

Transcript of Deposition of Mary E. Brooks

pg. ~~113~~ 114

ML 000 922 ~~09~~



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

B E F O R E :

GERARD J. RICHARDS, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, at the MORRIS TOWNSHIP MUNICIPAL BUILDING, Morris Township, New Jersey, on Monday, February 25, 1980, commencing at 10:30 in the forenoon.

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

THE PUBLIC ADVOCATE  
By: CARL C. BISGAIER, ESQ.,  
Attorneys for the Plaintiffs

MESSRS. SHANLEY & FISHER  
By: GLENN PANTEL, ESQ.,  
Attorneys for Defendant Harding Township

MESSRS. MC CARTER & ENGLISH  
By: ROSLYN S. HARRISON, ESQ.,  
Attorneys for Defendant Chester Township

MESSRS. SCANGARELLA & FEENEY  
By: FRANK SCANGARELLA, ESQ.,  
Attorneys for Defendant Lincoln Park Borough

MESSRS. PENDLETON & LATZER  
By: BERTRAM J. LATZER, ESQ.,  
Attorneys for Defendant Parsippany-Troy Hills Township

GERARD J. RICHARDS  
Certified Shorthand Reporter

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

I N D E X

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

WITNESS

DIRECT

CROSS

MARY E. BROOKS

By: Mr. Pantel

3

Mrs. Harrison

36

Mr. Scangarella

69

Mr. Latzer

88

300K

1 M A R Y E. B R O O K S, having been previously  
2 sworn is recalled and testified as follows:

3 FURTHER DIRECT EXAMINATION BY MR. PANTEL:

4 Q Miss Brooks, I remind you that you have  
5 been sworn in this matter to testify to the truth and  
6 that you are still under oath so that you still have  
7 an obligation to tell the truth. If you have any  
8 problem understanding any of my questions, please say  
9 so and I will clarify them. Do you understand all  
10 that? A Yes.

11 Q In calculating Harding Township's fair  
12 share of moderate or least cost housing did you  
13 consider the costs afforded for least cost housing by  
14 virtue of Harding Township's zoning ordinance?

15 A No.

16 Q Have you ever reviewed Harding Township's  
17 current zoning ordinance?

18 A No.

19 Q Is it true that you adjust the 1970  
20 present housing need by adding to that need as  
21 calculated by the DCA those low and moderate income  
22 households paying more than twenty-five percent of  
23 their income on housing in 1970?

24 A That's true.

25 Q On what do you base the twenty-five

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

percent breakoff figure in determining whether a household of that income is in need of housing?

A I'm not sure I understand the question. The identification is, I believe --

Q Excuse me, why don't you understand the question?

MR. BISGAIER: I don't understand it either. Are you asking for any authority which would support using twenty-five percent?

Q Why did you use the twenty-five percent breakoff figure?

A It's a standard rule of thumb on what constitutes the amount of one's income that a household can reasonably afford to pay for housing costs.

Q Did you consider any empirical studies that support the twenty-five percent breakoff figure as a valid figure?

A Not other than information that I read as the course of the business I do daily.

Q Could you identify any materials which you relied upon in determining that the twenty-five percent breakoff figure was valid?

A As I indicated it's a fairly standard criterion used and in other such studies I have seen it used. I didn't do any particular study in the preparation of

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

this.

Q Did you consider at all that in certain circumstances a low and moderate income family might voluntarily be paying more than twenty-five percent of their income for housing and making a conscious decision to choose a certain unit which is more costly than another?

A Did I consider that?

Q Yes, did you?

MR. BISGAIER: What do you mean by voluntarily?

MR. PANTEL: By making this decision of their own free choice, by choosing one which would cost more than twenty-five percent of their annual income and one of which would not.

MR. BISGAIER: Both of which are standard?

MR. PANTELL: Both of which meet the health and safety standards.

THE WITNESS: I am aware that households do that. I don't think it's so obvious that it's done voluntarily but that was not a part of the evaluation I did.

Q Assuming that the twenty-five percent breakoff figure is a valid figure in determining a component of present housing need, if someone is paying more than twenty-five percent of their income for

PENGAD CO., BAYONNE, N.J. 07002 - FORM 1045

1 housing, does that indicate that the family needs a  
2 housing unit or does it indicate that they are in need  
3 of a financial subsidy to help them pay for their  
4 present housing unit?

5 A Either of those factors would assist them in  
6 achieving a more balanced ratio of income and housing  
7 costs.

8 Q But in your fair share analysis isn't  
9 it true that you only decided that a person paying  
10 more than twenty-five percent of their income was in  
11 need of a new housing unit, isn't that true?

12 A I considered that factor in assessing the  
13 housing needs that exist in the region.

14 Q Is it true then that for every single  
15 low and moderate income family paying more than twenty-  
16 five percent of their income for housing, for every  
17 one of those families you added an additional compo-  
18 nent of present 1970 housing need and made no adjust-  
19 ment for the extent to which that need could be met  
20 by subsidy as opposed to new housing?

21 A As I have indicated it's possible to meet the  
22 housing needs that exist for low and moderate income  
23 persons in a variety of ways. I did, as you indicated  
24 in the first part of your question, included an addi-  
25 tional number of household needs for each of the

1 households indicated to be paying more than twenty-  
2 five percent of their income.

3 Q But you didn't reduce that figure by  
4 any adjustment and say that X percent of those house-  
5 holds paying more than twenty-five percent of their  
6 income could have that need reasonably met by subsidy?

7 A No, I did not.

8 Q As opposed to by a new housing unit,  
9 you assumed a new housing unit would be required,  
10 did you not?

11 A I have answered  
12 that question now three times. I indicated that I  
13 incorporated those figures in my estimate of housing  
14 need.

15 Q And by adding a new unit of housing need  
16 for each of those families paying more than twenty-  
17 five percent of their income for other low and  
18 moderate income housing did you assume that each of  
19 those families would need a housing unit or a different  
20 housing unit to meet their housing needs?

21 A No.

22 Q If you didn't make that assumption then  
23 why did you add one unit of housing need for each  
24 single family paying more than twenty-five percent of  
25 its income for housing where that family was of low  
or moderate income?

1 A As I have indicated to you before and I will  
2 indicate to you again, I think that the housing needs  
3 that are present in the region for low and moderate  
4 income persons can be made in a variety of ways.

5 Q Do you know or do you have available to  
6 you, I'm not trying to test your memory on this, do  
7 you have available to you Harding Township's fair share  
8 allocations based upon each of the four criteria used  
9 by the DCA, that is the personal income variable, the  
10 vacant land variable, the fiscal capability variable  
11 and the employment growth variable?

12 A Not that I know of unless it's in an appendix  
13 of the housing allocation report.

14 Q In doing any of your allocations to the  
15 different towns you didn't break down their fair  
16 share allocations by each of those four variables and  
17 then average them, did you?

18 A I did not.

19 Q In your earlier deposition you indicated  
20 that you could not advise Roxbury Township as to what  
21 it should do to change its land use element of its  
22 master plan to better afford housing units or the like.  
23 Could you advise Harding Township as to how it should  
24 change the land use elements of its master plan?

25 A I have not reviewed that land use element.

1 Q Have you studied the economic feasibility  
2 of constructing least cost housing in Harding Township?

3 A No.

4 Q Is Harding Township a developing community?

5 A I have not made that assessment.

6 Q What is the relevance of a town aggregate  
7 personal income to its fair share allocation?

8 MR. BISGAIER: I think that question has  
9 been thoroughly answered in prior depositions.  
10 In any event, what do you mean by relevancy?

11 MR. PANTEL: The DCA uses personal income  
12 as one of the variables in determining fair  
13 share allocations. Why is that a meaningful  
14 variable or a valid variable to use in determin-  
15 ing a town's fair share?

16 THE WITNESS: It is discussed at some  
17 degree in one of the reports that I have  
18 submitted where I go over DCA's housing alloca-  
19 tion report and I would like to rely on that.

20 However, my recollection of that evaluation is  
21 that the relevance of that is in, as discussed  
22 in that report, the development of a variety of  
23 criteria that develops some balance among  
24 criteria that determine the need, suitability  
25 and distribution of units available to low and

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

1 moderate income persons. That one factor is  
2 usually considered a factor that contributes  
3 to the distribution.

4 Q Why is that a factor which should contri-  
5 bute to distribution, as you put it?

6 A As New Jersey DCA prepared its housing alloca-  
7 tion plan and as is normally the case in fair share  
8 plans the relative, let's say median or aggregate  
9 income for a jurisdiction is directly proportional to  
10 the allocation of low and moderate income housing need  
11 given to that jurisdiction.

12 Q If a municipality has a very high  
13 aggregate personal income with respect to the regions  
14 total personal income it would have an allocation under  
15 this methodology, would it not?

16 A Yes, that's what I just said.

17 Q Why does the fact that a town has a  
18 relatively high income mean that it needs more low  
19 cost housing?

20 A As I indicated that  
21 is a factor that's used to incorporate one criteria  
22 in a fair share plan that relates to the distribution  
of future low and moderate income housing needs.

23 Q Doesn't that analysis assume that a  
24 certain type of economic integration is a goal to be  
25 sought for itself?

1 A I don't know whether there is an assumption  
2 that that's a goal to be sought for itself. It means  
3 exactly as I have explained it in the development of  
4 a housing allocation report.

5 Q Does the fact that a community has a  
6 relatively high aggregate personal income in any way  
7 mean that it's a more suitable place to locate lower  
8 cost housing, or least cost housing?

9 A As I just indicated there are several types of  
10 criteria that are used to allocate the low and moderate  
11 income housing needs of units. Some are based on need,  
12 some are based on suitability and some are based upon  
13 what we have just been talking about in the sense of  
14 distribution.

15 Q I don't think you have been responsive  
16 to the last question I just asked.

17 MR. BISGAIER: It may not be clear as  
18 you are using it as a term of art. Are you  
19 using it in her answer sense and if so, how  
20 would you define the term suitable?

21 MR. PANTEL: Would you please read back  
22 the question?

23 (The last question was read by the  
24 Reporter.)

25 MR. PANTEL: First of all, I don't think

1 it is necessary that every single term used in  
2 a question be defined, if you insist upon a  
3 definition of the term suitable I think we are  
4 using the term suitable in that question as it  
5 relates to a fair share plan, that is does the  
6 fact that a municipality has a relatively high  
7 income in any way mean that it would be suitable  
8 or appropriate for a fair share planner to  
9 advocate a greater number of housing units for  
10 that town.

11 THE WITNESS: To be as clear as I can  
12 possibly be, the term suitability is indeed  
13 used in fair share plans. I have used it in  
14 my reports and I have been referring to it in  
15 that sense on the assumption that you have read  
16 those reports and you are using the term in the  
17 same way. And as indicated in those reports  
18 there is some criteria that deal with that  
19 notion of suitability. There are some criteria  
20 that deal with the notion of distribution. The  
21 criterion that you have just been talking about  
22 as median income is appropriate to the category  
23 of distribution and in a fair share plan it is  
24 not considered a factor in determining the  
25 suitability of a jurisdiction for low and

1 moderate income housing. Does that answer the  
2 question? If it doesn't I will do it again  
3 another way.

4 Q If a town has a relatively high personal  
5 income -- A Let me say one more  
6 thing because maybe you are not understanding all of  
7 those factors are put together, you know, they are  
8 averaged or some other method is used.

9 Q I understand that each of the criteria  
10 results in a different allocation and the four alloca-  
11 tions are averaged. If a town has a relatively high,  
12 personal income, that fact tends to increase its  
13 allocation under the DCA methodology which you adopt.  
14 Why should, why does it make sense to increase a town's  
15 allocation of least cost housing just because it has a  
16 relatively high personal income?

17 A Because that is generally an indication that  
18 housing units are not present or available to lower  
19 income housing needs.

20 Q Does it indicate that there is an unmet  
21 need for such units?

22 A Not directly. That would be assessed in another  
23 way in the development of a housing allocation.

24 Q Do you believe that there is an unmet  
25 need for least cost housing in Harding Township?

1 A Yes.

2 Q Upon what do you base that belief?

3 A It seems fairly apparent from the New Jersey  
4 DCA's housing allocation report as well as the adjust-  
5 ments that I made here.

6 Q Where does the DCA report indicate that  
7 there is an unmet need for least cost housing in  
8 Harding Township? I didn't see it in the DCA report.

9 A That's what a housing allocation report is  
10 about.

11 Q The housing allocation report engages  
12 in certain mathematical exercises and allocates housing  
13 from the eastern portions of the eight county region  
14 to the western portions of the region but I don't see  
15 in that DCA fair share report any indication that there  
16 is a real unmet need for least cost housing in Harding  
17 Township.

18 A Well, I would have  
19 to check the figures to see, number one, if there is  
20 indeed a present need which New Jersey DCA has identi-  
21 fied for Harding Township. I don't now recall whether  
22 or not that is the case. But whether or not it is,  
23 unless New Jersey DCA came up with a zero allocation  
24 for Harding Township it is my opinion that the housing  
25 allocation report does indeed identify an unmet need  
for Harding Township.

1 Q If the DCA subsequently changed its  
 2 position with respect to Harding Township's fair share  
 3 and decided that it should have its allocation deferred  
 4 until some future point in time, or should have its  
 5 allocation reduced substantially, would you accept  
 6 that? Would you accept that determination?

7 A I can't answer that in the abstract.

8 Q Do you think that the extent of activity  
 9 for any variances to construct least cost housing in  
 10 a community might be indicative of whether or not  
 11 there is a demand for least cost housing in a community?

12 A I'm sorry, could you repeat the question?

(The last question was read by the  
 Reporter.)

THE WITNESS: It could be.

16 Q Is the absence of such variance applica-  
 17 tions for least cost housing indicative of the lack  
 18 of demand for such housing in a community?

19 A Not in my opinion.

20 Q Why not?

21 A As we have discussed before there are a variety  
 22 of impediments to the construction or indeed the exer-  
 23 cise of a demand for housing for low and moderate income  
 24 persons.

25 Q If there were an actual demand for such

1 housing which was not being met, don't you think that  
 2 a developer or entrepreneur would try to construct  
 3 such housing and undertake the necessary variance  
 4 applications if any were necessary?

5 A That may or may not be. Certainly one factor  
 6 that would influence that is whether or not they  
 7 thought they had a ghost of a chance of getting that  
 8 variance.

9 Q Do you think that they would have less  
 10 of a chance in getting the variance than you would  
 11 have in filing this lawsuit?

12 MR. BISGAIER: What do you mean by the  
 13 question?

14 MR. PANTEL: She indicated that a developer  
 15 might not file an application for a variance  
 16 because there was an indication of a lack of  
 17 success to be met in that application.

18 THE WITNESS: I really don't --

19 Q Why would a developer have any less of  
 20 an opportunity for success in filing such an applica-  
 21 tion for a variance that the Public Advocate would in  
 22 filing this lawsuit?

23 MR. BISGAIER: I don't understand the  
 24 connection at all.

25 THE WITNESS: I don't really see the

1 relevance of that comparison.

2 Q Presumably in filing this lawsuit you  
3 are trying to accomplish exactly what a developer would  
4 accomplish by filing an application for a variance to  
5 construct least cost housing?

6 MR. BISGAIER: Is this a serious ques-  
7 tion? Are we going to spend a lot of time on  
8 this?

9 MR. PANTEL: We won't have to spend a  
10 lot of time if you will let the witness answer.

11 THE WITNESS: I don't have an answer, I  
12 don't see a connection.

13 Q Have you appraised the likelihood of  
14 success in filing this lawsuit?

15 A No, I have not.

16 Q What is the date of the vacant land  
17 figures used in the DCA's allocation?

18 A I don't recall.

19 Q In what report would it be included? How  
20 could I find out what the date is?

21 A I'm relatively certain it's in one of the back-  
22 ground working papers that we have referred to before  
23 on the allocation method. That's not the exact name of  
24 it, but that's what it refers to.

25 Q Did you make any attempt to update those

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

figures of vacant developable land which were used by  
the DCA? A No.

Q Do you believe that those figures are  
still valid and accurate?

A Whatever the date of them I'm relatively sure  
that activity has gone on since then.

Q Do you believe that municipalities  
development limits might have changed since the vacant  
developable land figures were calculated by the DCA?

A It's conceivable.

Q Isn't it true that a municipality's  
development limit would have changed by virtue of any  
additional construction on vacant developable land  
since the DCA calculated its figure?

A Yes, that's true. As I recall in calculating  
the developable limit myself there were very few  
municipalities in Morris County that came close to  
their development limit other than those indicated in  
the DCA allocation form.

Q If a town has more than its "fair share"  
of least cost or low and moderate income housing does  
that reduce the fair share of any other municipalities?

MR. BISGAIER: Do you mean for purposes  
of the present DCA report?

MR. PANTEL: For purposes of Mary Brooks'

1 report.

2 MR. BISGAIER: As of when would it be  
3 ascertained that they had "greater than their  
4 fair share"?

5 MR. PANTEL: Let's do it two ways. As  
6 of the date of preparation of your report if  
7 a municipality had exceeded its fair share would  
8 that reduce the fair shares of any other muni-  
9 cipality?

10 THE WITNESS: That's sort of hard to  
11 answer because it's a complicated, more compli-  
12 cated question than you are indicating. If a  
13 jurisdiction has an excess of, if a jurisdiction  
14 has a lot of low and moderate income persons  
15 living in the jurisdiction that would be fed  
16 into the housing allocation report and it would,  
17 as indeed it has been, and that goes into deter-  
18 mining what the present and prospective housing  
19 need for low and moderate income persons are, is.

20 BY MR. PANTEL:

21 Q To give you an example, if a particular  
22 town had existing housing which was more than its fair  
23 share of housing as calculated by your report, did you  
24 then reduce the fair shares of any other towns because  
25 there was an excess supply, if you would, of housing in

1 this particular town.

2 MR. BISGAIER: Are you saying that that  
3 circumstance exists or occurred in any municipi-  
4 pality?

5 MR. PANTEL: I don't know if in fact it  
6 does exist, but I am asking her if it did exist  
7 would your methodology take that into account  
8 and reduce any town's allocations?

9 THE WITNESS: If I understand your  
10 question correctly it could not occur by virtue  
11 of the way that a housing allocation report is  
12 prepared.

13 Q Why is that?

14 A Well, because as I indicated in order to develop  
15 a housing allocation report one starts out with assessing  
16 what the current and prospective need is for housing  
17 for low and moderate income persons. And so whatever  
18 housing presently existed that meets a part of that  
19 need is taken into account in the development of a  
20 housing allocation report at its outset.

21 Q You have not examined the extent of  
22 new construction of low and moderate income housing in  
23 the region since 1970 apart from subsidized housing,  
24 is that correct?

25 A That's correct.

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

Q Do you think there has been significant construction of low and moderate income housing in the region since 1970?

A I don't know, but I don't think so.

Q Why don't you think so?

A Oh, in the region?

Q Yes.

A Just general knowledge I have, I am not aware of any significant construction of low and moderate income housing.

Q Is that lack of awareness based upon any studies or review of specific documents or figures?

A No. As I indicated I didn't study that.

Q Are you a member of any political organizations?

MR. BISGAIER: You mean like the John Birch Society?

THE WITNESS: What do you mean by political organizations?

Q Do you not understand what a political organization is?

A I want to make sure I understand what you mean by a political organization.

Q A political organization for purposes of this question is any organization which is involved

1 either in lobbying or in expressing a viewpoint to the  
 2 public with a particular ideology in mind. For example,  
 3 membership in the Harding Township Civic Association  
 4 wouldn't necessarily be, but membership in a John  
 5 Birch Society or in the Republican party or any other  
 6 political party would be membership in a political  
 7 organization. A No.

8 Q I didn't hear the answer.

9 A No.

10 Q Do you have any other affiliation with  
 11 a political organization apart from being a dues paying  
 12 member?

13 MR. BISGAIER: You are including any  
 14 lobbying activity within your notion of what a  
 15 political organization is?

16 THE WITNESS: I do have relationships  
 17 with organizations that do lobby.

18 Q What organizations are those?

19 A The Working Group for Community Development  
 20 Reform.

21 Q Where are they based?

22 A In Washington, D.C. The American Civil Liberties  
 23 Union.

24 Q What is the nature of your affiliation  
 25 with the ACLU?

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

1 A I contribute to them financially.

2 Q But you are not a member? Are you a

3 member? A Does that make one

4 a member?

5 Q I don't know.

6 MR. BISGAIER: The record will reflect  
7 that she doesn't either.

8 THE WITNESS: That she doesn't what?

9 MR. BISGAIER: Doesn't know either if it  
10 makes you a member or not.

11 Q Do you pay dues to the Working Group  
12 for Community Development Reform?

13 A No.

14 Q What is the nature of your affiliation  
15 with that group? A I work with them,  
16 if anything provide in kind services.

17 Q And that group is in Washington, D.C.?

18 A Yes.

19 Q Apart from those two groups do you have  
20 any other affiliations with any other such political groups as

21 I have defined the term?

22 A There are other organizations that I contribute  
23 to. I don't know if that's what you count as having  
24 an affiliation with.

25 Q What groups are they?

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

A National Association for the Advancement of Colored People.

Q You make financial contributions to them?

A I do.

Q Do you know if you are a member?

A I don't.

Q Any other group?

A Smithsonian Institute. Do they lobby?

Q Apart from the Smithsonian Institute?

A I do make other contributions but obviously nothing that comes to mind, it is nothing that would raise your eyebrows, I assure you.

MR. BISGAIER: Before we go on, I was under the impression in speaking to Mrs. Carrol that you had fifteen minutes of questions to ask and that Miss Harrison had a half hour of questions to ask.

MR. PANTEL: I am just about done.

Q In your September 10, 1979, report on demographics, you indicate that prices of Morris County homes increased sharply from 1970 to 1978. If indeed housing prices have increased sharply over this period what does that indicate to you about the prospects of constructing least cost housing affordable to low and moderate income families?

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

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

MR. BISGAIER: Under what conditions?

MR. PANTEL: Under unsubsidized conditions.

MR. BISGAIER: Given the full plenary of the recommendations that are contained in her report as to the zoning and other things that municipalities can be doing?

MR. PANTEL: In the context of conditions as they in fact exist.

THE WITNESS: I'm not exactly sure what you mean by subsidy but it certainly means that we have to work harder at it to produce the housing.

Q If housing prices have increased sharply from 1970 to 1977, does that indicate to you that there would have to be more reliance upon subsidies to construct least cost, or rather low and moderate income housing?

MR. BISGAIER: I think that to some extent her report covers this and I think it has indicated that the lack of subsidy money would indicate and also the increased costs would indicate a need for aggressive municipal action to accomplish construction of housing for low and moderate cost housing. I don't know whether what you are asking is beyond what's in her

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

1 report, of course obviously the rising costs of  
 2 conventional housing built under existing zoning  
 3 provisions would, if anything, confirm that  
 4 position that more aggressive municipal action  
 5 would be necessary.

6 I thought that was essentially laid out  
 7 in her report.

8 MR. PANTEL: Do you adopt Counsel's  
 9 statement as your answer to that question?

10 THE WITNESS: I think he did a very nice  
 11 job.

12 Q Do you adopt his answer?

13 A Yes.

14 Q Have you studied the relative increases  
 15 in housing prices for different types of housing?

16 A You mean in Morris County?

17 Q In Morris County or in any other area?

18 A I have looked at reports and information as  
 19 the course of business that I'm about, I have not  
 20 studied it in Morris County.

21 Q Have you studied it in any other area?

22 MR. BISGAIER: Do you want her to  
 23 amplify what she meant that she looks at in  
 24 the course of business that she is about?

25 THE WITNESS: The organization I work

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

1 for is concerned about the cost of housing so  
2 I read reports and study material on that infor-  
3 mation.

4 Q But you have not studied the relative  
5 increases in different housing types in Morris County  
6 or in this region, have you?

7 A That's true.

8 Q In that September 10, 1979 report in  
9 your quintile analysis you indicate that the rent  
10 affordable to low and moderate income families, that  
11 is families within the first quintile is a monthly  
12 rent of \$133. Do you know if this is economically  
13 possible to build an apartment and rent it for \$133  
14 per month without any subsidies?

15 A In Morris County?

16 Q In Morris County or in any of the  
17 municipalities sued in this lawsuit?

18 A No, I don't.

19 Q You don't know?

20 A I don't know.

21 Q Are the persons included in this quintile  
22 analysis those who might be receiving unemployment  
23 compensation, welfare payments or Social Security  
24 payments? A I believe so. I'm

25 not sure.

1 Q Is it your opinion that people receiving  
2 these government transfer payments should be able to  
3 afford to buy a new housing unit or rent a new housing  
4 unit?

5 MR. BISGAIER: What do you mean by  
6 should be able to?

7 MR. PANTEL: Is it your opinion that  
8 people receiving these government transfer pay-  
9 ments of unemployment compensation, welfare and  
10 Social Security as their source of income should  
11 be able to afford to buy new housing or rent  
12 new housing that is provided by an unsubsidized  
13 marketplace?

14 MR. BISGAIER: Again what do you mean by  
15 should be able to? I just object to the form  
16 of the question in that regard. If she wants  
17 to answer it or if you want to clarify it for  
18 her.

19 Q By should be able to I mean should a  
20 this share planner or any other type of planner try to  
21 make in planning to afford the opportunity for the  
22 free marketplace to provide housing to people in these  
23 income categories?

24 A This may not answer it sufficiently, those  
25 persons where they have housing needs, those needs need

1 to be met, I'm not particular about how the housing  
 2 needs are met. I don't think the opportunity for a  
 3 new housing unit should be denied them.

4 Q Can it be met in the free marketplace?

5 A Without subsidy?

6 Q Without subsidy.

7 A I don't know. It seems unlikely.

8 Q At page 50 of your April, 1979 demographic  
 9 report you indicated that Harding Township has 325  
 10 covered jobs in 1977. Do you have any reason to  
 11 believe that the housing supply within Harding Town-  
 12 ship was inadequate for purposes of housing workers  
 13 holding these jobs?

14 A I don't know.

15 Q Do you believe that housing --

16 A Excuse me for just a second.

17 Q Do you believe that housing for all  
 18 income ranges can be provided without subsidy?

19 A I think it's unlikely.

20 Q At pages 11 and 12, particularly page  
 21 of your April, 1979 report on demographics, you  
 22 refer to figures on the racial makeup of Morris County.  
 23 You cite certain towns which have proportions of non-  
 24 white population above the county wide average and  
 25 you indicate where minority populations are concentrated

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

1 in Morris County. What is the relevance of this  
2 discussion of racial composition to the faire share  
3 **OK** planning exercise in which you engaged?

4 **A** The data show usually within metropolitan areas  
5 and for the nation as a whole that minority classifi-  
6 cations are disproportionately largely represented  
7 in the lower income breaks, and in the provision of  
8 housing for lower income persons, given the fairly  
9 common knowledge that discrimination exists in the  
10 housing market it seems to me important that any effort  
11 to provide low and moderate income housing takes into  
12 account the need to make sure that there is adequate  
13 opportunity for minorities to participate in the  
14 availability of that housing.

15 Q What is the relevance of the fact that  
16 a particular town might have a relatively high concen-  
17 tration of minority persons while other towns have less  
18 or significantly less minority persons living in the  
19 town? What is the relevance of that fact to any fair  
20 share planning analysis?

21 **A** I suppose none other than what I have just  
22 indicated.

23 Q Is it fair to say that the only relevance  
24 is that, is that you believe there is some correlation  
25 between? **A** Well, there is a

1 correlation. Well, there is a correlation in that  
2 there is a greater proportion of minority persons in  
3 low income categories than is true for non-minority.

4 Q But if you have income figures on the  
5 different towns then wouldn't that be a more perfect  
6 variable to look at rather than looking at racial  
7 figures if the only reason you look at the racial  
8 figures is because of the relationship to income?

9 A I don't know what you mean by more perfect,  
10 the income variable is indeed the income variable  
11 that's used in the preparation of the housing alloca-  
12 tion report, not the proportion of minorities. I as  
13 a planner think it's an important variable to look at  
14 and that's why I included it.

15 Q Apart from any relationships between  
16 race and income is there any importance to looking at  
17 racial figures? You indicated as a planner that it  
18 was very important to look at?

19 A I think in the implementation of a housing  
20 allocation report it is important to take every step  
21 possible to insure that minorities are not discriminated  
22 against in the provision of housing.

23 Q You have also stated that it's fairly  
24 common knowledge or a general knowledge that there is  
25 discrimination in the housing market. Do you believe

1 that there is any type of racial discrimination in the  
2 housing market in Morris County or in any of the  
3 towns which have been sued in this lawsuit?

4 A Yes.

5 Q Upon what is that opinion based?

6 A My general knowledge about the housing market.

7 Q Could you please be more specific?

8 A There is evidence indeed even for the tri-state  
9 region that discrimination exists in the housing  
10 market. A report very recently was released from the  
11 Regional Planning Association in a report funded by  
12 the Department of Housing and Urban Development that  
13 indicates discrimination exists widely in the housing  
14 market in this region and the distribution of minorities  
15 throughout the region I think is at least one factor  
16 that one must look at in assessing whether or not  
17 discrimination occurs.

18 Q Is one of the purposes of your study  
19 to eliminate such discrimination?

20 A What study?

21 Q Of your fair share allocation report.

22 A Is the purposes of that allocation, is one of  
23 the purposes of this allocation to remedy this racial  
24 discrimination to which you refer?

25 MR. BISGAIER: The purpose of the study

1 is to respond to a request by myself to review  
2 specific reports. She already has testified  
3 that she believes that it is important in the  
4 implementation of a housing allocation plan to  
5 attempt to account for racial discrimination  
6 and segregation. I don't see that the question  
7 hasn't already been answered.

8 Q Do you think that any such racial, that  
9 the fact that any such racial discrimination exists  
10 adds to the validity or importance of your fair share  
11 planning for this region?

12 A Could you repeat the question?

13 (The last question was read by the  
14 Reporter.)

15 THE WITNESS: I think fair share planning  
16 is valid in and of itself whether racial  
17 discrimination existed. However, I think the  
18 existence of discrimination in the housing  
19 market adds to the importance of the development  
20 and implementation of housing allocations.

21 Q Can you cite any specific study documenting  
22 racial discrimination in the region?

23 A I just did.

24 Q What study was that?

25 A The Regional Planning Association recently, or

1 not so recently, released a report on, I don't know  
 2 the name of it, housing segregation in the region or  
 3 some such title.

4 Q What was the region?

5 A Probably the Regional Planning Association  
 6 region.

7 Q Where is the Regional Planning Associa-  
 8 tion group? A In New York City.

9 MR. PANTEL: I have no further questions.

10 MR. BISGAIER: Just before you leave,  
 11 for the purposes of the record in terms of  
 12 allocating the cost of these depositions, since  
 13 this is not a maxi trial what we intend to do  
 14 is just have her draw up her bill as she did for  
 15 the maxi trial depositions and allocate it on  
 16 a percentage basis giving the amount of time  
 17 that each person takes for a deposition.

18 MR. PANTEL: In other words, do it on  
 19 the basis of pages?

20 MR. BISGAIER: Do it on the basis of  
 21 percentages.

22 MR. PANTEL: In other words, we have to  
 23 keep track of how much time was just spent and  
 24 how much time will be spent by each person  
 25 asking questions?

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

DGK

MR. BISGAIER: Right.

MR. PANTEL: Should we put a statement in the record then as to how much time I just took.

MR. BISGAIER: Yes, you started at 10:57 and you ended at 11:50.

THE WITNESS: Who pays for the time I sat around?

MR. BISGAIER: That will be how we calculate the percentage of time. The act of billing will be as its been done as was agreed upon by Counsel for the common defense which is basically Miss Brooks' time door-to-door with the exception of her lunch, that was the quid pro quo for not having this deposition taken at her office.

MR. SCANGARELLA: That's acceptable.

1 M A R Y E. B R O O K S, having been previously  
2 sworn, is recalled and testified as follows:

3 CROSS EXAMINATION BY MRS. HARRISON:

4 Q I am Roslyn Harrison from McCarter and  
5 English representing Chester Township.

6 Miss Brooks, the same rules that have applied  
7 in all your previous depositions apply to this deposi-  
8 tion as well. Do you have any questions about them?  
9 Do you understand them?

10 A Yes, I do.

11 Q Miss Brooks, you have advised us that  
12 you have education in city and regional planning.  
13 Can you describe the kinds of considerations that you  
14 were trained to make in devising plans based on your  
15 training?

16 MR. BISGAIER: Fair share plans specifi-  
17 cally?

18 MRS. HARRISON: Any kind of planning,  
19 planning in general.

20 THE WITNESS: As I'm sure I have indicated  
21 in prior depositions I have a master's in city  
22 and regional planning.

23 Q Excuse me, my question is not what your  
24 training is, you have responded to that.

25 A I am getting ready to answer your question.

1 Q All right.

2 A And in the course of receiving that degree I  
3 went through and was instructed in a variety of areas  
4 that relate to the development of comprehensive plans  
5 and an evaluation of the components that a community  
6 must take into account in its own future development,  
7 such as infrastructure, regional facilities such as  
8 shopping centers, airports, highways, subdivision  
9 design, housing, the location and determination of the  
10 amount of parks and recreational areas and schools and  
11 other community facilities. Is that sufficient, or  
12 do you want me to go on?

13 Q I am asking for this kind of listing,  
14 and if there are any other factors I would like you  
15 to list them.

16 MR. BISGAIER: I didn't object to the  
17 form of the question because I thought you would  
18 accept as broad an answer as the question was  
19 broad and I think it's difficult with somebody  
20 with several years of expertise in the field  
21 to pinpoint and specify in detail every single  
22 consideration that they may or may not use in  
23 evaluating a planning process.

24 MRS. HARRISON: I think she is doing  
25 very fine and I would just like her to continue

1 and list any others that you feel are considera-  
2 tions that a planner must make in doing the  
3 planning. It's really a request for a defini-  
4 tion of a planner.

5 THE WITNESS: That was not the question  
6 you asked me.

7 Q The question was what you were trained  
8 to consider in preparing comprehensive plans.

9 MR. BISGAIER: You are limiting your  
10 question to comprehensive plans as opposed to  
11 plans in general?

12 MRS. HARRISON: I'm not sure that there  
13 is really a difference. I am then going to get  
14 into fair share planning as she would distinguish  
15 the kinds of considerations that take place  
16 there, but we are talking about planning in  
17 general as exemplified in the process of  
18 developing a comprehensive plan for a governmental  
19 unit. And thus far we have got a number of  
20 things that you said.

21 And my question is are there any other  
22 considerations?

23 THE WITNESS: In addition to that I was  
24 trained in the socio-economic factors, popula-  
25 tion trends, and other, for lack of a better

1 word, socio-economic indicators such as  
2 employment opportunities, development patterns,  
3 the mix of residential units.

4 Q What do you mean mix, cost difference  
5 and types of different development units?

6 A Both. And training on the kinds of topographic  
7 and environmental and other such "geographic" considera-  
8 tions that should be made. That's all I recall but  
9 I'm sure I have offended my professor.

10 Q Would you define a planner as someone  
11 who in the process of developing land use projections  
12 considers all the factors that you have just listed  
13 that you were trained to consider?

14 MR. BISGAIER: When you say land use  
15 projections, you mean determination as to what  
16 the appropriate use of land is?

17 MRS. HARRISON: Yes.

18 THE WITNESS: Would I define a planner  
19 that way?

20 Q Yes.

21 A No.

22 Q Would you give your definition of a  
23 planner?

24 A I don't really have  
25 a definition of a planner.

25 Q You have referred to yourself as a

1 planner a number of times. And I wonder the basis on  
2 which you categorize yourself that way, why you  
3 consider yourself a planner if you do, if you don't --  
4 A I do consider myself a planner, I have a degree  
5 in city and regional planning and I engage in planning  
6 activity. I think that's sufficient for my calling  
7 myself a planner.

8 Q Which planning activities, what do you  
9 mean? A Any number of activities  
10 such as research, consulting activities.

11 Q With respect to what, just research in  
12 general?

13 MR. BISGAIER: We spent an entire day's  
14 deposition where I think Mr. Sirota went through  
15 excruciating detail with respect to that.

16 MRS. HARRISON: I read it.

17 MR. BISGAIER: And she is now saying  
18 those are the planning activities that she does  
19 which she believes indicates that she is a  
20 planner.

21 Q You are saying that the fact that you  
22 do research in what sort of things makes you a planner?  
23 I think research in general, I may do legal research  
24 that doesn't make me a planner, scientific research  
25 doesn't make me a planner.

1 A I think it's fairly obvious that I do research  
2 in planning related items or planning items.

3 Q By planning items, you mean what, land  
4 use, what do you mean by planning items?

5 A I have done research in a variety of areas,  
6 land use, zoning, housing, the use of Federal funds  
7 for community development, population and other kinds  
8 of forecasts that are necessary for planning. Those  
9 are among the types of items that I think are planning  
10 items.

11 Q Okay. You have listed the areas of  
12 inquiry that you said you were trained to consider in  
13 doing comprehensive plans. In doing a fair share plan  
14 as a planner what areas of inquiry do you feel of that  
15 list you gave are relevant to that kind of plan?  
16 Are there any that you feel that are not relevant,  
17 that might be the easiest way to answer the question.

18 A I would prefer the first. It's going to be  
19 difficult to answer in a very short way. Probably the  
20 best answer or the best comprehensive answer I can  
21 give is contained primarily in the first report that  
22 I submitted which goes over in some detail the kinds  
23 of considerations that are made in the development of  
24 a housing allocation plan. As I think must be obvious  
25 from that report involved in the development of a

1 housing allocation plan is an understanding of the  
2 development patterns within the area, of the housing  
3 availability and demand for housing in an area, the  
4 population and socio-economic characteristics of an  
5 area. I think that's sufficient.

6 Q So that the list, the four things that  
7 you have identified are the only factors you feel are  
8 relevant to the planning process in designing a fair  
9 share housing allocation, is that right?

10 MR. BISGAIER: Before she answers that  
11 question, could you read back her answer to  
12 the last question?

13 (The last answer was read by the  
14 Reporter.)

15 MR. BISGAIER: I guess what my objection  
16 is is your characterization of her answer. If  
17 that was a characterization of her answer or  
18 if it was a new question.

19 MRS. HARRISON: I believe the question  
20 was to list of the planning factors she pre-  
21 viously mentioned those that she felt were  
22 relevant for designing a fair share plan. She  
23 listed four and I asked if that's all or if there  
24 were others. She also said there were considera-  
25 tions in her first report that she felt were

52

... ..

53

... ..

54

... ..

**MEMORANDUM**

55

... ..

56

... ..

57

... ..

58

... ..

59

... ..

60

... ..

61

... ..

62

... ..

63

... ..

64

... ..

65

... ..

66

... ..

67

... ..

68

... ..

69

... ..

70

... ..

71

... ..

72

... ..

73

... ..

74

... ..

75

... ..

... ..

REPRODUCED FROM THE NATIONAL ARCHIVES

1 of housing demand for all income groups generally  
2 anywhere? Have you engaged in that analysis?

3 MR. BISGAIER: Maybe you could be more  
4 precise in what you mean by factor of housing  
5 demand? We have submitted expert reports which  
6 cover such matters as employment, growth popu-  
7 lation projections, household size projections,  
8 housing unit projections, low and moderate  
9 income percentages of various populations,  
10 racial indications of geographic locations of  
11 racial minorities.

12 Your question read most broadly would  
13 encompass information that's already been given  
14 by way of expert reports here. I'm not sure  
15 if you mean those things or if you mean a  
16 specific market demand study.

17 MRS. HARRISON: Okay, I am really asking  
18 the witness what her, she mentioned demand as  
19 one factor that a planner must analyze in  
20 coming up with a fair share study. And I am  
21 asking has she studied the factors involved in  
22 this thing called demand, as she uses it, and  
23 her response was no.

24 MR. BISGAIER: I think you better ask  
25 that question directly the way you just phrased

1 it.

2 THE WITNESS: You keep changing the way  
3 you characterize the question you ask so I'm  
4 not sure you asked the question you think you  
5 asked.

6 MR. BISGAIER: If you are asking whether  
7 the question of demand has an input in her  
8 housing allocation study --

9 MRS. HARRISON: That's the next question.  
10 My first question is did she consider or study  
11 at all the factor of demand for housing in  
12 Morris County, that was the first question, and  
13 the response on the record is no.

14 THE WITNESS: You asked me if I had  
15 studied housing demand for all incomes in Morris  
16 County and I said no. You can read it back if  
17 you don't believe me.

18 MR. BISGAIER: The question that you are  
19 looking for an answer to is to whether Miss  
20 Brooks studied housing demand in Morris County  
21 vis-a-vis a fair share analysis, maybe she can  
22 respond to that. I just don't want us to get  
23 hung up here.

24 Q Could you identify the factors that you  
25 examined in concluding that there exists a housing

1 demand? When you use the word housing demand as a  
2 quote, unquote planner and one of the factors that  
3 you fit into your equation when you do --

4 A If you will let me answer your question I  
5 think maybe we can clear it up. You mean in my prepara-  
6 tion in the adjustment to the housing plan, number one,  
7 and do you mean in specific reference to Morris County,  
8 number two?

9 Q Okay, let's use first number one, if  
10 you want to. I asked a more general question and your  
11 response was no. In preparation of the fair share  
12 plan for Morris County did you consider the issue of  
13 housing demand?

14 A If you will go back and look at the very first  
15 report I prepared and submitted in this matter there  
16 is a discussion in that report of the fact that low  
17 and moderate income persons do not characteristically  
18 exercise what is commonly referred to as a demand for  
19 housing in a housing market. That's primarily because  
20 their income does not generally permit them to compete  
21 for the current sales prices of homes that are avail-  
22 able in broad sections of that region. The housing  
23 allocation plan attempts to identify what that demand  
24 would be, given the opportunity for low and moderate  
25 income persons to exercise such a demand. Does that

1 answer your question?

2 Q We are getting there. You are then  
3 characterizing the housing allocation figures that you  
4 have in your reports as figures that would satisfy  
5 a housing demand if lower income individuals were free  
6 to compete in the housing market, is that right?

7 A I think it is an approximation of that, yes.

8 Q What leads you to the conclusion that  
9 these numbers would represent the demand if housing  
10 were freely available?

11 A I would not indicate that it would necessarily  
12 represent demand on a one-to-one comparison. I said  
13 approximation. What in fact happens in a housing  
14 allocation plan, as I am sure you are by now aware,  
15 is that in the allocation of the need that has been  
16 identified a variety of factors are taken into account.  
17 And in the use of those factors the assumption of  
18 housing allocation report is that the implementation  
19 of the housing allocation report would result in a  
20 distribution of housing based on the kinds of considera-  
21 tions that determine the location of housing absent  
22 factors that discriminate against the location of that  
23 housing.

24 If you don't understand that, ask me again.

25 Q Let's try to work through it. There are

1 four factors essentially involved in your housing  
2 allocation analysis based on which you allocate housing.  
3 Of those four factors, which one or more than one  
4 constitute demand considerations? Is availability a  
5 demand factor, is income a demand factor, is increasing  
6 employment a demand factor, which of these variables,  
7 which of these four factors which constitute your  
8 variables is a demand factor?

9 A As we have already talked about in the  
10 description of the factors that are used in the allo-  
11 cation of a fair share plan, those are divided up or  
12 can be categorized or characterized as suitability,  
13 need and distribution. Generally those factors that  
14 are considered to indicate the need for housing or  
15 the distribution of housing reflect to some extent the  
16 demand that exists for that housing as well.

17 Q Okay. Of the four factors in your  
18 equation, you are saying that those which represent  
19 need and those which represent distribution are part  
20 of the, what you call the demand factor. Can you  
21 specifically identify which of those four variables  
22 in your equation deal with suitability first?

23 A The land availability.

24 Q Which deals with the need?

25 A The second one, and I have forgotten how to

1 categorize it, employment growth.

2 Q Is there any other factor that deals

3 with need?

A Municipal fiscal

4 capability.

5 Q What about distribution?

6 A Personal income.

7 Q Can you explain how municipal fiscal

8 capability relates to need and to demand since you

9 identified these as one in the same?

10 A I did not identify them as one in the same.

11 But in housing allocation reports the fiscal capability

12 of a jurisdiction is, to some extent, related to the

13 ability of that jurisdiction to provide services and

14 facilities for additional populations.

15 Q Are you saying that the fact that a

16 municipality is able to provide facilities means that

17 there is a housing demand?

18 A That factor is related, as I indicated, to the

19 selection that a household might make in choosing a

20 jurisdiction where they would wish to live.

21 Q And can you explain how it's related to

22 their choice of a jurisdiction, why would they choose

23 a jurisdiction that has, are you meaning by this if

24 there is more municipal fiscal capability that there

25 might be a greater tendency for people to select housing

OK

1 in that area? Does that relationship exist?

2 A If I understand your question correctly, yes,  
3 is a housing allocation.

4 Q So that demand would increase as  
5 municipal fiscal capability increased, is that right?

6 A I said there is a relationship.

7 Q Is the relationship one to one as one  
8 goes up the other one goes up, or are you suggesting  
9 that as one goes down the other one goes up, what is  
10 the relationship?

11 A As I indicated it is probably not one to one  
12 but that the relationship exists and that the housing  
13 allocation report is attempting to get at that rela-  
14 tionship.

15 Q As I understand what you do with your  
16 formula, you evaluate the strength of the municipal  
17 fiscal capability and assign more units to a munici-  
18 pality that has more municipal capability, is that  
19 right?

A That's correct.

20 Q Now you are saying that the housing  
21 demand isn't necessarily related one to one to that  
22 existing municipality's fiscal capability, is that  
23 right?

A I don't know whether

24 it is.

25 Q You don't know whether it is, but your

1 formula does provide more housing because there is  
2 more municipal capability, is that right?

3 A The New Jersey DCA, yes, that's correct.

4 Q Even though it may have nothing to do  
5 whatsoever, or even though the relationship may not  
6 be one to one of demand being greater if municipal  
7 capability is greater?

8 A That's correct.

9 Q Similarly with personal income which  
10 you have identified as a distribution factor, can  
11 you explain what you mean by that?

12 A I already explained it this morning.

13 Q Is it correct to characterize your  
14 explanation as stating that as personal income is  
15 greater you believe that the obligation to provide  
16 more low and moderate income housing should increase?

17 A That's certainly not the way I described it  
18 this morning as I recall. It is as I indicated this  
19 morning used to identify the relative wealth of juris-  
20 dictions and therefore the relative proportion of low  
21 and moderate income households that reside in that  
22 jurisdiction.

23 Q Does this then become, rather than a  
24 distribution factor, a need factor?

25 A I have already indicated to you it's a distribution

1 factor.

2 Q But your description of the reason that  
3 it's in the equation is related to the issue of need,  
4 is it not? You are saying that personal income shows  
5 that there are, if it's higher, that there would tend  
6 to be a lower percentage of low and moderate income  
7 people in that municipality, is that right?

8 A That is what I just said.

9 Q Have you not as part of your equation  
10 already identified the number of units that are  
11 substandard within a municipality that must be, for  
12 which additional units must be provided to satisfy  
13 that obligation, is that not part of your equation?

14 A You are using words funny and I'm not sure I  
15 understand your question.

16 MR. BISGAIER: The report does speak for  
17 itself as to how that is done and I think it's  
18 different from how you characterized it so  
19 maybe we should let the report speak for itself  
20 in that regard or --

21 MRS. HARRISON: You are saying that  
22 there is no housing obligation identified for  
23 the number of substandard units in a municipality?  
24 Isn't that present need?

25 MR. BISGAIER: That goes into the

1 accumulation or the calculation or regional  
2 present need, there is no necessary correlation  
3 between local substandard housing and the local  
4 fair share of regional present need.

5 Q You have increased the amount of housing  
6 allocation for Morris County over the numbers in the  
7 DCA report, that is right, you accept that, right?  
8 Have you calculated the total population impact on  
9 Morris County of this additional obligation that you  
10 have placed on the town?

11 A How do you mean population impact?

12 Q As I understand your report you figure  
13 approximately three persons per housing unit and  
14 therefore you can take the number of housing units  
15 that you assign, multiply it by three and you get a  
16 population projection built into the report, is that  
17 right? A That would be correct.

18 Q Okay. You have substantially increased  
19 the size of the housing allocation and therefore  
20 population projection for low and moderate income for  
21 Morris County over that of the original DCA report,  
22 is that right?

23 A It has been increased, yes.

24 Q Have you calculated if there is that  
25 increase of low and moderate income population what

1 the total increased population would be in Morris  
2 County as a result of this increase?

3 A I may well have done that. I don't recall.  
4 As you indicate, it's a simple calculation.

5 Q Is the intent of your report by increasing  
6 the amount of low and moderate income population, is  
7 there any change that you are projecting in the  
8 demographic characteristics in the population? Would  
9 this result in an increased percentage of low and  
10 moderate income population in Morris County, thereby  
11 not necessarily increasing total population by the  
12 current factor which is now twenty-five percent? In  
13 other words, would your report anticipate that there  
14 would be four times your number of population total  
15 projection for the County at the end of your period of  
16 time?

17 MR. BISGAIER: Off the record.

18 (There is a discussion had off the  
19 record.)

20  
21 THE WITNESS: I certainly have not done  
22 the kind of evaluation that your last question  
23 seems to indicate.

24 Q So your response is that you have not  
25 calculated the total population impact upon Morris

1 County of adding to the housing allocation as you  
2 have done in your report?

3 A That's correct.

4 Q Have you projected any change in demo-  
5 graphic characteristics of the County that would occur  
6 as a result of your additional housing allocation  
7 obligation of low and moderate income housing?

8 A No, I have not.

9 Q I show you the Tri-State Planning  
10 Commission Regional Development Guide. In the process  
11 of computing your housing allocation obligations, did  
12 you review this document?

13 MR. BISGAIER: Are you asking if she  
14 used it?

15 MRS. HARRISON: I am asking her if she  
16 reviewed it. My next question is --

17 MR. BISGAIER: You are asking if she  
18 reviewed it in the process of doing the allo-  
19 cation report?

20 MRS. HARRISON: That's right.

21 MR. BISGAIER: In other words, was it  
22 part of that process?

23 MRS. HARRISON: That's correct.

24 THE WITNESS: I don't believe so.

25 Q Can you please respond yes or no, did you

1 or did you not or do you not remember?

2 A It depends on whether you want an honest answer.

3 Q I want an honest answer.

4 A I don't recall. I certainly don't think so,  
5 let me answer it that way.

6 Q In the housing allocation calculations  
7 included in your reports for Morris County, did you  
8 factor in any of the consideration for housing distri-  
9 bution that exists in this regional development guide?

10 A No, I did not.

11 MR. BISGAIER: Before you answer that  
12 I am assuming before you go any further with  
13 this that that answer is based on the fact that  
14 you don't remember or think that you used that.  
15 There may be factors in there that you also  
16 used. Do you understand the difference?

17 THE WITNESS: Oh, that's definitely true.

18 MR. BISGAIER: In order for her to  
19 properly answer that question she would have to  
20 review that document to see whether there were  
21 considerations used by Tri-State in its regional  
22 guide which are similar or identically used by  
23 the Department of Community Affairs in its  
24 housing allocation.

25 Q Okay. But you have no recollection of

1 specifically using the considerations in the Tri-State  
2 Regional Development Guide in the development of your  
3 housing allocation report, is that right?

4 A That's correct.

5 Q I show you another document, the Tri-  
6 State Regional Planning Commission of People, Dwellings  
7 and Neighborhoods, do you recall whether you reviewed  
8 this document in the process of preparing your housing  
9 allocation report?

10 A I believe I did.

11 Q Did the consideration, and in fact the  
12 specific housing allocation figures in this report  
13 affect in any way your housing allocation figures in  
14 your final report?

15 A No.

16 Q So no adjustment was made in the calcula-  
17 tions and numbers that you came up with for the numbers  
18 and considerations in this report, is that right?

19 A That's correct.

20 **CK** Q I show you another document, the New  
21 Jersey State Development Guide Plan-Preliminary Draft.  
22 Did you review the State Development Guide Plan in  
23 the process of preparing your housing allocation  
24 figures?

25 MR. BISGAIER: The State Department of

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

1 Community Affairs did.

2 THE WITNESS: That's true.

3 MR. BISGAIER: Go ahead. You are getting  
4 very direct answers to very specific questions  
5 and I'm a little concerned that -- go ahead,  
6 I'm sorry for interjecting.

7 THE WITNESS: I don't believe so.

8 Q When you say I don't believe so that  
9 really is not terribly responsive to the question.

10 A You must recognize I did the work over a year  
11 ago and the reports that I used, and whatever, are  
12 discussed in earlier depositions. In addition to that  
13 it is, it must be obvious to you that the New Jersey  
14 DCA looked at these reports and made certain considera-  
15 tions based on those reports in its own New Jersey DCA  
16 allocation report. I am aware of that. And I know  
17 that to some extent I looked at the reports that New  
18 Jersey DCA looked at because I can't recall the speci-  
19 fics of that evaluation is the reason I am answering  
20 the questions the way I am answering them.

21 Q Is it true that you relied on the DCA's  
22 review of other documents in your decision to use the  
23 DCA report, did you yourself personally review other  
24 documents and compare them with the DCA housing alloca-  
25 tion report figures or did you personally review them

1 or did you rely on the DCA's housing allocation report  
2 in itself and assume that they had done this review?

3 MR. BISGAIER: The problem I have with  
4 the question and I think the precise answer  
5 that's going to be given is that these are all  
6 documents which in the course of Miss Brooks'  
7 experience she has an understanding of and  
8 reviewed and for her to know quite specifically,  
9 you know, within the total knowledge that she  
10 has of Tri-State and the work that she has done  
11 with Tri-State, to what extent that knowledge  
12 played a part in accepting DCA's evaluation is  
13 going to be difficult.

14 If you are asking precisely what she is  
15 relying on I think it's the full body of know-  
16 ledge and intellect in this field which includes  
17 an understanding of Tri-State's work product.

18 MRS. HARRISON: You are testifying, I'm  
19 not sure the witness would say this. She was  
20 asked specifically whether in developing her  
21 reports she reviewed those documents. As I  
22 understand her response it is that she did not  
23 individually review that, she believed that the  
24 DCA did so and that there was --

25 THE WITNESS: Let me correct my answer.

1                   What I told you is that I did not recall whether  
2                   I reviewed them precisely. You asked me a  
3                   very direct question.

4                   In the adjustment that I made to the  
5                   New Jersey Housing Allocation Report I reviewed  
6                   those reports, I have reviewed them as a part  
7                   of the preparation for this testimony then, I  
8                   have reviewed them outside of this testimony  
9                   and I am familiar with them.

10                  Now --

11                  Q           Let's try the next one. Did considera-  
12                  tions reflected in the State Development Guide Plan  
13                  in any way influence the revisions to the DCA Housing  
14                  Allocation Report which you made in your report?

15                  A           No.

16                  Q           I show you the Summary Draft Water  
17                  Quality Management Plan for the Upper Raritan dated  
18                  June, 1979. Did you review this document in the  
19                  process of preparing your housing allocation for Morris  
20                  County?

21                  A           My answer on the  
22                  previous reports applies to this one.

23                  Q           That there was just general, you have  
24                  just general knowledge of this report, is that right?

25                  A           No, I have reviewed it specifically.

                  Q           Okay.

1 A I have reviewed it specifically in preparation  
2 for this testimony and I have reviewed it in other  
3 instances.

4 Q Did the contents of this report in any  
5 way influence the specific figures that you have  
6 included in your housing allocation report?

7 A No.

8 Q I show you the Summary Draft Water  
9 Quality Management Plan for the Northeast Area dated  
10 April, 1979, did you reievew this report in the  
11 process of preparing your housing allocation report,  
12 any fair housing allocation report?

13 A I'm having a little bit of difficulty with your  
14 question in that I did review the Draft Water Quality  
15 Management Plan for the Northeast Area, it doesn't  
16 look like what you just held up.

17 Q There is a summary document --

18 MR. BISGAIER: Your question is actually  
19 referring to the study itself and not necessarily  
20 the summary document.

21 THE WITNESS: I did look at the entire  
22 report, yes.

23 Q Did the specific information in that  
24 entire report in any way affect the calculations that  
25 you have presented for your housing allocation report?

1 A No.

2 Q I show you the President's Urban and  
3 Regional Policy Group Report titled a New Partnership  
4 to Conserve America's Communities dated March, 1978.  
5 Did you review this report in the process of preparing  
6 your housing allocation anslysis?

7 A No.

8 Q Did any considerations in this -- you  
9 said you did not review the report, therefore did any  
10 considerations in this report affect the specific  
11 figures you included in your housing allocation study?

12 A It's wrong for me to answer, isn't it? I don't  
13 know.

14 MR. BISGAIER: She would have to read  
15 the report.

16 MRS. HARRISON: Okay.

17 Q I show you another document, the Sixth  
18 Annual Message delivered to the New Jersey Legislature,  
19 January 8th, 1980, by Governor Byrne. Have you reviewed  
20 this document?

21 A No.

22 Q Had you reviewed prior annual messages  
23 of Governor Byrne in the process of preparing your  
24 housing allocation report?

25 A I don't believe so.

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

Q Is there anything that you need to refresh your recollection on that, whether or not you

did? A May I ask a question?

(There is a discussion had off the record.)

THE WITNESS: No annual messages, no.

Q I show you the Morris County Master Plan Future Land Use Element dated April, 1975. In the process of preparing your housing allocation report did you review the Morris County Master Plan?

A I believe so. I'm having trouble because the reports you hold up don't look like the reports that I have reviewed.

Q I think this is the April, 1975 Master Plan is the current one and that is the one that you would have reviewed?

A Yes.

Q Did any consideration within this Master Plan affect your housing allocation figures in your reports? A No.

Q You have testified in the earlier part of this deposition that needs for housing for low and moderate income units might not necessarily be met by new units, is that right?

A That's correct.

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

1 Q As I understand your figures, they are  
2 figures for new housing units in your housing alloca-  
3 tion report. You have specified a number of low and  
4 moderate housing units that are needed in Morris  
5 County, is that right?

6 A To give you a precise answer, New Jersey DCA  
7 in its housing allocation report does treat its identi-  
8 fication of housing need and its housing allocation  
9 plan as one that is related to the development of new  
10 units.

11 Q And do you accept that characterization  
12 of housing need as being met by new units as the DCA  
13 housing plan provides?

14 A Yes. I did adjust the housing need as identified  
15 by the New Jersey DCA and I added some additional  
16 factor in the estimate of that need which I believe  
17 do potentially represent the need for additional new  
18 units for low and moderate income households. I do  
19 also believe that it is possible to meet some of that  
20 need in ways other than the construction of new housing.

21 Q If some of the numbers of your housing  
22 allocation needs were satisfied by existing housing  
23 units, is it not so that it would not be necessary to  
24 rezone to satisfy such a need?

25 A Repeat the question, please.

1 (The last question was read by the  
2 Reporter.)

3 MR. BISGAIER: Don't answer it, please.

4 Are you using the term rezoning to specifically  
5 refer to simply changing or altering permitted  
6 uses and the standards under which new permitted  
7 uses would be built?

8 MRS. HARRISON: Yes.

9 THE WITNESS: Can I repeat what you said?

10 MRS. HARRISON: It's just a definition  
11 of what zoning is in terms of housing.

12 MR. BISGAIER: She is just talking now  
13 about zoning in the sense of establishing what  
14 the permitted use is and the standard under  
15 which a permitted use can be built as opposed  
16 to, you know, the kinds of affirmative action  
17 that you may have referred to, it is not  
18 included in zoning as she is using it.

19 THE WITNESS: In any event I find it very  
20 difficult to believe that that would be the case.

21 Q As I understand your response you are  
22 saying that part of your housing allocation obligation  
23 could be met with other than new units but you are  
24 saying that in order to accomplish that rezoning would  
25 be necessary, is that right?

1 A That seems very likely to me, yes.

2 Q Can you explain why rezoning would be  
3 required in order to make it possible to satisfy low  
4 and moderate income housing need from existing units?

5 A Then I misunderstood your question. You said if  
6 some of the housing need were met by existing units  
7 would it then be necessary to rezone to meet the needs  
8 for low and moderate income?

9 Q That particular need, that need that is  
10 being met by existing units. My question is, you are  
11 saying part of your total need is going to be met by  
12 existing units?

13 A I did misunderstand your question.

14 Q Okay.

15 A Now I understand why you asked the question.  
16 The rezoning itself might not be necessary.

17 Q Okay. Can you identify the number of  
18 units within your total housing allocation obligation  
19 that you believe could be met from the existing stock  
20 of housing in Morris County?

21 A No.

22 Q Is it possible for you to do that calcula-  
23 tion so that you can compute that number?

24 A There are a whole host of variables that would  
25 determine that, whether or not that would be possible.

1

One, if the data were available, secondly if

2

the units were available.

3

Q Apart from whether or not the units are

4

currently available on the market, I'm not sure what

5

you mean by that, you have come up with a total figure

6

of housing need that you have calculated regardless of

7

whether or not it's going to be built. You have not

8

done that next step of deciding whether or not it can

9

be built. You have simply got a figure. Now you have

10

said of that figure part of that you believe can be

11

met from existing housing stock.

12

And my question is, is it possible to do a

13

calculation to determine what part of that need can be

14

met from existing housing stock?

15

A I answered the question the way I think the

16

question ought to be answered.

17

Q Are you saying that part would depend

18

upon whether units are available to be rehabilitated,

19

is that what you feel would be necessary to determine?

20

A That could be one factor. But you seem to be

21

concerned about the fact about the availability. It

22

wouldn't make me very happy to look at a low income

23

family and say here is your low income unit, too bad

24

somebody is in it.

25

Q If your calculations were done and it

1 were possible to identify fifty percent of the total  
2 housing obligation as available in current housing  
3 stock, would you then reduce the numbers of new units  
4 obligation by that fifty percent calculation?

5 A I think so.

6 Q There is a last question, a combined  
7 one. You have previously been shown a number of  
8 documents that were published by Tri-State, by the  
9 State, by the Governor's office and by Morris County.  
10 Were any of these documents considered in the process  
11 of your allocation of housing units for Chester  
12 Township? A The same answer

13 applies as when you asked the question about Morris  
14 County.

15 Q And in the specific numbers that you  
16 calculated for Chester Township does the same answer  
17 also apply that you did not make any adjustment for  
18 the specific numbers based on the considerations in  
19 these documents?

20 A That's correct.

21 MPS. HARRISON: That's all.

22 (There was a luncheon recess taken.)  
23  
24  
25

1 M A R Y E. B R O O K S, having been previously  
2 sworn, is recalled and testified as follows:

3 CROSS EXAMINATION BY MR. SCANGARELLA:

4 Q Miss Brooks, my name is Frank  
5 Scangarella, I'm the attorney for the Borough of Lincoln  
6 Park and these questions would apply to Lincoln Park  
7 and I would expect the mini trial.

8 You have prepared a number of reports and I  
9 just want to be sure that I can identify the most  
10 recent of those reports. There is a report entitled  
11 Preliminary Report on Adjustment to New Jersey DCA  
12 Revised Statewide Housing Allocation Report for New  
13 Jersey and that's dated apparently April of '79. Is  
14 there an update to that report which is entitled  
15 Addendum Report, Housing Allocation Adjustments for  
16 Morris County which is August 30, '79, do I have  
17 those two correct?

18 A Yes.

19 Q Is there any update to the report  
20 entitled Addendum Report Current Housing Costs in  
21 Morris County, New Jersey?

22 A No.

23 Q And is there any update to the report  
24 entitled A Discussion of Fair Share Planning dated  
25 March, '79? A No.

1 Q May I assume without dealing with any  
2 report specifically that none of your reports or none  
3 of your investigations dealt with the issue of  
4 developing municipality in any given municipality?

5 A That's correct.

6 Q And may I further assume that you have  
7 not reviewed any zoning ordinance in the Borough of  
8 Lincoln Park, for example?

9 A That's correct.

10 Q In your report entitled A Discussion of  
11 Fair Share Planning, you deal on page 10 with the  
12 method of allocation of need. And further on page 12  
13 of that report under the heading identifying the  
14 criteria you set forth a suitability criteria and a  
15 distribution criteria. To what extent, and I appreciate  
16 that this is a very general question, how does the  
17 suitability criteria apply to the Borough of Lincoln  
18 Park given the amount of vacant land in that community  
19 which I believe one of the State studies has identified  
20 as being 396 acres?

21 A You mean in reference to the New Jersey DCA  
22 Housing Allocation Report?

23 Q Yes.

24 A In fact I think it's indicated even later in  
25 this report the extent to which New Jersey DCA looks

1 at vacant developable land is the factor used by New  
2 Jersey DCA that would indicate suitability.

3 Q So that the availability of vacant  
4 developable land and available water and sewer facili-  
5 ties are criteria that are factored into suitability  
6 as your report indicates.

7 Did your report consider the school, the fact  
8 that Lincoln Park fails, does not have a high school,  
9 was that considered by you specifically when you  
10 considered an allocation for the Borough of Lincoln  
11 Park in applying the suitability criterion?

12 A No.

13 Q When you applied the suitability criteria  
14 I take it the <sup>F</sup>infrastructure <sup>WAS</sup> of some importance, the  
15 availability of water and sewer facilities in the  
16 community. Did your study or analysis consider whether  
17 or not the existing vacant developable land is covered  
18 by the sanitary sewer program in the Borough of Lincoln  
19 Park, in other words, that it is sewered or will be  
20 sewered as proposed as the rest of the community is?

21 A I think you are under, I guess, a misconception  
22 in that if you look at the description that the New  
23 Jersey DCA gives of its considerations and identifica-  
24 tion of this vacant developable land they did not factor  
25 into that the kinds of descriptions that you seem to be

1 giving about water and sewer and those such facilities.

2 Q But the availability of such facilities  
3 would have an effect upon the development intensity,  
4 I would assume, from a planning point of view?

5 A It usually does, yes.

6 Q What about the per capita fiscal resources?  
7 What factors are considered in terms of per capital  
8 fiscal resources?

9 A You are referring to the New Jersey DCA housing  
10 allocation report?

11 Q Well, I am referring to those items that  
12 are set forth under suitability criteria in your  
13 report and you list per capita fiscal resources, can  
14 you explain what you meant by fiscal per capita  
15 resources?

16 A What I have done  
17 here is list the kinds of factors that jurisdictions  
18 have taken, agencies have taken into account in the  
19 development of allocation plans. As I recall of those  
20 that I reviewed the per capita fiscal resources make  
21 an assessment of, let's say -- could be, say, let's  
22 say tax rate or this may be listed elsewhere. There  
23 are such things as the relationship between assessment  
24 of school districts per capita, those are the ones  
25 that come to mind. I'm sure there are some others.

Q Would such a definition be composed of

1 as an element of the amount of capital debt the  
2 municipality has assumed in order to pay for its  
3 infrastructures and schools?

4 A I have not seen that considered in an allocation.

5 Q Would it appropriately be in that type  
6 of analysis?

7 MR. BISGAIER: You mean by that question  
8 if one did that would Miss Brooks think that  
9 would be an appropriate consideration.

10 MR. SCANGARELLA: What I mean is would  
11 she consider the capital debt attributable to  
12 infrastructures as an element of per capita  
13 fiscal resources.

14 THE WITNESS: In a housing allocation  
15 report?

16 Q Yes.

17 A No.

18 Q You wouldn't. You would consider tax  
19 rate as an element of per capita fiscal resources?

20 A I would not. And I can't right now recall  
21 whether or not I have seen it used.

22 Q I'm sorry, I thought you indicated that  
23 you would. A I tried to preface

24 my answer by saying the listing here is the kinds of  
25 things that have been found in housing allocation

1 reports that have been prepared of which there are  
2 a whole bunch all over the country.

3 Q Could you give me a definition of per  
4 capita fiscal resources then so that I understand?  
5 What is it you mean by that, that phrase under suitab-  
6 ility criteria on page 12 of your report?

7 A I don't quite know how to answer that other  
8 than the way I did. I tried to give you examples of  
9 some things I remember seeing in other reports which  
10 is all this listing is.

11 Q What are those again, I just don't  
12 recall. A One example would  
13 be -- well, as I recall I have seen used some relation-  
14 ship between either tax assessment or tax rate, what-  
15 ever, per capita. I have seen ones that do the same  
16 kind of thing with school assessment per capita. I  
17 don't recall any others.

18 Q All right. Now under distribution  
19 criteria your report indicates that you generally  
20 allocate more units to an area which presently contains  
21 a disproportionately low amount of low-moderate income  
22 households. Generally expanding the choice for  
23 housing opportunity for low and moderate income house-  
24 holds and then goes on to say examples of the amount  
25 of distributive criteria are the amount of subsidized

1 housing, the average value of homes or the average  
2 annual incomes of the population.

3 Now in making the housing allocation for Lincoln  
4 Park I assume that you factored in the average value  
5 of homes in Lincoln Park?

6 A No.

7 Q You did not?

8 (There is a discussion had off  
9 the record.)

10 Q May I assume then however that the  
11 criteria set forth in your report are criteria with  
12 which you agree? A No. As I indicated  
13 earlier I mean when you first started this line of  
14 questioning this is literally a review of the kinds of  
15 things that are found in housing allocation reports  
16 throughout the country. And they do vary widely. As  
17 I am trying to indicate in this particular section of  
18 the report the criteria used by agencies in the prepara-  
19 tion of housing allocation reports do tend to generally  
20 fall within these three criteria, the need criteria,  
21 the suitability and the distribution, only two of  
22 which you have mentioned.

23 Q And these are the criteria that you  
24 testified to earlier today, the suitability, need and  
25 the distribution criteria?

1 A That's correct.

2 (There is a discussion had off the  
3 record.)

4 Q Besides the three criteria that were  
5 referred to in my previous question, are there any  
6 other criteria that were employed by you in developing  
7 the housing allocation numbers that you applied to the  
8 Borough of Lincoln Park?

9 A Okay. I assume you are referring to the general  
10 category of criteria, need, suitability, distribution  
11 that you have mentioned?

12 Q I am.

13 A As I evaluated New Jersey DCA housing allocation  
14 report there were no other generic categories of  
15 criteria.

16 Q Are you referring to the New Jersey,  
17 I'm sorry, what was it again?

18 A DCA.

19 Q Allocation report. You did an independent  
20 allocation or you simply adjusted that allocation?

21 A I adjusted that allocation.

22 Q So that you accepted that report and  
23 simply made modifications to it?

24 A That's correct.

25 Q Now were there any criteria that you

1 employed in making modifications to the New Jersey  
2 DCA report?

3 MR. BISGAIER: Housing allocation criteria?

4 MR. SCANGARELLA: Housing allocation  
5 criteria.

6 THE WITNESS: Other than the ones that  
7 New Jersey DCA used?

8 Q Yes.

9 A No.

10 Q I would like you to refer to the  
11 preliminary report on adjustments to the New Jersey  
12 DCA report and that would be the April, 1974 report.  
13 And on page 12 in particular, I'm sorry, make that 13,  
14 there is a statement contained at the bottom of the  
15 page or middle of the page, last paragraph, the result  
16 is to give credit to those municipalities making an  
17 effort to provide assisted housing, as a consequence  
18 their allocations are reduced. And that's under the  
19 heading adjustments to the allocations.

20 My question is to what extent, if at all, did  
21 you give credit with respect to the Borough of Lincoln  
22 Park to provisions for low-moderate income senior  
23 citizens housing?

24 A As this report indicates if there was not -- if  
25 there was not construction of assisted housing since

1 1970, according to the sources indicated in this  
2 report, adjustment was not given to a jurisdiction.  
3 So if what you are referring to does not fall within  
4 that definition then adjustment was not given.

5 Q There was no adjustment unless the units  
6 were actually constructed?

7 A Yes.

8 Q Let me rephrase it. I further take  
9 it that there would be no adjustment if there is land  
10 zoned for low-moderate income senior citizens housing  
11 use but that the project would not have been built,  
12 there would have been no adjustment is what you are  
13 saying. A That's correct.

14 Q Actually you couldn't really give any  
15 adjustment, could you, if you didn't review the zoning  
16 ordinance of Lincoln Park?

17 A It wouldn't have mattered to me anyway if the  
18 unit had not been constructed.

19 Q All right, you are dealing with actual  
20 constructed, okay.

21 There is an addendum to that report entitled  
22 Preliminary Report on Demographic Characteristics of  
23 Morris County. And on page 16 there is a listing of  
24 the wealthiest communities in Morris County. And I  
25 just refer you to that. And on page 17 there is a

1 reference to the greatest increase in Q 4 and Q 5  
 2 municipalities. Lincoln Park appears in neither cate-  
 3 gory of either the wealthiest municipality in Morris  
 4 County or the greatest increase in Q 4 or Q 5 by a  
 5 municipality. And I ask you whether or not that fact  
 6 was considered by you in the housing allocation adjust-  
 7 ments that were made for Lincoln Park?

8 A Not directly, no.

9 Q On page 28 there is likewise a listing  
 10 of those municipalities with the largest increase in  
 11 covered employment. And again Lincoln Park is  
 12 listed as one of those municipalities. And the same  
 13 question applies to that list.

14 A The same answer applies.

15 Q The same answer would likewise apply.

16 Thank you.

17 MR. BISGAIER: Let's go off the record.

18 (There is a discussion had off the  
 19 record.)

20 THE WITNESS: With reference to the  
 21 covered employment data contained in the report,  
 22 we are now talking about I did not take any  
 23 specific data and use it in the specific adjust-  
 24 ments that I made to the New Jersey DCA housing  
 25 allocation report. However, New Jersey DCA

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

1 did use covered employment data in its housing  
2 allocation report and I retained that considera-  
3 tion.

4 Q Okay. Page 30 there is a chart that  
5 sets forth the percentage of owner occupied for all  
6 of the municipalities in Morris County. And Lincoln  
7 Park is shown as being seventy-four percent owner  
8 occupied. May we assume from that that twenty-six  
9 percent of Lincoln Park housing units are rental  
10 occupied?

A Could you repeat  
11 the question, please?

12 (The last question was read by the  
13 Reporter.)

14 THE WITNESS: Of the occupied housing,  
15 that's correct.

16 Q Yes?

17 A Yes, occupied and total housing stock are two  
18 different items.

19 Q I understand.

20 Okay.

21 Q And on page 34 there is a listing of  
22 total number of units in three plus structures. I  
23 take it that means the total number of units that are  
24 three families or more?

A It is the total number of units that are found

1 in a building that has within it three or more units.

2 Q And that indicates that that chart would  
3 indicate that Lincoln Park ranks eleventh in the most  
4 number of, among other municipalities, eleventh

5 highest? A Within Morris County,  
6 yes.

7 Q So that there are twenty-eight municipa-  
8 lities that have less number of units in three plus  
9 more structures, is that correct?

10 A That's correct.

11 Q And there are twenty-seven municipali-  
12 ties in this lawsuit as I understand it.

13 A I believe so.

14 Q All right. Do you know, Miss Brooks,  
15 what Lincoln Park's tax rate is, or did you consider  
16 it at all in making your adjustment to the DCA alloca-  
17 tion? A No.

18 Q Would it be important to you in those  
19 adjustments if Lincoln Park was listed as having the  
20 highest tax rate among, in the County, effective  
21 rate?

22 A Would it be  
23 important to the development of the housing allocation  
24 report?

24 Q Yes.

25 A No.

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

1 Q It would not. Would it be important  
2 if in addition to having the third highest tax rate  
3 the municipality had assumed recently a large amount  
4 of capital debt and that that capital debt would cause  
5 a substantial further increase in that tax rate?

6 A No. That's very similar to a question you  
7 asked me before.

8 Q It's related.

9 A The answer is still no. You might want to know  
10 that, or as I assume you do know, that New Jersey  
11 did in its housing allocation report look at the  
12 non-residential ratables as one factor. That's not  
13 the same item but it's related.

14 Q But in terms of the ability of the  
15 municipality to financially absorb the cost of infra-  
16 structures and schools that may be attendant to any  
17 substantial increase in its population, wouldn't that,  
18 that being a tax rate and capital debt, wouldn't that  
19 be a relevant consideration from your point of view in  
20 those adjustments?

21 No.

22 Q Even for example if Lincoln Park has no  
23 high school, public high school, and if that community was  
24 compelled to add on top of the existing ratable base  
25 the cost of such a school, that would not be, in your

1 mind, important from the point of view in making the  
2 adjustment to that allocation, DCA allocation?

3 No.

4 Q Would the family income and the ranking  
5 of Lincoln Park among other Morris County municipali-  
6 ties, family income, would that be a factor that you  
7 consider in making the adjustments to the DCA alloca-  
8 tion report?

9 A I believe the per capita income was considered  
10 by New Jersey DCA in its allocations. I'm sorry,  
11 the household income.

12 Q The household income?

13 A Yes.

14 Q Do you have the figures available as to  
15 Lincoln Park's ranking on household income as compared  
16 to ranking in the region? Miss Brooks, maybe before  
17 you go any further let me ask you would that informa-  
18 tion be important to you in making the adjustment to  
19 the DCA allocation, the family household income?

20 As I just indicated it was a factor used in the  
21 New Jersey DCA housing allocation report.

22 Q But it was not independently further  
23 considered by you when you did the adjustments to that  
24 allocation? A No.

25 Q The three criteria that we talked about

1 in terms of comprising elements in the demand was  
2 availability, which was defined as a land availability  
3 factor, and we are accepting New Jersey DCA figures  
4 that in terms of available vacant land in a given  
5 community? A I retained the

6 same, their estimates.

7 Q Now if that estimate on available vacant  
8 land were incorrect, and this is a hypothetical  
9 question, and assume in Lincoln Park there were not  
10 396 acres but 275 acres of available vacant land based  
11 upon more precise mapping, what effect would that  
12 have upon the allocation and your adjustments to that  
13 allocation? A As I indicated

14 I didn't adjust that factor. You used a phrase that  
15 wasn't quite correct and let me correct that and then  
16 I will answer your question. You used the phrase  
17 demand, the three factors that we are talking about  
18 were not used to estimate demand, they were used as a  
19 part of the allocation method for distributing or  
20 applying the low and moderate housing need that  
21 was applied to each jurisdiction. If the land  
22 availability estimate were reduced that would reduce  
23 the allocation identified for a jurisdiction.

24 Q Proportionately?

25 A Yes. What do you mean by proportionately?

1 Q Well, if for example the allocation were  
2 1,500 units and there was 300 available developable  
3 [REDACTED] and that was reduced to 150 available developable  
4 [REDACTED] would that allocation be reduced in half or

5 by half? A No.

6 Q Is there any mathematical relationship  
7 between that allocation and vacant available develop-  
8 able land? A Yes, there is.

9 The allocation of the low and moderate income housing  
10 need is in direct proportion to the relationship of  
11 the vacant developable land within a jurisdiction to  
12 the vacant developable land within the region. However,  
13 that is one among three factors that are then averaged  
14 to get the total allocation and that applies to  
15 prospective housing need.

16 Q I have a note that employment growth and  
17 municipal fiscal capability are likewise factors that  
18 are considered in the housing allocation?

19 A That's true.

20 Q Under municipal fiscal capability I  
21 [REDACTED] we are covering old ground but what elements are  
22 considered under municipal fiscal capability besides  
23 tax rate, may I assume that is considered?

24 A In the New Jersey housing allocation report  
25 their definition of municipal fiscal capability is

1 contained in their housing allocation report and it is  
2 a factor that we have talked about previously.

3 Q That was that relationship between tax  
4 rate and -- A No, no, it's

5 basically the non-residential ratable growth between  
6 1968 and 1975, maybe '74.

7 Q The non-residential ratable growth is  
8 a ratable base consideration, isn't that correct, and  
9 we are dealing with the revenue side of a municipal  
10 budget. A That's correct.

11 Q Under municipal fiscal capability is  
12 the debit side of the budget such as capital debt a  
13 factor? A No.

14 Q It is not? Is there some reason why it  
15 isn't or it is just not considered by New Jersey DCA?

16 A It's not considered by New Jersey DCA. I have  
17 never seen it used in a housing allocation report.

18 Q And the last item is the personal income,  
19 the last criteria in the housing allocation among the  
20 [redacted] that we have just been discussing?

21 [redacted] That's right. There are four all together and  
22 this is the fourth.

23 Q And the personal income is household  
24 income of a given family, I guess that goes without  
25 saying? A I believe so, yes.

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

1 Q Any other considerations in personal  
2 income beside the household income?

3 No.

4 Q Actually then going back to the question  
5 of provisions under current zoning for least cost  
6 housing, if there were such provisions in Lincoln Park's  
7 zoning ordinance there would really be no credit given  
8 in your adjustment to the allocation, the DCA alloca-  
9 tions, is that correct?

10 A That's correct.

11 Q What is the rationale behind that?

12 A Really what we just discussed, the fact that  
13 unless the units are provided there is no reason to  
14 assume that the need as identified should be reduced.

15 Q So that it would be very possible in  
16 Lincoln Park, for example, that there could be provi-  
17 sion in its current zoning ordinance for a sufficient  
18 number of least cost housing units to meet the need,  
19 however, by your analysis unless these units are  
20 expected that need remains?

21 That's true.

22 MR. SCANGARELLA: That's all I have.

23 Thank you very much.

24

25

1 M A R Y E. B R O O K S, having been previously  
2 sworn, is recalled and testifies as follows:

3 EXAMINATION BY MR. LATZER:

4 Q I'm Bertram Latzer, I represent the  
5 Township of Parsippany-Troy Hills.

6 Do you consider yourself an expert in land use  
7 planning? Do you understand the question?

8 A I think so. I'm not testifying as an expert  
9 in this case on land use planning.

10 Q Okay. In what area of expertise are you  
11 testifying in this case?

12 A Fair share planning. Do you want to answer that  
13 or shall I?

14 MR. BISGAIER: It would just be within  
15 the scope of the expert report, basically demo-  
16 graphic information and fair share analysis.

17 Q In filing the reports that you did, did  
18 you take into consideration any elements of land use  
19 planning? A No.

20 Q I see references in a report dated  
21 19, 1979 entitled a Discussion of Fair Share  
22 Planning to Land Use Planning. Do you want me to be  
23 specific or am I wrong?

24 A That's possible.

25 Q Yes. And in particular throughout I find

1 references to the desirability of balanced and  
2 housing opportunities for all aspects of population  
3 within any municipality. Do those references appear  
4 in the March, 1979 report offhand, do you know?

5 A That sounds possible, yes. Another is discussion  
6 about those items.

7 Q And do you consider that an element of  
8 land use planning?

9 A Yes.

10 Q You do?

11 A Yes.

12 Q And you do have, as I understand, a  
13 background in land use planning?

14 A That's correct.

15 Q And considering your expertise in the  
16 area of land use planning, do you have an opinion as  
17 to the desirability of a community affording heterogen-  
18 eous housing opportunities?

19 A I don't understand the question.

20 Q Do you think a community ought to be  
21 balanced from a land use planning aspect as a land  
22 use planner?

23 MR. BISGAIER: From the point of view of  
24 housing types are you referring?

25 MR. LATZER: I am referring to housing

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

types, I am referring to economic levels, I am referring to socio-economic levels, do you think that's desirable, speaking as a land use planner?

THE WITNESS: Yes.

Q And is that kind of a consideration the very basis for allocations, housing allocations?

A I am not quite sure what you mean by the very basis.

Q But a basis?

A As I understand the question, no.

Q You do not. What is the purpose of housing allocations as you understand it in this particular litigation?

A I think it's spelled out very clearly in the reports and the explanation there is much more thorough than I can give here. However, it is to provide a mechanism for meeting the housing needs of low and moderate income households that exist within the region.

Q And if a municipality has from a point of view of land use planning a balanced community in terms of all various types of housing types, what then is the need of an allocation for that community?

A As I just indicated the allocation as represented in a housing allocation plan deals with meeting the

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

1 housing need that exists for low and moderate income  
2 households? A Yes.

3 Q But I give you a hypothetical and say  
4 to you, or, strike that.

5 Are you saying of the twenty-seven municipali-  
6 ties that there is not one that has all types of  
7 housing either constructed or that may be permitted?

8 A The housing allocation report does not neces-  
9 sarily say that, no.

10 Q Well, you have adopted, am I wrong, have  
11 you not adopted the housing allocation report in your  
12 report? A I adjusted the

13 New Jersey DCA's housing allocation report.

14 Q You adjusted it up. But between the  
15 adjustment and what is unadjusted that represents,  
16 that is you accept that?

17 A Yes.

18 Q Now my question is whether or not are  
19 you testifying or in your reports are you saying that

20 of the twenty-seven municipalities has a  
21 balanced community, balanced in terms of all housing  
22 types either available or permitted?

23 A I guess you didn't understand my answer. What  
24 the housing allocation report says, and indeed as my  
25 adjustment indicates is that there remains unmet

PENCAID CO., BAYONNE, N.J. 07001 - FORM 2046

1 housing need for low and moderate income persons that  
2 needs to be met regardless of the current land use  
3 patterns throughout the County.

4 Q The current land use pattern within a  
5 particular municipality is an important consideration,  
6 is it not, from a housing allocation standpoint?

7 MR. BISGAIER: Can I have that  
8 question back again?

9 (The last question was read by the  
10 Reporter.)

11 MR. BISGAIER: From what?

12 MR. LATZER: Do you want me to  
13 the question?

14 MR. BISGAIER: All I want to know is  
15 when you say the existing land use pattern you  
16 are referring to the existing land use in the  
17 municipality as opposed to the existing zoning  
18 configuration?

19 MR. LATZER: I mean both, I mean existing  
20 land use patterns and I mean permitted housing  
21 patterns.

22 THE WITNESS: I'm not sure this is going  
23 to answer your question. It's an important  
24 consideration to the extent that housing needs  
25 for low and moderate income persons have been met

1 in the past and therefore some of that need has  
2 been taken, has been met. It is not a factor  
3 that would alter the need that is allocated  
4 through a housing allocation plan.

5 Q But it is, nevertheless, would you charac-  
6 terize it as an important element in determining what  
7 the housing allocation should be for a particular  
8 municipality, or is it irrelevant?

9 A It's largely irrelevant.

10 MR. BISGAIER: Off the record.

11 (There is a discussion had off  
12 record.)

13 THE WITNESS: I might give you  
14 information, I guess. When I said largely,  
15 I mean it's not a direct factor that is incor-  
16 porated in the method used for housing alloca-  
17 tion plans although obviously it does have some  
18 influence indirectly on the factors that are  
19 considered in a housing allocation report.

20 Q You have used a housing allocation  
21 as I understand it, of the DCA and you have  
22 made certain adjustments, correct?

23 A Yes.

24 Q Would you be prepared to accept the idea  
25 that other formulas could be equally as efficacious

1 as yours in making housing allocations?

2 A It's possible, yes.

3 Q Would you consider it unreasonable if  
4 the other formula or formulas took into consideration  
5 and factored in existing least cost housing in a  
6 particular municipality?

7 A To the extent that that ought to be factored in  
8 it is factored in in the New Jersey DCA housing allo-  
9 cation report.

10 Q Where is that factored in?

11 A That's sort of what I mean by indirect. The  
12 housing allocation report begins with an estimate of  
13 the need that exists. If a jurisdiction has met some  
14 of that need then that total overall need is then less  
15 than it would be otherwise. However -- well, to  
16 continue, of the criteria that I used in allocating  
17 the need that is identified to the extent that there  
18 are low and moderate income persons in the jurisdiction.  
19 For instance, in the New Jersey DCA Housing Allocation  
20 that would more than likely reduce, for instance,  
21 some figure that is used as one of the criteria  
22 which would thereby reduce the allocation given to  
23 that jurisdiction.

24 So to that extent that is factored into the  
25 New Jersey DCA Housing Allocation. In the income factor

1 and in the original estimate of need, yes. And, excuse  
2 me, if those units were constructed with assistance  
3 after 1970 as indicated in the report in my adjustment  
4 they would have been taken into account.

5 Q It's your opinion that personal income  
6 factor and the need factors sufficiently reflect the  
7 existing housing pattern as it was previously defined  
8 by me in a municipality?

9 A Yes.

10 Q Are you in a position to apply the  
11 particular formula to Parsippany-Troy Hills  
12 afternoon? A What do you mean  
13 apply the formula?

14 Q Well, to show me how you have, how  
15 personal income and how the need will adequately, in  
16 your opinion, take into consideration the existing  
17 housing types?

18 A I can give you a general description of it. It's  
19 described in more detail in the working papers developed  
20 Jersey DCA which have been referred to in  
21 depositions.

22 Q Could you without, it doesn't have to be  
23 Parsippany-Troy Hills, but could you show me how this  
24 will work or -- A As I said I  
25 can generally, I don't know if you have a copy of New

1 Jersey DCA's report here but on page 16 they discuss  
2 the four criteria used.

3 Q Could we use a municipality as an  
4 example, do you have that kind of information here?

5 A What I cannot do is take you through the  
6 precise calculations, I don't have that data here.

7 Q Did you do the data?

8 A No, I used the same factor that New Jersey DCA  
9 used in averaging these four criteria and applying  
10 that factor to the prospective housing units.

11 Q Isn't the relationship between the factor  
12 of personal income and need which as you explained was  
13 averaged in, is that, in your opinion, do those two  
14 factors bear a close relationship or do they closely  
15 represent the existing housing patterns in a municipa-  
16 lity?

17 A I'm sorry, I don't under-  
18 stand the question.

19 MR. BISGAIER: I would like to hear it  
20 back again.

21 MR. LATZER: I will rephrase it.

22 Q I understand that you have said that  
23 consideration for existing housing patterns is in the  
24 formula that the DCA used and which you adopted in the  
25 form of a factor of personal income and housing needs,  
is that correct?

A Yes.

1 Q Now what I am asking you is does it  
2 truly bear a close relationship to, necessarily bear  
3 a close relationship to the existing housing pattern?

4 A It does not represent existing housing patterns  
5 directly but I think it represents it adequately for  
6 the purposes of a housing allocation report.

7 Q Then you would disagree with Mr. Mallach  
8 on that point or are you unfamiliar with his statement  
9 in depositions previously taken by myself in which he  
10 says that it did not adequately represent it, if you  
11 take the position as being true you would disagree with  
12 that position, is that correct?

13 A I am not familiar with his position.

14 Q Have you actually done any numbers on  
15 what we are talking about to see whether or not there  
16 is a relationship between these two factors and the  
17 housing pattern of the municipality, have you actually  
18 worked it out? A Not specifi-

19 cally for Morris County. I have done in the course  
20 of my work I do generally looked at the relationship  
21 between income and type of housing and cost of housing  
22 available in the jurisdiction.

23 Q Hypothetically let's take a municipality  
24 of approximately 60,000 in population, and accept for  
25 the moment that two-thirds of its population either

1 resides in "least cost housing" as you may have  
2 referred to it in your documentation. And let us  
3 assume that the least cost housing took place between  
4 the years 1960 and 1970. And let us assume that it's  
5 non-residential ratable growth took place between 1970  
6 and 1975. And let us assume that this municipality  
7 has available land as defined by the DCA. And let us  
8 assume that the personal income, strike that, just  
9 hold my formula for a moment and let me say to you is  
10 it not so that the personal income varies slightly  
11 from municipality to municipality, if you can accept  
12 the word slightly within the County.

13 There is not much of a deviation of income  
14 household to income.

15 A You are asking me whether or not there is?

16 Q Yes.

17 A I would have to check that.

18 Q Okay. But let's assume that there is  
19 not much of a deviation between personal incomes; using  
20 the information that I have given you, this hypotheti-  
21 cal community nevertheless could receive a substantial,  
22 if you can accept that word, a substantial number of  
23 units allocated to it. Or if I may rephrase the  
24 question, is there anything in the information I have  
25 given to you which would indicate that this

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

municipality would not receive a substantial number of units, if you can answer the question?

*Handwritten:* NOW FILE

MR. BISGAIER: Maybe to make it a little simpler, are you asking whether any of the factors you indicated would influence a lessening of the number of units allocated to this municipality?

MR. LATZER: Yes, much better phrased, thank you, Carl, I will accept that change.

THE WITNESS: No, there would not.  
(There is a discussion had off the record.)

THE WITNESS: I thought I made that clear before that to the extent that least cost units indicated a population of low and moderate income persons and meeting that need it would lessen the allocation given to that jurisdiction. And as I indicated, although you made it constant, it would affect the personal income factor as well.

Q But if the personal income factor was constant, and accept for the purpose of the argument that the personal income factor is constant, did I understand your answer to be that the information that I have given to you, as given to you -- strike that.

1 Is there anything, I think as Mr. Bisgaier has  
2 said before, is there anything in the information that  
3 I have given you about this particular municipality  
4 that would lessen the amount of its allocation holding  
5 the income factor constant?

6 A Not other than the indirect effect that the  
7 least cost housing would have on the criterias indicated  
8 and on the need that's estimated.

9 Q So that if the need were determined, and  
10 let me assume when we talk about need I want to talk  
11 that for the purpose of this question to present  
12 need, I don't want to talk about substandard housing,  
13 I would like you to assume that there is no substandard  
14 housing in the community, I would like you to assume  
15 the personal income factor is constant, what you are  
16 saying as I understand it is that once a regional need  
17 is determined that in this particular hypothetical  
18 community as long as it has available lands it will  
19 then have to, under this particular formula, accept  
20 a proportionate share of its allocation or will be  
21 given a proportionate share of its allocation?

22 A That's correct, given all the factors that are  
23 considered in that allocation.

24 Q Given what I have said, and that is we  
25 are holding the personal income constant, it has no

1 substandard housing, it has two-thirds of its present  
2 population in low or least cost housing, and it's had  
3 a ratable, its ratable growth has been from '70 to '75,  
4 as long as there is a need for housing in the region  
5 then this particular municipality would, not with-  
6 standing the information that I have given to you, as  
7 long as it has the available land it would be assigned  
8 a proportionate housing allocation?

9 A It would be assigned a housing allocation.

10 I'm not sure what you mean by proportionate.

11 Q Right, I will leave that out.

12 So the fact that it already has two-thirds of  
13 its population in least cost housing would not, once  
14 again holding personal income constant, would not be  
15 relevant and is not relevant to the formula that you  
16 have used?

17 A Not other than in  
18 the ways I have indicated. It is relevant in the fact  
19 that some need presumably has been met. It's relevant  
20 in the vacant land that is available and it is indeed  
21 relevant of the fact that you held it constant in the  
22 personal income factor.

23 Q But in terms of weight, does the, looking  
24 at the particular formula in terms of land use planning,  
25 zoning and the character of neighborhoods, the balancing  
of a community in terms of all housing types, doesn't

1 the fact that this community has already two-thirds  
2 of its population in least cost housing, isn't it  
3 ~~that~~ in this formula that that particular fact receives  
4 comparatively little consideration?

5 A I'm not sure what you mean by comparative, but  
6 no, I don't think so, it does receive consideration.

7 Q It does not receive consideration?

8 A It does receive consideration the ways I have  
9 talked about.

10 Q If you hold personal income constant  
11 then you are saying it receives consideration in terms  
12 of, and I also want to say that I want you to accept  
13 that there are no substandard houses, then it receives  
14 consideration in projected need and how well it has  
15 met its projected need, other than that it doesn't  
16 receive any consideration?

17 A I don't know what that hypothetical means, but  
18 it in fact does not apply to the situation here. You  
19 mean if you remove all variables and ask your question  
20 ~~guess~~ I have to agree to it.

21 Q Well, are you suggesting, are you saying  
22 that as an expert as I believe you hold yourself out  
23 as, that the personal income factor and the projected  
24 need factor, when you do the numbers on these two  
25 elements in a particular case and apply it to a particular

1 municipality that it is reflective of the existing  
2 housing pattern in that particular municipality?

3 I believe it is, yes.

4 Q You have not done this on a municipality  
5 by municipality basis, have you?

6 A Not in Morris County, no, other than the demo-  
7 graphic evaluation you have in the reports that I have  
8 submitted.

9 Q Why is the ratable growth that is used  
10 in the formula non-residential ratable growth, why  
11 is the period 1968 to 1975 used?

12 A I don't really recall, it's in a background  
13 report of New Jersey DCA's -- I don't recall.

14 Q Well, I know you may not recall DCA's,  
15 but as I understand it you have adopted these years  
16 yourself. I mean DCA has now become your report in  
17 that sense with your adjustments.

18 A I adjusted DCA's and I don't recall.

19 Q But you continue to use the years 1968  
20 through 1975?

21 A I accepted that  
22 adjustment, yes.

23 Q Well, I'm asking you as an expert why  
24 did you accept those years?

25 MR. BISGAIER: This again is another  
example, Bert, of where this is a report that

1 was done over a year ago. The deposition is  
2 being taken now. If you want her to have an  
3 opportunity to review the working papers then  
4 she can answer that more properly.

5 What she is testifying is having reviewed  
6 it and having read the working papers she did  
7 not adjust that factor when she did her adjust-  
8 ment, to that extent she didn't think it neces-  
9 sary to adjust it but if you want a more precise  
10 answer to that I think she should have an oppor-  
11 tunity to review that. There are those of  
12 those kind of questions and to ask her a year

13 THE WITNESS: It was also discussed in  
14 other depositions.

15 Q It was discussed in other depositions

16 MR. BISGAIER: Yes.

17 MR. LATZER: Then I will rely on what's  
18 in the other deposition.

19 Q If you can answer this question, do you  
20 whether or not using the years 1968 through 1975,  
21 know whether or not -- strike that.

22 Using '68 through '75, you yourself did not  
23 before adopting that particular time period do an  
24 analysis of ratables within each municipality involved  
25 in this litigation, did you?

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

A I did not.

MR. BISGAIER: By that you mean the absolute ratables as opposed to rate growth, is that correct?

MR. LATZER: No, I'm sorry, ratable growth in each municipality, I know you didn't know exact --

THE WITNESS: I'm sorry, as indicated in the report you have I did look at covered employment. I did not look directly at the ratable growth.

Q But you did look at what, I'm sorry?

A The covered employment.

Q And the same period was covered for covered employment?

A I looked at '72 through '77, I believe.

Q Is there any reason, if you can answer this, I realize you have answered a lot of questions.

Did you look at any other time span before the report other than the one you mentioned on percent growth?

MR. BISGAIER: I'm sure if your question means did she consider any for purposes of the housing allocation plan, I think the answer to that is no, but her reports do indicate covered

1 employment information for other time frames  
2 but it's not used in the housing allocation  
3 report. I think if you are precisely asking  
4 Miss Brooks about the housing allocation report  
5 you might get a different answer then.

6 Q I was talking about the housing alloca-  
7 tion report. A Then the answer is  
8 no.

9 Q But you are suggesting that for other  
10 purposes you did look at other time spans?

11 MR. BISGAIER: Miss Brooks is  
12 general demographic trends for the County  
13 is not directly related to housing allocation  
14 plans so some of the reports do cover that kind  
15 of information but it was not incorporated into  
16 the housing allocation plan.

17 Q Were those other reports done before  
18 your allocation figures for Morris County, if you know?

19 A At least the review, the material was, I'm not  
20 sure that the report itself was presented at that time.

21 Q Do you know whether or not the allocation  
22 figures would be any different if you had used, say,  
23 a time span of instead of '68 to '75, let us say from  
24 '60 to '68, do you know?

25 A I do not know. It's possible.

1 Q You did not work up any figures for any  
2 time span? A In reference to

3 the housing allocation report?

4 Q Yes.

5 A No.

6 Q With reference to any of the work before  
7 you did the housing allocation report?

8 A As indicated in the demographic report there  
9 is covered employment data from '72 to '77.

10 Q But other than '72 to '77, I am talking  
11 about a time span before that.

12 MR. BISGAIER: It wasn't gathered on  
13 a municipal basis prior to 1970, I don't think.

14 THE WITNESS: I looked at the general  
15 data but not by municipality.

16 Q Let me get back again to one of the  
17 questions I started with and this was again as I read  
18 your discussion of fair share planning, dated March,  
19 1979, and I refer first to the introduction, the last  
20 paragraph. Strike that.

21 About two-thirds of the way down the goals  
22 identified by a fair share plan, the second sentence,  
23 these goals are identified so as to correct imbalances  
24 in the patterns of low and moderate income housing in  
25 the region.



1 litigation to provide me with a formula which would  
2 come up with housing allocations and take and consider  
3 the communities are to be balanced and provide all  
4 household types, would it be unreasonable for you to  
5 provide me with a factor that reflected existing  
6 household types in a municipality other than the  
7 factors that you are using in your present allocation  
8 method? A It sounds like the  
9 same question that you have asked me before.

10 Q I mean as a statistician do you consider  
11 that another formula or another factor could be used  
12 to reflect all household types in a municipality  
13 other factors?

14 A I would think it certainly could be done.

15 Q And offhand you do not know of any  
16 factor that you would use to reflect existing house-  
17 hold types other than those that are in this particular  
18 formula? A No. As I have

19 indicated I don't think it's appropriate and I have  
20 never seen it done in a housing allocation plan.

21 Q Do you believe that the application of  
22 the formula and the factors as used in this case can  
23 result in a community becoming imbalanced in terms of  
24 low cost housing, having "too much" least cost housing?

25 A No.

1 Q Well, not having done a formula or not  
2 having applied your formula to a particular municipali-  
3 ty, what do you base your answer on?

4 My understanding and knowledge of the develop-  
5 ment and application of a housing allocation report and  
6 my evaluation of New Jersey DCA's Housing Allocation  
7 Report leads me to conclude that it would not result  
8 in that kind of imbalance.

9 Q Will you at the time of trial, if you  
10 can answer this question, if you know the answer to  
11 the question, at that time apply the formula at the  
12 time of the mini trials to the Township of Parsippany-  
13 Troy Hills? A It is my

14 standing that I will not be testifying in the mini  
15 trials.

16 MR. BISGAIER: Why don't we clarify what  
17 you mean, the DCA plan will be the subject of  
18 maxi trial testimony, it contains within it a  
19 formula which deals with all the municipalities  
20 in the State as well as Parsippany-Troy Hills.  
21 I am not anticipating the necessity of having  
22 that kind of testimony, you know, just repeated  
23 for each municipality.

24 MR. LATZER: So then the witness' answer  
25 is that that I heard from Mr. Bisgaier, that

1 you will not be applying a formula to each  
2 municipality but you will be testifying from  
3 the DCA reports and your adjustments.

4 MR. BISGAIER: Right, there will be no  
5 new formulation other than what you have already  
6 seen in the reports as they reflect a housing  
7 allocation for Parsippany-Troy Hills, the DCA  
8 plan and Miss Brooks' adjustment.

9 Q As I understand your previous testimony  
10 you have not done any land use planning for any clients,  
11 whether they be governmental or private?

12 MR. BISGAIER: Are you, Bert, referring  
13 to like the preparation of a master plan,  
14 preparation of a comprehensive plan, the pre-  
15 paration of a zoning ordinance?

16 MR. LATZER: Or an application on behalf  
17 of an applicant to plan to develop lands, a  
18 private client perhaps, and within the context  
19 obviously of zoning.

20 MR. BISGAIER: My only concern with her  
21 answer here is that she has, Mary is dealing  
22 with extensive reports evaluating specific  
23 zoning ordinances and master plans and that sort  
24 of thing.

25 MR. LATZER: You have?

1 THE WITNESS: That's correct.

2 Q You have done reports on zoning ordinances,  
3 master plans, are you answering to that?

4 Yes, I am.

5 Q And have you done that from the point of  
6 view of the municipal body? Have you ever done a  
7 master plan? A No.

8 Q And have you ever drafted a zoning  
9 ordinance or, drafted a zoning ordinance?

10 A No.

11 Q Have you ever done an evaluation on  
12 behalf of a governmental unit of a master plan or a  
13 zoning ordinance?

14 A Yes.

15 Q For the municipality? Was it a  
16 municipality or municipalities?

17 MR. BISGAIER: Off the record.

18 (There is a discussion had off the  
19 record.)

20 Q Now my last question is whether or not  
21 right now can you apply the formula to a hypo-  
22 theoretical municipality so I can do the numbers right  
23 here and see how the formula works?

24 A The allocation formula as I adjusted it?

25 Q Yes, without my having to refer to any

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

1 previous reports?

2 A I could do that, the point is that I went  
3 through it in excruciating detail in prior testimony  
4 with Mr. Sirota.

5 Q Okay, then I won't ask you to do it again.

6 A I mean literally step-by-step for Rockaway  
7 Township. And that's sort of been the ordeal, other  
8 people accepted that.

9 MR. LATZER: Thank you very much.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

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

-----  
MORRIS COUNTY FAIR HOUSING :  
COUNCIL, et al, :  
Plaintiffs, :  
-vs- :  
BOONTON TOWNSHIP, et al, :  
Defendants. :

CERTIFICATE

I, GERARD J. RICHARDS, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, certify that the foregoing is a true and accurate transcript of the deposition of MARY E. BROOKS, who was first duly sworn by me, at the place and on the date hereinbefore set forth.

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



\_\_\_\_\_  
A Notary Public of the State of New Jersey

Dated: 3/29/80

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