

ML - Morris County * Fair Housing Council
v. Boonton
- Roxbury Township

May 1, 1979

7

Transcript of Deposition of Alan Mallach

ML000963 ~~11~~

pg. 92

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

MORRIS COUNTY FAIR HOUSING COUNCIL,
MORRIS COUNTY BRANCH OF THE NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE and STANLEY C. VAN
NESS, PUBLIC ADVOCATE OF THE STATE
OF NEW JERSEY,

ML000963G

Plaintiffs,

DEPOSITION OF:
ALAN MALLACH.

-vs-

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

Defendants.

B E F O R E:

VICTOR SELVAGGI, JR., 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, May 7, 1979,
commencing at 10 a.m.

KNARR - RICHARDS, ASSOCIATES

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

THE PUBLIC ADVOCATE
BY: VERICE M. MASON, ATT'Y.
Attorneys for the Plaintiffs.

ERASER
POT TONIC

MESSRS. JAMES, WYCKOFF, VECCHIO & THOMAS
BY: JOSEPH J. VECCHIO, ESQ.
Attorneys for the Defendant Roxbury Township.

VICTOR SELVAGGI, JR.
Certified Shorthand Reporter

I N D E X

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WITNESS

DIRECT

~~ERAS~~

ALAN MALLACH

By Mr. Vecchio

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~~COTTON~~

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A L A N M A I L A C H, previously sworn, recalled;
DIRECT EXAMINATION BY MR. VECCHIO:

MISS MASON: Mr. Vecchio has agreed that Roxbury Township will pay Mr. Mallach's travel expenses and their prorata share of the travel expenses and will pay for the cost of his deposition as outlined in the letter that we had sent previously.

MR. VECCHIO: I will stipulate to same so long as other counsel dealing with the Common Defense have stipulated the same and I'm advised they have.

MISS MASON: Yes.

MR. VECCHIO: Mr. Mallach has been previously sworn.

Q Mr. Mallach, I'm going to ask you a series of questions and I know that you have been through a lot of depositions already.

Not by way of being condenscending at all, but if you do not understand any of the questions that I ask you, please request me to rephrase it.

A Certainly.

Q I sometimes get confused with my own questions and I'll try not to be repetitive, although in some instances I may.

1 Mr. Mallach, where were you born?

2 A Pittsburgh, Pennsylvania.

3 Q And when? A October 15,
4 1954.

5 Q Where did you attend grammar school?

6 A Principally in Tel Aviv, Israel, a municipal
7 school named Heroes of Israel.

8 Q And from what year to what year,
9 approximately? A This was from when
10 I was about seven until I was 15.

11 Q And subsequent to that time did you
12 continue your education? A Yes.

13 Q And after that what school did you
14 attend? A Well, I attended in
15 Israel Municipal High School No. 9 and then in the
16 United States, White Plains, New York public high
17 school.

18 Q And when did you graduate?

19 A 1962.

20 Q And did you attend college subsequent
21 to that time? A Yes.

22 Q What college did you attend?

23 A Yale College in New Haven, Connecticut.

24 Q What did you major in at Yale?

25 A Sociology.

1 Q And you took one course in planning,
2 I understand? A That's correct.

3 Q What was that course?

4 A It was the only undergraduate planning course
5 at the college at the time. It was an over view, I
6 guess, city planning.

7 Q When did you graduate from Yale?

8 A 1976.

9 Q All right. One of the things I have
10 some difficulty with and maybe if you can square it
11 away for me a little bit, I read your depositions,
12 but I'm trying to pinpoint, if you will, your area of
13 expertise. If you could explain what you feel your
14 area of expertise is, I would appreciate it.

15 A Well, I think I characterized it at least in
16 the context of this case, as housing and planning.

17 Q And in the area of housing and planning,
18 you rely for your expertise basically upon your
19 experience as opposed to your formal educational
20 training? A That's correct.

21 Q And you are familiar with the concept
22 of region as described in the Mount Laurel and Madison
23 Township cases. Is that correct?

24 A I believe so.

25 Q And are regions essentially a defined

1 concrete area? A There are a lot of
2 definitions for a lot of different uses of the concept
3 **region** because it can be used, for example, for the
4 **kind of** housing, distribution purposes as used in
5 Madison and Mount Laurel in which case it has one
6 definition. It can be used dealing with the labor
7 market patterns or journey to work patterns, so each
8 of these has a reasonable definition, but there is no
9 single overarching definition.

10 Q Okay. Now, what type of definition from
11 your standpoint would fit the particular **region that**
12 we are dealing with in this particular **litigation?**

13 A Okay. I think the key language that I think
14 appears in the Madison decision, I'll probably para-
15 phrase, is the region from absent exclusionary zoning
16 the population would be drawn.

17 MR. VECCHIO: Could you read that back
18 to me.

19 (The Reporter reads back the last
20 answer.)

21 Q Okay. Now, did you indicate in your
22 prior depositions that the edges of the regions are
23 somewhat fuzzy at times?

24 A I may have.
It's a legitimate point.

25 Q But the edges of the region are, in fact,

1 at times fuzzy? A Yes.

2 Q All right. Now, let me ask you this
3 **question:** It seems that the region that we are
4 **talking** about in this case is comprised of political
5 subdivisions. Is that correct?

6 A Yes.

7 Q And one area that we are talking about
8 is Morris County. Is that correct?

9 A That's an area. I don't believe that that's
10 necessarily coterminous with the regions in the Madison
11 sense.

12 Q The region in the Madison sense would
13 include the eight counties that are described in the
14 various reports? A Conservatively.

15 It could be more.

16 Q All right. Now, could you tell me, if
17 you know, when the boundary line between Morris and
18 Sussex County was ever established, when it was
19 established, if you know? A I believe

20 ~~THESE~~ these were established during the 19th century, but
21 ~~ERASZ~~ I don't know specifically.

22 Q All right. Could you tell me what the
23 rationale was for the establishment of the boundary
24 between Morris and Sussex County?

25 A That I couldn't tell.

1 Q All right. Could you tell me whether
 2 there are any planning or zoning considerations that
 3 were taken into account in the establishment of the
 4 boundary line between Morris and Sussex County?

5 A I really couldn't tell.

6 Q Do you know where Roxbury Township is
 7 located? A Yes.

8 Q And is Roxbury Township on the boundary
 9 of Morris and Sussex County? A Yes.

10 Q Now, do you know when Roxbury Township
 11 was established? A No.

12 Q And could you tell me what planning and
 13 zoning considerations, if any, were taken into account
 14 in the establishment of the boundaries between Roxbury
 15 and the surrounding municipalities?

16 A I really couldn't say.

17 Q All right. Now, let me ask you this:
 18 Are there planning and zoning considerations that are
 19 coterminous with the boundaries of Morris and Sussex
 20 County?

A In a very rough fashion.

21 ~~ERAS~~ Q All right. Could you tell me what that
 22 rough fashion is because this is one of the areas that
 23 troubles me. A Okay. I think in

24 terms of delineating the region and in this case
 25 looking at a region in the context of the growth and

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1 development of population movement emanating outward
2 from the original urban core of northeast New Jersey,
3 the key point to establish in many ways is to try to
4 determine where the urbanizing affect of that pressure
5 starts significantly to drop off and again without
6 having made a detailed study of this, it seems that
7 the boundary between Morris and Sussex Counties is
8 somewhat comparable to that point.

9 In other words, it seems apparent that all of
10 Morris County is, to a greater lesser degree, in that
11 orbit. It's quite possible that it spills over to
12 some degree into Sussex County, but somewhere along
13 those lines the affect it does diminish and so in some
14 ways the county line in that case can be used as an
15 approximation or a short hand for that planning
16 relationship.

17 Q Let me follow it up with this: Assume
18 that, and there have been changes in the boundary line
19 between Morris and Sussex County, assume that 50 percent
20 of Roxbury Township succeeded, if you will.

21 They can't do that.

22 Q Yes. Succeeded, if you will, and was
23 annexed to Sussex County, would you then say that all
24 of Roxbury Township is in this region or not in this
25 region? A Well, this is where the

1 question of fuzziness comes in clearly. Now, from a
2 purely analytical standpoint, this came up in the
3 Clinton case that I mentioned to you.

4 Q Yes. A In the Clinton
5 case the court found that even though Clinton was in
6 Hunterdon County, which is technically not part of the
7 eight counties delineated by the State as this north-
8 eastern region, that the Clinton area by virtue of its
9 growth, transportation connections, so on and so forth
10 was certainly affected by the northeastern area and
11 in arriving at some kind of fair share concept for
12 Clinton, one had to think of it as part of the north-
13 eastern region rather than as an isolated rural
14 community and I think the same would undoubtedly be
15 true if, let's say hypothetically half of Roxbury
16 succeeded and formed a community as New Roxbury which
17 was in Sussex County, then I think a detailed analysis
18 doing a thorough case by case kind of analysis would
19 suggest that in spite of the fact it was in Sussex
20 County, it was still no less part of the northeastern
21 region as it had been before.

22 Q The difficulty that I have with that,
23 Mr. Mallach, and I don't know whether this will come
24 out as a question or a statement of mine that you
25 might care to comment on, is that it seems to me that

1 there should be some kind of a study done in order to
2 determine from a planning and zoning standpoint what
3 the totality of the region in fact consists of on a
4 finite basis and regardless of the political boundaries.

5 A Okay. Let me say two things in response to
6 that. One, of course, is that since this whole ques-
7 tion of region, as I understand it presently, is
8 outside the scope of what my testimony will be at
9 the trial. I really have not approached it to any
10 level of detail analysis. However, I think from a
11 practical standpoint, the question of precise
12 delineation of the region is really only at issue
13 when there is a serious question as to whether a
14 given community is or is not part of the region as
15 was the case in Clinton. If you are dealing with a
16 situation, which I believe again without detailed
17 analysis, but I believe is the case of Morris County
18 where all of the municipalities are inside the region
19 that is made up of this northeastern New Jersey
20 totality, however you might want to extend that region
21 into Sussex County or for that matter into Warren
22 County and elsewhere and so on is really immaterial
23 because it would not affect the outcome in terms of
24 region fair share and so on for a Morris County
25 municipality more than minutely, if that.

1 Q Okay. But it seems that the import of
2 your statement is that the fuzziness is on the outside
3 of the county boundary line rather than inside the
4 county boundary line. A Yes.

5 Q Okay. So when you use the term fuzzy,
6 you are using the term in a sense so that it is only
7 fuzzy beyond what has been included in this region.
8 Is that correct? A That's my
9 impression in terms of this particular area and there
10 may be other parts of the region, other counties
11 where it would be fuzzy on the other side.

12 Q Let me ask you this: When you studied
13 the various ordinances of the various municipalities,
14 did you take into consideration or did you study also
15 the municipalities within Morris County that have not
16 been joined in this litigation?

17 A Well, I'm generally familiar with the munici-
18 palities that have not been joined in the litigation
19 or at least some of them. I did not study their
20 ordinances.

21 Q So that those municipalities may, in
22 fact, have provisions which you feel might not be
23 appropriate and provide least cost housing. Is that
24 correct? A That's possible, yes.

25 Q For example, the municipalities that were

1 left out, they may have zigzag provisions in their
2 ordinances. Is that correct?

3 A They may, yes.

4 Q And might not provide for modular or
5 mobile homes? A Yes.

6 Q Dealing with that subject, I may as well
7 now, what is the distinction between a mobile home, if
8 you will, and a trailer or trailer court, because I
9 have a problem with that. A Okay.

10 There are a number of distinctions, some of which are
11 less clear than others. The term trailer I think came
12 into use back in the '50's and generally construes
13 something that is more or less readily mobile. In
14 other words, it's small, it's maneuverable enough so
15 that it can be carried behind a large car and move
16 from place to place without serious difficulty. A
17 trailer court, at least to some degree includes the
18 idea of a transit community. In other words, where
19 people are carrying their trailers behind their cars
20 come in to park for a night or a week on vacation,
21 whatever.

22 The term mobile home which came into being, I
23 believe somewhat later, is generally taken to refer to
24 a substantially larger unit which, although mobile in
25 the literal sense, is significantly less maneuverable

1 and of the size and weight that it would not be
2 carried from place to place for temporary occupancy
3 for the most part and generally is placed some place
4 ~~for~~ long period of time. Now, the equivalent for
5 mobile homes is a mobile home park which is a
6 development where concrete pads are erected for mobile
7 homes and there is a common circulation and recrea-
8 tional arrangement. I should mention in passing that
9 many of the ordinances are by no means explicit about
10 the distinction. In some cases they will say one is
11 the other, at least for the purpose of the ordinance
12 or whatever.

13 Q Now, in your review of the Roxbury
14 Ordinance, and you did review it, I believe that you
15 referred to a provision indicating that trailer and
16 trailer courts are prohibited.

17 A That's correct.

18 Q All right. Now, does that provision,
19 as you reviewed it in the Roxbury Ordinance, prohibit
20 mobile homes or mobile home parks?

21 A In the absence of any language dealing with
22 mobile homes in the ordinance, the answer is yes.

23 Q All right. And could you explain to me
24 why that is the case? A Because the

25 terms are commonly used as generally interchangeable

1 categories and particularly so in municipal ordinances
 2 and again where the term mobile home does not appear
 3 ~~in the~~ ordinance has not been defined, then I believe
 4 ~~it is~~ reasonable to construe the trailer term as
 5 incorporates mobile homes as well.

6 Q Does a mobile home conform with the New
 7 Jersey Construction Code? A There are
 8 provisions whereby they do.

9 Q How would a municipality provide if an
 10 individual had a lot that conformed with the zoning
 11 ordinance, prevent someone from locating a mobile
 12 home conforming to the New Jersey Construction Code
 13 upon that lot? A Well, I assume
 14 they would deny him a building permit.

15 Q But what I'm asking you is what possible
 16 grounds could there be to deny him a building permit
 17 if he conformed to the lot size, the setback and he
 18 conformed to the construction code?

19 A Well, --

20 Q And the ordinance prohibits only trailers,
 21 ~~but not~~ mobile homes. A Well, I think
 22 if the ordinance prohibited trailers and the zoning
 23 officer, building inspector construed trailer to
 24 include mobile home, but after all from his standpoint
 25 he could argue the two are definitionally the same,

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1 they both have wheels, they are both manufactured and
2 both pulled behind cars and trucks to the site.

3 Assuming he decided the two were equivalent, I'm not
4 entirely sure what grounds he would use to deny the
5 building permit, but again that's not -- if a munici-
6 pality writes such a provision in their ordinance,
7 one looking at that ordinance cannot say that
8 provision is immaterial because I don't know how they
9 would go about enforcing it. The fact is the munici-
10 pality must have had some idea before it adopted the
11 ordinance.

12 Q Let me ask you another question: What
13 is the difference between a modular home and a mobile
14 home because I don't understand that either.

15 A This is an important difference from the
16 definition standpoint because the mobile home and the
17 trailer could be construed to be essentially the same
18 thing. One is just a big version of the other because,
19 as I said, they both do come with wheels, both do come
20 with a hitch that enables them to be pulled to the site
21 behind a car or a truck. A modular unit on the other
22 hand is at no time mobile in that sense. It is
23 essentially a prefabricated house or part of a house
24 or part of a multi-family building that has been
25 constructed elsewhere and is transported to the site

1 usually on a specially designed flatbed truck.

2 Q That's a modular home?

3 A Yes. So in other words, there is no mobility,
4 **either** implicit or explicit about a modular home as
5 distinct on the other hand a mobile home or trailer.

6 Q Is there any cost differential between
7 a modular home as opposed to a mobile home? Say the
8 equivalent sized units with the equivalent stuff
9 inside the units. A There shouldn't be.

10 I'm not sure whether there is in practice **because**
11 modular homes do not seem to be as widespread as
12 mobile homes, so I don't have very much **current cost**
13 information.

14 Q But even on a modular home you leave
15 off the wheels and stuff and it's conceivable they
16 could be cheaper? A It could be.

17 Q What is the particular infirmity when
18 municipalities prohibit a trailer court and somebody
19 could buy a modular home and put in on the site without
20 **the wheels?** A Well, the problem

21 **is that** for whatever reasons, and again these are
22 questions and you may be better to direct it toward
23 Mr. Haeckel, but it's my understanding that if you
24 wanted to go out and buy such a unit there is an
25 existing distribution network, and existing body of

1 dealers, availability of supply and what have you
2 for mobile homes. Again for whatever reason the same
3 does not seem to be the case for modular units.

4 Q Okay. In your previous testimony which
5 I reviewed briefly, you used the terms health and
6 safety. A That's correct.

7 Q And I believe, and I'm going to ^{be} para-
8 phrasing, so correct me if I'm wrong because I'm not
9 trying to impose my thoughts upon yourself or try to
10 get you into any kind of a trick question, but I
11 believe that the thrust is that or what is sought is
12 the construction of least cost housing consistent with
13 standards of health and safety. Is that correct?

14 A That's my understanding of the Madison case.

15 Q All right. Now, as you use the term
16 health and as you use the term safety, what do you
17 mean by them?

18 Let me rephrase it in a different way. As you
19 use the term health, how do you define that term when
20 you use it? What does it include, if you will? I
21 realize that that's a difficult question, but it deals
22 with some of the difficulty that I have in perception
23 of the conceptual matters involved in this case.

24 A I think it deals with the dwelling unit and
25 its environs providing such living space, air, light

1 and the like as to make it possible for a normal
2 household or say a representative household to live
3 a healthy life without excessive crowding and the like.

4 Q Now, dealing with the term then safety,
5 could you tell me what you mean by that particular
6 term or as you understand it?

7 A It's not too terribly dissimilar. Again, the
8 unit provides protection from harmful external factors,
9 weather, cold and the like, that the site layout again
10 provides reasonable safety for people in terms of --

11 Q Don't use the same term to define the

12 term. A It's difficult because I don't
13 doubt there is a body of case law with which I'm not
14 familiar that deals with some of these things.

15 MISS MASON: You are not a lawyer and
16 you don't have to be familiar with that.

17 Q I'm asking you as you understnad the
18 terms. A Protection from external

19 harms which can include such matters as traffic,
20 smoking, the elements and so forth.

21 Q All right. Now, let me ask you another
22 question and it's not meant to be facetious, but as I
23 understand it a cell block or a cell in a prison is
24 approximately six feet by twelve feet and it accommo-
25 dates two people. Now, does that meet your criteria

1 of health and safety as you used the terms?

2 A Not for normal family living and I think that's
3 an important distinction.

4 Q All right. Now, what is the absolute
5 minimum area that meets your criteria for normal
6 family living for a one bedroom apartment, if you
7 will, absolute minimum? A Well, I
8 try to scratch that. When I look at the question of
9 minimums I look at it in functional terms and go from
10 that to try to translate that into areas. In other
11 words, a one bedroom apartment has to have a number
12 of things. It has to have a bathroom that provides
13 room for the different bathroom activities to be
14 carried out. It has to have a kitchen, provide room
15 for food preparation and food serving. It has to
16 have a place where people can eat the food that is
17 prepared in the kitchen, a place where people can
18 sleep and which also has space for two people to sleep
19 comfortably as well as certain minimum storage areas
20 for clothing and the like. Perhaps a small additional
21 space for a crib if there is an infant and a certain
22 amount of circulation space, socializing space, a
23 sitting area.

24 Q If you will then, could you give me,
25 going through those items, give me the amount of space

1 needed for each of those areas in order to come up
2 with the minimum? A Okay. I will
3 have to do this in fairly rough terms.

4 Q It's all right.

5 A Because I don't have the exact figures with me.

6 Q If I have any reports that you had done
7 that could be of some assistance to you --

8 A No, there are extensive studies on this. A
9 lot of this material appears in the HUD property
10 standards which I referenced on this point.

11 Q I understand that, but what I'm trying
12 to do is try to ascertain what you feel as a housing
13 expert are the minimums regardless of what HUD feels.

14 A Let me give you some very approximate figures.
15 A bathroom, for example, has to have 40 or 50 square
16 feet in it to accommodate a toilet, sink, a tub and
17 shower, adequate ventilation, space for movement and
18 certain minimum storage requirements. A galley kitchen,
19 which is about the most efficient type of kitchen,
20 needs about 70 square feet. In effect, what you have
21 is you have a ten foot long line which has the main
22 services, stove, sink, refrigerator, some counter area,
23 a parallel area separated by about three feet of work,
24 standing space with working counters and cabinets
25 above, usually open serving counter between there and

1 the dining area. It's usually about the most efficient
2 layout, so it's about 70 square feet.

3 The dining area and the living area or social
4 **living** area --

5 Q Pardon me. Are you talking about just
6 the dining area and something else --

7 A Well, --

8 Q -- or do you break them down?

9 A In the most efficient layout you do not have
10 a separate dining room and a separate living room,
11 so you would have a single room perhaps roughly in
12 an L shape that would provide space for eating,
13 socializing, passive recreation and the like. Now,
14 that altogether would probably have to contain about
15 200 square feet. That's very rough. It's based on
16 the clearances you need for a table, the dining table,
17 movement space between the dining area and the sitting
18 area and reasonable area for chairs, coffee tables,
19 bookcases, a television set which seems to be a
20 **necessity** nowadays. So altogether about 200 square

21
22 Q All right. A Then you have
23 a bedroom which, if it's going to serve two adults
24 with a fair amount of storage space plus have enough
25 flexible space so an infant can be kept in the same

1 room, you would be talking about say 130 or so square
2 feet. Then you would add to that about another 10,
3 15 percent probably for hallways, internal walls,
4 storage, door clearances and such like. You add up
5 somewheres around 500 square feet I would think
6 altogether.

7 Q Bear with me. And how many people could
8 a one bedroom apartment of this type accommodate in
9 your opinion? A Two adults.

10 Q Meeting the requirements of health and
11 safety that you -- A Two adults
12 comfortably or two adults plus an infant or very
13 small child.

14 Q Now, what is the size of the one bedroom
15 apartment that you have recommended for Roxbury
16 Township? A I suggested that in the
17 area of 550 to 600 square feet is acceptable. That's
18 based on the HUD standards.

19 Q Well, why have you increased the size
20 above what you felt the minimum was, is there some
21 rationale? A Yes, the rationale is
22 essentially that the HUD standards are, if you will,
23 time honored. In other words, they are a body of
24 demonstrative standards that work well in providing
25 good economical housing.

1 Q Is there any other reason why you have
2 increased the apartment size aside from the HUD
3 standards? A No.

4 Q And your opinion then is essentially
5 based upon the HUD standards, correct?

6 A Well, it's corroborated by the HUD standards.

7 Q But the HUD standards are a little bit
8 more expansive than your opinion.

9 A A little bit.

10 Q So your testimony is that 50 square feet
11 is an insignificant differentiation between your
12 standards and the HUD standards? That's approximately
13 10 percent, I would guess. A It could

14 be a significant amount. It certainly could be a
15 significant amount if it were added say arbitrarily
16 on to a number. I believe it's a reasonable amount
17 in this case because again of the established records
18 and viability of the HUD standards in providing good
19 sound housing.

20 Q Now, let me ask you this question: In
21 your report you have indicated for a one bedroom
22 between 550 to 600 square feet. Is that correct?

23 A Yes.

24 Q Now, would you say that it would be
25 excessive if the ordinance required a one bedroom

1 apartment to be 600 square feet plus one square inch?

2 A Why yes.

3 Q One square inch would make a difference
4 in your opinion? A Again, there are

5 two issues here. There is a question of the practical
6 impact of the extra square inch and there is a question
7 of the need to draw the line somewhere.

8 Q Well, what I'm referring to, Mr. Mallach,
9 is that lines can be drawn anywhere and what I'm
10 attempting to deal with is the necessity of drawing a
11 line at a particular finite number as opposed to
12 drawing a line at something that approximates that
13 number considering the discretionary powers of the
14 municipality and the peculiarities affecting the
15 municipality. A Well, it's partly

16 for that reason that I framed the standards in as
17 broad a fashion as I believed could be justifiable.
18 In other words, by saying 550 to 600 as we saw by
19 going through the exercise we did, it's apparent that
20 a unit consistent with health and safety standards
21 could be constructed with fewer square feet. So in
22 other words, by providing the extra margin as indicated
23 by using the HUD standards and then by providing a
24 range, one would hope that within that range the
25 discretion of the municipality would find ample scope

1 for its exercise.

2 Q Now, let me ask you this, Mr. Mallach:
3 In the event that Roxbury Township or anyone of the
4 defendant municipalities adopted a zoning ordinance
5 permitting one bedroom apartments within the munici-
6 pality of a size of 651 square feet, would you then
7 conclude that that zoning ordinance was, in fact,
8 exclusionary or that provision was, in fact, violative
9 of the principals of Mount Laurel and/or the principals
10 of the Madison Township case or subsequent decisions?

11 A Well, I think the answer I gave previously to
12 defense counsel will have to suffice. The answer is
13 yes, bearing in mind that if the provisions were so
14 modest it could be remedied at little cost to the
15 municipality.

16 Q I see. Even if a particular municipality
17 had very large people by some strange quirk of faith
18 or sociological impact? A I would say
19 that would remain to be true.

20 Q As a matter of defense, I'm sure.
21 Certainly.

22 Q Now, Mr. Mallach, some general questions
23 dealing with your report. You indicate 10 dwelling
24 units per acre for townhouses. Is that correct?

25 A That's correct.

1 Q Now, if a municipality did, in fact,
2 zone in the fashion that you suggest they should zone,
3 would the zoning produce least cost housing?

4 A If they zoned in that fashion and they and
5 other municipalities over zoned in the manner specified
6 by the Madison decision, I believe it would produce
7 least cost housing. I would not say it would produce
8 exclusively least cost housing, but it would produce
9 some, yes.

10 Q Is it your position a municipality, if
11 it zones for multiple family dwellings should zone all
12 of the multiple family zones for least cost housing?

13 A I believe that the municipality has some
14 discretion in that matter. For example, there may
15 be other public purposes its seeking that may be
16 consistent with least cost housing goals. I believe
17 in my report I've suggested that that is certainly
18 applicable to certain PUD zones one finds. I think
19 my reading again of Madison is that a municipality is
20 obligated to zone, over zone rather for least cost
21 housing and that having been achieved, that that
22 municipality has reasonable discretion in what it does
23 otherwise.

24 Q All right. But in your report at some
25 point and I don't recall where it was, did you indicate

1 that there should be some restrictions on the maximum
2 size of the particular units that are constructed
3 that a developer should not be permitted to construct
4 units beyond the certain size?

5 A I don't know that I recommended that. I
6 indicated that that is one approach that has been
7 suggested and that may in some cases be worth
8 considering as a way of encouraging least cost
9 housing. I am not so sold on it as to explicitly
10 promote it or recommend it.

11 Q Dealing with, and what I'm trying to
12 deal with are your concepts as a housing expert and
13 as a planner through your experience, they are not
14 necessarily the dictates of the Mount Laurel and
15 Madison Township cases, but essentially your expertise
16 in the area, whether they conflict with Madison
17 Township or Mount Laurel, that's for the courts to
18 decide or whether my position does.

19 Now, what type of least cost housing would
20 private industry provide?

21 A Assuming the zoning was there, I would think
22 quite a variety of housing. I think certainly town-
23 houses, single family houses on small lots, probably
24 mobile home parks to a degree, probably some reasonable
25 housing.

1 Q How does density affect the cost?

2 A Okay. It affects the cost in a number of ways.

3 ~~The first~~ **COTTON** The first, of course, is the cost of land in terms of
4 per unit costs. The more units per acre, the less
5 cost per unit for all land, even though the per acre
6 cost may go up, it goes up at a slower rate than
7 density, so the unit costs declines.

8 Q All right. Now, I'm sorry, were you
9 finished?

A That's one factor. A
10 second factor is many of the costs associated with
11 development are directly affected by making ~~infra-~~
12 structure lines and connections as short as possible
13 which can only be achieved if the density is high
14 enough to provide for fairly tight clustering of units;
15 and thirdly, to some degree the latter is undermined
16 if, as a result of the clustering, a large part of the
17 site remains undeveloped because that will result in
18 higher operating costs in terms of taxes and maintenance
19 on the development.

20 Q Okay. Now, what is the ratio that you

21 ~~speak~~ of in the reduction and price on a per unit
22 basis? Is there a particular percentage ratio that
23 you can point to?

A I really can't.

24 It's an area that has never, to my knowledge, been
25 given the attention say like serious economic research

1 that it should. It's something that can be expressed,
2 for example, in rough quanta. In a community typically
3 where you have land zoned at, let's say for townhouses,
4 an area of say five or six to the acre, typically the
5 units tend to get about five or \$6,000 per unit in
6 land costs for a total price of maybe 25, \$30,000 per
7 acre, typical townhouse land costs, in that area.

8 Q What type of community did you refer to?

9 A Well, I guess a typical north Jersey suburban
10 community. The most recent experience I've had in
11 this is not, unfortunately, in Morris County and in
12 comparable areas where those townhouse prices seem to
13 obtain, one finds per unit costs for garden apartments
14 tend to be only about half of what they are for town-
15 houses, \$2500, \$3,000 a unit.

16 Q Now, I may have misunderstood you. Did
17 you state what the cost per unit would be for five or
18 six units on developed land of townhouses as being
19 \$2500 to \$3,000 per acre in a northeastern community?

20 A No. The cost per unit of townhouses at densities
21 of say five or six to the acre is likely to be in the
22 area of five or \$6,000 per unit or 25 or \$30,000 per
23 acre. For garden apartments at say 10 or 15 to the
24 acre, it's likely to be in the area of \$2500 or \$3,000
25 per unit or perhaps 30 or \$40,000 an acre.

1 Q All right. Dealing with the land cost
2 again, if you will, in approaching the development of
3 a particular piece of property, is not the price of
4 the land directly related to some of the items that
5 you referred to, the amount of infrastructure that
6 the developer has to install and does not the absence
7 of the construction of those items or the limiting of
8 the construction of those items have the affect of
9 increasing the price of the property itself?

10 A Well, I think to distinguish between off site
11 and on site infrastructure, in my comment just before
12 I was referring to on site costs as distinct from the
13 off site costs that might be needed to bring the
14 infrastructure to the site.

15 Q Well, even with the on site costs, for
16 example, if a developer had a parcel of land consisting
17 of five acres that was zoned for 15 units per acre
18 and all that he had to install was 150 feet of road
19 to service the entire development, would that not
20 affect the price that he would pay for that property?

21 A Not necessarily. Again, it's all very hypo-
22 thetical. If you have a lot of land available in a
23 community or in a region that's zoned for multi-family
24 housing at least cost standards, some major variations
25 in cost would affect the price. Obviously a piece of

1 land that had sewers going right up to the site line
2 which could be hooked into would be more desirable
3 and therefore more expensive than a piece of land
4 which required either construction of a package plant
5 or alternatively a lengthy extension of sewer lines,
6 that would be born at least in some part by the
7 developer, so at certain gross differences would be
8 likely to be reflected in the purchase price.

9 Q As a housing consultant and housing
10 expert do you advise a client of yours as to whether
11 he should become involved in a particular project or
12 not and estimate the value of the property based also
13 on the cost of the units, the cost of the installation
14 of the infrastructure on site or off site, if you will?

15 A Yes.

16 Q And does not the absence of the extensive
17 infrastructure make the project more worth while?

18 A Let me see if I have that straight. You are
19 saying the project is more worth while if the infra-
20 structure is there already?

21 Q That he shouldn't have to put as much in.

22 A Certainly.

23 Q Doesn't that drive up the value of the
24 property?

A Again, in some cases it
25 may. You are looking at a balancing process in the

1 final analysis.

2 Q So that my question then comes back to
3 the same problem again is what that high density does
4 to provide low cost units. I don't understand that.

5 A We have first the land which we dealt with. In
6 terms of the infrastructure, the density comes to bear
7 in terms of how you can develop that site.

8 For example, let's say, as is the case in some
9 ordinances, that the ordinance requires that houses in
10 a multi-family zone be set back 100 or 150 feet from
11 the public road on which they front. That means that
12 you have to run a lot of pipes a long way. It also
13 means that you have a large swath of land that has to
14 be maintained in some fashion. This is directly
15 related to the density. If you have a high density
16 and you do not have any of these arbitrary other
17 requirements, you can cluster the units in the most
18 efficient way in terms of your roads, your sewer hook
19 ups, your water lines, power lines, etc., etc., and
20 the most economical type of development.

21 Q But my point again, Mr. Mallach, if you
22 have a knowledgeable person that is selling real
23 estate and you have high densities, then does not the
24 seller of that land take fully into consideration in
25 setting the price of the land, the amount of improve-

1 ments that have to be installed by the developer?

2 A What I'm saying, holding the amount, amount of
3 **improvements** constant. If you have a piece of land
4 **and** you have to bring certain improvements, services
5 to the site, you have to **pave** certain roads and what
6 have you, but what you do on that site is a function
7 of what kind of density you get which, in turn, defines
8 how economically you can lay out your site to minimize
9 your costs. That part is rarely taken into direct
10 account by the seller of land.

11 Q Assume that we have a tract of land that
12 is 10 acres and the cost of providing the **infrastruc-**
13 **ture** for this particular parcel considering a density
14 of 15 units per acre would be \$20,000, okay?

15 A Bring the infrastructure up to the site?

16 Q Either on site or off site, the total
17 infrastructure for the site is \$20,000 with 15 units
18 and assume that in some fashion the infrastructure was
19 provided totally to the site and the density was
20 **COTTON** reduced from 15 units per acre to 10 units per acre,
21 **what** affect would that have upon the price of the land,
22 the density versus cost of infrastructure and price
23 per unit and ultimate selling price or rental price
24 of the unit? That's really what I'm trying to get a
25 handle on. A Well, I think it depends

1 on what your comparisons are. Let's say you have
2 site A which involves substantial infrastructure
3 extensions and a density of 15 to the acre. Site B
4 that does not require any infrastructure extension, but
5 has everything up to the site and has a density of
6 10 to the acre, hypothetically the question would be
7 that the site that has the infrastructure ready to
8 go might carry a somewhat higher cost as a result.
9 The site that does not would carry a lower cost as a
10 result, but if it had a higher density it would be
11 kind of a trade off. So in practice, the number of
12 factors that would go into weighing it could get
13 fairly complicated. What you do in looking at a site
14 as you do kind of an evaluation, you look at the
15 relative cost of the site, the density and how that
16 translates out into unit cost. What you are really
17 concerned with in terms of infrastructure more than
18 anything else is unit cost of the infrastructure, not
19 the flat cost, but the cost of the infrastructure.
20 You have to provide relative to the number of units
21 that you are going to be able to build on the site.

22 So, for example, in many ways the most efficient
23 type of site would be a high density area where you
24 could build in large volume that might not have infra-
25 structure right up to it, but would be large enough so

1 you could build in large volume and spread your infra-
2 structure costs over a large number of units. That
3 conceivably could be the best trade off because you
4 would have your lowest land costs, your most efficient
5 layout possibilities, because of the high density your
6 most efficient use of the land and enough units to
7 spread the infrastructure costs over.

8 Q Would you concede that in some instances
9 high density would not produce least cost housing?

10 A In and of itself?

11 Q In and of itself, yes, sir.

12 A It's a, I would argue necessary, but perhaps
13 not sufficient condition.

14 Q I see. Now, you referred to over zoning.

15 A Yes.

16 Q Now, does zoning in your experience as a
17 planning expert and housing consultant affect the price
18 of the land? A Yes.

19 Q Now, what is the affect of over zoning
20 a particular municipality with reference to any
21 particular use on the price of the land?

22 A It reduces it. It eliminates the scarcity
23 factor.

24 Q And therefore in the event that land
25 in developing communities is, in fact, over zoned for

1 least cost housing, the value of the property owned
2 by particular entities or individuals is reduced, is
3 that correct? A No, not necessarily.

4 I'm saying it reduces the cost of that land relative
5 to what the same land would cost if there were only
6 say one 12 acre buildable tract in the entire munici-
7 pality. It would not necessarily and in practice most
8 probably would not reduce the value relative to what
9 the previous use might be, say one acre single family.
10 It would probably increase the value to the landowner
11 over that.

12 Q Supposing the property were previously
13 zoned industrial and that all of the property that
14 was zoned industrial in the municipality were rezoned
15 for least cost housing, what affect would that have on
16 the property in Roxbury Township, if you will?

17 A Well, I haven't looked at the industrial zones
18 in Roxbury Township specifically in terms of their
19 land values, but speaking say in general terms, it
20 would vary very widely because industrial land, or
21 whether the value of industrial land is very location-
22 ally defined. Some industrial land could be tremendously
23 valuable, worth amounts greater than almost any likely
24 residential use can afford. Some industrially zoned
25 land could be effectively zoned into inutility if the

1 land does not have site characteristics making it at
2 all attractive to industrial development. So within
3 the overall industrial category, you are likely to
4 find the spectrum of values ranging from a couple
5 thousand an acre to perhaps \$100,000 or more an acre.

6 Q So that your contention is then or you
7 submit over zoning for least cost housing will not
8 have any adverse affect on the property owners who
9 own the property that eventually would be zoned for
10 least cost housing. Is that correct?

11 A Certainly not as a general rule. Obviously
12 any rezoning that a municipality undertakes does not
13 carry with it a guarantee that landowners will in all
14 cases not have the value of their property reduced. I
15 believe every time a municipality undertakes a major
16 rezoning, the odds are at least some property owners
17 somewhere in the municipality is economically hurt or
18 at least on paper, but certainly an extensive rezoning
19 for least cost housing I believe is likely to have a
20 more beneficial effect on property values than most
21 rezoning undertaken by suburban municipalities.

22 Q In your opinion what are the causes of
23 exclusionary zoning as that term was used in Mount
24 Laurel and Madison Township?

25 A I think there are many and in some cases complex

1 and in others straight forward.

2 I think one cause is simply the desire to
3 achieve fiscal advantage, if you will, to see to it
4 that generally speaking the housing that's constructed
5 in a municipality pays property taxes in proportion
6 to or in excess of what it's likely to require in the
7 municipal services. I think a second reason has to do
8 with very strong drives, pressures, if you will for
9 both social and economic homogeneity. I think this
10 manifests itself in the strong preference for detached
11 single family housing and the fact in a typical
12 municipality one finds virtually all residential land
13 zoned for single family detached housing and only
14 isolated parcels very often in out of the way loca-
15 tions for any other type of housing. I think a lot
16 of this has to do with stereotypes about the kinds of
17 people who live in multi-family housing as well as
18 certain judgments about their likely economic status
19 relative to the rest of the community. I think in
20 some cases there may be an implicit racial undercurrent
21 to this. After all, since racial covenant has long
22 since been illegal, but the same objective that
23 prompted them in the first place may very well be
24 present.

25 Q Now, are you familiar with the concurring,

1 I believe it was opinion of Justice Mountain in the
 2 Mount Laurel case? A I think I read it
 3 at one time. I certainly don't recall it.

4 Q Where he described the root causes of
 5 exclusionary zoning as being the tax structure of the
 6 State of New Jersey and the issue of relateralization
 7 of the cities. A I don't recall the
 8 concurring opinion, but I'll take your word for it.

9 Q Well, what I want to know is do you agree
 10 with that type of proposition?

11 A Obviously those factors have a bearing on it,
 12 but I doubt, I don't know how central they really are.
 13 I think if I had to look at root causes, which is
 14 a tricky matter best of times, my impression is that
 15 the root causes are more heavily in the social and
 16 economic demographic, psychological, what have you
 17 sphere and less so in the area of taxation. I think
 18 obviously the tax structure depends on the property
 19 taxes and so on contributes and are a significant
 20 factor, but I doubt if I would consider that the root
 21 cause.

22 Q But it is, as you stated, a significant
 23 factor? A Yes, but a secondary one.

24 Q A secondary one?

25 A Yes.

1 Q And the primary one is what?

2 A The complex of social, economical, psychological
3 objectives of people in suburban communities.

4 Q Now, would the change in the tax struc-
5 ture in your opinion as a housing expert tend to
6 eliminate or partially eliminate the exclusionary
7 zoning, if you will? A I doubt it.

8 Q Now, dealing with another factor and just
9 from your standpoint and not the standpoint of the
10 cases, why is the burden of providing for least cost
11 housing, if you will, imposed upon "developing"
12 communities and not on the populus of the State of
13 New Jersey as a whole? A Let me see
14 if I can clarify that. Why do I think the Supreme
15 Court put the burden there or why do I feel it should
16 be put there?

17 Q In other words, what I'm trying to do is,
18 regardless of what the Supreme Court said, Mr.
19 Bernstein and the others asked about the court decisions,
20 but I want to know what you think.

21 I've argued and, in fact, I wrote an article
22 on the subject which was written before the relevant
23 court cases came down and was published after they
24 came down, which is somewhat annoying to me on this
25 point, and I argued and I believe I share some of the

1 thoughts of Justice Pashman in some of his semidescent-
2 ing, semiconcurring statements that it really should
3 not be a flat either or. Obviously the extent, the
4 scope, the nature, the approach would vary depending
5 on the relative state of development of a community,
6 but I really don't see that it should necessarily be
7 a flat either or matter.

8 Q And does least cost housing, if you
9 will, impose any particular financial burden on
10 developing communities? A Not
11 significantly.

12 Q Does it impose any burden on **developing**
13 communities by way of schools, fire protection,
14 police protection? A Well, any
15 population increment regardless of the economic status
16 or level of the occupants will impose additional
17 burdens for services, so in that sense certainly the
18 occupants of least cost housing are likely to require
19 additional services. Given a likely demographic mix
20 of least cost housing population, young families,
21 couples, elderly families with children and whatnot
22 and given the fact that the units will pay some reason-
23 ^{part}able/of property taxes, my guess is that on the average
24 the burden relative to the added resources that will
25 be provided will not be great.

1 Q Are you aware of any studies that have
2 been done in this regard?

3 A Well, there are studies that relate closely to
4 it. Since the term least cost housing as a term of
5 art is a fairly fresh one, it, as such has not been
6 the subject of a study. I myself did a very extensive
7 study in 1973 and '74 which looked at relative fiscal
8 affect of different housing types and among other
9 things concluded that on balance a municipality that
10 had a larger and smaller share of multi-family units
11 are doing better. That most multi-family types,
12 including garden apartments, townhouses and high rise
13 were better fiscal propositions for a typical munici-
14 pality than were all but extremely expensive detached
15 single family houses.

16 Q You mentioned an article that you wrote
17 prior to the Mount Laurel decision and also the study
18 that you did in 1973 or 1974. Is it possible that I
19 can have a copy of those? A Well, can

20 we go off the record?

21 Q Sure.

22 (A discussion was had off the record.)

23 Q With reference to the study you did in
24 1973-'74, did the apartments that you studied at that
25 time have certain bedroom restrictions?

1 A In our analysis we controlled for different
2 bedroom mixes.

3 Q Was this a report that was done for
4 Rutgers University?

A No, it was done
5 for the County and Municipal Government Study Commis-
6 sion, a State agency. We worked with a group from
7 Rutgers University on it which subsequently published
8 its own report using some of the same data.

9 Q All right. Now, absent of bedroom
10 restrictions on multiple family units, would there be
11 a cost imposed upon the developing communities by
12 requiring them to provide their "fair share of low and
13 moderate income housing"?

14 A Not substantially.

15 Q Okay. What is the reason in your mind
16 as a planner and as a housing consultant and just
17 ignoring, if you will, although respectfully for the
18 record, the Supreme Court decisions in Madison and
19 Mount Laurel, what is the reason for not sharing that
20 burden with whatever it may be with developed and
21 pre-developing communities? A Well, I
22 believe I've already stated that I believe that the
23 burden should be shared or the responsibility. I'm not
24 sure that I construe it as a burden.

25 Q And how do you envision that the burden

1 should be shared because we may have, or I may feel
2 differently about --

3 MISS MASON: Do you mean the cost?

4 MR. VECCHIO: I don't know whether Mr.
5 Mallach is talking about a cost burden, but
6 first of all, what do you conceive of the burden
7 being?

8 THE WITNESS: I don't really believe
9 there is a burden involved. I mean, obviously
10 suburban municipalities construe it to be a
11 burden and so there has to be something there
12 that the suburban municipalities have a problem
13 with. Since I see no indication that there is
14 a significant fiscal burden, certainly not more
15 so than many single family houses or single
16 family house subdivisions that are built in
17 suburban communities, the burden is obviously
18 something other than fiscal, so it presumably
19 must be social, economic or some such thing.

20 Q How many units do you feel should be
21 located in Roxbury Township?

22 A I haven't done any study of that.

23 Q Do you know how many units are proposed
24 as a result of this particular litigation pursuant to
25 the DCA Report? A I don't know that

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1 the units that are proposed in the DCA Report are
2 units proposed as a result of this litigation would
3 be necessarily identical. I believe the witness who
4 is dealing with this has submitted a report in which
5 she suggests that certain changes could reasonably
6 be made in the DCA Report. According to the DCA
7 Report, Roxbury Township gets just under 2,000 units.

8 Q Now, is it your testimony that the
9 location of 2,000 units in Roxbury Township would not
10 increase the cost burdens to Roxbury Township?

11 A I think it would depend on what kind of units
12 they were. I think if it was a mix in reasonable
13 proportion of the different least cost housing types,
14 then I believe the fiscal burdens would not be
15 excessive.

16 Q But are you saying that there would, in
17 fact, be a fiscal burden or are you saying that there
18 would not be?

19 A What I'm saying is
20 whether or not there would be a fiscal burden in
21 practice would be dictated by the very specific
22 composition of the units. Exactly what types, what
23 type of bedrooms, so on and so forth. I could not
24 speak to that. What I'm saying is that given the
25 variety of types of bedrooms, family sizes, family
characteristics involved in the least cost housing

1 need, that there is no inherent burden involved.
2 Obviously there may be a burden or may not be a
3 burden depending upon a specific mix of the units
4 that actually get built, but this is not inherently
5 a fiscal burden creating activity.

6 MR. VECCHIO: Off the record.

7 (There is a discussion off the record.)

8 Q Now, Mr. Mallach, in your report you
9 indicated that one of the cost burdens that some
10 ordinances imposed is the requirement that **basement**
11 exists for a dwelling house.

12 A That's correct.

13 Q What ordinance requires that? Can you
14 name me one ordinance that you are aware of for a
15 single family dwelling house on whatever size lot
16 requires a basement?

17 MISS MASON: Do you mean in Roxbury
18 Township?

19 Q In any town, Mr. Mallach, that you are
20 of. Then we will get to Roxbury.

21 Well, I've seen quite a number of them. In
22 terms of the towns involved in this litigation, I
23 don't recall specifically whether I do.

24 Q Does Roxbury?

25 A Not as far as my notes indicate.

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1 Q Okay. Now, dealing with Roxbury
2 Township again, I believe you indicated that Roxbury
3 Township provides some borderline least cost housing.

4 A That's the term I used. It was perhaps lightly
5 used.

6 Q Don't say over generous statement.

7 A Oh, it certainly was. It was charitable to
8 the extreme.

9 Q Mr. Mallach, you indicate that the R-4
10 zone allows single family dwelling houses, single
11 family houses on 7500 square foot lots with 50 foot
12 frontage and 900 square foot floor area minimum.

13 Now, why do those requirements not meet the
14 least cost provisions if they are borderline?

15 A Well, because they can be more modest and not
16 by a matter of inches, but clearly more modest than
17 these without forfeiting any identifiable health or
18 safety goals with which I'm familiar.

19 Q Well, how much more modest ca

20 you say they are borderline and I want

21 not modest. I would like to know

22 to the borderline and how far

23 line as you conceive as a

24 planner. A

25 the general part of my report, 5,

1 adequate amount of space on which to put a detached
2 single family house. So that's certainly one difference.
3 The 50 foot frontage is probably reasonable. In fact,
4 in the Township's Ordinance it already permits a 50
5 foot frontage. I can think of no good reason why it
6 requires a lot depth, as a result, be 150 feet. It
7 seems to be unnecessary and it could be reduced. In
8 other words, given the fact that the frontage require-
9 ments in the ordinance are already modest, the lot size
10 requirement could be reduced without any material
11 affect that I can imagine to the Township's zoning
12 provisions.

13 Q Are you familiar with Roxbury Township,
14 Mr. Mallach? A In a general way, not
15 in detail.

16 Q Have you ever visited Roxbury Township?

17 A Yes, I have.

18 Q Can you tell me when you did so?

19 A I did so on April the 4th.

20 Q And in the presence of whom?

21 In the presence of Mr. Bisgaier and Miss Brooks.

22 Q And what time did you arrive at Roxbury
23 Township, if you recall? A It would be
24 very approximate. It was during the earlier mid-
25 afternoon.

1 Q And what areas of Roxbury Township did
2 you visit? A Well, since the

3 particular purpose of my trip was to look at the two
4 tracts of land that are zoned for some form of multi-
5 family or other than single family housing, the
6 principal areas that I visited were those.

7 Q And where are those areas?

8 A One is, I guess it would be east of the Port
9 Morris area along the river. I forget the name of the
10 street.

11 Q That's okay.

12 A And second is more or less south of **Netcong**
13 Borough along Route 46.

14 Q And how long did your visit take?

15 A Perhaps half an hour.

16 Q Half an hour to visit both sites?

17 A That's correct. Between half an hour and an
18 hour.

19 Q Let me ask you this: Did you get there
20 in your car? A Yes.

21 Q Did you get out of the car?

22 A Yes.

23 Q Did you walk each site?

24 A I walked the first site I mentioned. Unfortu-
25 nately by the time we got to the second site it had

1 started to rain rather heavily, so we drove inside
2 the site on the dirt road that is there, but I did
3 not actually walk that site.

4 Q All right. Now, what are the other
5 areas of our borderline zoning of the R-4 zone that
6 you find objectionable? A Well, as I
7 said the 7500 square feet. The 900 square foot
8 minimum floor area requirement is, although certainly
9 not outrageous by comparison to many other such
10 provisions, it's higher than necessary. It is probably
11 what would be acceptable, although it could be less
12 for a three bedroom unit, but would be higher than is
13 needed for say a two bedroom house as I believe I
14 indicated in my general report, it would be more
15 appropriate to have what I think the court and the
16 home builders case referred to, occupancy based
17 standards that would vary on the basis of number of
18 bedrooms that the developer builder chose to build.

19 Q Is there anything else that you find
20 objectionable with reference to the R-4 zone?

21 A Well, the requirement that there be a garage
22 or car port.

23 Q Okay. Now, have you as a housing
24 consultant, have you viewed the particular areas that
25 are located in the R-4 zone in Roxbury Township?

1 A Not at this point.

2 Q Did you intend to?

3 A I hope to.

4 Q I see. A I have no
5 specific plans.

6 Q Now, could you describe to me the
7 filtering process that I believe you had mentioned
8 previously and that is alluded to in Madison Township.

9 A The filtering process is a fairly well estab-
10 lished principal in housing markets analysis that
11 indicates that when a new house is constructed or new
12 housing generally is constructed, a certain percentage
13 of the people buying or renting the new housing will
14 have done so to upgrade their housing conditions and
15 will, as a result, vacate a unit that on the average
16 will be less expensive than the units they are moving
17 into.

18 Q Does that process work?

19 A Yes.

20 Q Now, could you tell me in your opinion,
21 if you can, what the cost would be of a unit as you
22 describe it newly constructed in Roxbury Township or
23 as you depict such a unit should be constructed for
24 a three bedroom house as compared to an existing
25 dwelling constructed 15 years ago in the R-4 zone in

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1 Roxbury Township, three bedroom house?

2 A I really can't speak to either.

3 Q Is it conceivable, Mr. Mallach, that
4 the borderline dwellings in Roxbury Township in the
5 R-4 zone, in fact, do provide least cost housing
6 through the filtering process because of the fact
7 that they are not newly constructed units?

8 A Well, they may or may not provide least cost
9 housing or inexpensive housing because I think the
10 term least cost housing has a somewhat narrower
11 definition given the court decision.

12 Q Yes. A I could speak to
13 whether they do. Assuming they provide some
14 inexpensive housing, the fact is that they are
15 existing houses which do not go toward meeting the
16 additional leads they are being created in terms of
17 household formation, replacement and what have you,
18 which is the basis for the fair share.

19 Q But doesn't that run counter to the
20 concept of the filtering process?

21 A No. In order to have the filtering process
22 work, you have to have new units to provide the
23 opportunity for filtering.

24 Now, let's assume hypothetically that there is
25 existing inexpensive housing in Roxbury Township which

1 is occupied. If that unit is going to filter, it's
2 going to be through the medium of the present occupant
3 ~~COTTEN~~ of that unit being able to buy a new unit within his
4 or her means. So long as no new housing is being
5 built, nothing filters.

6 Q Well, what my point essentially is, as
7 I understand it, the filtering process generally as
8 you described it to me is one where someone purchases
9 a dwelling unit of whatever type that is more expensive
10 than the dwelling unit that they are in. Is that
11 right? A Right.

12 Q Okay. Now, if people are living in
13 inexpensive homes in the R-4 zone and they purchase
14 more expensive dwellings in Roxbury or elsewhere, what
15 happens to the dwellings that are in the R-4 zone?

16 A They become available.

17 Q They become available, and my question
18 to you is this: It seems logical to me that that is
19 a housing stock in Roxbury that is available for
20 people to buy through the filtering process, is it

21 not? A Yes.

22 Q All right. Now, Roxbury Township permits,
23 dealing with your report again and I won't jump around
24 on you, two family houses are permitted in the R-5 and
25 R-6 with 10,000 square foot lots with average widths

1 of 100 feet, 5,000 square feet and 50 feet per dwelling
2 unit.

3 Now, does that provide any inexpensive or least
4 cost housing in Roxbury Township?

5 A It does not provide least cost housing.

6 Q Now, can you explain to me why it
7 doesn't? A Yes. I think first

8 5,000 square feet and 50 foot frontage dwelling units
9 for a two family house is, in any event, more than is
10 required for least cost standards. However, that is
11 somewhat academic because the ordinance also provides
12 that the overall density in a zone may not exceed five
13 units per acre, so that you have an effective land
14 utilization of something in the area of 9,000 square
15 feet per unit.

16 Q Okay. Now, Mr. Mallach, you did visit
17 the site where it's zoned for the two family homes.

18 Is that right? A That's correct.

19 Q Could you describe the site to us
20 generally as you recall it?

21 A Well, there are two sites in which two family
22 houses are permitted. There is the R-5 and R-6. The
23 R-6 is largely a swamp. Approximately two-thirds to
24 three-quarters of the site would appear to be swampy
25 with the water at or near the surface and probably,

1 although I haven't verified this, in large part flood
2 plain. The remaining part of the site is already
3 developed, although in a scattered fashion with
4 scattered single family houses along the street
5 frontage and some kind of machine yard or heavy equip-
6 ment yard also on the front frontage. These houses
7 and machine yard tend to occupy most of the high and
8 dry land of the site.

9 Q All right. Now, what is swamp land
10 worth compared to ready developable land that is out
11 of the flood plain? A Less. How
12 much less depends on the nature of the environmental
13 controls, but certainly less.

14 Q Okay. Now, Mr. Mallach, so that swamp
15 land is worth less money. Is that correct?

16 A Yes.

17 Q Now, all of the site is not swamp land.
18 Is that correct? A That's correct.

19 Q So what portions of the site would
20 normally be used for development?

21 A Well, in a hypothetical development site where
22 you would have a small amount of swamp land and a large
23 amount of high and dry land, clearly you would develop
24 the high and dry land.

25 Q All right. Did you do a study to

1 determine whether this particular parcel of land, the
2 one you are referring to, the swampy piece, has a
3 certain percentage of land that is readily developable
4 and a certain percentage that is not?

5 A Well, I've looked at this site in the soil
6 conservation service data and that is, as I suggested,
7 indicates that probably two-thirds or more of the site
8 is not developable.

9 Q And probably two-thirds or more of the
10 site is not readily usable for any purpose, right?

11 A That's correct, and of the site remaining, one-
12 quarter to one-third that might be developable, it
13 already has a number of structures on it.

14 Q And is it not so therefore that a
15 particular site such as this considering the environ-
16 mental constraints that exist on the site would
17 justify five units per acre because of the substantial
18 portion of the land could not, in your opinion be used.

19 Is that not so? A In theory that may
20 be apparent, but in practice this is an R-6 zone. Now,
21 under the R-6 zone the only permitted uses are two or
22 four family houses. Eighty percent of the units must
23 be two family houses under the provisions of the R-6.
24 Each one of those requires a separate lot of 5,000
25 square feet under the ordinance. If you could only

1 build lots on a quarter of a tract, you say even at
2 5,000 square feet, you would be unable to achieve a
3 gross density on the tract of probably more than two
4 to three on the acre.

5 Q But my question is that from a practical
6 standpoint, as far as this site is concerned, if it
7 was zoned for a million an acre or whether it were
8 zoned for industrial or whether it was zoned for any-
9 thing, except to be facetious, hunting snakes or
10 whatever, evidently it is not usable land, is it?

11 A Well, this raises a number of questions. Clearly
12 zoning a site in such a way that you only have a
13 quarter to a third of the tract of usable land, it's
14 an inefficient method for any kind of development and
15 a site that has been singled out, a tract that has
16 been singled out for development of that nature is
17 clearly not a suitable development tract. If you had,
18 for example, a larger tract of a few hundred acres
19 zoned multi-family, there were certain amounts of
20 development land in it, then that land could reasonably be
21 set aside and development at both gross and net density
22 could be achieved on the balance. In this case you
23 have a site that has so little development land relative
24 to what cannot be affected, that could be developed,
25 it's an inherently wasteful situation and the fact

1 that you have existing structures and existing houses
2 on the developable part of the land means that your
3 acquisition costs will probably be quite high despite
4 the large amount of undevelopable land there.

5 Q Well, in your experience as a housing
6 consultant and working with I assume substantial
7 projects, have you not found that land that has
8 serious environmental constraints is sold at substan-
9 tially lower prices? A Yes. What
10 I'm saying is that the fact that you are going to have
11 to buy houses in use and an industrial use on the
12 developable part will add to the cost of that portion
13 which will offset whatever hypothetical savings you
14 might obtain from the lower value of the swamp land.

15 Q Why do you assume that you would have
16 to buy the existing uses on the property in order to
17 use the balance of the vacant land?

18 A Because there is no, virtually no developable
19 land zoned in that zone that could be assembled
20 without buying the existing houses.

21 Q I see. And can you tell me why that is
22 the case, sir, after your examination of this parcel
23 of land? A Based on my examination

24 of the parcel of land, the existing uses are dotted
25 over the bulk of the developable portion of this tract.

1 Q And they are separate parcels?

2 A I don't know whether they are separate parcels.

3 Q But in any event, your testimony is clear

4 that as to this particular parcel of land, it is not
5 developable because of the fact that there are existing

6 uses in this mapped area as shown on the zoning map

7 of Roxbury Township? A My testimony

8 is that it would not be developable unless those uses
9 were acquired and most likely cleared.

10 Q Okay. Now, where was that parcel that

11 you were talking about? A This was

12 between Center Street and the river east of Port

13 Morris. I think it's Center Street.

14 Q Now, what other objections do you have

15 from the least cost standpoint to the properties

16 located in the R-5 and R-6 zone and the zoning affecting

17 them? A Well, as I mentioned, the

18 R-5, the R-6 zone rather is largely undevelopable and

19 certainly undevelopable for least cost purposes because

20 of the large part of the tract that cannot be developed,

21 the requirement to acquire existing uses and clear

22 them.

23 The R-5 zone is a much more complex site. It

24 is also partly with existing uses. These include at

25 least five existing single family houses and a New

1 Jersey Department of Transportation maintenance and
2 storage facility of a fairly extensive nature. In
3 addition, substantial parts of the site have steep
4 slopes which would significantly increase the cost of
5 developing the site.

6 Q And these particular constraints in
7 your opinion are the reasons why that site would not
8 provide least cost housing?

9 A That's correct.

10 Q From the zoning standpoint, are there
11 constraints that you find objectionable?

12 A Yes.

13 Q All right. Can you tell me what those
14 are?

15 A The growth density of five
16 units to the acre is unreasonable.

17 Q How much of the site is developable and
18 how much is not developable?

19 A Which site?

20 Q The one you were just talking about with
21 the New Jersey Department of Transportation and the
22 steep slopes.

23 A Well, to some degree
24 almost any site is developable in theory.

25 Q Within reasonable limitations, if you
26 will.

27 A Within reasonable limitations
28 it would be hard to say because I did not get to do as

1 thorough examination. I would say perhaps half.

2 Q Half? A That would be
3 a high estimate, I think. It would be half or less.

4 Q But assume that it was only 25 percent
5 developable, what would happen on this particular
6 site? A If it were only 25 percent

7 developable, they would only get one of two things
8 happening, perhaps. The most likely thing is that if
9 it were developed at all, it would be developed for a
10 number of units that would be substantially less than
11 the theoretical yield of the site. In other words,
12 let's say the site is 40 acres, which I think is
13 roughly the size. Then that would have a theoretical
14 yield of 200 units. In practice, the maximum yield
15 would be more likely to be 50 to 100 units.

16 Q Would you say that it provided least
17 cost housing or approximated providing the least cost
18 housing on this tract in the event that 200 units
19 could be placed upon 50 percent of the site and the
20 value of the land and the fact be substantially
21 diminished because of the environmental constraints?

22 A No.

23 Q And can you tell me why, sir?

24 A Because that would still not permit as high
25 density as could be developed efficiently.

1 Q Would it approximate least cost housing,
2 sir? A Well, I can't speak to
3 approximations. I don't know the meaning of the term
4 in this context.

5 Q Would it provide inexpensive housing,
6 sir? A It may conceivably.

7 Q Thank you. Now, dealing with the mid
8 rise or high rise apartments, is my recollection
9 correct that you feel that mid rise and high rise
10 apartments should be permitted in all of the defendant
11 municipalities that are involved in this litigation?

12 A Certainly mid rise apartments, not necessarily
13 high rise in addition.

14 Q What you are talking about there are
15 seven to nine stories? A Well, up to
16 that. At least four and up to say seven to nine
17 stories.

18 Q Now, have you taken into consideration
19 the municipal facilities that would be necessary in
20 order to support units that would be four to five to
21 nine stories high in Roxbury Township?

22 A Well, typically the one municipal facility that
23 seems to be called for in such situations, I guess the
24 quasi-municipal facility you might say would be somewhat
25 larger fire truck for the local volunteer fire department.

1 Q What about water pressure?

2 A I think that would vary from community to
3 community. I have no idea what the Roxbury system
4 is, but in many systems there is no need for a major
5 change to provide for a four or five story building,
6 especially as if need be the building design can only
7 provide for a storage tank of some sort.

8 Q What is a fire truck of the type
9 required to service a nine story building cost, Mr.
10 Mallach, if you know? A No, I'm afraid
11 I don't know.

12 MISS MASON: Can we take a five minute
13 break?

14 MR. VECCHIO: Sure.

15 (A short recess is taken.)

16 Q Okay. Does Roxbury have any zigzag
17 provisions? A Yes.

18 Q And can you tell me specifically how
19 the zigzag provisions in the Roxbury Ordinance increase
20 the cost and to what extent they do in those particular
21 zones? A I can't give you the extent
22 because I don't have the exact figures in front of me,
23 and in any event I haven't done a study of current
24 zigzag costs, but the manner in which they increased
25 the costs is by increasing the amount of wall area

1 that's required for a given number of habitable square
2 feet.

3 Q You have done a study on this at some
4 time in the past? A On specific costs?

5 Q Costs generated by zigzag provisions.

6 A No.

7 Q Now, does Roxbury contain a provision
8 in its ordinance dealing with what is commonly referred
9 to as look alikes? A Not according to
10 my report.

11 Q How do look alikes, or prohibiting of
12 look alikes increase costs?

13 A Well, they increase costs because they effec-
14 tively prevent the construction of straight forward
15 basically uniform small no frills single family houses
16 which are the most efficient kind of uses for small
17 lot development.

18 Q Well, can't you have imaginative types
19 of planning that prevent look alikes and still doesn't
20 cost any more? A Well, you can

21 have imaginative planning and certainly it's very
22 important if you are going to build a simple small
23 unit that it be a well designed unit. To some degree
24 it's arguable that any variation from one unit to the
25 next is potentially increasing costs because of the

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1 fact it reduces the efficiency of the construction
2 process, but if you have an imaginative design or
3 a couple of imaginative designs that will create an
4 attractive development, the no look alike provisions
5 often require such extensive variation in elevations,
6 roof height, roof width, number of windows, doors,
7 what have you, that they simultaneously increase costs
8 and discourage imaginative designs. I believe very
9 strongly that imaginative designs should be encouraged.

10 Q Well, for example, if you had a dwelling
11 house of a specific size and you just required the
12 roof to be turned around on various dwelling houses
13 and yet it was the same square footage of the roof,
14 would that still substantially increase costs and
15 prevent least cost housing?

16 A A provision of that sort might not. I'm unclear
17 as to what good it would do.

18 Q Beauty is in the eye of the beholder, I
19 guess, or something like that, isn't it?

20 A Let's not get into that. It's been discussed
21 extensively in some of the previous depositions.

22 Q What do you mean when you use the term
23 infrastructure? A Infrastructure means
24 the full range of off site and on site preparations
25 that are needed before construction can take place.

1 The principal infrastructure elements are streets and
2 internal roadways and the like and the appertainences
3 ~~CUT TO~~ such as gutters and curbs where necessary and the
4 provision of the sewer and water service.

5 Q Is it your contention that the developer
6 should not provide the infrastructure?

7 A Well, not necessarily, though I suggested I
8 think it's a very good thing where a municipality will
9 act affirmatively to assist the developer in infra-
10 structure provisions to make least cost housing
11 feasible. My position on infrastructure is I think
12 really straight forward to the degree that the infra-
13 structure existing ⁱⁿ the community can be tapped into.
14 Then it makes the best sense to zone the most accessible
15 sites in that regard for least cost housing to the
16 degree that there off sites improvements involved a
17 developer of least cost housing can be made responsible
18 for its prorata share of off tract improvements as
19 provided under the Municipal Land Use Law.

20 Q You do not contend that the Municipal
21 Land Use Law is invalid in that regard, do you?

22 A No.

23 Q All right. I'm sorry, I interrupted you.

24 A However, that as the Madison decision made
25 clear is that if the municipality has sited the areas

1 for least cost housing in such a relationship to the
2 existing infrastructure that the extensions are
3 massive or particularly lengthy, then that is clearly
4 inconsistent with least cost housing goals.

5 Q What is the situation in Roxbury
6 Township in your opinion? A In what
7 regard?

8 Q With reference to the imposition of
9 infrastructure costs upon the areas that are zoned
10 for multiple family dwellings?

11 A I do not know.

12 Q Are you willing to study that facet of
13 the matter or not? A Most probably not.

14 Q I see. There will be someone else that
15 will address themselves to that or you don't know?

16 A I don't know.

17 MISS MASON: I'm not certain of that.

18 Q I see. Now, did you address also in
19 your report snow removal and trash removal and the
20 proposition that such costs should not be imposed upon
21 the development itself or owner of the property?

22 A That's correct.

23 Q Well, what difference does it make as
24 to whether those items are paid by the developer
25 through a private scavenger or paid through taxes?

1 A Well, if he's paying taxes anyway and has to
2 pay for private scavenger over and above the tax,
3 that's an imposition.

4 Q Unless the tax rate were adjusted based
5 upon the services received. A Well,
6 if X percent of the municipal budget goes to such
7 trash removal, then if he pays his taxes and it's
8 part of the general budget of the municipality, he
9 pays his taxes and he contributes toward that for
10 himself and toward the community as a whole, it
11 averages out over the community. If he is required
12 to pay for private trash removal while the rest of the
13 community obtains their trash removal as part of the
14 general purpose municipal budget, then he is being
15 double taxed because certainly if he were not obligated
16 to pick up trash himself and receive the service from
17 the municipality, then it's possible that the service
18 cost to the municipality might go up slightly. That
19 would be then disbursed over all the taxpayers as is
20 the case with everybody else's trash removal and his
21 taxes will certainly not go up to match the amount
22 that he has to pay for a scavenger on his own.

23 Q How would you characterize Roxbury
24 Township, as what kind of a community?

25 A Well, say outer ring suburban community.

1 Q Is that a term of yours or is that a
2 term that you have obtained or read somewhere else?

3 A It's a term in common use in say the housing
4 and planning trade.

5 Q From a zoning standpoint are there urban
6 as opposed to suburban standards?

7 A Standards, no. Obviously there are what one
8 might call pendencies. They are more distinctly urban
9 or more distinctly suburban.

10 Q Do they relate at all to the infra-
11 structure that presently exists in urban as opposed
12 to suburban communities?

13 For example, the existence of public sewage,
14 public water supply, etc. A Well, the
15 zoning standards undoubtedly have a relationship to
16 the existence of sewer and water services, but I
17 wouldn't characterize that as being an urban, suburban
18 distinction because large parts of suburban communities
19 have public water and sewer.

20 Q Dealing again with Roxbury Township,
21 are you aware of what public water systems and/or
22 sewage systems exist within the municipality?

23 A No.

24 Q If you assume that 50 percent of the
25 municipality was not serviced by public water and

1 sewage, would that affect your concept as to how the
2 land in that municipality should be zoned?

3 A To a degree.

4 Q If you assume that 100 percent of the
5 municipality were not serviced by public sewer or
6 water, would that affect your concept as to how the
7 land should be zoned?

8 A Again to a
9 degree.

10 Q And to what degree?

11 A To the degree that if a municipality had no
12 public sewer and water, the means by which least cost
13 housing were to be provided might require the develop-
14 ment of package treatment facilities. As such you
15 would try to identify areas for multi-family zoning
16 which would be conducive to such facilities and where
17 the total number of units that would be developed would
18 be adequate to sustain high quality maintenance as well
19 as construction of such facilities.

20 Q What type of package facility would you
21 recommend for Roxbury Township?

22 A I think that would have to be evaluated on a
23 site by site basis.

24 Q Approximately how much land would have
25 to be devoted to a package plant for say a 300 unit
apartment site of a least cost type for a package plant?

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1 A Again, that would vary widely. It could be a
2 very small amount if you were in the position to
3 discharge into a stream directly.

4 Q All right. Assume that in the first
5 instance then. A Well, again, without
6 claiming to great technical expertise in this area,
7 which is a disclaimer I've made frequently because
8 sewers appear to be on the minds of many people, the
9 acreage might be two, three, at most five acres,
10 perhaps.

11 Q Five acres? A That would
12 be the maximum.

13 Q To service how many units?

14 A 300.

15 Q I see. And for a spray irrigation, how
16 many would be necessary? A I don't have
17 any exact figures. It's obviously more than that and
18 it apparently varies very widely depending on the nature
19 of the soil characteristics of the area that you have
20 chosen for spraying.

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COTTON

21 Q Well, what is the value of a one acre
22 parcel of prime residential land in Roxbury Township
23 as opposed to the value of a one acre prime parcel in
24 Essex Fells, do you know? A No.

25 Q Would there be a difference?

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1 A Most probably.

2 Q All right. Does an outer ring community
3 such as Roxbury Township generally tend to have lower
4 land values? A It varies. I think

5 if you hold what you might call economic level
6 constant, it would probably have somewhat lower land
7 values, but even so that would vary depending on the
8 quality of the transportation system and the like.

9 Q Now, so that I don't deal with the
10 defendants that are involved in this, are you familiar
11 with Livingston which is in the general region that
12 abuts Florham Park? A In a general sense.

13 Q Say a one acre parcel of land in
14 Livingston is worth more or less than an equivalent
15 one acre parcel of land in Roxbury Township.

16 A Again, this is based purely on speculation
17 without any hard facts, but I would guess that it
18 would probably be worth more.

19 Q Now, is it conceivable then therefore
20 that although some communities may zone for least cost
21 housing, that the burden of the totality of least cost
22 housing will be imposed upon those communities wherein
23 the property values are lower?

24 MISS MASON: Would you read back that
25 question for me.

1 (The following was read by the Reporter:

2 "QUESTION: Now, is it conceivable then
3 therefore that although some communities may
4 zone for least cost housing, that the burden of
5 the totality of least cost housing will be
6 imposed upon those communities wherein the
7 property values are lower?")

8 THE WITNESS: It's very hard to tell
9 given the fact that least cost housing and the
10 whole argument of over zoning for least cost
11 housing and so on is so new that it's very hard
12 to tell exactly what would happen if it had a
13 proper test. I think given the land values
14 would be higher in some place than others, it's
15 likely that what amounts to least cost housing
16 in one community might be more expensive than
17 to what amount it is in other communities.

18 Q In a community that has very high land
19 values at the present time, even if that community
20 zones for least cost housing, inexpensive housing may
21 very well not be created. Is that correct, sir?

22 A It's a possibility.

23 Q And is it not further possible that that
24 type of zoning, if forced upon inner ring suburban
25 communities and outer ring suburban communities would

1 have the affect of creating lesser expensive least
2 cost housing in the outer ring communities?

3 MISS MASON: I assume you are addressing
4 this to developing communities.

5 MR. VECCHIO: Yes.

6 THE WITNESS: It may. I think it would
7 also have a bearing on whether there were any
8 trade offs in terms of infrastructure provision
9 costs which might be lower in the inner ring
10 communities.

11 Q So is it conceivable then, absent the
12 trade off on infrastructure, that an outer ring
13 community such as Roxbury would end up with somewhat
14 more than its share of least cost housing in the sense
15 that is more inexpensive housing?

16 A Well, not necessarily. If I read the Madison
17 language correctly, what the court is looking for is
18 for the municipalities to make possible its fair share.
19 In other words, what you are saying, let's say that you
20 over zoned.

21 Q Do you want me to phrase it?

22 A Let me try the hypothetical and if it seems to
23 make sense --

24 Q Fine. A Let's say you
25 over zoned say by a factor of three of least cost

1 housing based upon the general market analysis that
2 you discovered in Roxbury say by virtue of its
3 economic characteristics, land cost characteristics,
4 what have you, your least cost housing was being
5 produced at a ratio of say one to two instead of one
6 to three, now I see no reason why in such a circumstance
7 a municipality would be legally barred from monitoring
8 the actual production of least cost units and con-
9 ceivably if least cost housing production as a
10 percentage of total production or as a percentage of
11 land use exceeded the expected share than perhaps
12 removing some of the land gradually from the available
13 inventory for least cost housing production. I'm not
14 saying I would recommend that.

15 Q How would the Township do that if this
16 litigation were terminated and the court said that
17 Roxbury Township has to zone for 2,000, 2500 units?

18 A Okay. Let's say the goal is 2500 least cost
19 units.

20 Q I think it's somewhat less, I hope.
21 Hypothetically.

22 Q Fine. A And given the
23 Madison language, Roxbury would be expected to over
24 zone, so that let's say they might create zones where
25 the theoretical capacity was 7500 units. Now, Roxbury's

1 fair share is 2500 units. The over zoning is, because
2 of all the various regions, it might lead to some
3 land not being used toward the fair share, but
4 Roxbury could monitor the actual housing production
5 overtime so that if, for example, they discovered
6 that the fair share was being met, that there was
7 still ample vacant land zoned for least cost housing,
8 but that their fair share for least cost housing was
9 being met at a faster rate or more efficient level
10 than they had expected, then they could rezone some
11 of the remaining vacant land.

12 Q Bu t have you experienced any area in
13 this country wherein this process has been carried
14 through to the ultimate culmination in the United
15 States of America? A No.

16 Q Is there any such area that you are aware
17 of where it has occurred outside of the United States
18 of America? A The process by which
19 you mean --

20 Q By which I mean the requiring of
21 municipalities, various municipalities to zone for
22 least cost housing and the ultimate affect upon the
23 various municipalities in doing so?

24 A No.

25 Q I may have asked you this question. If

1 I did, I apologize. Can you conceive of some munici-
2 palities zoning for least cost housing and the housing
3 be of such cost that it does not provide for least
4 cost housing?

5 I'm sorry, does not provide for inexpensive
6 housing, if you will? A I think that's
7 certainly possible. In fact, that is clearly part of
8 the rationale for over zoning that at least some of
9 the housing that would be built under least cost
10 zoning provisions would be more expensive, larger,
11 fancier, frillier, whatever.

12 Q Can you conceive of this happening based
13 solely upon the land cost in the various communities?

14 A No.

15 Q We do agree on one item that generally
16 the further away from the urban areas, the property
17 values are less? A Other things being
18 equal, yes.

19 Q Now, does parking in your opinion for
20 multiple family dwellings have to be related to
21 occupancy? A Generally speaking,

22 yes.

23 Q In other words, you would say that an
24 efficiency apartment would require less parking than
25 a four bedroom apartment, obviously?

1 A Yes.

2 Q You were involved in the Mount Laurel
3 case from its inception or nearly so?

4 A Nearly so, I guess.

5 Q Has least cost housing been built in
6 Mount Laurel? A No.

7 Q What about Madison Township?

8 A I believe so. I haven't been as closely
9 involved with the Madison case, but I believe that
10 the developer has, one of the plaintiffs in the case
11 and who received permits as a result of the litigation,
12 has built housing and a substantial part of which is
13 least cost or is in the process of doing so.

14 Q Even if subsidies exist for least cost
15 housing, is it difficult to construct them with
16 present day construction costs?

17 A No.

18 Q In considering the elements of health
19 and safety, do you consider within the ambit of those
20 elements the following items within the definition
21 that we had dealt with earlier, fire?

22 A Yes.

23 Q Why don't I just read them and tell me
24 which ones you don't exclude or don't include. Flood,
25 panic, other natural and man made disasters.

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1 A Certainly, though I've never been entirely
 2 clear about the panic. I guess that has to do with
 3 double exits in theaters and such things.

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4 Q Adequate light, air and open space?

5 A Yes.

6 Q Development of individual municipalities
 7 not conflicting with the development and general
 8 welfare of neighboring municipalities?

9 A I think that goes into the general welfare
 10 category as being not specifically related to health
 11 and safety.

12 Q So that when you use the terms health
 13 and safety, you do not include that in there?

14 A That's correct.

15 Q So then you feel that in the area of
 16 least cost housing that item should not be considered?

17 A I would guess so.

18 Q To promote the establishment of
 19 appropriate population densities and concentrations?

20 A That could be included.

21 Q Encourage the appropriate and efficient
 22 expenditure of public fund by the coordination of
 23 public development with land use policies?

24 A That' strictly speaking, is not a health or
 25 safety matter.

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1 Q Provide sufficient space and appropriate
2 location for a variety of agricultural, residential,
3 recreational, commercial and industrial uses and open
4 space both public and private according to their
5 respective environmental requirements in order to meet
6 the needs of all New Jersey citizens?

7 A That's got a little of everything.

8 Q Well, that's not within your definition?

9 A Certainly to some degree, yes.

10 Q Do you remember it at all or would you
11 like to look at it and tell me what degree is in and
12 what is --

13 MISS MASON: If you are going to be
14 specific, maybe he should look at it.

15 MR. VECCHIO: I have no objection to him
16 doing so. It's item g.

17 MISS MASON: Thank you.

18 THE WITNESS: Again, I won't want to
19 suggest these are hard and fast categories.
20 For example, one could argue that preservation
21 of agricultural land is needed for health and
22 safety because one must eat. One could equally
23 argue that although one must eat, one could eat
24 food from other municipalities or regions or
25 states or what have you. What I'm saying, in a

1 situation like that, it's whether this fits
2 into the health and safety aspect to the purposes
3 rather than the general welfare aspect is
4 really a judgment matter, it's hardly a hard
5 and fast one.

6 Q But my point is, you see what I'm
7 trying to do is try to find out again how encompassing
8 your use of the terms health and safety are and I'm
9 also attempting to determine, and I'll tell you what
10 the purpose of my question is. I'm attempting to
11 determine whether, in your opinion, if you will to
12 any extent render any portions of the Municipal Land
13 Use Act invalid if your opinions are correct because
14 I have some thoughts of my own in that regard.

15 A Well, I don't see that. For example, if we
16 take f that you cited before which is to encourage
17 the appropriate and efficient expenditure of public
18 funds by the coordination of public development with
19 land use policies. Now, I would consider that a
20 legitimate purpose of land use planning generally and
21 even though I don't believe that the framing of
22 specific zoning standards for least cost housing
23 necessarily bears any direct relationship to that, I
24 think at the point where a municipality is planning
25 a rezoning to provide its fair share of least cost

1 housing, an enlightened municipality would identify
2 sites and identify appropriate uses for sites in the
3 context of that language.

4 MR. VECCHIO: Okay. Could I have it
5 back, please, to ask him a couple of questions?

6 MISS MASON: Yes.

7 THE WITNESS: There are a lot of things
8 going on in the planning process that are
9 legitimate that do not necessarily relate to
10 the framing of specific standards for a multi-
11 family zone.

12 Q And does your concept of health and
13 safety include to encourage the location and design
14 of transportation routes? A I would
15 include that, yes.

16 Q And to promote the free flow of traffic?

17 A I think that's essentially the same that was
18 assumed under the previous one.

19 MISS MASON: I think that while Mr.
20 Mallach has attempted to explain that he's
21 not comfortable answering these kinds of
22 questions in light of the different perspectives,
23 I guess you could say in the Municipal Land Use
24 Law and what he is here today to try to do, he
25 is talking about specific municipalities rather

1 than the approach that the municipalities
2 should consider in determining what sites and
3 what kind of zoning is appropriate for the
4 municipality.

5 MR. VECCHIO: Yes, I understand that,
6 but all that I'm trying to do is trying to get
7 down to the concept that Mr. Mallach uses and
8 that's health and safety, and to determine
9 whether all of the purposes or just some of
10 the purposes of the Land Use Act are incorporated
11 in his, in what he means by health and safety.

12 Q Am I being unfair in asking you that

13 subject? A Let me speak to counsel
14 for a second.

15 (There is a discussion off the record.)

16 MISS MASON: Mr. Vecchio, for the record
17 I would like to say that I think my client has
18 already answered that question in giving a
19 complete answer previously as to what elements
20 are included in his concept of health and
21 safety. I think that I want to be certain that
22 you are not, first of all, asking for a legal
23 interpretation in the question that you are
24 asking him now and I would also like to state
25 that I think that the Municipal Land Use Law is

1 not being used here appropriately. That's not
2 really within the scope of the kind of things
3 that we are trying to discuss insofar as his
4 expert testimony is concerned.

5 MR. VECCHIO: All right. But unless
6 you direct him not to answer the question,
7 which I hope you don't, all that I'm trying to
8 do is to determine whether in his determination
9 what items are included in his concept of
10 health and safety. They either are or they
11 aren't and I'm trying to understand it somewhat
12 better myself.

13 MISS MASON: I will not instruct him
14 not to answer.

15 MR. VECCHIO: And your objection is
16 certainly noted.

17 MISS MASON: Thank you.

18 MR. VECCHIO: I have no problem with
19 that.

20 Q In your concept of health and safety,
21 do you determine or does that include the promotion
22 of desirable visual environment as you used the term
23 of health and safety with good civic design and
24 arrangements? A That one is
25 awfully vague. I believe perhaps at the margins it

1 may have some relation to health and safety, but not
2 generally speaking.

3 Q What about the promotion to promote
4 the conservation of open space and valuable natural
5 resources and to prevent urban sprawl and degradation
6 of the environment through the improper use of land,
7 does that -- A Certainly.

8 Q And have you also considered or do you
9 include within that definition the encouragement of
10 planned unit developments? A No.

11 Q And do you include in health and safety
12 to encourage the senior citizen community housing?

13 A That's something of an analogous provision in
14 that list. Clearly senior citizen housing is like
15 housing for non-senior citizens is required for health
16 and safety. Obviously your citizens in that case,
17 that it should be singled out in that fashion however,
18 is something that I see no, shall I say philosophical or
19 conceptual --

20 Q Is this included to encourage coordina-
21 tion of the various public and private procedures and
22 activity shaping land development with a view of
23 lessening the cost of such development and to the more
24 efficient use of land? A Again, it may
25 That's again framed in such general terms that it's --

1 it could be considered included.

2 Q All right. Do you feel that your
3 concept of least cost housing comports with the
4 Municipal Land Use Act? A Yes.

5 Q Just one other question, Mr. Mallach.
6 It will be my last one unless your answer is too long,
7 in the event which I may think of another question
8 and that is essentially this, I have a good deal of
9 concern on behalf of Roxbury Township along the same
10 lines I have to rehash once more. Are you familiar
11 with Essex Fells which is a very high class residential
12 community in Essex County? A Yes.

13 Q Are you aware that the land costs in
14 Essex Fells are extremely high?

15 A Not with specificity.

16 Q Let's assume that there is a community
17 in New Jersey within the region that has extremely
18 high land costs and that community is zoned for least
19 cost housing and that least cost housing is produced
20 in line with Mount Laurel, but it does not amount to
21 an expensive housing, then where will the inexpensive
22 housing end up? A Elsewhere.

23 Q And where would that elsewhere be, sir,
24 in communities that have lesser property values?

25 A We are pyramiding hypotheticals here and I

1 think if you look at Essex Fells, for example, from a
2 practical standpoint, one of the reasons that land is
3 expensive there, which I believe is, even though I have
4 no specific knowledge, is not so much that it is a
5 high class community, but that it is a high class
6 unity with an extreme scarcity of remaining buildable
7 parcels. So in other words, there are very few parcels,
8 but yet since by definition there are always going to
9 be a fair number of people seeking their way into a
10 high class community, the combination of the demand
11 and scarcity tend to bid the land up drastically, so in
12 a situation like that it's unlikely that anything,
13 particularly inexpensive would be built unless some-
14 body set out deliberately to bring about housing under
15 a government subsidy program which might be one
16 alternative to contemplate for such situations.

17 Q Well, how do you make an allocation
18 without determining that first, Mr. Mallach?

19 A Determining what?

20 Q Determining where the inexpensive
21 thing will, in fact, as a practical matter conceivably
22 be located. That's my problem.

23 A Well, I think part of that is, if you do an
24 allocation that takes into vacant land and employment,
25 so that gives you an idea of where it reasonably ought

1 to locate, at that point I guess the court took the
2 position that beyond that it's not in the purview of
3 the municipality.

4 In other words, I think there is an important
5 point here, if the municipality were to take an
6 affirmative role in seeing to it that the allocation
7 was going to be met, then I think a municipality could
8 certainly do quite a number of things in terms of
9 working with community development funds, providing
10 seed money, to providing tax abatement and all kinds
11 of other things. In essence, rightly or wrongly and
12 I must admit I'm of two minds on the subject, the
13 court said the municipality should take essentially
14 a passive role, should zone right and then step by
15 step back from the picture, if you will, and so in
16 essence the allocation process under those terms
17 cannot dictate what will actually get built where.
18 It's a matter of providing opportunities.

19 Q What I'm asking you is your projection
20 if the municipalities provide the opportunities
21 it most likely will be built and I'm introducing
22 the factor of land cost. A It's possible
23 that over a region it would be built more rapidly or
24 more likely to happen in amounts commensurate with the
25 fair share in municipalities that had the lower land

1 costs. Again, assuming availability of infrastructure
2 and so on.

3 Q And do you feel, Mr. Mallach, that that
4 is, from your standpoint, not the standpoint of the
5 court, but from your standpoint as a planner and a
6 housing consultant in considering the various munici-
7 palities that are involved in this matter, that that
8 result is a fair and equitable and just result, sir?

9 A I really don't know.

10 MR. VECCHIO: I don't think it is, Mr.
11 Mallach, and that's my problem. Thank you
12 very much.

13 THE WITNESS: Thank you.

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

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MEMO

MORRIS COUNTY FAIR HOUSING COUNCIL,
et als,

Plaintiffs,

-vs-

BOONTON TOWNSHIP, et als,

Defendants.

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: CERTIFICATE

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I, VICTOR SELVAGGI, JR., a Certified Shorthand Reporter and Notary Public of the State of New Jersey certify that the foregoing is a true and accurate teanscript of the deposition of ALAN MALLACH who was previously sworn at the place and on the date hereinbefore set forth.

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

Victor Selvaggi, Jr.

A Notary Public of the State of New Jersey

Dated: 5/10/79