

ML - Morris County Fair Housing Council
v. Beantown Twp (Morris County)

12/3/79

Examination of David Zimmerman,
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p 89

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

MORRIS COUNTY FAIR HOUSING COUNCIL, :

Plaintiffs, :

-v- :

CIVIL ACTION

BOONTON TOWNSHIP, et al, :

Deposition of:
 P.DAVID ZIMMERMAN

Defendants. :

T R A N S C R I P T of the stenographic notes of the
 proceedings in the above-entitled matter, as taken by and
 before JO-ANN KANNON, a Shorthand Reporter and Notary Public
 of the State of New Jersey, held at the offices of THE
 MORRIS TOWNSHIP MUNICIPAL BUILDING, Convent Station,
 New Jersey, on Tuesday, November 13, 1979, commencing at
 10:00 A.M.

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

STANLEY C. VAN NESS, PUBLIC ADVOCATE
 BY: CARL BISGAIER, ESQ.,
 Attorney for the Plaintiff

SUPERIOR COURT
 MORRIS COUNTY,
 FILED

DEC 3 1979

MESSRS. VOGEL, CHAIT & ROETTGER
 BY: HERBERT A. VOGEL, ESQ.,
 Attorney for Common Defense Committee

FRANK A. HEADLEY
 COUNTY CLERK
 DEPUTY CLERK

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A P P E A R A N C E S (Cont'd):

SHANLEY & FISHER, ESQS.,
BY: GLENN PANTEL, ESC., AND CHARLES A. REED, ESC.,
Attorneys for Harding Township

IN PRESENCE OF:

LINDA HURD, ESQ.
ASSISTANT DEPUTY PUBLIC ADVOCATE

SUSAN GRUEL

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



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NAME

PAGE

P. DAVID ZIMMERMAN

DIRECT EXAMINATION BY MR. BISGAIER

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E X H I B I T S

NO.

DESCRIPTION

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Z-1

Letter to Roger Clapp, Esq., 3
from P. David Zimmerman

1 P . D A V I D Z I M M E R M A N , sworn.

2 DIRECT EXAMINATION BY MR. BISGAIER:

3 Mr. Zimmerman, have you ever taken a deposition
4 before, given sworn testimony?

5 A Yes.

6 Q My responsibility under the law is to ask you
7 the questions and yours is to basically answer them truth-
8 fully.

9 If you have any questions about what I'm asking,
10 any doubts or feel you do not understand, just kind of let
11 me know and we'll try to nail this conversation. ~~It's~~
12 Herb will help out to clarify whenever possible.

13 You raised at the beginning of the deposition a fees
14 question. Our understanding is that we will pay -- under
15 the rules, we are obligated to pay any reasonable fee. We
16 will pay what your fee is to the Common Defense Fund based
17 on the time that you spend in the depositions. Now, what
18 is that fee?

19 A That's sixty dollars an hour. What about the fee
20 ~~for~~ the time for preparation of this, in terms of rereading
21 ~~my reports?~~

22 Q No, we do not pay for that. We just pay for
23 the time you spend in the deposition.

24 MR. VOGEL: Assuming, I think Mr. Bisgaier
25 is correct on the rule, and assuming that it is

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consistent with the rule, any time that is spent in preparation will be billed to the Common Defense Fund.

Any time in deposition hearing or traveling to and from the deposition hearing --

MR. BISGAIER: We are specifically asked to take the depositions in the office of the specific witness in order to avoid having to pay for travel time. It was not our choice.

MR. VOGEL: Travel time is insignificant in this case. Mr. Zimmerman is from Morristown.

MR. BISGAIER: Is that satisfactory everybody?

Q Mr. Zimmerman, let me show you a document that has been previously marked as Z-1, and could you identify that document for purposes of the record?

A This is a document that I prepared which can best be titled "Preliminary Report Relating to the Morris 27 Litigation," dated October 5, 1979.

Q And this document represents your work product?

A That's correct.

Q Did you produce any of the documents that were requested as a result of the subpoena that was mailed to you, personally, and served on a Roger Clapp?

A I'm not aware of any subpoena.

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MR. VOGEL: Nor am I.

MR. BISGAIER: Off the record.

(A discussion was held off the record.)

In view of the fact that apparently you have not received a copy of the subpoena, Mr. Clapp hasn't forwarded it to you, we'll postpone the production of such documents as such time we reconvene for depositions or other arrangements are made.

This document, Z-1 for the purpose of identification, have you done any further work with regard to this case other than what is reflected in Z-1?

A Yes.

Q And what would that be?

A We are in the process of gathering data in several areas. One is, we are doing a sample survey of the market prices that are paid for housing in select municipalities in Morris County, and we are also gathering data relating to the wages paid to covered employees for 1977 for several counties in New Jersey.

Did you intend to do any further work other

A Yes.

Q What do you intend to do?

A I intend to continue to analyze housing in Morris County to ascertain it to what extent the current housing

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1 supply satisfies the needs for low and moderate income
2 housing, and to what extent to the normal development of
3 housing or the normal housing market in Morris County, in
4 the region, meets the needs for regional fair share housing.

5 Second, I am developing another allocation method
6 which will, hopefully, relate the relationship of housing
7 choice and employment, and what I would consider a little
8 more sophisticated way that has hitherto been done, namely,
9 I am going to try and correlate the location of specific
10 job types and specific jobs by income to the housing choices
11 that people hypothetically would make, given that income
12 and that job at "x" location or "y" location in the

13 Q When did you anticipate doing this?

14 A We're in the process of gathering the data for this
15 now and I would say that I'll have preliminary results
16 before the end of the year.

17 Q Is this a model that you intend to adopt as
18 your own or is this a model that you intend to put forward
19 as one which you think is the appropriate model for fair
20 housing purposes as opposed to what is contained in

22 A That's correct.

23 Q How would you characterize your analysis in
24 Z-1 as compared to the analysis that you intend to put
25 forward in this new model as to the merits of different

1 allocation plans discussed?

2 MR. VOGEL: I'm going to note an objec-
3 tion. I don't know that he can characterize
4 the merits of the study which he hasn't yet
5 completed and contrast it to a study which he
6 has completed, but he can answer.

7 MR. BISGAIER: We have put on the record
8 that there is just general waiver of objections,
9 things like that. Is that satisfactory to you?

10 MR. VOGEL: It is but there are times
11 when I think an objection is appropriate.

12 MR. BISGAIER: You won't be able to
13 interposing.

14 MR. VOGEL: I would like to put on the
15 record that Mr. Pantel is here and I neglected
16 to mention that Mr. Pantel or somebody from
17 that office had called me this morning and they
18 did want to make some kind of a statement for
19 the record qualifying their position, with
20 respect to Mr. Zimmerman.

21 MR. PANTEL: That's P-a-n-t-e-l.

22 For the record, we do want to state that
23 we reserve the right to retain our own experts
24 with respect to the subject matter of Mr.
25 Zimmerman's testimony and that we don't consider

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ourselves bound by it now as our expert. And the appearance, as for Harding Township, it's Harding Township's position as the position I have just outlined.

MR. VOGEL: Just go backward, my appearance is on behalf of the Common Defense Committee and my name is Herbert A. Vogel of the law firm of Vogel, Chait and Roettger, R-o-e-t-t-g-e-r.

Q Why don't you answer the question that was posed, if you can?

A Maybe it would serve everyone, including Mr. [redacted] to have the question reread, if you don't mind?

MR. BISGAIER: Fine. Please read the last question back.

(Whereupon the reporter read back the last question as follows:

"Question: How would you characterize your analysis in Z-1 as compared to the analysis that you intend to put forward in this new model as to the merits of the different allocation plans discussed?"

A As you may be aware, the document Z-1 was essentially broken down into several parts, one of which was an analysis of the means utilized by the Department of Community

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1 Affairs to allocate low and moderate income housing in
2 regions throughout New Jersey. And I think in my report
3 I presented that analysis or that means and also analyzed
4 what DCA's approach to the situation was, as a reasonable
5 alternative to the assumptions made by DCA.

6 My report contains other parameters, as I call them,
7 or other assumptions regarding the growth of population,
8 the size of households, the treatment of vacant developable
9 lands as examples. Also my report talks about four-county
10 regions as opposed to the eight-county regions utilized by
11 DCA.

12 Utilizing the parameters that I thought were more
13 reasonable and also a region which, again, I thought was
14 more reasonable than employed by DCA, different figures
15 were generated for low and moderate income housing for
16 Morris County.

17 A second approach to the problem was also presented
18 in my report whereby the growth of the employment was analyzed
19 and using that method the two figures were generated for
20 low and moderate income housing for Morris County. Now,
21 what I propose to do, as I've indicated earlier, is to see
22 if it's possible to contrive the demand for housing given
23 the type of jobs that have developed in Morris County with
24 particular reference to the income that's generated by
25 those jobs and their location, recognizing that there is a

1 close relationship between employment and housing choice.

2 Now, I don't know if that attempt will be successful.

3 In reading through the literature on housing allocations,
4 the best of my information is that it has not been attempted
5 or if it has been attempted, it hasn't been published.

6 Q Why are you attempting it?

7 A Because I think that it essentially makes more sense
8 to me to do it that way. I think the approach used by DCA
9 is basically a formula and there is much in the literature
10 that, depending on what area of the county -- what area of
11 the country you are dealing with, that author -- what each
12 particular author feels is most important. There
13 varieties of formulas developed to allocate housing.

14 However, I was looking at the problem and, as I see
15 it, there's another way to deal with it and to analyze the
16 relationship between housing and where people live and
17 where they work, etcetera, and I think that employment is
18 a key factor and I think what we're essentially dealing
19 with is attempting to come up with some figures that would
20 tell us where people would live, give absent land use con-
21 siderations. I think that the method that we are trying to
22 develop, hopefully, will give us those answers.

23 Q Are you dissatisfied with the various methodolo-
24 gies that were reflected in Z-1?

25 A I'm not dissatisfied with them.

1 Q Do you consider them unreasonable methodologies?

2 A No.

3 Q You're seeking a better alternative then? One
4 that you are more confident with, as a planner?

5 A I would say a better alternative.

6 Q Is your opinion then that the employment
7 records on the allocation that you used in Z-1 is not satis-
8 factory?

9 A No, I think it's quite satisfactory. I think it can
10 be utilized and I think that it's a valid method.

11 Q Would you have a different opinion about the
12 DCA method or the adjusted DCA method that you used?

13 A No, I think they are all reasonable. I think I
14 indicated, in my report, that I think there are some
15 problems with the DCA method and that's why the report
16 contains what you've characterized as adjusted DCA method.

17 Q Well, let me ask you this. How would you feel
18 about the court -- if a court chose to and I say would you
19 feel, as a professional planner, if the court chose to
20 adapt any one of the three methods just discussed in your
21 report?

22 A Well, I don't have any feelings about it. I mean
23 that's up to the court to decide.

24 Q What would your opinion, as a professional
25 planner, -- would you think the court was acting unreason-

1 ably if it adopted DCA or if it adopted the adjusted DCA
2 plan or adopted an employment method that you have set
3 forth?

4
5 MR. VOGEL: I'm going to object to his
6 giving any opinion as to whether or not -- as
7 to the court acting unreasonably. If you want
8 to know his opinion, ask him. But, certainly
9 as to whether or not the court is going to act
10 unreasonably if they go one way or the other --

11 Q As a professional planner, would you consider
12 it unreasonable for someone, whether it is a court or any-
13 one, to adopt any one of the three methods just discussed
14 in your report, as a professional planner?

15 A I would characterize each methodology as being
16 reasonable in terms of it's being well thought out and
17 having a logic to it. However, as I indicated earlier,
18 I feel that there are some problems, as I indicated in my
19 report, with the DCA methodology and I don't think I'm
20 -- let's just say the best that can be done.

21 Q Is that a difference of opinion in terms of
22 what proper planning methodology would be or is it your
23 feeling that what was done was unjustified or unreasonable
24 in some way capricious or arbitrary?

25 Do you understand the distinction I'm making or
should I try to go at this a different way?

1 A Well, I would suggest that if anyone were to absorb
2 wholeheartedly the DCA methodology that they were essential-
3 ly not utilizing the best means at their disposal to
4 answer the questions addressed to the issue, just like using,
5 you know, an inferior tool to accomplish a job.

6 Q Are there aspects of the DCA methodology --
7 now, I'm talking about as opposed to the specific way in
8 which they implemented that methodology which you feel are
9 arbitrary and unreasonable?

10 A I deal in my report with the definition of the
11 region and I think that that is one area which I feel it's
12 unreasonable or less reasonable than it should be.

13 Q So you think that if somebody adopted and
14 utilized an eight-county region, they would be acting un-
15 reasonably in this context as opposed to having a different
16 opinion as a planner?

17 A Yes.

18 Q Is there any other aspect of the DCA methodology
19 that you would put in the same category as unreasonable and
20 as opposed to other areas that planners might disagree as
21 reasonable?

22 A There is an assumption in the DCA report which deals
23 with the 1990 population of the counties throughout New
24 Jersey. Again, this is a figure that I don't think is the
25 best tool as I've mentioned earlier to be utilized. Recog-

1 nizing that that figure was generated several years ago
2 and that other agencies have come out with information that
3 is, in my opinion, more valid than what DCA produced and
4 that there is a constant revision of population figures and
5 I wouldn't be surprised if DCA, themselves, were not in the
6 process of revising their own population estimates.

7 Remembering that the DCA method and the DCA report
8 itself is a revision from what was published several years
9 earlier, and they may be in the process themselves, of
10 revising the revision so that there is a constant critical
11 examination of material that's produced by planners and by
12 any experts, and I think it is incumbent upon us to take
13 the information which is most valid and most current and
14 if you are not, I think you are unreasonable.

15 Q You think -- you don't think it's unreasonable
16 to utilize the 1990 population projection for fair share
17 planning purposes. You feel it's unreasonable to use the
18 particular one that DCA used?

19 A That's correct.

20 Q Is there anything else in the report that you
21 would consider unreasonable as opposed to a reasonable
22 difference as to agreements among planners in terms of the
23 methodology?

24 A The size of the household that is utilized by the
25 DCA is significantly smaller than figures used by others,

1 such as the Trf-state or RPA or other agencies which have
2 equal stature or status to DCA.

3 In fact, I would submit that, while not constant in
4 the report, most sociological information or analyses of
5 demography point to increasing of household size and in-
6 creasing of the birth rate so that I'm confident that the
7 figures that were introduced by other agencies have validity
8 and that the figures used by DCA are not reasonable in
9 light of this information.

10 Q What else about the DCA methodology is unreason-
11 able as opposed to the difference among planners?

12 A The DCA report introduces a figure of four
13 units per acre upon which housing should be built through-
14 out the region. I think this is an unreasonable statistic
15 to use.

16 Q You don't have to tell me why you think that
17 it's unreasonable. What else do you think is unreasonable?

18 A The assumption that all developable land is equally --
19 I'm sorry -- all vacant developable land is equally prone to full
20 development and thereby -- or prone to development as
21 opposed to recognizing that certain areas may be more devel-
22 opable than others. In fact, other areas may not be devel-
23 opable as a matter of public policy as enunciated in the
24 Development Guide Plan of the State of New Jersey which
25 identified vacant areas of the State but also identified

1 a public policy or suggests that there should be a public
2 policy whereby certain areas should not be developed until
3 after the year 2000 and other areas should be.

4 Other than its potential conflicts with the
5 State Development Guide, did you feel that the plan was
6 unreasonable in that regard?

7 A Well, I think that is indicative of the DCA's
8 approach to vacant land whereby all vacant land, excluding
9 twelve percent wet lands, farm lands, etcetera, is equally
10 adaptable to development.

11 Q Do you feel that the Housing Allocation Plan
12 is in conflict with the State Development Guide?

13 A Yes.

14 Q Is it your opinion that the DCA feels that it's
15 in conflict with the State Development Guide?

16 A I don't know what DCA's opinion is. I think the
17 facts speak for themselves that they are in conflict.

18 Q And the case in which you see that they are
19 not in conflict is the treatment of the limited growth
20 development area?

21 I think they are in conflict. I didn't say they are
22 not in conflict.

23 Q Yes, and the way you see they are in conflict
24 is the treatment of the limited growth area and growth
25 area in the Development Guide Plan's treatment of the

1 vacant development lands in housing?

2 A That's correct.

3 Q Are there any other aspects of the methodology
4 that you consider unreasonable?

5 A Basically, there are two other areas. One relates to
6 the way in which the DCA reports factors in job growth as
7 opposed to jobs in absolute numbers. The DCA report intro-
8 duces as one of their information factors, the growth of
9 jobs, I think, between 1969 and 1976 and subsequently would
10 allocate low and moderate income housing to those areas
11 where the job growth is greatest.

12 Q You would go so far as to say your di-
13 of opinion there is more a difference of what is
14 or not?

15 A Right. I think it's unreasonable for them to do
16 that. I think it's statistically unreasonable. Essentially,
17 what they are saying, if there's one job in the area and
18 the job is an additional job introduced, then the increase
19 in jobs is a hundred percent and thereby the allocations
20 would be somewhat distorted by that statistic. I think
21 the fairer approach or the more reasonable approach
22 would be as we've suggested to deal with absolute jobs
23 rather than percent of job increase.

24 Q Do you know of any fair share plan that does
25 that besides yours?

1 A I don't know whether they have or they haven't.
2 There are some fair share plans that don't deal with employ-
3 ment at all.

4 Do you know of any fair share plan other than
5 yours which allocates prospective housing needs on the
6 basis of the existing job location as opposed to respective
7 job location?

8 A Well, I don't know. DCA didn't generate a plan based
9 on prospective job location, new jobs or present jobs.

10 My employment model or my employment work, in my
11 report, deals with prospective jobs, but DCA doesn't deal
12 with prospective jobs. Now, some models do and some don't.

13 Q Do you know of any models which evaluate
14 prospective needs, keeping in mind that DCA considered
15 prospective housing needs, any needs generated after 1970.
16 Do you know any model which evaluated where prospective
17 housing needs should be located by utilizing where existing
18 jobs were, the totality of the existing jobs?

19 A I don't know of any that did or likewise I don't
20 know of any that didn't.

21 It's something that you haven't evaluated from
22 your point of view that our planners have done?

23 A I just don't remember. You know, I examined a good
24 number of housing allocation plans and methods and I just
25 don't remember offhand which ones did what and which ones

1 didn't do particular things. I mean, I could answer that
2 question by going back to my notes, going back to the books.

3 Q What, other than the job criteria or how DCA
4 used that in the allocation plan, do you think was unreason-
5 able about their methodology?

6 A The DCA report identified three factors relating to
7 housing which were used to generate in-place housing needs.
8 Those three factors were: dilapidated units, overcrowded
9 units of 1.01 persons per room and vacancy factor.

10 Now, the use of dilapidated units are suspect because
11 in 1970 the census of housing did not tabulate dilapidated
12 units. Housing condition was not part of the 1970
13 of the housing as opposed to previous census. What was
14 undertaken and what DCA did, was to rely upon a correlation
15 factor that was developed by Tri-State which correlated in
16 1960 housing dilapidation with income and other socio-
17 economic factors.

18 Q Do you think that was unreasonable?

19 A I think that we don't know if it's reasonable or
20 unreasonable because --

21 Q Do you have a better way to do it?

22 A Well, let me answer the question. I don't know if
23 it's reasonable or unreasonable because we don't know if
24 the conditions have changed between 1960 and 1970 such
25 that the assumptions made in 1960 about dilapidated housing

1 units and income are valid.

2 Q What would lead you to believe that they are

3 [REDACTED]

4 A I think there is a general trend nationally and also
5 in this area of improvement in housing conditions so that
6 the number of dilapidated units, for example, in 1940 is
7 significantly less than in 1960. All literature seems to
8 indicate that the condition of housing nationally is im-
9 proving.

10 Q What literature or reports or any analysis that
11 you have would indicate to you that the Department of Commu-
12 nity Affairs' assessment of what it considered to [REDACTED]
13 present housing need as of 1970, the low and moderate income
14 people, was too large that they overestimated the present
15 housing needs as of 1970 -- first of all is that your opinion
16 that they overestimated present housing needs in the State
17 as of 1970?

18 A I would say that I, at this point, don't have an
19 opinion in that regard. You may have noted in my report
20 that I didn't deal with the in-place housing need and essen-
21 tially the figures were the same as DCA.

22 However, that doesn't mean that I don't feel that
23 figure is a hundred percent valid and that we're in the
24 process of analyzing that at the present time. I don't know
25 what we would come up with.

1 Q How are you intending to analyze the present
2 need figure that DCA utilized for 1970 present housing?

3 [REDACTED] tell the truth, at this point, I don't know.

4 [REDACTED] So, it's safe to characterize your present opin-
5 ion as that you essentially have no opinion of it. DCA has
6 produced a document reflecting 1970 present housing needs
7 and you have no opinion as to whether that's high, low,
8 accurate? You just have no opinion whatsoever about it?

9 A Where I am on this figure is that up to this point I've
10 not questioned this figure. However, we are in the process
11 of doing that and we may find that it's a reasonable and
12 valid figure to use. [REDACTED]

13 Q You might even find that it's low in which case
14 you would tell us it should be higher?

15 A It may be higher.

16 Q What is your opinion about the Department of
17 Community Affairs failing to utilize in its assessment of
18 the present housing needs that category or class of people
19 who were paying too much of their income for housing under
20 [REDACTED] formulations of that concept? Do you understand
21 the question?

22 A I think I do. Your question, if I can paraphrase it
23 to see if I can understand it, is that in the earlier report
24 the DCA presented, their figures for low and moderate in-
25 come housing based upon financial housing national guide

1 says or identifies that there were people paying more than
2 twenty-five percent of their income for housing and that
3 that item was not included in the later revised report by
4 DCA.

5 Q What do you think of that?

6 MR. VOGEL: I am going to object to that.
7 I have some difficulty with your position of
8 attempting to expand upon the expert reports
9 that you have submitted through this expert and
10 you can ask him, you know, opinions of where
11 he's going and how he analyzes it but
12 bound by your own expert reports. But
13 answer the question.

14 A I don't recall how I dealt with that.

15 Q Well, I'm asking you, as a planner, what do you
16 feel -- do you feel that that is a category of people who
17 are experiencing a present housing need?

18 A Yes.

19 Q How do you feel or how do you feel as a planner
20 about an analysis that is done of present housing needs
21 which fails to calculate in that analysis that class of
22 people?

23 MR. VOGEL: Same objection that I had
24 before.

25 A Well, that class of people may be accounted for through

1 other statistics which I think is what DCA did.

2 Q You feel there may be an overlap?

3 [REDACTED] Other than that, there may have been an overlap
4 and, obviously, we don't want to count poor people twice.

5 Do you have any other reason for thinking that it was appro-
6 priate not to consider that category of people in assessing
7 present housing needs?
8

9 A Well, I think that that category of people has to be
10 accounted for and DCA essentially made the choice on how
11 they were going to do it. I didn't make that choice.

12 Q Yes. I'm just asking you --

13 A And I'm, at this point, I -- I haven't weighed the
14 merits of the DCA's choice of using dilapidated, overcrowding
15 and vacancies as their criteria versus deteriorated, dilapi-
16 dated, and financial factors.

17 Q So, essentially as of today, in any event, you
18 do not know how you personally would choose to assess present
19 housing needs.

20 [REDACTED] Personally or professionally?

21 [REDACTED] Professionally.

22 MR. VOGEL: Just let me interpose another
23 objection to the same line of questioning. You've
24 got the DCA report and their approach which is
25 what you submitted or the Public Advocate submit-

1 ted and you've got Mr. Zimmerman's reports and
2 you've got anything that Mr. Zimmerman said he's
3 working on. It is beyond the scope of his report
4 and you're asking him for an opinion about some-
5 thing which neither your expert nor he has put
6 forward. It's beyond the scope of Mr. Zimmer-
7 man's testimony here.

8 I think your questions ought to be direc-
9 ted to his reports and what his knowledge of
10 your reports is and that's something the DCA
11 failed to do.

12 MR. BISGAIER: You won't instruct
13 to answer my questions?

14 MR. VOGEL: No.

15 MR. BISGAIER: Thank you.

16 A Would you repeat the question.

17 MR. BISGAIER: Will you read back the
18 last question please?

19 (Whereupon the last question was read back
20 as follows:

21 "Question: So, essentially as of today,
22 in any event, you do not know how you personally
23 would choose to assess present housing needs?"

24 A Yes.

25 Q In evaluating the Department of Community Affairs'

1 housing allocation plan, what documents did you review?

2 Now, I mean of the Department of Community Affairs, to nar-

3 [REDACTED] reviewed, essentially, as I recall, three documents.

4 One was an analysis of the low and moderate income housing
5 needs in New Jersey published in 1975, and I analyzed a re-
6 port entitled "A Revised Statewide Housing Allocation Report"
7 from New Jersey published in 1978, and a State Preliminary
8 Draft Development Guide Plan, if I have it titled correctly.
9

10 Q The Housing Allocation Plan you're referring to,
11 is it 1978?

12 A Yes.

13 Q Did you also review the 1976 Housing Allocation
14 Plan done by DCA or any other documents of the Department?

15 A I'd have to see the specific document that you're
16 referring to to know if I have reviewed it or not.

17 Q The '76 document has a green cover. The '78 has
18 a blue cover. I'm just asking what the basis of your analy-
19 sis --

20 [REDACTED] ink it was '75 but maybe it was '76, the green
21 [REDACTED] was reviewed by myself.

22 MR. BISGAIER: Off the record.

23 (A discussion was held off the record.)

24 Q Just so I can clarify this, the totality of the
25 documents that you reviewed from the -- produced by the

1 Department of Community Affairs and evaluated and to under-
2 stand what the Department of Community Affairs did was the
3 [REDACTED] Guide, whatever its appropriate title is, the
4 [REDACTED] Housing Allocation Plan, the 1976 Housing Allocation
5 Plan, and, I believe, you stated the one other -- the analy-
6 sis of low and moderate income needs that was done by the
7 Department?

8 A There are other materials. I think I took an example
9 -- there are two executive government orders --

10 Q Executive Orders 46 and 35?

11 A 35, I think. There may be others but those come to
12 mind immediately at this time. [REDACTED]

13 Q Did you discuss the DCA report with officials of
14 the Department or people who, either working there now, or
15 had worked there, that had worked on the Housing Allocation
16 Plan or the Development Guide?

17 A I've discussed the Development Guide Plan but -- yes.

18 Q But you have not discussed the Housing Allocation
19 Plan?

[REDACTED] s correct.

[REDACTED] With whom did you discuss the Development Guide?

22 A As I recall, it was Richard Ginman.

23 Q What was the nature of that conversation, to the
24 best of your recollection?

25 A The nature of that conversation revolved around a dis-

1 cussion of the plan in relationship to its development of an
2 area of Somerset County.

3 Q Did you discuss the Development Guide in the
4 Housing Allocation Plan visa vie Morris County at any time?

5 A Well, at that meeting that I had with Mr. Ginman, the
6 plan was discussed in general.

7 Q Where was that meeting?

8 A That meeting was in Trenton.

9 Q Where in Trenton?

10 A In Ginman's office.

11 Q Do you have any notes that you took on that
12 meeting?

13 A I doubt it.

14 Q If you do, would you make those available when
15 you make available your other documents that we have request-
16 ed?

17 A Certainly.

18 Q Do you recall any opinions expressed by Mr. Gin-
19 man with regard to either Development Guide or the Housing
20 Plan?

21 Almost certain there were no opinions by Mr. Ginman
22 dealing with the Housing Allocation Plan. We discussed the
23 Guide Plan.

24 I don't know what else to add. It's just a general
25 discussion.

1 Q Do you recall any opinion with Mr. Ginman
2 regarding the Guide Plan?

3 [REDACTED] recall, he felt it was a good plan, a good policy
4 [REDACTED] the future development of New Jersey.

5 Q Did he feel it was inconsistent with the Housing
6 Allocation Plan?

7 A As I indicated the Housing Allocation Plan did not
8 come up in the conversation.

9 Q What specific municipality were you discussing
10 with Mr. Ginman?

11 A We were talking about Peapack-Gladstone.

12 Q What was the context or the purpose of
13 discussion? [REDACTED]

14 A Well, Peapack-Gladstone was a municipality into which
15 Beneficial Finance wanted to place their corporate headquart-
16 ers and Mr. Ginman indicated that that move was contrary to
17 the State Development Guide Plan.

18 Q Why were you discussing that with him?

19 A I was retained by Beneficial as a planner for several
20 [REDACTED] take several projects relative or several studies
21 [REDACTED] to their relocation, and during the course of my
22 working with Beneficial, we received correspondence from Mr.
23 Ginman relating, as I stated, to his opinion that the devel-
24 opment of the corporate office headquarters in Peapack-Glad-
25 stone was, on its face, contrary to the Development Guide

1 Plan.

2 Q Was that development ever built?

3 A Yes, it's currently being built now.

4 Q Did the State of New Jersey or Mr. Gimman take
5 any action to prohibit it or try to inhibit its being built?

6 A Well, I don't know how you characterize their action
7 as inhibiting but they did indicate in a letter that their
8 initial analysis was that the development was contrary to
9 the State Development Guide Plan.

10 I would feel it's safe to say that after discussing
11 with them various issues concerning his letter and what we
12 were attempting to do, I think his position was

13 Q Did he change his mind as to its --

14 A As I said, I think he mitigated his position, yes.

15 Q To what?

16 A I think he could see that what we were attempting to
17 do may not come on its face, may have been contrary to the
18 State Development Guide Plan as was initially stated.

19 Q Why do you think it was contrary to the State
20 Development Guide?

21 A In my recall, his letter indicated that it was -- the
22 office headquarters were being built in an area of New Jersey
23 that was being designated for no growth.

24 Q No growth as opposed to limited growth?

25 A Yes.

1 Q What was your opinion about that designation?

2 A Well, there were a series of factors to which I brought
3 [REDACTED] man's attention. One of which related to the fact
4 [REDACTED] it was true the office headquarters was going into
5 an area that was indicated for, I forget what it was limited
6 or no growth, that the character of the area would be main-
7 tained as a rural environment due to the extensive acreage
8 that was being purchased by Beneficial.

9 Q How many employees did that project generate?
10 Would it generate at full employment?

11 A Most of the employees were being relocated from the
12 offices in Morristown and other smaller sites to [REDACTED]
13 site and it would amount to a thousand employees.

14 Q Did you do any studies or reports regarding that
15 development?

16 A I generated correspondence regarding that development
17 specifically to Mr. Ginman.

18 Q Would you produce that correspondence --

19 A I'll have to get approval to distribute that from
20 [REDACTED]

21 MR. VOGEL: If it was part of his work
22 product for another client, I think there is a
23 limitation that must be imposed upon your request.

24 MR. BISGAIER: Why don't we see if there
25 is a problem and we'll worry about how to deal

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with it.

MR. VOGEL: That is the position we're putting forth on the record.

MR. BISGAIER: We will take a five minute break.

(A short recess was then taken.)

Q Have you ever rendered an opinion with regard to the State Development Guide other than what's contained in Z-1?

A No, I don't think so.

Q To the best of your knowledge of now [redacted] other publications where you have referred to the Development Guide or utilized it or rendered an opinion about it?

A I don't think so.

Q What about the State Housing Allocation Plan? Same question other than as contained in Z-1, have you ever utilized or evaluated it, rendered an opinion about it in any publication or writing of yourself?

[redacted] 't think so.

Have you ever professionally done an analysis of a housing allocation plan?

A I don't think so.

Q Why do you hesitate to answer that yes or no?

MR. VOGEL: He was thinking.

1 A Well --

2 MR. VOGEL: Just a moment. You asked a
3 question of have you ever. That's a long time,
4 Mr. Bisgaier. I mean, Mr. Zimmerman is a con-
5 templative thinking person. He paused for per-
6 haps five seconds. I don't think that's a long
7 time.

8 MR. BISGAIER: I don't mean to say he took
9 a long time -- Mr. Zimmerman took a long time to
10 answer the question. I'm curious to a yes or
11 no answer ultimately.

12 A I have read many Housing Allocation Plans
13 thinking whether, in the course of reading and reviewing
14 them, I had written anything or made any notes about them
15 and I don't think I did.

16 Q Those readings were solely in the context of
17 the work that you've done in this case?

18 A No.

19 Q What would have occasioned you to read them or
20 housing evaluation plans previous to that case?
21 simultaneously?

22 A Well, I feel it's part of my growth as a professional
23 to be aware of what's being written in the field that I'm
24 particularly interested in. There are towns that I'm
25 interested in, some of those municipalities had housing

1 allocation plans generated for them.

2 Q By whom?

3 [REDACTED]ous planning consultants and housing experts.

4 [REDACTED] What towns are those?

5 A One in particular that comes to mind is Chester Town-
6 ship.

7 Q Any other?

8 A There are others. I just don't recall at the moment.

9 Q Have you ever evaluated -- this may be repetitive.
10 It's only because I'm getting bored. I can't remember what
11 I've said before.

12 Have you ever done a written evaluation or [REDACTED]
13 of Housing Allocation Plans other than the DCA plan?

14 A No, I have not written a report or analysis of an
15 allocation plan other than DCA, to the best of my knowledge
16 -- the best of my memory, I should say.

17 Q Did you ever render an opinion with regard to
18 the Chester Housing Allocation Plan either orally if not
19 written?

20 [REDACTED] MR. VOGEL: What do you mean by the "Ches-
21 ter Housing Allocation Plan"? Would you identi-
22 fy the plan that you are referring to?

23 Q What plan were you referring to, Mr. Zimmerman?

24 A There are about two housing allocation plans prepared
25 for Chester Township by individual planning consultants.

1 Q Who were they?

2 A Peter Graham and Malcolm Kasler.



And did you review those plans or read them?

I did.

5 Q Did you ever render an oral opinion regarding
6 them?

7 A I doubt it.

8 Q Do you recall what your opinion of them was or
9 is now?

10 A I recall what my opinion was at the time.

11 Q What was it?

12 A I didn't think too highly of them.



13 Q Why?

14 A I don't recall at that time, you know, I just -- I
15 forget whether it was that they used unreasonable factors to
16 generate the housing allocation or their figures were not
17 accurate or whatever. I just --

18 Q Did you think that they were unreasonable plans?

19 A Yes.



Have you reviewed any other Housing Allocation
has been produced by any person relative to this
case?

22
23 A Well, I have reviewed -- by your side? Your side or
24 anybody?

25 Q Other than as contained in Z-1, have you reviewed

1 any other Housing Allocation Plan relative to this case?

2 A I reviewed the work -- the report and deposition of
[REDACTED] ch.

Is that all?

5 A I think so, yes.

6 Q So, if a Housing Allocation Plan was done by a
7 planner or by anyone for that matter for any of the defendant
8 municipalities in this case, you have not seen it?

9 A I don't think so.

10 Q Have you discussed your methodology or housing
11 allocation planning, per se, in the context of the [REDACTED]
12 lar case with anyone?

13 MR. VOGEL: Well, I'm going to interpose
14 an objection to the extent that it involves
15 discussions with the attorneys for the defendants
16 because, obviously, it's a matter of the attor-
17 neys' work product and not discoverable.

18 I mean, obviously, he's talked to the
19 attorneys for the Common Defense Fund about his
[REDACTED] work.

20 Have you talked with the attorneys of the Common
21 Defense Fund about your work?

22 MR. VOGEL: I'll represent that for the
23 record. He has made reports to them and talked
24 to them, told them his findings.
25

1 Q Do you acknowledge what Mr. Vogel just said and
2 agree with it?

 that's accurate.

3 Have you discussed your work product or your
4 work evaluation of what your work product would be, or your
5 methodology with anyone other than the attorneys, anyone
6 other than the people in your office?
7

8 A Yes, I have.

9 Q Who would that be?

10 A I've discussed my work with James Hughes who is a
11 professor of Rutgers University and John Mills who is a
12 professor of Princeton University. 

13 Q Anyone other than those two individuals?

14 A Well, intermittently, I have discussed it with other
15 planning professionals but I would say that those are --
16 telephone conversations as specific problems or ideas arise,
17 rather than on a continuous dialogue basis.

18 Q Have you spoken about it with any professional
19 planners other than the attorneys who were working on that



22 Q Who was that?

23 A Richard Coppola.

24 Q And when did that conversation take place?

25 A There were several conversations that have been taking

1 place since the litigation was initiated.

2 Q What was the purpose of these conversations?

3 A Mostly discovery and that is for each one of us to be
4 aware of what the other was doing, the approaches, methods,
5 assumptions, etcetera, that each one of us were utilizing in
6 our work.

7 Q Did you have a particular concern as to a con-
8 flict in his work?

9 A No.

10 Q Did he express any opinions to you about your
11 work?

12 A No. I think we agreed to disagree.

13 Q Where do you disagree?

14 A Well, to be very honest with you, I haven't read his
15 final report so I don't know exactly where all the disagree-
16 ments, if any, lie but during the conversations we were
17 taking, I think, different approaches. I would say his
18 approach was more in a planning oriented in terms of the
19 relationship between housing and the intra-structure needs
20 for ~~the~~ facilities. The definition of that region was
21 ~~different~~ than mine. Whereas my approach was more as a --
22 I should say not only as a planner but as a housing expert
23 and I think we may come up with the same result and we may
24 not. I don't know.

25 Q Do you know of any practical implication of this

1 disagreement or this different perspective in terms of where
2 you may disagree?

[REDACTED] Can't know what you mean by "practical".

5 Well, for example, does he disagree with utilizing
6 the four-county region or an eight-county region? Or has he
7 rendered an opinion to you regarding that or any other aspect
8 of your methodology?

8 MR. VOGEL: I object to the question.

9 First of all, Mr. Zimmerman has testified that
10 he has not read the final report by Mr. Coppola.

11 MR. BISGAIER: Neither have I.

12 MR. VOGEL: Mr. Coppola's final
13 will speak for itself. Z-1 and the Coppola re-
14 port to the extent that they differ in region or
15 whatever detail they differ and Mr. Zimmerman has
16 not read that final report so he really doesn't
17 know what Mr. Coppola's position is.

18 Q Do you remember the question?

19 A No.

[REDACTED] Let me ask you this.

[REDACTED] Mr. Coppola express any opinion to you which indi-
22 cated to you that he disagreed with the methodology that you
23 utilized or the analysis that you have given us in Z-1?

24 A No.

25 Q Did you express anything to him which would indi-

1 cate that you had a problem with or disagreed with the analy-
2 sis that he was giving you regarding housing allocation on
3 [REDACTED] for housing development?
4 [REDACTED]

5 Q What do you mean that you "agreed to disagree"
6 when you said that? Is that just speculative?

7 A Well, in our discussions I could see the approach that
8 he was taking was different than my approach and where we'll
9 end up is a question mark at this point. At least, where
10 he'll end up. I know where I'm ending up.

11 Q How does the approach differ?

12 A I indicated earlier that his approach is more [REDACTED]
13 oriented.

14 Q I remember that. But, quite specifically, if
15 you can -- if you can't, just say so. Can you articulate that
16 a little bit better as to what that means as to a difference
17 of approach?

18 A Well, I might -- I don't know how far I can go along
19 with this because I don't know to what extent being specula-
20 [REDACTED] what he's going to come up with.

21 [REDACTED] Don't be. Just remember what he said.

22 MR. VOGEL: He's already answered the
23 question, but he can expound upon it, fine.

24 A I'm going to come up with specific examples -- one
25 example was that there was, for example, an identification of

1 the region on the part of Mr. Coppola that was different
2 than my identification.

3 [REDACTED] What was his identification, if you can recall?
4 [REDACTED] I recall, his identification was the regions con-
5 sisted of Morris County and all contiguous communities.

6 Q Do you feel that was unreasonable? Just the
7 difference of opinion as to planner?

8 A Well, I didn't really -- didn't analyze it. As I
9 said, I'm not in the posture to say "Rich, you're off the
10 wall." He's doing his work and whatever he comes up with,
11 he comes up with and when he submits a report, I'll look at
12 it and form an opinion about it. But, I'm not pr [REDACTED]
13 do that at this point.

14 MR. BISGAIER: Well --

15 MR. VOGEL: Objection. Let him finish his
16 answer.

17 MR. BISGAIER: I didn't mean to interrupt
18 you Mr. Zimmerman.

19 A I'm just pulling that item on the table area as he
20 [REDACTED] with an item which is different than what I came up
21 [REDACTED] and I think it's a good example where we agreed to dis-
22 agree and I'm not in any position to say that his region is
23 unreasonable and mine is reasonable and vice versa. That is
24 one item where we're disagreeing. When the final report is
25 in, I will read it and I will form an opinion.

1 Q Well, do you have an opinion now as to whether
2 it would be appropriate to do any Housing Allocation Plan
3 for Morris County and the individual municipalities in that
4 county to utilize the county itself as a region generating
5 housing need?

6 A I've indicated in my report that the approach I think
7 is most reasonable to employ is the four-county region.
8 However, one could, I think, validly say that there may be
9 two regions. There may be a preliminary and secondary region.

10 For example, that the primary region may be Morris
11 County and that the needs that are existent in Morris County
12 at the present time of privacy and have to be dealt with and
13 there's a second housing region which incorporates regional
14 factors. So, I don't know if he's taking that approach or
15 whatever. But I'm saying --

16 Q I'm no longer asking about Mr. Coppola. I'm
17 just asking about the utilization of Morris County per se?

18 A Well, at that point, I would have to say that unless
19 one were to qualify the definition of region as I've just
20 been saying that there are several regions of which Morris
21 County may represent ninety percent of the housing or some-
22 thing like that. Then, on its face, I would be suspicious
23 of a region that solely was confined to Morris County bounda-
24 ries.

25 Q Why are you evaluating Housing Allocation Plans

1 for purposes of this case?

2 MR. VOGEL: You mean what purposes is he
3 attempting to achieve? What do you mean by that
4 question "why"?

5 Q Could you answer that question?

6 A Yes, I think I can answer it.

7 MR. VOGEL: Well --

8 MR. BISGAIER: Let him answer it. What do
9 we have to lose by him taking his best shot at
10 it?

11 MR. VOGEL: Obviously housing is the funda-
12 mental issue in the case. I don't qu
13 stand the thrust of your question.

14 Q Go ahead. Why don't you answer it?

15 A My assumption is that Judge Muir, at some point in
16 time, is suggesting to say that Morris County needs or should
17 have "x" amount of low and moderate income housing units and
18 that my analysis, I would hope, would enable him to make that
19 decision.

20 I see. You perceive that Housing Allocation Plan
21 is a method of ascertaining what the housing needs are in
22 Morris County for low and moderate income housing?

23 A If I understand your question, I would say yes.

24 Q I don't think that gives me too much.
25 What is the relationship between the Housing Allocation

1 Plan and -- what is a Housing Allocation Plan?

2 A That's somewhat difficult to define.

3 Q What does it do?

4 A Theoretically it identifies specific goals and objec-
5 tives for, in this case, low and moderate income providing
6 -- low and moderate income housing and means to implement
7 those goals and objectives.

8 Q So then a Housing Allocation Plan is one to
9 identify housing needs of low and moderate income people?

10 A Housing needs of low and moderate income people should,
11 in my opinion, should be an integral part of a housing plan.

12 Q Do you know any other way to assess what
13 a municipality's responsibility might be to provide housing oppor-
14 tunities for low and moderate income persons in the sense of
15 ascertaining a numerical number?

16 A I think -- yes, there are other ways.

17 Q What are they?

18 A I think one way would be a thorough survey technique.

19 Q What would that be?

20 I would envision a municipality being surveyed and in
21 addition the residents of the municipality surveyed and
22 specific data accumulated relating to their housing charac-
23 teristics and from that data or the analysis of that data,
24 hopefully, would generate a need figures.

25 Q What would those need figures reflect?

1 A Well, that would be part of your -- you would, as part
2 of the undertaking, you would have to identify what housing
3 [REDACTED] you wanted to identify -- you wanted to involve,
4 [REDACTED], if you were so disposed you might feel that
5 providing or identifying middle income housing needs, just
6 hypothetically, was paramount and assuming that the moderate
7 income housing people would move into the units of the mid-
8 dle income people if new income housing was provided. Now
9 that approach assumes filtering and other factors you might
10 be particularly interested in the need for senior citizen
11 housing and the problem there might be a problem in the
12 community that would be, hopefully, discovered and [REDACTED]
13 through the survey technique but that's been done [REDACTED]
14 it's a very valid approach to identifying housing needs.

15 Q Suppose your goal was to determine whether a
16 municipality land use plan was responsive to regional housing
17 needs, regional and local housing needs?

18 In other words, your goal as planner, you were asked
19 to do that, what would you do?

20 [REDACTED] sounds like one of Paul Davidoff's essay questions.
21 [REDACTED] is a pretty extensive -- that question requires a
22 pretty extensive answer. I assume you want me to go ahead?

23 Q Yes.

24 MR. VOGEL: Could I have the question read
25 back?

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(Whereupon the report read back the following question:

"Question: Suppose your goal was to determine whether a municipality land use plan was responsive to regional housing needs, regional and local housing needs? In other words, your goal, as planner, you were asked to do that, what would you do?"

MR. VOGEL: I'll object because it's maximalist expert. The issues in the maxi trial is defined by the court, the definition of the issues for purposes of this litigation number one, the high and moderate income housing needs second, the low and moderate income housing needs of that region. I think that the question is beyond the scope of Mr. Zimmerman's report. Beyond the scope of his function in the maxi trial to get down each individual municipality and what was the detailed type of work he would do in each individual municipality.

If you want to answer, I would certainly -- I would not direct him not to answer the question but that certainly does call for an extensive answer.

MR. BISGAIER: Let's see how we do. If it rambles on for a few days, we'll all agree to cut

1 it short.

2 A I'm getting paid by the hour. It might go on for

3 weeks.

4 The approach that I would suggest for addressing your
5 question which is how can a land use plan be constructed to
6 be responsive to local and regional housing needs.

7 Q Sorry, that wasn't the question.

8 The question is how would you evaluate whether or not

9 A I'm sorry. It was responsive to local and regional
10 housing needs. Well, that question can be answered much
11 shorter. Whether I would suggest that that plan be evaluated
12 in two ways.

13 One if, on its face, it provided the opportunity for
14 housing to exist which would be occupied by low and moderate
15 income people; two, to evaluate the situation over a time
16 period to see, in fact, what did occur within a year or two
17 years or three years, whatever your time period is.

18 Q The first thing or one thing you would do would
19 be to evaluate the land use plan to see whether an opportu-
20 nity has been afforded for the construction of housing for low
21 income persons?

22 A Not quite. I didn't say construction. I said whether
23 the opportunity was available for housing to exist which would
24 be occupied by low and moderate income people.

25 Well, that housing may be in new housing, it may be old

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1 housing -- might be subsidized housing, it might be unsubsi-
2 dized housing.

3 Q And the second thing that you would do is evalu-
4 ate over a period of time whether or not that had, in fact,
5 occurred the low and moderate income persons had occupied
6 those buildings?

7 A Yes.

8 Q How would you do it?

9 A Well, -- yes, -- okay. That's fine whether those
10 units -- whether low and moderate income families exist in
11 the municipality.

12 Q How would you determine whether or not [REDACTED]
13 use plan had afforded an opportunity for low and moderate
14 income persons to occupy housing in the municipality?

15 A I would first examine the housing that existed in the
16 municipality at the present time and make a determination as
17 to whether those housing are being inhabited by low and moder-
18 ate income people or not.

19 Q Would you do anything else?

20 A As a second aspect, I would examine the local land use
21 regulations to try and ascertain whether they afford an oppor-
22 tunity for housing to exist for low and moderate income
23 families.

24 Q What would you look for?

25 MR. VOGEL: Could we have a note on the

1 record of who's joined us?

2 MR. REED: Charles Reed from the Firm of
3 Shanley & Fisher.

4 MR. VOGEL: Representing Harding Township
5 I take it?

6 MR. REED: Right.

7 Q Did you finish that question?

8 MR. VOGEL: Off the record.

9 (Whereupon a discussion was held off the
10 record.)

11 Q What was the question? Do you remember [redacted]

12 A I think we're heading up to land use controls [redacted]

13 Q That's right. How would you know whether the
14 land use controls afforded that opportunity or not?

15 A Land use controls -- maybe I should have stated this
16 in the beginning. I was thinking of it but land use controls,
17 in my opinion, may impact on a portion of the opportunities
18 for low and moderate income housing so to the extent that
19 zoning or other land use controls have a role to play, I

20 define those controls and make a determination as to
21 what type of housing would be generated, if built, as regu-
22 lated in the zoning ordinance.

23 However, I think we all realize that housing for low
24 and moderate income people is not solely generated by new
25 construction and is not solely generated by the private

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1 housing market. To that extent, land use controls may not
2 have any weight at all.

3 [REDACTED] Let's suppose they did. Okay, hypothetically --
4 [REDACTED] Suppose that you can make a direct correlation between
5 land controls and the opportunity for low and moderate in-
6 come persons. Now, let's hypothetically say you could review
7 the land use plan and ascertain from that land use plan and
8 the totality of the actions that the municipality could take
9 or has taken.

10 How many units of low and moderate housing has the
11 municipalities chosen to afford? How would you know they
12 had been doing enough, affording an adequate number [REDACTED]
13 respond to local and regional present and prospective housing
14 units?

15 MR. VOGEL: I object to the question on
16 the basis of the fact that the hypothetical is
17 based upon an assumption or assumptions which are
18 directly contrary to Mr. Zimmerman's answer to
19 the last question. And therefore it's certainly
20 an improper question. There has got to be a
21 foundation for hypothetical questions. You are
22 trying to build a hypothetical question with this
23 witness. At least build it upon the testimony
24 that's given or his statements contained in Z-1.

25 Q Can you answer the question?

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THE WITNESS: Did you object to my answer-
in the question?

MR. VOGEL: If you are able to, I will not
direct you not to answer it but my objection is
on the record.

A Just to be sure I understand fully the question could
either be read or paraphrased again?

Q I'll paraphrase it again.

Suppose a municipality could, in fact, control how
many low and moderate income housing units or, for that
matter, the nature and type of housing units that are pro-
duced in the municipal control -- what economic gains
into the municipality -- suppose they could do that, ~~and~~
in such a manner that they could insure, in some way, that
housing that was produced in the municipality was affordable
to low and moderate income groups.

How would you know whether what they had done was
adequate to respond to their regional, local, and regional
prospective and present housing obligations?

MR. VOGEL: I'm going to direct him not to
answer.

MR. BISGAIER: Oh, Herb --

MR. VOGEL: Just a moment --

MR. BISGAIER: Are we going to have to go
to the Judge to find out the answer?

1 MR. VOGEL: Just a moment. When you hear
2 what I have to say, then you can express your-
3 self. I am going to direct him not to answer the
4 question to the extent that the assumptions con-
5 tained therein are not consistent with his own
6 views as stated in either Z-1 or as stated in his
7 previous answer or his own, just generally.

8 So, if the assumptions are not consistent
9 with his views, I don't see how he can give an
10 intelligent response on the answer.

11 Q Mr. Zimmerman, could you give an intelligent,
12 responsive answer to that question?

13 A Yes and no.

14 Q Well, to the extent yes, could you give an extent
15 no? Would you hold it back?

16 A I don't think that there's any way that anyone can
17 accurately measure whether the needs for low and moderate
18 income housing are completely satisfied. So, I think the
19 goal that is part and parcel of what I have identified we're
20 all about here is difficult to entertain in reality and
21 in theory.

22 I think the best that you can do is make a reasonable,
23 hopefully rational, attempt to measure the need and provide
24 for that need recognizing that even after that exercise is
25 completed you will probably fall short of the mark.

1 Q And the way to do that is how?

2 A Twofold. One would be to identify the needs that are
3 generated within the municipality itself and second to
4 identify the needs that are generated from outside of the
5 region or to generate and then to identify the best and most
6 appropriate means to deal with those. Now, you've suggested
7 that the hypothetical means would be through zoning land use
8 controls.

9 Q Could you think of any other way that the munici-
10 pality could impact on creation of housing opportunities for
11 low and moderate income persons?

12 A Well, as I indicated earlier, the land use 
13 are limited in their impact. Most land use controls are
14 geared to address new construction in a particular private
15 construction to the extent that they already exist in the
16 municipality. Older housing that may be available to low
17 and moderate income people or to the extent that subsidized
18 housing could be introduced, land use controls really don't
19 have too much to say about that.

20 Q Do you perceive that a housing allocation plan
21 is a way to ascertain what the municipality's responsibility
22 is in terms of addressing present and respected local and
23 regional housing needs?

24 A Yes.

25 Q Do you know of any other way to make that assess-

1 ment?

2 A Well, I indicated earlier, I think a survey technique
[redacted] up with the same quantitative output.

MR. VOGEL: Off the record.

(A discussion was held off the record.)

6 MR. BISGAIER: We will take a short recess
7 for lunch.

(A short lunch recess was taken.)

9 CONTINUED DIRECT EXAMINATION BY MR. BISGAIER:

10 Q You used the term household sizing in your deposi-
11 tion and in Z-1; is that correct?

12 A Yes. [redacted]

13 Q What is household size? As you have used it?

14 A That is the number of persons per household.

15 Q Is that an average number? Are you using average
16 numbers in it? What is average household size?

17 A Yes, as I recall it, the figure that everyone is using
18 is average household.

19 Q What is average household size? How did you
[redacted] at?

[redacted] determining the number of persons in each household
22 and dividing by the number of the household.

23 Q And you refer in your report in Z-1 to the Port
24 Authority of New York and New Jersey average household size
25 determinations; did you not?

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1 A Yes.

2 Q What specifically are you referring to there?

DCK

3 A [REDACTED] specific report was that derived from?

4 A As I recall, that report was entitled "People and Jobs"
5 published in 1974.

6 Q Do you have a copy of that report?

7 A Yes.

8 Q And the average household size numbers that you
9 utilized in Z-1 were derived specifically from that report?

10 A Yes.

11 Q Did you extrapolate it or analyze the report to
12 derive those figures or was there a specific chart
13 those figures in the report?

14 A I'd have to look at the report. I don't remember.

15 Q Could you produce that in the next deposition
16 when you produce your other documents?

17 A Yes.

18 Q Are you familiar with any other average house-
19 hold size projections that have been made for the eight-
[REDACTED] ion referred to in the DCA plan?

20 A As I recall it, Tri-State Transportation commissioned
21 household size data which was similar to the Port Authority
22 data.

23 Q What is the basis of that conclusion?

24 A Of my conclusion or their conclusion?
25

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1 Q Your conclusion that they were similar?

2 A The numbers were similar. The figures were similar.

3 Q Where did you derive the Tri-State figures from?

4 A Again, I don't recall the name of the report. I could
5 make it available to you.

6 Q Thank you.

7 Are you familiar with any other household size projec-
8 tions other than those?

9 A What do you mean by "familiar"?

10 Q Do you know of any other? With specific regard
11 to the eight-County region?

12 A No.

13 Q How did you evaluate the merits of the household
14 size projections that the Port Authority used?

15 A As I recall, the figures utilized by Port Authority
16 and Tri-State were comparable and, in my opinion, the figure
17 used by DCA was decidedly different and, in my judgment, was
18 unreasonably low for Morris County.

19 Q How did you make that determination that one was
20 unreasonably low and that another was more appropriate?

21 The two that I made reference to, Tri-State and Port
22 Authority, were similar, comparable in the same ballpark --
23 I chose -- whatever adjective -- I think I'm saying that
24 their choice and DCA's figure was divergent from that. From
25 those other figures and, in my opinion, as I said this morn-

1 ing, the size of the household is a variable, that those
2 change, and I think that the literature that I've read indi-
3 cates we're near the trough in the change of those
4 household sizes and that the future will see an increase in household
5 size and I feel that this was particularly important since
6 the household size figure not only is applicable to 1970 or
7 1977 but also is applicable to generating the data for 1990.

8 What we could have done is to plot on the graph the
9 changes in household size say for 1940 or 1950 and to con-
10 tinue that graph out to 1990 and come up with an average
11 household size for 1990 or for 1985 or we'd come
12 something that's reasonable to apply recognizing
13 dealing with the future and we're making an estimate to what
14 the future household size would be.

15 However, I did not choose to do that and chose rather
16 to use the figures generated by the Port Authority. However,
17 if I did plot that information on a chart, it would not be
18 dissimilar at all to the Port Authority figures.

19 Q How would you plot that theory? What would you

20 [REDACTED]
21 [REDACTED] would have generated a graph which would have on
22 the vertical -- the horizontal axis years and on the verti-
23 cal axis the average household size and I think you would
24 see that the household size has been steadily declining.
25 The opinion is that we can't decline any more than where we

1 are and that we would see an upsurge in the future.

2 Q Would we see that on this graph?

3 A I don't know. I don't know, I didn't plot it out. We
4 may see that as a result of your questions. I may be so
5 moved.

6 Q So, you don't know now, for example, what the
7 latest data is on household size in this region that's
8 derivable from census information or other information?

9 A We may have census reports in my office that deals
10 with that indirectly.

11 Q I'm sure you do. I'm asking you whether you
12 had reviewed that information prior to making the
13 that the Port Authority household size projections for this
14 eight-county region were more or less appropriate than DCA's?

15 A I don't recall whether he did or didn't.

16 MR. BISGAIER: A short recess will be
17 taken.

18 (Whereupon a recess was taken.)

19 MR. BISGAIER: Miss Reporter, will you
20 please read back a few of the last questions?

21 (Whereupon the reporter read back several
22 of the questions preceding.)

23 CONTINUED DIRECT EXAMINATION BY MR. BISGAIER:

24 Q Could you tell me exactly what you did review
25 prior to making your judgment that the Port Authority house-

1 hold size projections should be utilized for purposes of
2 your report?

3 [REDACTED] I can't think I can do that with the precision that
4 you are requesting but I said we have a lot of census materi-
5 al in books and literature analyzing in my office. We did
6 take a look at it. I don't recall which ones we thought
7 were relevant and which ones were not.

8 Q So, when you refer to all the studies and histor-
9 ical trends and the like you can't be more precise to say
10 there are studies and there are trends to indicate that the
11 Port Authority figure is more reasonable?

12 A I can't be more precise at this point. If [REDACTED]
13 need for more backup information that could be generated.

14 Q No, I don't need more backup information. What
15 I'm curious about is what you utilized in making the judg-
16 ment to use the Port Authority figure?

17 A I can't, at this time, tell you what we used.

18 Q If you can't, fine. You don't recall any specific
19 report that you read that supported that figure? You don't
20 [REDACTED] analysis that you did, any census information that
21 [REDACTED] Nothing?

22 A Well, I can recall examining a variety of reports and
23 literature. I can't give you the names at this time.

24 Q Let's try one more time. You referred to the
25 general opinion, I guess in the profession, that the decline

1 in household size, in average household size, is bottoming
2 out and I think you testified that we are going to see a rise
3 in the average household size; is that not correct?

4 A Uh-huh.

5 Q What is that judgment based on? Whose opinion
6 are you referring to?

7 A Again, the distillation of the variety of reports and
8 information that I read and analyzed and looked at. If it
9 is required that I footnote my statements, I'm prepared to do
10 so but, I feel that I'm an expert in the field and that's my
11 opinion.

12 Q Do you plan on utilizing any support
13 mentation for that opinion at trial?

14 A I may. I may not. It depends upon what the attorneys
15 for the Common Defense Fund feel is appropriate.

16 Q Can you produce then, at the next deposition,
17 all of the information, all of the reports and documents
18 which, to the best of your recollection, you actually util-
19 ized or actually referred to in making any of the judgments
20 contained in Z-1?

21 I would say it's impossible to do that.

22 Q Why?

23 A Well, there are, as I indicated, a variety of reports
24 and information that I read and analyzed that cross my desk.
25 There is material that I --

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1 Q Could you produce it?

2 A -- That I discussed with other faculty at Rutgers
3 [REDACTED] and to swear that I'll tabulate all of that, I
4 think is just impossible. There may be some material that is
5 more accessible and more relevant than others. I mean, I
6 think it's unfair to ask an expert to say, to put on the
7 table, everything that goes into his expert opinion. It's
8 like saying describe the world.

9 It's all based upon many things. That may have hap-
10 pened fifteen years ago.

11 Q Well, why don't you try and see what [REDACTED]
12 bring with the understanding that it may be the [REDACTED]
13 list, that you may forget something. I don't think anyone
14 is asking you to do more than you can do.

15 But, I would like to see what it is that you are rely-
16 ing upon for the judgments that you are making, the expert
17 opinion that is reflected in your report. With certain speci-
18 ficity as to household size and population projections and
19 all that.

20 [REDACTED] I think you should understand that the reason I utili-
21 [REDACTED] household size figure by Tri-State and the population
22 projection by the Department of Labor and Industry and other
23 information that was generated by other reputable agencies
24 was to avoid the situation that I think you are creating
25 here. I attempted to use reputable data produced by reputa-

1 ble and bonafide agencies not to generate something of my
2 own, my knowledge, based upon something that may prove to

3 [REDACTED]

4 You consider the Department of Community
5 Affairs a reputable agency?

6 A It is a reputable --

7 Q Do you consider the household size unreputable?

8 A Yes.

9 Q What is the basis of that opinion?

10 A No one else agrees with it.

11 Q Who else? Everyone else in the field that dis-
12 agrees with it? [REDACTED]

13 A I mentioned two very reputable agencies, that is the
14 Port Authority and Tri-State.

15 Q Do you know of any other agency that disagrees
16 with it? Any other person that disagrees with it?

17 A There may be others.

18 Q But, you don't know any now?

19 A As I said, there is information that we just got

20 [REDACTED] talking about that would suggest that DCA's figures
21 [REDACTED] low.

22 Q Could you produce that information?

23 A I think we have already agreed to do that.

24 Q Okay. What would you accept as an acceptable
25 deviation from the Port Authority household size projection

1 as what might be a reasonable deviation that you would accept?

2 A I don't know if I'm prepared to answer that. I don't
[REDACTED] the acceptable deviation would be seven percent or
[REDACTED] percent -- I couldn't put up a figure at this time.

5 Q Whatever the Tri-State deviation is, you're
6 willing to accept that, I take it, as indicative of the fact
7 that the Port Authority figure is reasonable because it's
8 comparable to Tri-State; is that not correct?

9 A Right.

10 Q Is there any reason to select the Port Authority
11 figure as opposed to the Tri-State figure? [REDACTED]

12 A I don't recall -- it may have been that Tri
13 higher and we chose the lower figure.

14 Q But, you just don't recall what the basis of
15 choosing between them would be?

16 A Not at this time. I would have to look at my notes
17 and see what my notes were at that time.

18 Q Could you produce those notes? Well, actually
19 you have been subpoenaed to produce them. You have never
[REDACTED] copy of the subpoena?

MR. BISGAIER: Off the record.

(A discussion was held off the record.)

22 THE WITNESS: I don't think I can get them
23 to you until the last week of November or the
24 first week in December because I'm going on vaca-
25

1 tion for approximately ten days. So, as soon as
2 I return, we will assemble that material and it
3 will be forwarded to Mr. Vogel and Mr. Clapp
4 whom I assume will forward them to you.

5 MR. BISGAIER: They don't have to be for-
6 warded. They will be at the next deposition.

7 Q In any event, as I understand your testimony,
8 either the Tri-State or the Port Authority household projec-
9 tion would be acceptable to you as in the range of reasonable-
10 ness to you as a valid projection?

11 A As I remember it, the Tri-State projection, I would
12 agree with you.

13 Q Have you ever utilized household size
14 household size information in any report or analysis that
15 you have done other than what is contained in Z-1?

16 A No.

17 Q Have you previously rendered an opinion about
18 the merits of any particular household size projection prior
19 to what is contained in Z-1?

20 A I don't recall ever doing so.

21 Q Is this then the first time that you have ever
22 evaluated the merits of household size projection?

23 A No.

24 Q When have you done it previously?

25 A I would say throughout my career as a planner. I have

1 studied the item as a student in school and I am well famili-
2 ar with household size statistics.

3 [REDACTED] Being familiar with the statistics is one thing,
4 [REDACTED] evaluated the merits of a projection is another. Have
5 you ever, previously, either made a household size projection
6 or evaluated the merits of another person's or agency's pro-
7 jection? If so, where and when?

8 A Well, the statistics or the figure is part and parcel
9 of the myriad of information that I deal and have been deal-
10 ing with for a considerable period of time. However, as --
11 but, as I recall, Z-1 is the only written document that I
12 have produced that critically examines a household [REDACTED]
13 figure and suggests the substitution of another household
14 size figure.

15 Q Are you familiar with any authoritative text on
16 how to make household size projections? Do you have any --

17 A One does not come to mind.

18 Q In the schooling you referred to, what were you
19 referring to in terms of household size projections?

20 [REDACTED] arily to my education as a planner and subsequent

21 Q Nothing more specific than that?

22 A You asked me a question. I'll answer whatever you
23 want me to say.

24 Q That's the question. Anything more specific than
25

1 that?

2 A Do you want to know the courses that I have taken?

3 [REDACTED] The courses that specifically or the texts that
4 [REDACTED] specifically deal with household size projections? Are you
5 familiar with any texts?

6 A I don't think there is --

7 MR. VOGEL: You said "courses or texts"?

8 A I don't think there is any one text that deals with
9 household size projections. There are chapters of books
10 that deal with it.

11 Q Any that you would rely upon as authoritative?

12 A I can't cite one at this point. [REDACTED]

13 Q Should you refresh your recollection [REDACTED]
14 answer comes to mind, had you known the information today
15 you would have answered differently. Would you let us
16 know through Mr. Vogel --

17 MR. VOGEL: First of all, it's been clear
18 that he's going to testify at another time and
19 if there is something you want him to bring,
[REDACTED] tell him to bring it.

20 [REDACTED]
21 [REDACTED]
22 MR. BISGAIER: That is not what I am get-
23 ting at. All I am getting at here is basically
24 to inform you that I'm requesting you to, should
25 subsequent to this deposition or any other depo-
sition, to your recollection that your answers

1 -- that you would be able to supplement your
2 answer with more definitive information, I'm
3 just asking you to do so through Mr. Vogel.
4 That is all.

5 A As I understand it, you have requested all my notes
6 and backup information?

7 Q Right.

8 A In addition, you have requested that I produce what-
9 ever reports, studies, or other information, that as best
10 as I can recall, filtered into my decision regarding house-
11 hold size?

12 Q That's correct.

13 A Okay.

14 Q That will be it.

15 Is there a relationship between household size and
16 zoning?

17 A Yes, I would say so.

18 Q What is it?

19 A The larger the household size, the larger the structures
20 are the size of the dwellings in it and vice versa.
21 the household, the smaller the size dwelling
22 units, as a general approach.

23 Q Is it true as a general approach that single
24 family detached households that occupy single family detached
25 units, tend to have greater household -- average household

1 size than households that occupy multi-family units?

2 A Yes.

3 [REDACTED] Q So that if a municipality zoned solely for
4 [REDACTED] family detached houses would that impact on household
5 size in that municipality?

6 A Yes.

7 Q How would it impact?

8 A The average household size would be, say it might be,
9 above the average for the State.

10 Q So, take a municipality such as Mt. Olive, for
11 example, prior to the introduction of what I am told
12 thousands of multi-family garden apartment units. [REDACTED]

13 MR. VOGEL: But that was part of your dis-
14 covery before you decided to sue Mt. Olive.

15 Q In a municipality such as Mt. Olive, were you
16 speaking prior to the introduction of the garden apartments
17 in the municipality? The average household size was greater
18 than it is today for that municipality?

19 A Yes.

20 [REDACTED] Q How do you account for the differences in the
21 [REDACTED] household size among the component counties of the
22 four-county or eight-county region that we have been referring
23 to?

24 A I would suggest two factors which relate to the differ-
25 ences in household size in counties in New Jersey. One being

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1 the largest number of unrelated individuals in the suburban-
2 ized counties and the second being the largest number of
[REDACTED] with children in these suburbanized or urban coun-

5 Q Now, if an unrelated individual -- strike that
6 -- define what an unrelated individual is?

7 A Single person household.

8 Q Is there a particular housing type which is
9 more likely to attract an unrelated individual as opposed to
10 a family?

11 A Yes.

12 Q What is that?

13 A Several types, starting with boarding house or rooming
14 house, apartments, perhaps townhouses or condominiums -- I
15 say a condominium, I really mean a hi-rise.

16 Q Is there any reason why in any given region, in
17 other words, the eight-county region or the four-county
18 region or any given region average household size all things
19 being equal should be relatively the same within that region
[REDACTED] fine region?

[REDACTED] 't know what you mean by "all things being equal"
22 because they aren't equal.

23 Q What makes them unequal?

24 A Employment.

25 Q How does that impact on average household size?

1 A The type of jobs available in suburban communities are
2 different than the type of jobs available in urban communi-

3
4 Q Like, for example, what?

5 A I would -- today there are more jobs in urban communi-
6 ties that would be occupied by single persons than in subur-
7 ban communities.

8 Q Like that? Single persons, you are referring to
9 unrelated individuals. There are certain jobs which you are
10 saying which attract people who live alone?

11 A Right.

12 Q What is an example of such a job?

13 A Well, I would say that the urban area has tradition-
14 ally been the low key for single persons going to say New
15 York, Newark, whatever, or Cleveland, to essentially "seek
16 their fortune," and when you look at the statistics, you
17 find that in almost all urban communities there is a migra-
18 tion of young people in the age category of say twenty to
19 thirty and these are usually people here starting their
20 careers and go to New York, as an example. They are highly
21 mobile and they are at the entry level in various employment
22 situations.

23 Q What specific jobs would appear in Newark that
24 wouldn't appear in Morris County that would more attract an
25 unrelated individual person living alone to Newark as opposed

1 to Morris County? What is an example of one?

2 A I think I have answered that to the best of my ability,
3 at this time.

4 Q Other than employment, what are the other varia-
5 bles which might impact on the location of unrelated individ-
6 uals or an average household size within a region?

7 A I think there are certain cultural and social factors.

8 Q Like what?

9 A Urban areas have traditionally offered a much wider
10 variety of recreational, cultural entertainment factors than
11 the suburban community. Traditionally, suburban communities
12 have been family oriented and thus a single individual
13 looking for mixing with other single individuals might find a
14 suburban community dead or there's no action here, whatever.
15 But, an urban community offers indefinitely more opportuni-
16 ties for interaction and for variety and the glittering
17 lights are attractive to unrelated individuals.

18 Q Is there any report or analysis that anybody has
19 done, to your knowledge, which would account for the location
20 of unrelated individuals or the choices that are being made
21 by unrelated individuals as to where they reside?

22 A Well, I would submit that the opinion that I have ren-
23 dered is universally held and I would find it difficult to
24 believe anyone had a different opinion. I could certainly
25 generate a study or report that would support that if you

1 feel that is important. I don't see --

2 Q That you would write or has been written?

3 A What has been written.

4 Q Have you reviewed that prior to --

5 A Again, I said that my opinions are based upon my edu-
6 cation and experience which expands a long period of time
7 and I can't bring that information, every report or study
8 that I have ever read because I have a library full and to
9 produce such a report and testify that I have read it and it
10 influenced my opinion and -- if you want me to produce that,
11 I can.

12 Q Mr. Zimmerman, would you be surprised 
13 were estimated communities or any community, municipality
14 within Morris County, for example, which had an average house-
15 hold size lower than the average household size in Essex
16 County?

17 MR. VOGEL: Let me just interpose an objec-
18 tion. Unless that question is based upon reports
19 that you have seen and facts that are available,
20 you know, it is a misleading question.

21 Q Do you know -- I'll rephrase the question.

22 Do you know of any municipality in Morris County which
23 presently has an average household size more than the average
24 household size for Essex County?

25 MR. VOGEL: Are you talking about any

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community as distinguished from Morris County as a whole?

MR. BISGAIER: Right.

I don't know.

Q If such were the case, would that affect your judgment that you've testified to previously?

MR. VOGEL: Objection. Unless you know that identity.

MR. BISGAIER: I don't know.

MR. VOGEL: Wait a minute. You are asking a question which is premised upon a fact, a hypothetical assumption. I have no problem with the question but if you are aware of the fact then tell the witness. It is "x" community that has a lower average than Essex County, so that he can respond to it intelligently.

MR. BISGAIER: If I knew, I wouldn't have asked the question hypothetically. I don't know.

MR. VOGEL: So, you don't know if there is any community?

MR. BISGAIER: What I am asking is how that would impact on Mr. Zimmerman's judgment.

MR. VOGEL: I object to that question. If you want to ask him a question, hypothetical question, based upon some assumptions that you

1 know or so they are founded in some report that
2 is one thing. If you don't know whether or not
3 there is such a community, it is totally unfair
4 and it is irrelevant. It is immaterial unless
5 there is such a municipality.

6 Q Could you answer the question?

7 MR. VOGEL: Is the question, does he know
8 of any such community?

9 MR. BISGAIER: No.

10 MR. VOGEL: Can we give some foundation for
11 it?

12 MR. BISGAIER: He answered it.
13 know.

14 MR. VOGEL: How could he?

15 MR. BISGAIER: I asked a hypothetical.
16 If he can answer, fine.

17 MR. VOGEL: Now, unless you can tell the
18 witness there is such a community and you are
19 familiar with such facts there that there may be
20 no such community, you are asking him to answer
21 a question based upon facts that don't exist and
22 we are really not achieving anything here.

23 MR. BISGAIER: You are directing him not
24 to answer the question?

25 MR. VOGEL: Fine, he is directed unless you

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1 have -- you can represent to the witness or to
 2 me and I will accept that representation that
 3 there is such a community. If so, tell him what
 4 it is and then he can answer the question.

5 Q If there were -- is it probable, Mr. Zimmerman --
 6 to what extent do you think, as a professional planner, that
 7 household size -- average household size figures for any
 8 given municipality may be a function of that municipality
 9 exclusive of multi-family uses?

10 A That may be a part of it.

11 Q How significant a part of it? Would you be able
 12 to evaluate that?

13 A No.

14 Q In making a projection as to the future household
 15 size of any given municipality, are past exclusionary patterns
 16 taken into account?

17 A Are taken into account by whom? By me or other experts?

18 Q Did you think they were appropriately taken into
 19 account or should have been taken into account?

20 Well, initially, you inquired as to whether zoning or
 21 land use controls may have a part in household size and I
 22 said that they may play a part. Now, you are asking if
 23 exclusionary zoning contributes to household size, if I am
 24 paraphrasing you correctly?

25 Q I believe you answered the question. They do;

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1 is that correct?

2 A It might be a factor but it may be coincidental.

3 Q How might it be a factor?

4 A There may be a correlation between -- well, obviously,
5 there is going to be a correlation between the household size
6 and the type of housing found in the community and equally
7 obvious there will probably be a correlation between the
8 zoning exclusively for single family housing and household
9 size in the community but, there may be a coincidental fac-
10 tor in that if there were absolutely no zoning in that commun-
11 ity. The free housing market would build single family
12 housing in that community. So, that there may be
13 ship between household size and zoning but that relationship
14 may be the result of designer, it may be the result of free
15 operation of housing market, and it might have come up with
16 the same thing.

17 Q Do you agree it is only a function of design and
18 coincidence?

19 A No, the only opinion I have in this area is that if an
20 individual of low and moderate income status is desirous of
21 living in the region, he or she should be given the opportun-
22 ity to do so.

23 Q What does that have to do with household size?

24 A Well, I think it has something to do with the exclusion-
25 ary zoning issue and the relationship that I thought you were

1 painting between large household size and the way a municipi-
2 pality zones.

3 I am saying that just because a community has a large
4 household size doesn't translate into a finding of exclusion-
5 ary zoning for that community. I think that it may be the
6 case, it may not be the case. Obviously, there are many
7 factors and I am suggesting one which I think is reasonable.

8 If there was zoning in that community, there still
9 might be a preponderance of single family homes in that commun-
10 ity.

11 Q Is there any reason why you would object to
12 utilizing the average household size for the regional
13 household projections for the component counties of the
14 region?

15 A Yes.

16 Q What is it?

17 A Because I think that there are significant differences
18 between the counties in the region and I think these differ-
19 ences are valid and have nothing to do with housing. So, I
20 don't see how.

21 Q Give me the specifics? What are they, that would
22 lead you to say that it's unreasonable to utilize the region-
23 al average household size in making population projections
24 for component municipalities, as opposed to the particular
25 county average household size?

1 A Well, maybe I didn't understand your question. I
2 thought that your question was is it reasonable to use the
3 [REDACTED] size for the entire region, for the component
4 [REDACTED] or is it reasonable to use the county which had
5 household size for the component municipalities?

6 Q I will rephrase the question. Would you say it
7 is unreasonable to utilize the average household size in
8 the region as the figure which you use in a computation to
9 derive future household projections for the region -- for
10 the component counties in the region?

11 A For the region, for the component --

12 Q For the component counties of the region [REDACTED]

13 A Yes, I was saying it is unreasonable to do that [REDACTED]

14 Q Would you tell me specifically why you believe
15 that is unreasonable?

16 A Because I don't think using that figure you have a
17 fair spectrum or representative sample of the housing types
18 that are available or should be available in the component
19 county.

20 That is, for example, if you said let's use the house-
21 [REDACTED] for Morris County as the household size that we
22 should average for or build into other formulas when you
23 compute housing allocations for the constituent municipali-
24 ties in the county, I would say that that seems to be a fair
25 approach. Because, within Morris County you have a spectrum

1 of family/^{and}unrelated individuals and to use the county average
2 seems in my opinion to be a fair approach.

3 Q Why? Is it any more fair than using the regional
4 average?

5 A Because, the regional average is weighted in terms of
6 urban and just by statistics in sheer numbers of people that
7 are found in urban areas.

8 Q I am not talking about the sheer numbers. I am
9 talking about the household numbers, right?

10 A Well, there are more people living in Essex County and
11 Union County and Newark and Elizabeth and Orange and Roselle
12 than there are people in Morris County. So, any
13 that uses that average for an area like Morris County would
14 be weighting that in favor of urban characteristics. Just as
15 if I said "let's use the Morris County figure for design
16 housing for Newark." And that might be equally unrealistic
17 because it does not have any relationship to Newark and, in
18 my mind, it would be equally unreasonable.

19 Q Would you believe it is equally unreasonable to
20 use that projected household size for Morris County in terms
21 of reputation for Morris County municipality as to the
22 future households which will exist in that municipality; is
23 that not correct?

24 A I have already testified that I think that would be a
25 reasonable approach.

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1 Q You think it is unreasonable to use the regional
2 average household size in making those computations?

3 [REDACTED]'s correct.

4 [REDACTED] Why?

5 A Because, I feel that the regional household size
6 figures are weighted in favor or towards the urban communi-
7 ties, and I don't think the urban communities represent the
8 mean or the average for northern New Jersey. I mean, I am
9 not prepared to say that we should use data that suggest to
10 result in every community in northern New Jersey having a
11 significantly high number of unrelated individuals because
12 that is not what the average population looks like [REDACTED]

13 Q The average population of a region is whatever
14 the region's average population is; right? I don't under-
15 stand the point you are making at all. So maybe you can
16 clarify it for me. You have a region that has an average
17 household size; is that correct?

18 A That is correct.

19 Q And that reflects what has occurred in that
20 [REDACTED] context or what is occurring at that present time;
21 [REDACTED] not correct?

22 A That's correct.

23 Q What is wrong with using a projection as to that
24 regional household size that is going to exist and the aver-
25 age for that whole region and using that figure in the compu-

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1 tation of total households for that region, is there any-
2 thing wrong with that, because the average -- is there any-
3 thing wrong with that?

4 A Yes.

5 Q You would not say totally what the projected
6 regional household size is?

7 A There is only one reason that we are dealing with the
8 four-county region or DCA is dealing with an eight-county
9 region and the only rational basis for coming up with that
10 region is that that is a housing region and as such satis-
11 fies such criteria to be defined as housing region. There is
12 nothing in that statement that says that because [REDACTED]
13 ing with this region in terms of housing that we [REDACTED]
14 also deal with this region in terms of average household
15 size or average income or average anything else. I might say
16 why not take the household size of the nation or why not take
17 the household size of Merristown. I can take anything as
18 long as I just figure what I am using and come up with some
19 reasonable basis for that.

20 Q Why not take the household size of the nation?

21 A Well, I think at this point, I don't know what the
22 household size of the nation is. I don't know what that
23 would -- what that figure would be.

24 Q Isn't it a fact that the more that you move
25 away from what the local figure is, the more you would move

1 away from that figure which may be excluded by such things
2 as local municipal land use decisions which may or maynot
3 ~~reflect~~ that housing choice would be absent those decisions?

4 ~~...~~ I think that --

5 Q It is not?

6 A I think that the household size figure for the four-
7 county region that I have identified may very well be signi-
8 ficantly different than the household size figure for the
9 nation as a whole and I don't know which one is more valid
10 to use.

11 Q You do know that it is more valid to use the
12 county figure than the regional one? ~~...~~

13 A But, it is only because I have looked into that and I
14 have come up with that as a conclusion of it. I haven't
15 looked into the nation's figure.

16 Q You said before that you don't know what would
17 be an acceptable deviation from the Port Authority figure
18 whether it would be seven percent or fifteen percent. How
19 would one know -- how would one comfortably derive an accepta-
20 ~~...~~ tion from such a given figure?

21 ~~...~~ wouldn't attempt to come up with that figure. I
22 don't think it is purposeful.

23 Q Well, humor me. If it's twenty percent, would
24 you say that it's too great a deviation?

25 A I have no way of answering that. I have never seen

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1 household size figures presented or analyzed in those terms
2 and I don't know whether a five percent or ten percent,
3 [REDACTED] percent deviation would be and if it was twenty per-
4 [REDACTED] what would be useful.

5 Q Well, if you are doing a projection that's a
6 little bit of a -- by its very nature is a projection into
7 the future. We don't really know what the future will hold
8 and we do the best we can in making a projection in trying
9 to seek and say; isn't that correct? Isn't that the nature
10 of a projection?

11 A We all do the best we can.

12 Q Right. And built into that, as far as [REDACTED]
13 tell, anyone else that has done a projection, whether [REDACTED]
14 for household size or for population, there are standard
15 deviations which are acceptable, which they -- the planner or
16 whoever is doing that projection would say that within this
17 range my anticipation is that, this will be the accurate
18 figure -- now, projected household size is a very specific
19 number, whether it's 2.9 or 3.2 and what I am asking you is
20 [REDACTED] what would be an acceptable deviation from that that you
21 [REDACTED] be fitted into the range?

22 A There's no population projection that has ever used
23 the term "deviation" or "standard deviation." What is attempted
24 or usually done is to present a range -- if you are so inclined
25 to do that. Some people don't present a range. They feel

1 this is going to be the population in 1990 and that's it.

2 Other people say based on different assumptions the popula-

3 [REDACTED] be "x" or the population could be "y". Just like

4 [REDACTED], I said in the economic section, the economic

5 model of my report, I said, "that depending upon your fore-

6 cast for employment growth, the needs for low and moderate

7 income housing could be "x" or could be "y". It depends

8 upon your assumptions." I think that is the standard proce-

9 dure in making projections about the future population.

10 The census makes projections using different birth-
11 rate factors or different fertility rate statistics.

12 Q With regard to household size, you do [REDACTED]

13 self, have or you do not know of any range that in terms of

14 projections that you would be comfortable with?

15 A Well, I have indicated in my report what I am comforta-
16 ble with and what I am uncomfortable with.

17 Q You would be, at least, comfortable with that
18 range between Tri-State and Port Authority figures but not
19 comfortable between the range of the Port Authority and DCA

20 figures?

21 [REDACTED] I am not comfortable with the DCA figures.

22 Q You are comfortable with the Tri-State figures?

23 A With the Port Authority figure.

24 Q What about the Tri-State figure?

25 A To the best of my recollection, I think that figure is

1 in the same ballpark as the Port Authority figure.

2 Q And therefore reasonable?

3 A And therefore reasonable. If it is not --

4 Q How close would it have to be for you to ascertain whether it was reasonable or not?

5 A I don't know.

6 Q At least in your report you said it was comparable and close to it and therefore acceptable?

7 A Right.

8 Q But you don't recall what that was based on? That judgment?

9 A No. I would say it's a judgment that was not based on saying that well, this is eleven percent, therefore good, but if it was nine percent, it would be good.

10 Q What would it have been based on if it wasn't based on that?

11 A I don't know. I said before, I have to look at my notes and determine what went into my decision. Maybe it had nothing to do with the range, maybe it had something to do with their assumptions as to why these figures were one thing and not another.

12 Q In evaluating those assumptions that evaluation -- the assumption that you read or the amount -- the analysis of the Port Authority that you reviewed was the analysis that was contained in that one document; is that correct?

13

1 A As I recall, yes.

2 Q Did you review any other documents taken by the
3 Port Authority supporting that analysis?

4 A We may have. There are, quite frankly, a lot of things
5 that I have read and they all were not read last week. I
6 just don't remember everything.

7 Q Did you speak to anyone at the Port Authority
8 to ascertain how they did that analysis?

9 A An individual on my staff, working under my super-
10 vision, spoke to both the Port Authority and Tri-State people.

11 Q Who's that individual?

12 A The girl who was here this morning, Susan Gruel.

13 Q Any information that you had used that was
14 regard to that computation, would have been derived from a
15 conversation or notes that -- I am sorry, what was her name?

16 A Susan Gruel.

17 Q Ms. Gruel would have given you?

18 A Notes, verbal information and/or reports.

19 Q Would you bring with you any notes or reports
20 that she produced relative to --

21 A Yes, I plan to.

22 Q -- or any employee of your firm, if there are
23 others. Produced relative to this case at the next deposition?

24 A Okay. Let me ask one question. Who is going to take
25 the time to duplicate all of that stuff?

1 Q Don't worry about that.

2 A I am not going to give you my notes. You are going to
[REDACTED] of my notes. I am continuing to work with this
[REDACTED] . I need it. I just can't --

5 Q You won't have to leave it. Just bring whatever
6 you can. You can take it back with you when we are finished.

7 A Fine.

8 Q Do you know who you spoke to at the Port Author-
9 ity?

10 A No.

11 MR. BISGAIER: Off the record.

12 (A discussion was held off the [REDACTED])

13 MR. BISGAIER: The next date was projected

14 for December 3, 1979, at 9:00 A.M.

15 (This deposition was adjourned at 2:25

16 P.M.)

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[REDACTED]

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C E R T I F I C A T E

I, JO-ANN KANNON,
a Shorthand Reporter of the State of New Jersey,
do hereby state that the foregoing is a true
and accurate transcript of my stenographic notes
of the within proceedings, to the best of my ability.


