

Transcript of Deposition of Alvin E. Gasher

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

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MORRIS COUNTY FAIR HOUSING :  
COUNCIL, :

Plaintiff, :

-vs- :

BOONTON TOWNSHIP, et als, :

Defendant. :  
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Deposition of ALVIN E. GERSHEN, taken stenographically  
in the above-entitled matter before PATRICIA MRAW, Certified  
Shorthand Reporter and Notary Public of the State of New  
Jersey, at the office of the Public Advocate, Carroll  
Building, 2nd Floor, East State Street, Trenton, New Jersey,  
on Thursday, February 7, 1980, commencing at 1:00 p.m.

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

CARL ~~BISCAUER~~, DEPUTY PUBLIC ADVOCATE,  
For the Plaintiff.

SACHAR, BERNSTEIN, ROTHBERG, SIKORA & MONGELLO, ESQS.,  
BY: DANIEL S. BERNSTEIN, ESQS.,  
For the Defendant.

BY: PATRICIA MRAW, C.S.R.

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WITNESSES

PAGE

ALVIN E. GERSHEN

Examination by Mr. Bisgarder

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

1 ALVIN E. GERSHEN, SWORN.

2 EXAMINATION BY MR. BISQAUR:

3 Q Al, could you identify this document which  
4 has been previously marked as G-5?

5 A This is a report prepared by our office and  
6 dated January 10, 1980 relative to this case, and it  
7 includes a series of tables, eleven tables comparing  
8 and analysing a number of things, the density of var-  
9 ious subsidized housing projects, some seventeen pro-  
10 jects in New Jersey, and also analysing the long-range  
11 effects of monthly rent in three projects, both on an  
12 annual as well as a per unit basis.

13 Q And you handed this copy of that document  
14 to me today, is that not correct?

15 A I handed you a copy today, I mailed a copy to  
16 our attorney on January 10th.

17 Q May I have it, please?

18 A My copy or yours?

19 Q Mine.

20 MR. BISQAUR: I would just like the  
21 record to reflect this is the first time  
22 that I received a copy of this document or  
23 knew of its existence was today.

24 Q In the previous deposition --

25 A Could you speak up just a little bit.

1 Q -- you made a statement which I'd like you  
2 just to explain to me, you stated, and I will let you  
3 read it after I read it into the record, we asked as  
4 to what the scope of your testimony would be, that it  
5 was to analyse the cost of constructing housing in  
6 various configurations and analyse the impact of land  
7 costs on those costs, and indicate whether or not they  
8 could be built and rented without or with a subsidy.

9 A Without what?

10 Q Without or with a subsidy. My question is  
11 that I'd like you to explain on that a little bit as  
12 to what you meant and what you perceive the nature of  
13 your testimony to be in that regard?

14 A Yes, in response to the question you read just  
15 now, I gave a three part answer.

16 Q I understand that.

17 A You just gave the first part of a more comprehen-  
18 sive answer.

19 Q Relative to this part of it, I have been  
20 [REDACTED] client to analyse configurations. By  
21 [REDACTED] configurations I take it to mean low rise as well as  
22 high rise type, various numbers of bedroom types,  
23 family versus senior citizen types and suburban and  
24 urban types, and analysing the impact of land costs  
25 would be to make some determination as to what effect

1 land cost has related to total development costs re-  
2 lated to monthly costs to the consumer; and finally,  
3 the last phrase is indicate whether or not they could  
4 be built or rented with or without subsidy. To indi-  
5 cate what market rents would be and by market rents  
6 I mean generally a nonsubsidized rent, basic rent,  
7 partially subsidized, and what additional subsidy if  
8 any would be necessary. Necessary for what purpose?

9 A To be affordable by low, moderate, and middle  
10 income people, which is where we are at.

11 Q Can you refer me to the expert report which  
12 you have submitted which would encompass this particu-  
13 lar testimony?

14 A Yes, we have submitted G-2, which has attached to  
15 it a Form 10, we have G-2 as the basis of comparison  
16 of some of that information analysed the series of  
17 Form 10's, Form 10's being the pro formas being used  
18 by the Housing Agency, and so all of these elements  
19 would be part of the analyses, but are not attached,  
20 obviously to the report itself.

21 Q I missed what you meant by the last thing,  
22 all of these elements would be part of the analyses,  
23 but are not attached to the report itself. What ele-  
24 ments are you referring to that are not attached to  
25 the report?

1 A Seventeen Form 10's are not attached to the report,  
2 a series of financial statements for Kingsbury, Pond  
3 Run and Trent Center, each are not attached to the  
4 report. There are numerous workpapers, to use that  
5 term of art, which form the basis of an analyses that  
6 myself or my staff did which came out of files and are  
7 not attached, obviously, as workpapers normally  
8 wouldn't be, to the reports.

9 Q Do you intend to rely at trial on these  
10 documents?

11 A Yes, I have to in order to form the basis of this.

12 MR. BISQAUR: Off the record.

13 (A discussion was held off the record.)

14 Q Could you rather exhaustively state what  
15 documents you utilized and relied upon in your prepar-  
16 ation of your expert reports?

17 A Exhibit one is comparative density of subsidized  
18 housing projects, and there are some seventeen projects  
19 listed. Pre 1979 and post 1979 the information in that  
20 table was gathered from Form 10's, closing Form 10's  
21 for each of the seventeen projects for the NJHFA.  
22 Exhibit two in the Kingsbury Corporation, the informa-  
23 tion as to the operating expenses were fathered from  
24 annual audit reports of the Wolf and Company where the  
25 certified public accountants succeeded by Main, Hurdman &

1 Cranstown, which is a successor accounting firm to  
2 Wolf and Company for years ranging through 1975,  
3 through '78. Table two had the same source material  
4 as does table three. Table four is the rent schedule  
5 table as prepared by the NJHFA for the various years  
6 showing both basic and market rents. Table five is  
7 the same source material. Exhibit three, the infor-  
8 mation there was gathered from information supplied  
9 by the executive director of Trent Center East, and  
10 he got that information from monthly operating reports.  
11 Table seven was gotten from rent schedules for Trent  
12 Center East compiled for the executive director of  
13 that project. Table eight, the same source as the  
14 preceding table. Table nine, a monthly operating re-  
15 port submitted by the sponsor of Hamilton Senior Citizens  
16 to the NJHFA. Table ten are rents both basic and mar-  
17 ket rents from rent schedules prepared for the Hamilton  
18 Senior Citizen's housing by the NJHFA. Table eleven  
19 is store prepared from the same table, has the same  
20 source material as the previous table.

21 Q Now, I have not received any of that docu-  
22 mentation to date, is that not correct?

23 A That's correct.

24 MR. BISQAUR: I'd like now to request  
25 that copies of the documents be made available



1 to me and that we agree that if I believe  
2 it is necessary, that another date be set for  
3 a deposition on just information that I either  
4 received today or subsequent to today.

5 MR. BERNSTEIN: You are entitled to a  
6 subsequent deposition. I have no problem  
7 with that. As to the material, I think there  
8 is a number of backup material that you are  
9 entitled to have copies of. I am not sure  
10 as to the operating expenses, since we are  
11 talking about is it seventeen projects?

12 THE WITNESS: No, it then becomes three.

13 MR. BERNSTEIN: If we are talking about  
14 three projects, and if they are each ten  
15 years old --

16 THE WITNESS: No, one is ten years old,  
17 one is five, and one is about seven or eight,  
18 but the thing I would say to counsel is that  
19 in the operating and the annual report if we  
20 could give you those sections of the audit  
21 report dealing with the operating budget and  
22 not everything else, it would make the thing  
23 a lot easier because they are the only per-  
24 tinent things we concerned ourselves with.

25 MR. BISQAUR: How about if you provide

1 me with those and arrange to have the other  
2 information made available to me if I would  
3 like to look at it?

4 MR. BERNSTEIN: I have no problem with  
5 that.

6 THE WITNESS: And I certainly will do  
7 it if my attorney tells me to.

8 MR. BERNSTEIN: And I would even say for  
9 the record that Mr. Bisqaur or his office  
10 could contact Mr. Gershen or his office with-  
11 out my as the attorney interceding, and I  
12 would direct Mr. Gershen to make available  
13 whatever backup documentation there is so  
14 that Mr. Bisqaur or his agents could examine  
15 it, and if there is something pertinent, to  
16 make copies of it.

17 Q Now, in your initial response today regarding  
18 the configurations that you were going to be analysing,  
19 you referred to the distinction between low rise and  
20 high rise and bedroom types, family versus senior citi-  
21 zens, suburban, various urban types. Will your testimony  
22 be limited with regard to those in terms of the impact  
23 as to land costs or would it be more extensive than the  
24 impact of those different configurations on land cost?

25 A The latter.

1 Q Can you explain then what you perceive your  
2 testimony to cover, other than the impact on land costs  
3 that those different configurations would have?

4 A I can't tell you, but my testimony will be in re-  
5 sponse to what my attorney asks me, so I can't tell  
6 you the precise questions since I don't know what he  
7 will be asking me. I can only say that the thrust of  
8 my testimony as I perceive it is to show that in the  
9 per unit per month cost to the consumer, land costs  
10 became constant through the years and became less and  
11 less significant as to the cost of operating the pro-  
12 ject increases as we have seen the impact in the last  
13 few years. Basically as to the fuel and energy costs  
14 on the one hand and labor costs on the other, and this  
15 would be true regardless of the configuration of the  
16 project, urban, suburban, high rise, low rise, family,  
17 elderly, and that's what these figures are supposed to  
18 show.

19 Q All right. I think I understand. What you  
20 are saying is that basically it is your conclusion  
21 that regardless of the configurations, whether it be  
22 high rise or low rise, regardless of the number of  
23 bedrooms, regardless of whether it's a family or a  
24 senior citizen job, regardless of whether it's subur-  
25 ban or urban, the relative impact of land costs on the

1 rental remains the same?

2 A Diminishes, not remains the same. It becomes  
3 less important in time, whether you are talking about  
4 fifty units to the acre or sixty units to the acre.

5 Q Other than that conclusion and what you  
6 might draw from that conclusion, are there any other  
7 conclusions that you intend to make with regard to these  
8 configurations?

9 MR. BERNSTEIN: Let me just raise an  
10 objection here, and I will direct the witness  
11 to answer the question. The witness has sub-  
12 mitted reports, to say what are the conclu-  
13 sions that you draw from the report since  
14 when I asked Mr. Gershen questions at the  
15 trial after a lot of consultations with him  
16 it could be that there will be other conclu-  
17 sions coming forth and, therefore, I don't  
18 want him precluded from making other conclu-  
19 sions based on all the fact materials that  
20 [REDACTED] 's given on the basis of this answer. With  
21 [REDACTED] that caveat I will tell Mr. Gershen to answer  
22 the question.

23 MR. BISQAUR: Let's go off the record  
24 for a second.

25 (A discussion was held off the record.)

1 Q With regard to the statement that you have  
2 made that part of your expert reports are directed at  
3 analysing the cost of constructing housing from various  
4 configurations, do you, based on your expert reports,  
5 draw any conclusions from that analyses, other than the  
6 impact that those different configurations, which we  
7 previously discussed, will have on land costs and the  
8 impact of costs on the affordability of the unit?

9 A Land costs are one of the components these reports  
10 speak to, they speak to at least two others, and maybe  
11 more, but the two that come to mind would be a ques-  
12 tion which might be supposed, and now I am hypothecat-  
13 ing because I don't know, but I am prepared to testify  
14 based on these reports on whether or not subsidies are,  
15 in fact, needed to meet well constructed and designed  
16 housing for moderate and low income people, and those  
17 will come out of the Form 10's and the income limits  
18 which flow from it. Now, income limits are another  
19 report which maybe introduced and maybe should be pre-  
20 sented to you. Another aspect of these reports would  
21 be in the design of projects, the relationship of in-  
22 come producing space to nonincome producing space or  
23 what I would call the amenity level, and what impact  
24 it would have on affordable housing to the consumer  
25 over a period of time. It would have the same effect

1 as land illustrated if you have nonincome producing  
2 space in terms of community space or active or passive  
3 recreation space, which may cost you something to build  
4 but doesn't cost you much to maintain, it might be bene-  
5 ficial to include it in a development because its impact  
6 diminishes in time. I haven't met with counsel yet,  
7 but these are the kinds of things that I would expect  
8 him to be developing with me, based upon my answer to  
9 you in the last deposition as the second or third part  
10 of what you asked me my testimony would be. Now, the  
11 extent to which he will pursue this, and the depth to  
12 which he will pursue it and the additional avenues he  
13 may want to follow are questions I think best posed  
14 to my attorney and not to me. I am prepared to answer  
15 any and all questions to the best of my ability and  
16 knowledge and capability on the economics of housing  
17 and, more particularly, on the economics of subsidized  
18 housing in terms of how that process has worked for the  
19 past ten years, is working now, and probably will con-  
20 tinue to work.

21 MR. BISQAUR: Could you read the beginning  
22 of that back to me, please?

23 (The answer was read back by the Reporter.)

24 Q Can you tell me what your position is with  
25 regard to analyses of the cost of constructing housing

1 in various configurations, comparing low rise and high  
2 rise structures?

3 A The conclusions that we drew were that -- in G-5 --  
4 that a number of the projects has both low rise and  
5 high rise in it, and regardless of that, are very greatly  
6 in density from a low of six or five to the acre to a  
7 high of forty-five to the acre, so that low and high  
8 rise made little difference in terms of the densities,  
9 that was strictly a function of how much land was avail-  
10 able in any of these particular projects.

11 Q What was the function of how much land was  
12 available?

13 A The density. If there was more dense, if there  
14 was less dense, and less dense if there was more land,  
15 but there is no rational relationship between these  
16 figures.

17 Q How is it determined as to what number of  
18 units should go on the particular parcel of land?

19 A I would assume in those cases that I know of of  
20 the jobs we were associated with and we weren't associated  
21 with all of them, but most of them it was a function of  
22 local zoning, it was a function of availability of land,  
23 and it was a function of what land, when I say avail-  
24 ability, was additional land able to be acquired and  
25 what land was available at any given time for municipal

1 approval to be granted, were they granted quite aside  
2 from zoning, were they granted tax abatement in other  
3 municipal appropriates in one section of town versus  
4 another. So, no relationship to the cost but as to  
5 attitude.

6 Q Do you draw the same conclusion as to the  
7 number of bedrooms, family versus senior citizen, sub-  
8 urban versus urban types?

9 A No, that comes about in another way. There are  
10 two constraints in that, quite aside from the local  
11 approval process and attitudes on the local levels.

12 Q Let me clarify the question. Do you draw  
13 the same conclusion as you did with regard to the low  
14 rise versus the high rise as to density?

15 A I don't know what you mean by that at all.

16 Q I take it it is your position that regardless  
17 of whether the structure was low rise or high rise there  
18 was no reasonable relationship between that variable  
19 and the actual gross density of the project?

20 A There was no rational relationship necessarily.

21 Q Is your conclusion the same as to other  
22 variables, such as bedroom types, family versus senior  
23 citizen types, suburban versus urban types?

24 MR. BERNSTEIN: I'd like to know if the  
25 question presupposes that there would be no



1 substantial difference in rent, which I  
2 understood Mr. Gershen's testimony to be  
3 were no substantial relationship between the  
4 variables which you gave in another conclu-  
5 sion which he is to draw. In other words,  
6 I don't understand the question and would  
7 seek a clarification.

8 MR. BISQAUR: Well, I am trying to as-  
9 certain what the conclusions are that he is  
10 drawing when he says that he is evaluating  
11 these configurations and the costs in analys-  
12 ing the cost of constructing housing.

13 MR. BERNSTEIN: I assume then that you  
14 are seeking to know whether there is any  
15 relationship between the densities, the num-  
16 ber of bedrooms, suburban, urban, if there  
17 are any significant distinctions in the rent  
18 which is charged in these various types of  
19 housing.

20 MR. BISQAUR: Well, I will ask as to  
21 each one.

22 Q What conclusions do you draw with regard to  
23 analysing the cost of constructing housing with different  
24 configurations as to bedroom types?

25 A If you were to build a senior citizen project

1 anytime in the last five years in urban or suburban  
2 settings in New Jersey, giving the cost constraints on  
3 ~~the one hand~~ and the income limits on the other, most  
4 ~~any configuration~~ could be built from 100 units on up.  
5 If you wanted to build family housing in most SMSA,  
6 Standard Metropolitan Statistical Areas, in the last  
7 five years, given the income limits, the fair market  
8 rents, and the construction costs, you could not build  
9 family housing alone without the infusion of some sen-  
10 ior citizen housing, which makes a job feasible. This  
11 has nothing to do with monthly rent, this has to do  
12 with making feasibility in the first place. If you  
13 look at North 25 you see one eleven story and ten two  
14 story buildings. The one eleven story is elderly, it  
15 doesn't say it here, but the Form 10 will show it, and  
16 that's what made that job feasible. Similarly with the  
17 Salem-Lafayette job, the one fifteen story building  
18 of senior citizens made that job feasible. So, if you  
19 these in terms of understanding how to commence a job  
20 ~~is accomplished~~ from how to operate and manage a job,  
21 ~~you would~~ have to have a housing mix which is con-  
22 structed to do feasibility. If you then went further  
23 and looked at the mix of family housing, the one, two,  
24 three, and four bedroom units, these are modified and  
25 altered so that the configurations give you a feasible

1 job which may or may not be related to the housing need  
2 or demand in a given area. But regardless of the hous-  
3 ~~ing need or~~ demand, they have to fight these formulae  
4 which the Federal State Government have in order to  
5 gain feasibility so the job can be constructed.

6 Q What you have said, has that been true of  
7 the Newark SMSA?

8 A Generally yes, it's true of all of them, and  
9 it's an involved process of all sorts of formulae which  
10 are in the regulations.

11 Q How do you account for the difficulty of  
12 project feasibility with family housing as opposed to  
13 project feasibility with senior citizen housing or  
14 mixed projects?

15 A You have a higher cost allowance for high rise  
16 construction than you do for mid rise and higher for  
17 mid rise than you do for low rise. You have a higher  
18 per unit allowance for efficiencies than you do for  
19 one bedroom, than you do for two bedrooms, than three  
20 ~~bedrooms~~ bedrooms you have, the lower the per  
21 ~~unit~~ allowance is. So, it becomes easier by federal  
22 regulations to build high rise, low number of bedroom  
23 units.

24 Q Now, I take it all of the conclusions you  
25 just drew with regard to senior citizen housing and

1 family housing and mixed projects was referring to  
2 subsidized projects as opposed to conventionally built  
3 projects?

4 A Yes, when I talk about feasibility, when I talk  
5 about restrictions, federal regulations, I am talking  
6 about section 236, 101, 202, section 8, these various  
7 subsidized federal programs, yes.

8 Q Now, what are your conclusions with regard  
9 to feasibility relating to projects that were built  
10 with HFA subsidization?

11 A Yes, well, it's federal subsidization and HFA  
12 financing.

13 Q To what extent does the fact that HFA financed  
14 projects must utilize HFA standards in construction im-  
15 pact on the relative feasibility of these jobs?

16 A Well, that's a partial question which can't be  
17 answered, and the full question would be, HFA regula-  
18 tions and practices, because if the standard is higher,  
19 meaning that the room size might be a little bit bigger,  
20 then you mean HFA or the construction better,  
21 you also have to put in that the interest rate  
22 would be lower and the term longer with a longer term  
23 than an HFA or conventional and a lower interest rate  
24 than an HFA, HUD, or conventional. The somewhat higher  
25 requirement for better room size, larger room sizes and

1 better construction would be minimized, and probably  
2 would not make infeasible otherwise feasible jobs  
3 ~~via-a-vis~~ the federal program without HFA.

4 Q In your experience over the last five to ten  
5 years to what extent have the use of HFA standards or  
6 the imposition of HFA standards impacted on the project  
7 feasibility under HUD fair market rents?

8 A We have been able to finally get through, barring  
9 other reasons for not building, every project I could  
10 think of, even those wide feasibility problems, because  
11 there are techniques which can be used with HUD approval,  
12 the 109 percent factor and the 120 percent factor, the  
13 increasing of the construction costs which are the ad-  
14 ministrative remedies for "infeasible" projects which  
15 need more money, and if properly presented by the spon-  
16 sor to the state and the state to the Federal Govern-  
17 ment, invariably projects have been built. The defaults  
18 of state finance jobs have been far fewer than federally  
19 financed jobs, which leads to the conclusion that their  
20 standards might go better or something might be different  
21 ~~that~~ The fact that there are that many fewer  
22 troubled jobs at the state level, state financed than  
23 federally financed. So, I am very comfortable with  
24 what HFA has been doing and I'm very comfortable that  
25 other reasons set aside local approvals being yanked,

1 the problems with sites for other locational reasons,  
 2 you know, these kinds of things, lack of subsidies  
 3 altogether, setting those kinds of things aside, I  
 4 feel comfortable with the fact that well conceived  
 5 design and reasonably estimated jobs could get through  
 6 with the cooperation of HFA and the Federal Government.

7 Q Is it your opinion that the use of HFA  
 8 standards for family projects, which also receive HUD  
 9 funding and must therefore comply with the fair market  
 10 rents for family projects, has had no impact on pro-  
 11 ject feasibility for the number of multi-family or  
 12 the number of family projects that have been built in  
 13 New Jersey?

14 A No, I didn't say that, I didn't say that at all.

15 Q What is your answer to that?

16 A My answer is it may have had an effect on it, it  
 17 may have meant that in a particular project they may  
 18 have had to come back to the number of family units  
 19 and increase the number of senior citizen units in  
 20 order to have better feasibility. It may have meant  
 21 that if you have more family projects, they may have inter-  
 22 jected senior citizens to begin with in order to achieve  
 23 feasibility. It maybe that the dwelling unit mix  
 24 might have changed on the family side, the one, two,  
 25 three, four, five bedroom units by having fewer of the

1 large number of bedrooms and more of the smaller number  
2 of bedrooms in order to get feasibility, and it's the  
3 act of putting this together, yes, the regulations as  
4 between HUD and HFA do impact what finally comes out  
5 at the other end and what comes out at the other end  
6 is as much or more a function of the regulations as it  
7 is to the actual need to housing in a particular SMSA,  
8 but no matter what regulations you'd have, that state-  
9 ment would be equally true, although to a different  
10 degree, in a different mix.

11 Q In fact, it's not a question of it may have  
12 had that effect, I mean your experience has been that  
13 it has had that effect?

14 A Yes, I said that. This is not bad or good.

15 Q Now, you have stated that you are going to  
16 evaluate whether or not subsidies are needed to meet  
17 the needs of low, moderate income persons for housing.  
18 What conclusions have you made with regard to the need  
19 for subsidized housing in order to meet the needs of  
20 low and moderate income persons?

21 A Look at the seventeen Form 10's, the proper place  
22 on the Form 10's will indicate the affordable rent for  
23 a unit and the market or subsidized rent for the unit  
24 and the market or unsubsidized rent. Parenthetically  
25 unsubsidized, that means nontax abatement, not bonds

1 that are sold cheaper because there is a federal de-  
2 vice for not paying taxes, and, therefore, the interest  
3 rate is lower and the term longer. Setting that aside,  
4 we understand that is a form of subsidy, a real form  
5 of subsidy. Quite aside from that, each of the Form  
6 10's will reveal that in order to afford housing for  
7 the middle, moderate, and low income, as the Form 10, 8  
8 shows it, you must have a subsidy whether it's section  
9 8 or 236 if you want to build to the amenity level, the  
10 construction level that HFA would indicate is necessary  
11 for decent safe and sanitary housing. So, the conclu-  
12 sion is just by reading the seventeen Form 10's indicat-  
13 ing that subsidies are, in fact, necessary.

14 Q And is it your opinion that construction of  
15 housing a conventional basis without subsidization and  
16 without the requirement that the housing meet HFA  
17 standards, but with the requirement that they meet  
18 minimal standards for the protection of health and  
19 safety, that such housing could not be provided on a  
20 conventional basis for low and moderate income persons?  
21 A As I understand what you said with all its ramifi-  
22 cations the answer is no, it cannot be built without  
23 subsidization.

24 Q When you use the term low and moderate income  
25 persons, what are you referring to?



1 A Those income limits that you would see in the  
2 SMA, a copy of which I don't have, but are generally  
3 ~~ten to twelve~~ thousand for one person, families rang-  
4 ~~ing up to~~ fourteen, sixteen, nineteen, for three, four,  
5 and five person families as published by the BLS, Bureau  
6 of Labor and Statistics, Department of Labor, and which  
7 come out once a year in April.

8 Q Are you referring, do you refer, when you  
9 use the term low and moderate income persons or fam-  
10 ilies, to the HUD standards of fifty and eighty per-  
11 cent of the regional median?

12 A Yes, as they develop. I don't have my own, I  
13 accepted theirs as every state agency accepts the  
14 federal definition as they are promulgated by that  
15 agency and I do that without any equivocation or putting  
16 in of my own judgement as to what is low or high for  
17 the purposes of my testimony. I cite with them in  
18 terms of trying to get them altered, but that's a pro-  
19 fessional discussion and not for purposes of testimony

20 ~~in this case.~~

21 ~~I~~ am not sure I understand the distinction  
22 now.

23 A I accept them.

24 Q What is your opinion, or do you have an  
25 opinion as to the HFA standards, or income standards

1 for admission to an HFA financed project?

2 A They are HUD standards, they are not their own.

3 Q Isn't it true that HFA periodically through  
4 regulations establishes its definition of moderate  
5 income persons and families?

6 A I use the ones they give us right out of the  
7 Federal Handbook, excepting for nonassisted projects,  
8 in which case the state legislature talks about six  
9 times rent and seven times rent as being the upper  
10 income limit for admission to market projects. Non-  
11 subsidized, and I think there are seven of the 130  
12 some odd projects which are "nonsubsidized", other than  
13 that, and setting that aside, we use the federal regu-  
14 lations.

15 Q To your knowledge has the HFA used the same  
16 standards for its nonsubsidized as well as its subsi-  
17 dized jobs, constructions?

18 A Yes, same set of regulations, same book, to the  
19 best of my knowledge. I have always used that book.  
20 The standards have changed from year to year as they  
21 have interfaced with the feds, and there has been a  
22 give and take with them, but whatever was available at  
23 a given point in time is applicable to all projects.

24 Q All right. You have supplied me with a docu-  
25 ment that's been marked G-3 for purposes of identification

1 in which contains apparently part of a report that you  
2 described as being prepared for the Department of  
3 **Agriculture** at Princeton University.

4 **A No, architecture.**

5 **Q As I said, the transcription of the prior**  
6 **deposition left much to be desired.**

7 **A On the transmittal slip of G-3 architecture and**  
8 **urban planning.**

9 **Q Did you prepare the entire report that was**  
10 **submitted, or was this portion of the report the only**  
11 **work product of your office?**

12 **A I was hired as a consultant through Princeton**  
13 **University for the purposes of the entire report and**  
14 **I consulted with Shumaker (sic) and Crantz (sic),**  
15 **Shumaker (sic) was the architect, Crantz (sic) was the**  
16 **sociologist, on a regular basis in terms of the entire**  
17 **study which was done by a number of people, including**  
18 **Shumaker (sic), his staff of architects and computer**  
19 **people, surveyors and so on. In addition to that, our**  
20 **office prepared the eight or ten pages which were sup-**  
21 **plied to you which was our specific work which I also**  
22 **supervised as part of the overall.**

23 **Q Do you have an opinion about the other parts**  
24 **of the report, other than what you have?**

25 **A I don't know what you mean by do I have an opinion.**

1 Q I take it you stand behind the part of the  
2 report that's contained in G-3 as your work product?

3 A I stand behind it as of 1974, and I don't know  
4 that it should be updated or changed in 1980, but if  
5 someone would retain me to analyse it, I would be glad  
6 to tell you whether we'd come to the same exact con-  
7 clusions, but generally, yes, this is reasonable stuff.

8 Q Well, as of today you would not change it?

9 A No, I would write it a little differently with  
10 different numbers, being six years later the construc-  
11 tion costs are different and you'd have to update that  
12 kind of thing, and there are some new philosophies and  
13 theories, but generally that's the same.

14 Q Do you have the same opinion as the other  
15 parts of the report which you had input on but did not  
16 specifically write?

17 A Yes, that report was a report which I thought  
18 ought to be followed up by the whole series of other  
19 more detailed studies which would either collaborate  
20 ~~some of these~~ findings or change them, absent those  
21 ~~other studies~~ there might be some nationwide which  
22 followed through on the built environment for the  
23 elderly, recollecting that this analyses was done in  
24 '74, and there is a lot more in the literature today,  
25 to that extent there might be modifications of it. I

1 have not gone back to look at that report to tell you  
2 whether or not a portion or portions of it should be  
3 updated based on more recent findings and so on.

4 Q But at the time it was written you agreed  
5 with the statements and conclusions?

6 A Generally, yes.

7 MR. BERNSTEIN: Wait, excuse me, if I  
8 could just make this statement for the re-  
9 cord. Mr. Gershen did mention that he con-  
10 sulted with these other gentlemen on certain  
11 portions and as I understood the question  
12 presupposed that Mr. Gershen was only giving  
13 an opinion as to those items which he con-  
14 sulted with the other gentlemen on, and not  
15 on the entire report itself.

16 Q I understood your testimony that you consulted  
17 on the entire report.

18 A I was the general consultant, I had no right to  
19 change the report, that's not my work product, I didn't  
20 write the report. I don't take responsibility for it's  
21 content. There's a lot of difference between being  
22 an advisor and giving them source material and telling  
23 them where to go and doing the actual research. I was  
24 not the director of research, I was not the director  
25 of research, but I would have researched it in precisely

1 the same way. They have mixed up the report, they  
2 mixed up public housing with HFA and HFA with HUD,  
3 they made no distinction between CFA, Community Facil-  
4 ities, 202 housing at the time, and HFA housing, the  
5 sole sources of that kind of things, so if you are  
6 going to get very detailed with it and the answers  
7 as a whole lot of things would flow, but generally  
8 speaking it's a report which made sense, it did con-  
9 tribute to the literature, it was a good first cut for  
10 the university being in that field. It was a relatively  
11 inexpensive study, it should have been followed up with  
12 a whole source of other things, which were not, for  
13 whatever reason. To that extent it was a good report,  
14 but I don't take credit for its findings nor its  
15 authorship nor its directorship.

16 Q But do you generally support the conclusions?

17 A As I recall them, I will go back and read them  
18 again before trial so I can be more responsive if that  
19 question will be posed again, but I have not prepared  
20 myself to respond in detail at this point. I haven't  
21 even read it in a matter of years.

22 Q Would you be able to make a copy of it avail-  
23 able to me?

24 A Sure. We will find a copy for you. If it's our  
25 only copy, do you promise to give it back?

1 Q Yes.

2 Referring to G-5, I show you exhibit one on  
3 G-5 wherein you have listed various projects, would  
4 you be able to indicate on them by using just putting  
5 an X next to the ones which your office or you person-  
6 ally had any involvement?

7 A I am indicating North 25, Princeton Community  
8 Housing, Northgate II, Salem-Lafayette, Millwater, Ridge  
9 Oak, Pond Run, Mayor Gelman Senior Citizens, Edward  
10 Sisco Village, Poplar Village, West Long Branch Senior  
11 Citizens, New Community Gardens, Jackson-Slater,  
12 Brigantine, Montgomery Gateway, West Hampton or Mont-  
13 gomery Gateway II, with the exception that on Brigant-  
14 tine Homes we did the CAFRA, that's the Coastal Area  
15 Facilities Review Study which was an environmental  
16 study, but we did not do any of the housing work.

17 Q Can you state whether any of these particu-  
18 lar projects in your opinion are more appropriate for  
19 an urban as opposed to a suburban environment?

20 A Some are urban and some are suburban and they  
21 are designed for the environment in which they were.

22 Q Which would you say are designed for a sub-  
23 urban environment?

24 A Which were designed for a suburban environment,  
25 those that are in suburban locations. Princeton Community

1 Housing, Millwater is urban and suburban kind of. Ridge  
2 Oak, Pond Run is not quite suburban and not urban. Mayor  
3 Gelsman, Edward Sisco, Poplar Village and was Long Branch,  
4 they're all suburban.

5 Q When you say suburban environment, what are  
6 you referring to? I believe I used the term --

7 A Princeton Community Housing is located in the  
8 Township of Princeton, which itself would be called a  
9 suburban municipality located five thousand feet from  
10 Harrison Street and built predominately in what was  
11 then just the woods and undeveloped land. Millwater  
12 was built, although it was an urban renewal site, it's  
13 built in Newton, which is Sussex County, a county of  
14 less than fifty thousand people in the entire county  
15 being not classified as urban but suburban and rural.  
16 Newton itself might have some suburban characteristics,  
17 and this, as I indicated to you, is on the borderline.  
18 Bernards Township is in an almost rural suburban munic-  
19 ipality. Ridge Oak is built in an area of single family  
20 homes on the outskirts of the center of Bernards Town-  
21 ship and has great characteristics of a suburban muni-  
22 cipality. Pond Run is built in Hamilton Township, a  
23 municipality of some ninety-five thousand people, it's  
24 close to being urban but not in the sense of six large  
25 municipalities of New Jersey which are Camden, Paterson,



1 Jersey City, Newark, Trenton, and New Brunswick, it  
2 has some urban characteristics. They are the only  
3 two high rise structures in a municipality that has  
4 buildings of only two stories.

5 The Edward Sisco is built in Wayne Township, which  
6 could be classified as suburban. Poplar Village was  
7 built ten years ago in Ocean Township, Monmouth County,  
8 and it had very clear suburban characteristics, as did  
9 West Long Branch, which was built some three or four  
10 years ago and could not be classified as urban, it's  
11 kind of suburban bordering a little bit on rural char-  
12 acteristics, and they were designed specifically for  
13 those locations, therefore, take on the coloration of  
14 the municipality or the neighborhood in which they were  
15 built.

16 Q And you were capable of doing that with each  
17 of these projects that you mentioned?

18 A The architects who were designing the projects,  
19 together with our office and the professionals in-  
20 volved and the sponsors were in my judgement in each  
21 of these instances able to provide a physical amenity  
22 which was in close characteristic to the community  
23 and neighborhoods in which they were built, yes.

24 Q I take it with regard to all of these pro-  
25 jects development was assisted by government subsidies,

1 is that not correct?

2 A Yes.

3 Q And those would be HUD subsidies as well as  
4 HFA subsidies?

5 A HFA subsidies are the incorrect subsidy, and there  
6 are bonds which are tax free, each of those are locally  
7 tax abated and that's an indirect form of subsidy and,  
8 in addition to those, they have the subsidy you see in  
9 the right-hand column which is section eight, 101, or  
10 236, which are federal subsidy programs.

11 Q Were any of these projects built without  
12 being tax abated?

13 A No, not that I know of, they are all tax abated.

14 Q Do you have an opinion as to whether any  
15 of these projects or any federally funded subsidized  
16 projects would be feasible without tax abatement?

17 A They might, if we gave up the amenity level.

18 Q Well, given the HUD regulations and the re-  
19 quirements for amenity levels, is it your opinion that  
20 any of the projects could be constructed or any pro-  
21 ject could be constructed without tax abatement?

22 A You'd have to look at the design mix in which I  
23 described the number of pages back, you'd have to look  
24 at the income limits at the time they were built, you'd  
25 have to look at the construction costs, you'd have to

1 look at the income to nonincome producing space and  
2 then keep moving these back and forth til you get a  
3 mix that made sense.

4 Q Has it ever happened to your knowledge that  
5 that was accomplished without tax abatement?

6 A No, sir, and there is also a difference between  
7 a section eight and a 236. Section eight if you started  
8 without tax abatement you get an automatic increase in  
9 additional subsidy as the taxes went up, not so in  
10 original 236 projects, and so in nontax abated projects  
11 throughout the country that were 236 you have a number  
12 of defaults because as taxes went up disproportionately  
13 you drove projects into default. Now, tax abatement  
14 means two things; instead of paying taxes, you pay a  
15 percentage of income, rental income in lieu of taxes.  
16 It's a payment in lieu of taxes, and as long as you  
17 are paying a percentage, then regardless of what happens  
18 there is a tax consequence in a municipality that pro-  
19 ject paid as a percentage of income, and if as has been  
20 the case the last decade an urban municipality loses  
21 its commercial commerce and has cost increases proportion-  
22 ately, the tax ratings skyrocket. If the tax ratings  
23 skyrocket and residences are left to absorb the cost,  
24 taxes become so great as to then make projects then in-  
25 feasible. So, tax abatement has not only the advantage

1 of a lower payment in lieu of taxes initially, but are  
2 predictable as a function of income and not as a func-  
3 tion of municipal need which provides the ability to  
4 sustain economic disaster or to overcome potential  
5 economic disaster.

6 Q Did these projects receive any other form  
7 of governmental assistance, and I am not limiting my  
8 question to financial assistance?

9 A Some may in terms of meals on wheels. One project  
10 a Health Outreach Program with a local hospital where  
11 the tenant patient receives care which is paid for on  
12 Medicare and Medicaid funds. There are transportation  
13 programs to the older American provided in some instances  
14 by municipalities and others by counties and others by  
15 the state. There are programs, nutrition programs on  
16 the site, there is the RSVP Program, the required Senior  
17 Volunteer's Program, there are a whole series of pro-  
18 grams.

19 Q What -- I am sorry to interrupt you.

20 A Day Care Centers, Day Care Programs for families,  
21 a whole series of other input at the municipal level.

22 None of these projects that I know of received any  
23 block grants, although I'd have to check that to be  
24 more precise. There are a number which are built on  
25 the Urban Renewal sites, North 25, Northgate II, Salem-

1 Lafayette, Millwater, those then had the indirect sub-  
2 sidy.

3 Q Were there others built on Urban Renewal sites  
4 besides those?

5 A I don't know about the bottom, Jackson-Slater  
6 possibly was, Montgomery I and II are. The New Bruns-  
7 wick site I don't think was, I am not sure, but that's  
8 another form of upfront subsidy which municipalities  
9 had roads put in or sewer work or other like kind of  
10 help, I really don't know.

11 Q Of the eleven that you indicated that you  
12 worked on, the first eleven, which of those were built  
13 on Urban Renewal land?

14 A North 25, Northgate II, Salem-Lafayette, Millwater.

15 Q Is that all?

16 A Yes, sir.

17 Q Did any of the others receive any form of  
18 municipal assistance with regard to the cost of land?

19 A On PCH there is a road, a mile long road which  
20 was built to the site and there was an assessment made  
21 township wide, abutting landowner wide and PCH, so I  
22 don't know if that's a form of municipal assistance.

23 I don't know about the others, I don't recall.

24 Q How was the land purchased, do you know?

25 A PCH?

1 Q Yes.

2 A From a willing seller to a willing buyer.

3 Q Do you know what the land was zoned for at  
4 the time of its purchase?

5 A Research, I am now trying to remember, I have not  
6 looked it up and it's been eight years or ten years.

7 Q Was the site subject to a rezoning or a  
8 variance?

9 A It was subject to a long, long, long variance  
10 procedure.

11 Q Did you participate in that procedure?

12 A I did.

13 Q And what was the problem, if there was one?

14 A The problem of that procedure was the problem  
15 of any procedure of putting low and moderate income  
16 housing in a suburban location.

17 Q What was that?

18 A The problem of good folks in the municipality ob-  
19 jecting to changing the zoning to accomodate the use  
20 for real reasons, good reasons.

21 MR. BERNSTEIN: Good reasons.

22 Q How was it that the Princeton project re-  
23 ceived government approval then?

24 A I would think that our arguments made sense and  
25 prevailed and I think that the objectors arguments may

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1 not have, and I would think that the Zoning Board of  
2 Adjustments and the municipal officials felt that  
3 this was a worthwhile thing and a demonstrated need  
4 and a good location, and their wisdom has shown to be  
5 correct in terms of the project being as successful as  
6 it is.

7 Q Did they, in fact, give their support to the  
8 project prior to the application?

9 A Not that I know of.

10 Q So this was totally a privately sponsored  
11 and conceived project with no governmental support?

12 A Well, it had the support of every church and the  
13 university in Princeton with the exception of two  
14 churches, civic groups and a lot of good people, and  
15 it took eight years of hard work and it was supported  
16 through money through HFA. The community itself over-  
17 whelmingly supported that project through careful  
18 planning and speaking to public groups was able to  
19 finally succeed in developing and now maintaining and  
20 managing a very successful and a much needed project.

21 Q What support was given by Princeton University?

22 A They were and still are one of the sponsoring  
23 groups making up Princeton Community Housing.

24 Q Did they give any financial support directly  
25 or indirectly?

1 A They were going to and they may have at one point  
2 even lend some money, I am not sure, but I don't remem-  
3 ber, but joined the Board and gave it its moral support  
4 and involvement by people in the university, I had a  
5 university professor testify on a very critical ele-  
6 ment as a professor, but not for the university. There  
7 are a number of university people who were participating  
8 on the Board.

9 Q Who is the university professor who testified  
10 that you are referring to?

11 A Professor Glassman testified on generally the  
12 gasoline that ran in the middle of the project. The  
13 professor's wife became the president, not representing  
14 the university, but representing I think the League of  
15 Women Voters. There are a number of university people  
16 involved as were people in other colleges in Princeton  
17 involved.

18 Q Do you recall what the land cost was for  
19 that project?

20 A Five hundred dollars an acre, if I remember cor-  
21 rectly, and again, I have not refreshed myself, but  
22 this was very hilly land and the development costs  
23 were rather expensive.

24 Q Is there a rule of thumb that you use or the  
25 state or federal agencies use with regard to land costs



1 for a subsidized project?

2 A It used to be somewhere in the neighborhood of  
3 fifteen to twenty-five hundred dollars a dwelling unit,  
4 not counting abnormal course, as they would call it.

5 We have stretched that in some instances to three  
6 thousand or thirty-five hundred dollars a unit, subject  
7 to an appraisal, this is not what they give you, it's  
8 either or, whichever is lower.

9 Q Do they limit their approval for a project  
10 or do they make demands with regard to the number of  
11 dwelling units in a project, dependent on the land  
12 costs?

13 A I don't know how to answer that, they can't tell  
14 you to go on increased densities beyond reasonableness  
15 in terms of zoning or zoning variances. Have they re-  
16 flected projects as being too expensive, yes. I remem-  
17 ber in most instances and almost all overwhelming number  
18 of instances you are dealing without condemnation powers,  
19 and so it's a willing buyer and a willing seller and  
20 they just want to make sure that it's a willing buyer  
21 and a willing seller and not another relationship. In  
22 order to ensure that they put some limitations on the  
23 per unit cost, they insist on independent appraisals  
24 as well.

25 Q Now, in fact, is there a limitation that they

1 put on the per unit costs, or do they have a guideline  
2 for the per unit land costs?

3 A You'd have to ask them, we use whatever they tell  
4 us. Whether they are absolute or whether there are  
5 cases where there are higher values, I don't know, I  
6 take what they say seriously.

7 Q What do they tell you?

8 A We have gone two thousand, twenty-five hundred,  
9 and if we find projects where there are higher costs,  
10 we normally stay away from them. If we find that we  
11 have to come in with them, we do and try to argue and  
12 get approval.

13 Q Then have you been able to get approvals  
14 for projects that are at a higher land cost than twenty-  
15 five hundred dollars per acre?

16 A I don't remember, but I would think maybe, but I  
17 don't recall right offhand.

18 Q In any event, you would agree that it would  
19 be difficult to get agency approval for a project at  
20 a higher per unit, per unit land cost?

21 I haven't gotten a project through in the last  
22 year or so, so I don't know. Not very many projects  
23 have gotten through, so simply stated, the higher the  
24 land cost, the lower the construction cost could be  
25 because you've got an envelope which gives you a maximum

1 total development cost on a dwelling unit basis, and  
2 so you kid yourself as you go up with the land costs.

3 Q How is it that you were able to find land  
4 in Princeton at \$500 an acre? I am kind of curious.

5 A Do you want an answer on the record?

6 Q Yes.

7 A The land was landlocked, there was no road to it,  
8 it was in a research zone, it was very hilly and it  
9 had rock outcrop and it was overgrown with trees.

10 Q How hilly was it?

11 A How hilly was it?

12 Q What were the slopes like?

13 A Twenty and thirty percent slopes, parts of it  
14 could not be built on. It was not near any other  
15 development, residential or research, and had very few  
16 people to object to it because of its location.

17 Q What was the impact of the fact that it was  
18 a research zone? You seem to indicate or imply that  
19 there was some impact on land costs as a result of that.

20 A No, I didn't you said, why were you able to find  
21 land, you indicated it was landlocked, there was  
22 no road leading to it, there were no utilities leading  
23 to it, at the time water and sewer had to be brought  
24 to it, it was not zoned for this use, I mean it was  
25 laying there and not to be developed at that point.

1 Q What I am curious, have you ever been involved  
2 or know of a subsidized project which was not built with  
3 public water and sewer?

4 A No, sir, neither was this, this was built with a  
5 public water and sewer.

6 Q You are unfamiliar with any that would be  
7 built without public water and sewer?

8 A Yes, I am unfamiliar with any that have been built  
9 without public water and sewer.

10 Q You know of none that would be built without  
11 water and sewer facilities supplied by a governmental  
12 agency, whether a municipal utilities authority or a  
13 regional authority?

14 A All those I am familiar with have been built with  
15 some public, when I say public, I mean governmental or  
16 utility regulated sewer and water supply.

17 Q Do you have any knowledge as to whether a  
18 subsidized project could be built consistent with state  
19 or federal regulations without using a public water or  
20 sewer supply as opposed to for example a packaged plan?  
21 A I think it could be if the job was large enough  
22 to support the package plan and the economies were there.

23 Q Now, do you have an opinion as to what the  
24 per unit cost would have to be for a nonpublic water  
25 and sewer facility for project feasibility?

1 A Not without some additional research.

2 Q What is the per unit costs for water and  
3 sewer where public facilities are used, that is the use  
4 for the built up number for project feasibility?

5 A I'd have to go back to my Form 10. You could  
6 spend fifty or a thousand dollars a unit, it depends  
7 a lot on the municipality.

8 Q With regard to the Ridge Oak project you  
9 stated I believe that that was not an Urban Renewal,  
10 that was not on Urban Renewal land.

11 A That's right.

12 Q Can you state how that land was acquired?

13 A By purchase from a private owner.

14 Q Do you recall what the zoning was prior to  
15 its being purchased?

16 A I think one family residential.

17 Q Do you recall what the density was?

18 A No, sir.

19 Q Would it be, if you recall at all, safe to  
20 say that the zoning was greater than half acre lot

21  
22 A Probably not.

23 Q It would be less than half acre?

24 A I would think so, I am now trying to remember, I  
25 could look it up and be precise, I will for the trial

1 date get the exact zoning for Ridge Oak, but as I re-  
2 call it was single family and it was also subject to  
3 a zoning area.

4 Q And was there a variance hearing?

5 A Yes, sir.

6 Q And did you participate in that?

7 A Yes, sir.

8 Q Do you recall whether there were any objec-  
9 tions to the use of that site for the use that was pro-  
10 posed?

11 A I think there were.

12 Q What were, very generally speaking, the  
13 objections?

14 A The same general objections you get to any subsi-  
15 dized housing project in most locations, urban and sub-  
16 urban.

17 Q Were there any specific problems with regard  
18 to this site as to the location of a project in the  
19 nature of the one that was ultimately built?

20 A Again, I'd have to go back to look at the record,  
21 I recall objections, and this one was sponsored by five  
22 churches in Bernards Township, and so there was a lot  
23 of proponents as well as opponents, and the proponents  
24 again carried forward, and since then there have been  
25 very expensive single family homes built at the entranceway

1 to the project indicating the project has not been  
2 deleterious to the land values. In fact, it's been  
3 quite the contrary.

4 Q Now, how is it determined what gross densi-  
5 ties should be placed on that site?

6 A Two ways. One, by the size that was available;  
7 and two, by what would be necessary to make a feasible  
8 project, and what, in consideration of the architect  
9 and ourselves, we thought would be in fitting with that  
10 central location in the municipality, and the Board  
11 of Adjustments agreed, the governing body agreed, and  
12 the HFA agreed, and the project was built.

13 Q Do you recall what the per unit cost was of  
14 the land?

15 A No, I don't, I don't have that number.

16 Q Do you recall on any of these projects that  
17 you have had work with whether the cost of the land was  
18 based on the existing zoning at the time the applicant  
19 obtained an interest in the land or was it based on the  
20 ultimate densities that were placed upon the land sub-  
21 sequent to the various proceeding?

22 A To the best of my knowledge these never, with the  
23 exception of the Urban Renewal sites which have a per  
24 unit cost if I remember correctly \$500 per unit, which  
25 is the HUD's way of getting a write down on value and,

1 therefore, they are related to the per unit costs, the  
2 others are subject to approvals, but not on a per unit  
3 basis. Ridge Oak was not, Pond Run was not, Gelman was  
4 not, Sisco was not, Poplar Village I don't believe was,  
5 and neither was West Long Branch. Now, we had a pretty  
6 good idea of what the densities would be and the gross  
7 numbers in some instances.

8 Q So, you were able to make a representation  
9 or an offer based on a per unit cost in your own mind  
10 as to what the project would be able to --

11 A That changed, those numbers changed as the total  
12 number of units changed, and going into a zoning Board  
13 you never know what you are coming out with, but,  
14 again, this is typical in the industry. You don't  
15 know precisely, but you have a pretty good idea, and  
16 if you don't think you can make it, you don't start,  
17 and if you get a value from the HFA which is different  
18 than your contract value, you go back and renegotiate.  
19 The person selling you either believes you or in some  
20 instances you look for a deal, there are a lot of  
21 deals not shown here that never came to pass.

22 Q In any event, the amount of money you would  
23 have been able to pay for the land as a result of  
24 placing upon the land the type of development that you  
25 were considering was greater than the land would have



1 cost for the type of development it was then zoned for?

2 A I don't know that I fully understand that question.

3 Q I will repeat the question. Is it true then

4 in all of the cases where you were dealing with land

5 which was not in an Urban Renewal project that the

6 cost of the land, the value of the land under the exist-

7 ing zoning was less than the value of the land subse-

8 quent to variance approval?

9 A Not necessarily.

10 Q Explain that.

11 A When the land for Sisco Village was bought I recall

12 the figure of \$400,000 as the figure that the landowner

13 wanted, and I recall we had 241 units, maybe it was more

14 than \$400,000, but whatever that number was, if we had

15 150 units, that landowner wanted that same amount of

16 money, it was unrelated to what we had. Now, I don't

17 really at this point know what that land is valued at,

18 if an appraiser went out and made an appraisal. I

19 have no idea whether it's now worth more or less, and

20 as the value of that land would have been \$400,000,

21 regardless of what we finally got. Now, on a per unit

22 basis it would have been more or less depending on

23 what we got, but that was not germane to the negotia-

24 tions with that landowner.

25 Q Regardless of what the landowner wanted for

1 the land, do you recall whether the value that a rea-  
2 sonable assessor would have made for the land, given  
3 its then current zoning, would have been more or less  
4 than the value of the land subsequent to its rezoning?

5 MR. BERNSTEIN: I am going to make an  
6 objection here on the basis that the man  
7 is offered as an expert in planning and in  
8 developing subsidized housing units, but he  
9 is not a realtor or an appraiser and, there-  
10 fore, you are really asking something outside  
11 his area of expertise.

12 Q I am not asking for an expert opinion at all.  
13 I am asking whether you know factually.

14 A I have no opinion as to that at all.

15 MR. BERNSTEIN: I'd let him answer your  
16 question as to opinion but I don't want to  
17 have to be back in Court on an objection to  
18 questions, but I just want to make my objec-  
19 tion on the record.

20 THE WITNESS: I have no opinion on that  
21 at all.

22 Q With regard to the Pond Run project, I believe  
23 you stated that that was not an Urban Renewal plan?

24 A No, sir.

25 Q Do you recall what the prior permitted land

1 use was on that project?

2 A PRO, Professional Research Office.

3 Q So it was not a residential use?

4 A Residences were permitted in PRO.

5 Q Do you recall at what densities the residences  
6 were permitted?

7 A No, they have garden apartments all around, it's  
8 in a sea of garden apartments.

9 Q But you don't know if that was a permitted  
10 use?

11 A No, high rises were not, there is a high rise  
12 building, as I indicated, it's the only high rise.  
13 There are only two high rise buildings, it's in-between,  
14 so it was subject to the zoning variance as well.

15 Q Did that project receive any governmental  
16 assistance?

17 A No. In addition to subsidies you are talking  
18 about in addition to tax abatement?

19 Q Yes.

20 A No.

21 Q Do you recall what the cost of the land was,  
22 the per unit cost of the land, do you recall what the  
23 land value was prior to the variance granting the ten  
24 story structure?

25 A Roughly \$800 a unit.

1 Q That would be under the PRO zoning?

2 A Yes.

3 Q Did that land value change as a result --

4 A I don't really know. You see, I don't know what  
5 land values changed to, I know what the purchase price  
6 is.

7 Q Was the purchase price based on the existing  
8 zoning or was it based --

9 A I don't know what it is. What buyers and sellers  
10 decide to pay and sell at.

11 Q Would the Mayor Gelman project, do you recall  
12 what the zoning was on that project prior to the appli-  
13 cation?

14 A No, it's surrounded again with single family houses  
15 on a lake, and it came from a series, it came from two  
16 or three acquisitions, part of which was manufacturing,  
17 if I remember, but I don't know what the zoning is. In  
18 that instance, for instance, it has 99 units, it had  
19 120 or 130 when it started, and through the process of  
20 the hearing the units were cut away but the purchase  
21 price I think remained the same, and, again, I don't  
22 remember. That changed during the hearing process, the  
23 Zoning Board of Adjustment because of community objec-  
24 tions.

25 Q With regard to the Edward Sisco Village project,

1 can you state what the zoning was prior to the appli-  
2 cation?

3 A I don't really recall that one, that was too long  
4 ago.

5 Q With regard to the Poplar Village project,  
6 can you state what the zoning was prior to the appli-  
7 cation?

8 A I believe it was single family.

9 Q Do you recall at what density were lot size?

10 A No, sir.

11 Q Do you recall what the cost of the land was?

12 A No, sir.

13 Q Now, with the West Long Branch Senior Citizen  
14 project do you recall what the prior zoning was on that  
15 site prior to the application?

16 A I think single family.

17 Q Do you recall what the densities were?

18 A No.

19 Q At the time of the construction of these  
20 projects did all of them have public transportation to  
21 or near the site?

22 A No.

23 Q Which projects did not?

24 A West Long Branch, Poplar, Gelman, Pond Run, Ridge  
25 Oak, PCH.

1 Q At the time the applications were approved  
2 how far was the existing public transportation from  
3 the site?

4 A One mile from PCH. I don't know how far from  
5 Ridge Oak. A couple of thousand feet from Pond Run.  
6 I don't know how far from Gelman.

7 Q When you say you don't know how far, can you  
8 make any estimate?

9 A I don't even know if Gelman has any now. I would  
10 have to go back and check, the same with West Long  
11 Branch, the same with Poplar. Since PCH has Mercer  
12 Metro running to it, since Pond Run has Mercer Metro  
13 running to it, you see the Mercer County project Mercer  
14 Metro makes a detour and goes to the project.

15 Q What about the other projects?

16 A I'd have to check that for you.

17 Q Did that pose a problem in terms of the  
18 location and approval process of these projects where  
19 public transportation was not accessible?

20 In most of these projects, and, again, I'd have  
21 to refer myself on the specifics, in most of these  
22 projects we make a provision for either getting public  
23 transportation through a county network or municipality.  
24 In the case of Hamilton they have an elderly pickup  
25 system or we have the sponsor indicate that they will

1 run a minibus of their own, which is a form of public  
2 transportation and provides transportation on a commun-  
3 ity basis. How some of these were involved, since we  
4 don't know all of them, I'd have to go back and see  
5 how some of the problems were, in fact, solved. But  
6 we do indicate that some form of transportation, par-  
7 ticularly with the elderly, would have to be provided.

8 Q With regard to all of these projects at the  
9 time that the application was approved, what was their  
10 accessibility to major retail outlets?

11 A Princeton there was about a mile and a half.  
12 North 25 was downtown Trenton. Northgate is downtown  
13 Camden. Salem-Lafayette is right off Jackson Avenue.  
14 Jersey City, Millwater is downtown Newton and Ridge  
15 Oak has got some problems, in that it's not too close  
16 to major shopping. Pond Run is six or seven hundred  
17 feet away from shopping, Grand Union and that kind of  
18 store. Gelman is, depending upon whether you can use  
19 the backs of properties, relatively close to the  
20 shopping facilities. Sisco is next to the high school,  
21 across the street from the Municipal Building and in  
22 close proximity to the shopping in Wayne.

23 Q How far would you say Sisco is to the shop-  
24 ping facilities in Wayne?

25 A Not too far.

1 Q A mile?

2 A A thousand feet. Poplar I don't know what they  
3 ~~are doing in~~ Poplar, it was far away, I don't know  
4 ~~whether they~~ have made it any closer or not, and the  
5 same way in West Long Branch, I'd say a couple of  
6 thousand feet away, I'd have to go back and see what  
7 happened, three thousand feet.

8 Q What was the proximity of each of these pro-  
9 jects to existing educational and recreational facilities  
10 at the time the application was approved?

11 A North 25 again is downtown Trenton, so it has it.  
12 Princeton was at least a mile and a half away. North-  
13 gate is downtown Camden. Salem-Lafayette is an urban  
14 setting, it has its close proximity. Millwater if  
15 downtown Newton. Ridge Oak is not close except to a  
16 library facility. Pond Run then had no proximity, but  
17 now has Mercer County Community College coming to it  
18 and giving courses. In fact, they have one graduated  
19 from that school elderly senior citizen. Gelman is  
20 ~~not too close~~. Sisco is very close, across the street  
21 ~~from the library~~. Poplar is reasonably close. West  
22 Long Branch is not.

23 Q Can you state on the project that you list  
24 when you say elderly and family or family, which of  
25 those, what the relative makeup is within elderly and



1 family for each of those projects?

2 A I'd rather go back to the Form 10 and supply that  
3 to you. North 25 is a ten story building and would be  
4 elderly.

5 Q The Form 10 will show it's not necessarily --

6 A -- the Form 10 will show it right on its face.

7 Q Did any of these projects have problems with  
8 soils?

9 A Well, they were not problems, they have different  
10 soil characteristics. North 25 did because they had  
11 sewers underground, they were 100 and 125 years ago.

12 Q I am specifically including any land problem  
13 associated with infrastructure, I am talking specifically  
14 about soil conditions such as wet soils and the like.

15 A Well, let me say that all projects have different  
16 soil conditions and, therefore, require solutions. Even  
17 North 25 had wet soils, not regardless of the fact that  
18 it had infrastructure problems. Princeton Community  
19 Housing had rocky soil, tremendous rock outcrops and  
20 problems in rock. Northgate and Salem I will pass.  
21 ~~Millwater~~ I don't remember. Ridge Oak may have had  
22 some modest problems. Pond Run needed special footings  
23 but wasn't unusual. Gelman was okay. Poplar had water  
24 problems near a stream. In West Long Branch I think  
25 in the part of the project. There isn't a project that

1 you build that you don't have a soil condition that  
2 requires a certain kind of solution. Were they unusual?  
3 Not outlandishly so. Each one had a soil engineer and  
4 a solution to the specific soil condition you found,  
5 and that's untypical with rare exceptions. One rare  
6 exception is Trent Center. Trent Center, which is one  
7 of the latter projects listed on the next set of tables  
8 happens to have a sandy, a beautiful sandy condition  
9 and requires absolutely no special treatment whatsoever.  
10 But that's more unusual than usual in the construc-  
11 tion industry.

12 MR. BISQAUR: I am not going to be able  
13 to go through the rest of this exhibit. I  
14 looked at it for the first time today, so  
15 why don't we just save that for another day.

16 MR. BERNSTEIN: Do you have other stuff?

17 MR. BISQAUR: Let me try and run through  
18 the other stuff which I assume was not going  
19 to take too long today.

20 Q-2, which is entitled the feasibility analyses  
21 for the Morris County CBD North Triangle Model, let me  
22 ask you, first of all, what model is that based on?  
23 What are you referring to when you say CBD North Triangle  
24 Model?

25 A Well, in this particular case we took a municipality,

1 we named it that, don't worry about the North Triangle  
2 or business, it's a name, and this would be a typical  
3 project with typical costs as of the time we did it  
4 last May.

5 Q So it is your position that this would be  
6 true generally speaking throughout Morris County when  
7 a company uses this as a model for any township or  
8 municipality?

9 A Yes. You notice we have a zero land cost, the  
10 construction cost, since we are using in effect union  
11 labor would be precisely the same regardless of the  
12 municipality we are in because wage rate determinations  
13 would be the same and the cost of the materials would  
14 be exactly the same and air-conditioning units would  
15 cost \$210, whether you are delivering to Randolph Town-  
16 ship or Rockaway Township, there would be almost no  
17 difference in cost in transportation. So, these numbers  
18 are the same for every municipality as of May of '79.

19 Q These numbers though are based on a particu-  
20 lar type of project. What I am asking, are you assuming  
21 that this type of project is appropriate in Morris  
22 County and, therefore, we can conclude that these  
23 figures that you have derived from it are relevant to  
24 Morris County?

25 MR. BERNSTEIN: Wait. I object to the

1 form of the question. You said are appro-  
2 priate to Morris County, does that mean it's  
3 appropriate to every town in Morris County  
4 or to every site in Morris County?

5 Q It's a project which could be constructed  
6 in any township or municipality in Morris County. If  
7 it's not, then I am curious as to they thrust of it.

8 A I testified earlier that part of the art of putting  
9 a project together was to get a dwelling unit mix which  
10 permitted feasibility, and that mix was not necessarily  
11 responsive to housing needs in any one location. This  
12 mix of 158 dwelling units is feasible in the SMSA called  
13 Morris County or the SMSA in which Morris County lies,  
14 and in my judgement without testing each town it is  
15 sufficiently lower in total number of units eight,  
16 four bedroom townhouses would fit most all, not neces-  
17 sarily. Now, you'd have to look at each municipality,  
18 more specifically you'd have to look at specific sites  
19 in each municipality to see if in a specific case it  
20 fits, but generally speaking this is the kind of pro-  
21 ject that would produce feasibility. A lot of other  
22 things fall into place. Locational advantage, for  
23 example, geography and typography and all of the other  
24 things we would talk about.

25 Q What general conclusions do you draw from the

1 analyses in G-2? Essentially, what does it purport  
2 to show?

3 A Density is not a factor. Land cost is not a factor.  
4 Dwelling unit mix is important to achieve feasibility  
5 in any given set of federal numerical regulations.  
6 Housing to be well built and well constructed and well  
7 maintained must be subsidized to be afforded by low and  
8 moderate income people. I'd even stretch that to almost  
9 middle income people. Amenity level is important and  
10 does not have a long lasting impact on cost of housing.  
11 Those are the general conclusions I come to.

12 Q What are the conclusions that you come to,  
13 an what was the basis of comparing a subsidized job  
14 and a job where the construction cost figure is reduced  
15 by approximately 30 percent, which I take it was a  
16 conventional job, is that a correct analyses?

17 A Yes, the question at one point in our discussions  
18 with counsel on a number of municipalities and there  
19 are multiple counsels here, the question was what  
20 happens if "it was a conventional job" and we then  
21 assumed that there wouldn't be some of the rigorous  
22 requirements of HUD or HFA and we estimate that cost  
23 could be reduced let's say by 30 percent, what would  
24 happen, and that's why we reduced it and we come to  
25 the same kind of conclusion. It still becomes too

1 expensive and we don't know that you can really reduce  
2 it further without getting housing which is not pro-  
3 perly built in terms of initial construction which  
4 would have either obliging inference, which is not  
5 good for public policy purposes, or would be so infer-  
6 iorly built that its operating costs would even sky-  
7 rocket higher, and although you've got lower initial  
8 cost, five and ten years downstream it would be so  
9 expensive as to be inaffordable and most obviously is  
10 the installation or strip a house of installation,  
11 reduce its initial cost and with today's fuel costs  
12 it becomes prohibitively expensive a year from now,  
13 no less five and ten years from now.

14 Q Both projects, however, that you used as  
15 prototypes here were based on HFA standards?

16 A The original one is HFA standards, the other one  
17 was 30 percent less.

18 Q What would account for the 30 percent writedown?

19 A Prevailing wage determinations. In effect HFA  
20 projects are built by organized labor. If we assume  
21 you can build out organized labor without the fringe  
22 benefits that labor would get and so on.

23 Q But you used the same construction standards  
24 and site plan standards.

25 A Yes, generally speaking because in my judgement

1 they are not too much, but it's an arbitrary kind of  
2 thing, you might built quicker without inspections.  
3 You might have a contractor that cut a few corners and  
4 still had reasonable construction that could get appro-  
5 vals. It's a percentage of art rather than fact. Based  
6 upon visceral experience rather than provable demonstrable  
7 experience. It's what an expert would be asked to say  
8 in your opinion, and I think it's a reasonable figure  
9 to use, that should have credibility in a Court and  
10 hopefully with my counsel.

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

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I, PATRICIA MRAW, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination ALVIN E. GERSHEN was duly sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Patricia Mraw, C.S.R.  
Notary Public of the State of New Jersey

My Commission expires 10/12/82

Dated: 3/31/80