 for it and he wants to do it. That would be
7 a private contract.

8 MR. VOGEL: Well, Mr. Bisgaier, I do
9 note in Paragraph 2 of your letter of May 29,
10 1979, summarizing Mr. Davis' views, you say
11 "At my request, Mr. Davis reviewed Alan Mallach's
12 report of March 12, 1979, previously supplied
13 to you and the report on least cost housing and
14 zoning provisions. Mr. Davis generally
15 concurred in the analysis and conclusions of
16 Mr. Mallach."

17 Now, if that's the report in which the
18 thesis of Mr. Mallach is that there are require-
19 ments in the zoning ordinance which drive up
20 unreasonably and unnecessarily drive up the
21 cost of housing and Mr. Davis is here as an
22 expert witness and basically he is a builder,
23 I want to determine whether that position as
24 asserted by Mr. Mallach is, in fact, correct
25 from somebody who is in the real world.

1 MR. BISGAIER: Ask him.

2 MR. VOGEL: I am asking him and he's
3 been very specific on subdivision requirements
4 and I want to know other than ordinances, he's
5 recited minimum house standards and that didn't
6 apply to the subdivision. I want to know any-
7 thing else about the zoning ordinance.

8 THE WITNESS: I assume you are just
9 referring to single family housing or housing
10 of any nature?

11 Q I'm dealing with the subdivisions with
12 which you are familiar either because you built it or
13 because you got the approvals and you have some idea
14 of pricing. A One of the other areas
15 would certainly be the engineering review process that
16 is elaborate, laborious and work that must be accomp-
17 lished and it is exceedingly expensive.

18 Q Is that part of your improvement cost?

19 A It is.

20 Q Do you consider engineering work to be
21 part of your improvement cost?

22 A Not really. It's more development cost than
23 improvement cost.

24 Q In the Mt. Laurel, in the particular
25 zone in Mt. Laurel, was there an anti look alike

1 requirement? A Not that I'm aware of.

2 Q Were the houses as developed all
3 similar or are they different models?

4 A There are several models.

5 Q How many? A They are
6 still under construction, so I couldn't tell you.

7 Q But several different models that do not
8 look alike? A Two or three.

9 Q And that was as a result of the developer's
10 determination of the market?

11 A I don't know how he determined it, but it's his
12 determination.

13 Q Did the zoning ordinance in the Mt.
14 Laurel subdivision require basements or garages?

15 A Not that I'm aware of, no.

16 Q Did these houses have basements or
17 garages? A Some of them, yes.

18 Q And I take it that the inclusion of the
19 basement or a garage, and/or garage increased the cost

20 of this housing? A You would have to
21 ask the builder, I don't know.

22 Q You don't know whether the addition of
23 a garage to a house would increase the cost of the

24 house? A I don't know what his basic
25 house is.

1 Q I want your judgment on this. Does the
2 addition of a garage to a house increase the cost?

DEK

3 A Any addition to a house increases the cost.

4

Q And that would include a garage?

5 A Yes.

6 Q And the addition of a basement rather
7 than a slab, would that increase the cost of a house?

8 A Yes.

9 Q These two requirements, if I understood
10 your previous answer, a previous answer, do not exist
11 in the Mt. Laurel Zoning Ordinance, that is, garages
12 and basements are not mandated and yet the developer
13 included them in at least some of the units?

14 MR. BISGAIER: I thought you said you
15 didn't recollect.

16 THE WITNESS: I don't know whether he
17 does or doesn't. If I drive by the samples,
18 it appears as though because they are still
19 under construction, that they have garages.
20 I don't have the slightest idea if they have
21 basements.

22 Q You didn't see any foundation being built
23 which would indicate to you as a builder as to whether
24 or not they were on a slab or would have basements?

25 A If you are driving along a street several hundred

1 feet from a sample, you can't tell, even in the founda-
2 tion stage, if that's the basement or crawl space.

3 Q How about on slab?

4 A I'm not aware of him building anything on slab.

5 Q All of those houses have either crawl
6 spaces or basements as far as you know?

7 A I don't have the slightest idea. They may be
8 on slab.

9 Q You don't know whether they are on slab?

10 A No.

11 Q Did you drive up and down the streets of
12 the subdivision since the houses are being built?

13 A No. The samples are still being built and
14 there are no roads yet.

15 Q The models? A Yes.

16 Q How about in Cherry Hill?

17 A What about it?

18 Q Are the houses built there?

19 Some of them.

20 Q Some of them beyond the models?

21 Yes.

22 Q And do any of those houses have garages?

23 A Yes.

24 Q Do any of those houses have basements
25 rather than slabs? A No.

1 Q They are all on slab?

2 A No, some are on crawl spaces.

3 Q And some on slab?

4 A I don't have the slightest idea.

5 Q You know somehow the crawl spaces?

6 A Yes.

7 Q Do you know whether any have basements?

8 A I know they do not have basements.

9 Q Okay. Now, wouldn't you agree that or is
10 it so that the local zoning ordinance does not mandate
11 garages in Cherry Hill? A To my knowledge

12 it does not.

13 Q So is it fair to say that the builder,
14 considering market conditions, determined to add
15 garages to these houses? A Apparently so.

16 MR. BISGAIER: It would assume he does
17 know.

18 MR. VOGEL: That's what he said.

19 MR. BISGAIER: Are you sure Cherry Hill
20 does not require garages?

21 THE WITNESS: As positive as I can be
22 without being wrong. I don't think they do.
23 I've never seen it.

24 MR. BISGAIER: This is a good example
25 of the best evidence rule.

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1 Q If the houses were on 50 foot frontage
2 rather than 70 foot frontage, what difference do you
3 think that would make on the price?

4 A Of a house?

5 Q Yes. A Very little, if
6 any.

7 Q Okay. A You were talking
8 about Cherry Hill in the last question, were you not?

9 Q Yes. A Yes.

10 Q How about Mt. Laurel?

11 A A big difference.

12 Q A big difference in Mt. Laurel?

13 A Yes.

14 Q Why in Cherry Hill would it have very
15 little difference, if any, whereas in Mt. Laurel it
16 would have made a big difference?

17 A Simply because in Cherry Hill you are marketing
18 a \$60,000 product which is the low end of the spectrum
19 in the single family housing and you can successfully
20 market it on the lesser size lot if need be. However,
21 in our --

22 Q Excuse me. Just so that I can make sure
23 I understood your answer.

24 So that when you are marketing a house at the
25 low end of the price spectrum, whether it's on 70 foot

1 or 50 foot frontage lots, it's not going to have an
2 appreciable difference in the market in value?

3 A Appreciable, it may affect it by a thousand
4 dollars or \$2,000 which is 2% roughly, or 2½% of the
5 cost.

6 Q Okay. A In Mt. Laurel
7 where they are marketing a much more expensive home,
8 no one so far as been successful on a small lot or a
9 smaller than the 75 foot lot. Bear in mind also that
10 we started talking about percentages. There is a
11 tremendous difference between three or 4% of a \$60,000
12 or \$80,000 house than three or 4% of a \$10,000 or
13 \$15,000 mobile home.

14 Q So that the size of the lot and particu-
15 larly the frontage, in your judgment and from your
16 experience has a greater impact on the more expensive
17 homes than on the lesser expensive homes?

18 A In our market area, yes.

19 Q Are you familiar with any studies on the
20 appreciation in value of mobile homes over say a 15
21 year span of time versus conventionally built homes?

22 A Yes.

23 Q And first of all, how did you obtain
24 this information? A Market studies

25 that we had made in a lawsuit that we were involved in.

1 Q Where were these market studies?

2 A Where were they?

3 Q Yes, in what state?

4 A New Jersey, Maryland, Florida.

5 Q These market studies were in written
6 form? A I believe so.

7 Q Okay. And when you say we had made, did
8 you make them personally? A Some of them.

9 Q All right. And what was the conclusion
10 of those studies? A The mobile home
11 has as of recent been maintaining its value and
12 increasing its value from year to year. This is found
13 true of heavy mobile home projects or mobile home
14 itself that we investigated that has been built since
15 the HUD standards were initiated in 1972 I think or
16 '71.

17 Q So when you said in recent years, you are
18 talking about 1972 on? A Yes.

19 Q And so you would be talking about mobile
20 homes up to seven years old or that magnitude?

21 A As far as I went, yes. Even the old mobile
22 homes had maintained their value and have increased
23 in value, but not as quickly as a more recent vintage.

24 Q All right. Now, when you say increased
25 their value, what kind of increase are you talking

1 about? A 20, 25%.

2 Q Over what period of time?

3 A Well, a couple years.

4 Q In a couple of years. From 1972 to the
5 present? A No. A home that was say
6 bought in 1976 or '75 would be worth 20 or 25% more
7 now.

8 Q And in terms of the cost of purchasing
9 a new comparable home, what is the increase in the
10 cost? A That has also gone up. It's
11 gone up anywhere from 10 to 20%. Sometimes more,
12 sometimes less. Some mobile homes give a very
13 diversified product. When you say how much has a new
14 house gone up, you can't give one answer.

15 Q In terms of the conclusion of your
16 studies. A It has gone up.

17 Q All right. Now, did your studies compare
18 or contrast the appreciation and market value of
19 mobile homes to appreciation and market value of
20 conventionally built single family homes over a like
21 period of time? A No.

22 Q So that when you say the mobile homes
23 have maintained their value or gone up over the last
24 recent years, you do not know how this compares
25 favorably or otherwise with conventional homes?

1 A No, I didn't say that. I said the study didn't
2 reflect it. My own observation is that the single
3 family house has appreciated more.

4 Q Can you define more in a more definitive
5 manner? A No.

6 Q Just more? A Yes.

7 MR. VOGEL: Off the record.

8 (There is a discussion off the record.)

9 Q As a developer and builder, do you think
10 that maximum density requirements of all housing units,
11 whether garden apartments or single families should be
12 different/ⁱⁿcommunities that are more rural in nature
13 or semi-rural in nature as distinguished from those
14 that are more -- A What is meant by
15 maximum?

16 Q For example, are you familiar with any
17 of the 27 towns that are the subject of this litigation?

18 A You mean as far as their zoning requirements
19 are concerned? No.

20 Q Or physically familiar with them?

21 A Yes.

22 Q All right. Which ones? Are you familiar
23 with Madison? A I'm familiar with the
24 area that you represent.

25 Q All right. Now, in the areas given

1 anywhere in the State of New Jersey in the more
2 urbanized and developed areas, do you think the density
3 for new garden apartments should be any different from
4 densities for garden apartments in less developed
5 communities? A It is not a necessity,
6 no.

7 Q What is the maximum density that you
8 think as a developer is reasonable?

9 A In a garden apartment project?

10 Q Garden apartment project.

11 A Of two stories?

12 Q Of two stories.

13 A I would say 17 or 18 is the maximum per acre.

14 Q And it's your opinion that this maximum
15 density requirement would be reasonable regardless of
16 the nature of the community that is the extent of its
17 development? A I'm not sure what you

18 mean by nature of the community, but if you are
19 referring to a suburban versus an urban area, yes.

20 Q You think that good planning and zoning
21 would not dictate different density requirements
22 depending upon the extent of preexisting development
23 of a community? A I think good

24 planning and zoning will allow for all types of
25 density requirements, not specifically one or the

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other.

Q So that whether we are talking about garden apartments, zoning for garden apartments in an urban area of New Jersey or zoning for garden apartments in a rural area of New Jersey, your view is the maximum allowable density ought to be 18 units per acre?

A Yes.

Q Are there any other factors of the community or the area in which the garden apartments are located which in your judgment should have any effect on the maximum allowable density?

A That's such an all encompassing question it's impossible to answer.

Q Do you think that environmental constraints should bear any relationship to density, allowable density of multi-family housing units?

A You have to be more specific again. There are so many environmental lists that have various different constraints.

Q Any environmental constraints?

A I can't answer your question, it's just too vague.

Q Too vague? A Yes.

Q Do you think the nature of soil conditions should bear any relationship to the maximum

1 density allowances?

2 MR. BISGAIER: Off the record.

3 (There is a discussion off the record.)

4 Q Mr. Davis, other than the differentiation
5 of an area in terms of whether it's an urban or rural
6 area, are there any factors which you think which in
7 your judgment should influence the maximum allowable
8 density of garden apartments?

9 MR. BISGAIER: On a particular site?

10 Q On a particular site or in a particular
11 area as zoned by a municipality?

12 A There will certainly be certain sites which,
13 no matter how you try to do it, you can't get 18 units
14 per acre. For instance, topography. However, there
15 may be other sites where you can comfortably get more
16 than 20. So that there are conditions that will allow
17 you to vary that 18 maximum, that would be my opinion.

18 Q You testified that you have built garden
19 apartments at a density of 10 units per acre?

20 A Yes.

21 Q Why did you build them at 10 units per
22 acre rather than 18?

A This particular
23 site could not comfortably accommodate more.

24 Q Because of its topography or configura-
25 tion? A Both.

1 Q Anything else?

2 A No, not in this location.

3 Q Did it relate to market conditions at all?

4 A No.

5 Q Just topography and configuration?

6 A Yes.

7 Q What location are you talking about?

8 A Maple Shade.

9 Q That was the one I thought you had 30
10 units per acre? A We have several

11 apartment projects in that one town.

12 Q And you have one at 10 units per acre?

13 A We have two at 10 units per acre.

14 Q And you have one at 30 units per acre?

15 A Yes.

16 Q Other than topographic conditions and
17 configuration of the property, are there any other
18 factors which in your judgment would reduce the density
19 below 18 per acre? A It is personal

20 preference.

21 Q Personal preference?

22 A Yes.

23 Q What do you mean by that?

24 A Some planners have a fixation that you can't.

25 Q I want your judgment, not what some

1 planner thinks. Your judgment of what would be reason-
2 able factors. A Okay.

3 Q If you are saying personal preference of
4 people who will rent, certainly that's your judgment.
5 I don't care what some planner says.

6 A The only other condition possibly would be the
7 circumstances of an individual site and a particular
8 market that you would try to reach. I'm referring now
9 to a higher income market. You may want to allow more
10 open area between buildings than you would normally
11 have, consequently you would probably have a lesser
12 density.

13 Q Isn't the land generally cheaper in the
14 more rural areas than the more developed suburban
15 areas? A Yes.

16 Q Isn't there some benefit to the residents,
17 whether poor or moderate income or middle or affluent
18 people to have more open space around their living
19 units, garden apartments? A No. There
20 is a point beyond which more becomes unrealistic.

21 Q You think that point, the demarcation
22 line is 18? A Bearing in mind that I
23 said 18 as a maximum density, yes.

24 Q Right. That's maximum density that
25 should be allowed in a zoning ordinance?

1 A In my opinion, yes.

2 Q All right. What is a floating zone,

3 Mr. Davis? A The very few I've seen is
4 under certain criteria on a given kind of development
5 that can be put anywhere in a township.

6 Q And have you done any studies relative
7 to floating zones? A No.

8 Q Have you seen any developments that have
9 occurred pursuant to or as authorized by a floating
10 zone? A Yes.

11 Q And where is that?

12 A Well, when the PUD ordinance that was initiated
13 by the State to allow you to permit PUD's in a given
14 municipality was first initiated, provided the township
15 adopted that ordinance, that was really a floating
16 zone because providing you met the criteria that the
17 township held, a PUD could be built anywhere in the
18 township.

19 Q Kind of a zone in and of itself on top
20 of an existing zone? A Correct. I'm
21 not familiar with any others besides that.

22 Q All right. And is it your opinion that
23 mobile homes should be allowed as a floating zone
24 concept? A It's a possibility. It's

25 not unrealistic.

1 Q Is that your opinion for anyone of the
2 communities that are the subject of this litigation?

3 A I think it's a viable type of zoning for any
4 community.

5 Q As a floating zone, I'm not talking about
6 picking an isolated area or a specific area, and do you
7 think a municipality is unreasonable if they do not
8 permit this? A Permit a floating zone?

9 Q Yes, for mobile homes.

10 A Not necessarily, no.

11 Q Mr. Davis, if you take Mt. Laurel for
12 example and we will take that particular development
13 with which you are familiar and the subdivision and
14 zoning requirements that you think are excessive,
15 erroneous, unreasonable, do you have an opinion as to
16 the effect upon the market price of the houses if those
17 excessive and erroneous requirements were eliminated
18 from the zoning ordinance?

19 A Undoubtedly the effect would be that the
20 builders would have had the liberty to build a house
21 not necessarily in the \$90,000 category, but possibly
22 in a \$60,000 category.

23 Q Now, he is presently building in the
24 \$90,000 to \$130,000 category.

25 A Yes.

1 Q Do you think the elimination of those
2 excessive requirements would have resulted in the
3 builder building houses that sell for less money?

4 A You are asking me to speculate what he would
5 do and I don't have the slightest idea. I'm just
6 saying he would certainly have the availability now
7 from a base to build a lesser price home if he chose.

8 Q I understand that, but what I want your
9 opinion on is, or let me try to ask it a little
10 differently.

11 Wouldn't you agree that a builder in that
12 setting is going to build to meet the best and most
13 positive market conditions, and if that's for \$90,000
14 or \$130,000, regardless of the requirements he is
15 going to build in that range?

16 A Not so.

17 Q All right. In what way do you disagree
18 with that? A First of all, you are
19 assuming his choice is the best and that's why he
20 chose a \$90,000 home. That is not necessarily so. He
21 may lay a bomb. He may do very poorly. However, he
22 may have been in the position, if the cost of improve-
23 ments were less, to build a house of \$60,000 and be
24 very successful, but only time will tell whether you
25 are going to be successful with the \$90,000 homes.

1 Q Let me go back to the point where you
2 said he may have made a mistake in assessing the
3 market and he may lay a bomb, as you said, or he may
4 lose his shirt on the development because he's mis-
5 calculated the market. Is that what you meant?

6 A Yes.

7 Q All right. But assuming he has calculated
8 the market accurately, which is the goal, wouldn't you
9 say that's the goal of developers in trying to assess
10 what price range -- A Yes.

11 Q -- to build at, and if that judgment was
12 accurate and if some of these excessive requirements
13 of the zoning ordinance were eliminated, isn't it
14 likely that the developer would still build for that
15 same market that he thinks is out there?

16 A You are asking me to speculate what he would do
17 and I can't do that. I can only tell you what he has
18 done.

19 Q And what has he done?

20 A He has built houses to sell in the \$90,000
21 market area.

22 Q Don't you think that he has done this
23 because this is what he thinks is the market?

24 A Obviously so.

25 Q Okay. And if that's what he thinks is

1 the market, would the lessening of some improvement
2 requirements alter that market, that market need?

3 A It may change his thinking.

4 Q Do you think that minimum square footage
5 requirements should bear a relationship to the number
6 of people who are going to occupy the particular
7 dwelling unit?

8 A I imagine at a
9 certain point it probably should.

10 Q Do you think that setback requirements
11 for say garden apartments should bear any relationship
12 to the height of the building?

13 A I'm trying to think of a partical experience
14 where this has happened and for a garden apartment it
15 has very little bearing, if any.

16 Q So you think whether it's a two story
17 or three story garden apartment, the setbacks don't
18 bear any relationship?

19 A Not really, no.

20 Q Why should there be a setback at all for
21 garden apartments?

22 A I don't ever
23 recall saying there should be.

24 Q Do you think there should be?

25 A It depends upon your site and density require-
ments.

Q Well, do you think setback requirements
of any variety are unreasonable for garden apartments?

1 A Certain ones are. If you are building a garden
2 apartment project in an area where you are building
3 16, 18, 10, 12, whatever you want to build per acre,
4 you have a lot of ground to work with, so it's not
5 unrealistic to say let's have a setback requirement.
6 To have a setback requirement, that makes it unwieldy
7 or impossible to build to that density. It does not
8 make sense.

9 Q So setback requirements would depend in
10 part upon the area where the building is, the project
11 is located? A Yes.

12 Q In part on the density?

13 A Yes.

14 Q In part on the availability of land in
15 the area? A Yes.

16 Q And how about in part on the land, the
17 preexisting land use development in the area?

18 A You lost me.

19 Q Okay. Should setback requirements in a
20 zoning ordinance take into account what already exists
21 in the area of that zone in terms of development and
22 setback? A Maybe if you give me an

23 example.

24 Q If you are out in a rural area that is
25 substantially undeveloped -- A Yes.

1 Q -- and the municipality is setting set-
2 back requirements, do you think the standard should be
3 different or it is reasonable to set different standards
4 of setback requirements for garden apartments say in
5 an urban area? A No, not really.

6 Q What represents squing?

7 A I don't have the slightest idea.

8 Q Have you seen the report that Mr. Bisgaier
9 submitted dated May 29, 1979?

10 A I think I've read it, yes.

11 Q Advising all counsel as to your verbal
12 report to him? A I think I've read it,
13 yes.

14 Q All right. I'll read you a sentence
15 under that report, Page 3, Item 11 and the last sentence
16 reads as follows; He, referring to you, has personal
17 experience with rent squing and has found it to be a
18 realistic device. A I suggest you ask

19 Mr. Bisgaier what squing means. I don't know what it

20
21 Q You didn't tell him anything about rent
22 squing? A I may have, but I didn't
23 use that word.

24 MR. VOGEL: He used different words?

25 MR. BISGAIER: He might have. What we

1 were talking about was permitting some residents
2 of a multi-family dwelling to essentially
3 subsidize their rent, to lower the rent for
4 certain people and have different rents for
5 other people. Essentially an internal subsi-
6 dation of the rentals of some units by covering
7 their costs or the loss in rentals that they
8 would have normally paid by rentals for other,
9 in other units. That has been called by the New
10 Jersey Supreme Court as rent squing.

11 Q All right. Have you had personal
12 experience with such practices?

13 A Yes.

14 Q All right. And did you discuss them with
15 Mr. Bisgaier? A Yes.

16 Q Okay. And what has been your experience
17 with rent squing? A How have we accomp-
18 lished it?

19 Q Have you actually?

20 A We on our own without Federal, State or other
21 subsidies provide people on fixed income with a certain
22 economic strata credit on their rent up to 7%. There
23 are a lot of other criteria that take effect, but
24 essentially that's what happens.

25 Q And is there any Governmental requirement

1 which has either required this or prohibited this
2 practice? A No.

3 Q And is it still in effect?

4 A Yes.

5 Q Are the tenants who are not the benefi-
6 ciaries of that program, are they aware of the program?

7 A I would assume so. If they ask, we tell them.

8 Q Mr. Davis, do you have any idea of the
9 present cost of a septic system for individual single
10 family residences under the present requirements,
11 minimum requirements of, I think it's called Chapter
12 199?

A No.

13 Q Have you ever utilized septic systems
14 for any of the garden apartments you built?

15 A No.

16 Q They are all on public sewers?

17 A Yes.

18 Q Have you built any sewerage treatment
19 plants for any of these complexes?

20 A No.

21 Q Do you think that minimum acreage require-
22 ments for garden apartments are unreasonable?

23 A Yes.

24 Q Why? A Because it

25 doesn't make any difference at all whether you have

1 one acre and plan it properly or you have 1,000 acres
2 and plan it properly, so long as it is planned properly.

3 Q Isn't it true that if you have one acre
4 and a garden apartment complex that small a size that
5 you might not have enough apartments for a maintenance
6 man or superintendent on the premises?

7 A Possibly.

8 Q Do you think that's an unreasonable
9 requirement, municipal requirement, to be sure that
10 garden apartments which are developed in their
11 community are of sufficient size in terms of the
12 complex to justify at least one superintendent or
13 maintenance man on the premises?

14 A Possibly so. Your question is a little confusing
15 to me and very encompassing, but it still does not
16 alter the fact that there is nothing wrong with someone
17 building apartments on one acre and having someone
18 from the outside, an outside maintenance company doing
19 their maintenance.

20 Q Wouldn't you say that certain costs
21 exist in an apartment complex and are spread over the
22 number of apartment units in a manner so that if you
23 had more units, the cost would actually be reduced?

24 A What cost, maintenance cost?

25 Q No. I'm talking about up front planning

1 cost. You talked about engineering costs.

2 A To some degree.

3 Q So that isn't it possible that a
4 municipality in requiring a certain minimum lot size
5 would actually be fostering lower overall per unit
6 costs? A That's a fair retail.

7 Q It's a fair retail.

8 A Since when does a municipality care too much
9 what it cost a developer? They don't and I've never
10 seen one that does. They don't give a hill of beans
11 what it costs the developer.

12 Q You don't think there is any municipality
13 that cares about the cost of housing, the ultimate
14 cost of housing in their community?

15 A I didn't say that. You gave an example as to
16 why a municipality may require a large multi-family
17 development and the example you gave was because it
18 may be less expensive for the developer in the long
19 run for his engineering, as an example for that project
20 and my answer to you was baloney. The townships don't
21 care what it cost the developer so long as it costs
22 them more.

23 Q All right. And you don't think that the
24 townships, you have never seen a township that cared
25 about insuring that the costs of building a housing

1 unit would be less? You only, if I understand your
2 answer correctly, and correct me if I'm wrong, your
3 experience is you only see municipalities that want
4 the cost to the developers to be greater?

5 A Unless it's forced down their throat. That's
6 the truth. I'm talking about the private sector now.

7 Q You have found no municipalities that
8 care about attempting to reduce building costs in their
9 community? A That's correct.

10 Q And your experience is such that you have
11 no communities that want to achieve, want to adopt
12 zoning and subdivision requirements which might
13 encourage varieties of housing costs including some
14 lowers than others? A I didn't say
15 that. However, the variety stops when you start to
16 get below middle income because when you try to zone
17 for the lower economic strata, they don't want to do it.
18 When you try to provide housing for the low economic
19 strata, they don't want to do it.

20 MR. BISGAIER: Is there an exception?

21 THE WITNESS: The exception is when a
22 township is forced, usually by the courts to
23 provide some type of lower income housing. They
24 then will make a vein effort for that lower
25 income strata, but it is still like pulling

1 teeth.

2 Q That's your experience?

3 A Yes.

4 Q And have you ever heard of a Section 8
5 Rent Supplement Housing Program?

6 A Yes.

7 Q Do you know of any communities that have
8 programs of that nature? A Yes.

9 Q Are you familiar with housing authorities
10 in any communities? A Yes.

11 Q Are you familiar with any communities
12 that have developed zones and set standards for the
13 purpose of keeping development and housing costs down
14 rather than increasing those costs?

15 A For the private sector, no.

16 Q Only for publicly subsidized housing?

17 A Yes.

18 Q The garden apartment complex that you
19 built for which you got 30 units per acre, did you get
20 a variance for that? A No.

21 Q That was permitted in the zoning ordi-
22 nance? A Yes.

23 Q And do you think the zoning requirements
24 of that community were such that they drove your costs
25 up? A In those days the zoning

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requirements in this particular town were essentially nonexistent. My previous comment about towns not caring what it cost a developer, I'm referring to today. I'm not referring to 15 years ago when that project was built.

Q Let me just clarify that or let me just ask another question about that.

Is it your experience that while towns may not care what it cost the developer, that towns may care what it cost the ultimate purchaser or renter of a housing unit? A Not in the slightest.

MR. VOGEL: Okay. No further questions.

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

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MORRIS COUNTY FAIR HOUSING :
COUNCIL, et als, :

Plaintiffs, :

-vs- :

CERTIFICATE

BOONTON TOWNSHIP, et als, :

Defendants. :

I, VICTOR SELVAGGI, JR., a Certified Shorthand
Reporter and Notary Public of the State of New Jersey
certify that the foregoing is a true and accurate
transcript of the deposition of ROGER DAVIS who was
first duly sworn by me at the place and on the date
hereinbefore set forth.

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

Victor Selvaggi, Jr.

A Notary Public of the State of New Jersey

Dated: 10/4/79

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