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8-19-76

Transcript of Peter Abeles  
testimony

Pgs. 60

\* note quality is iffy.

MM000078S

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, BURLINGTON CO.  
DOCKET #L-25741-70 P.W.

SOUTHERN BURLINGTON COUNTY :  
N.A.A.C.P., et als :

vs. :

TOWNSHIP OF MOUNT LAUREL :

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, BURLINGTON CO.  
DOCKET #L-39647-75 P.W.

DAVIS ENTERPRISES, a :  
Partnership :

vs. :

TOWNSHIP OF MOUNT LAUREL, :  
a body politic, and the :  
PLANNING BOARD OF THE :  
TOWNSHIP OF MOUNT LAUREL :

- - - - -

August 19, 1976

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Oral depositions of PETER ABELES, taken in the  
Mount Laurel Municipal Building, Mount Laurel, N.J.,  
before Harry J. Bateman, a C.S.R., R.P.R. and Notary  
Public of the State of New Jersey, commencing at 10 a.m.,  
on the above date, there being present:

CARL S. BISCAIER, Deputy Director, Dept. of  
Public Advocate,  
for the Plaintiff

1  
2 TRIMBLE & MASTERS, ESQS.,  
3 BY: JOHN W. TRIMBLE, ESQ., and  
4 ROBERT F. ROGERS, ESQ.,  
for the Township of Mount Laurel

5 FARR, BRANDT, HAUGHEY, PENBERTHEY & LEWIS, ESQS.,  
6 BY: EDWARD A. PENBERTHEY, ESQ.,  
7 for Davis Enterprises as Plaintiff-  
8 Intervenor (Not Present)  
9  
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PETER ABELES, having been duly sworn,  
was examined and testified as follows:

BY MR. TRIMBLE:

Q. Mr. Abeles, I am John W. Trimble, attorney for Mount Laurel. I would like to ask you some questions concerning the litigation between Southern Burlington County NAACP, et al vs. Township of Mount Laurel.

Where is your office?

A. 10 Kenmare Street, New York City.

Q. What is your occupation?

A. I am a planner.

Q. Are you a licensed planner in the State of New Jersey?

A. That's correct.

Q. How long have you been a planner?

A. Eighteen years.

Q. And are you in business for yourself now?

A. I am employed by a corporation of which I am an officer.

Q. What field of planning have you been in, generally, if you have been in any specific field?

A. Generally, land use planning, zoning, subdivision problems, development of ordinances, operational research in various aspects of planning and housing, economic and market studies for various kinds of facilities, facility



1 planning for medical facilities, municipal centers,  
2 things of that nature. Housing and housing developments,  
3 both as a developer of housing and as a consultant to  
4 clients to develop housing on their behalf. Evaluations  
5 of housing and land use and development problems for  
6 federal, state and private agencies. I think that  
7 probably covers it.

8 Q. Have you ever represented clients that have been  
9 in a low or moderate housing field?

10 A. Yes, a number of clients.

11 Q. And in the State of New Jersey?

12 A. Yes.

13 Q. In particular, have any of them done any work in  
14 South Jersey below Mercer County?

15 A. Yes.

16 Q. Who were they?

17 A. I guess the most southern one would be the NIA  
18 Development Company of Bridgeton.

19 Q. NIA?

20 A. Yes.

21 Q. Were these low and moderate housing developers,  
22 or were their projects done through some type of a  
23 federal program?

24 A. Yes.

25 Q. Exclusively?

1 A. No.

2 Q. Have any of them done any work without some type  
3 of government subsidy, either state or federal?

4 A. As low income is generally defined or accepted,  
5 none that I have been involved with have built housing  
6 without state or federal assistance.

7 Q. How about moderate income?

8 A. That depends on the definition of moderate. That  
9 is an iffy area.

10 Q. What is your definition of low income and moderate  
11 income so far as the housing field is concerned?

12 A. I don't have any personal definition. I don't  
13 feel myself absolutely bound by the conceptional defi-  
14 nitions which are inherent in Section 8 of the Regulations  
15 which define low income as 50 percent of median income  
16 and moderate as 80 percent of median income. I think  
17 the first part of the definition makes a great deal of  
18 sense as a practical percentage, 50 percent median for  
19 low. I am not sure of what the moderate is. I have  
20 used 100 percent as median income to define the upper  
21 limits of moderate. Of course, all income limitations  
22 have a caveat such as size of the family, unusual  
23 expenses per family.

24 Q. Are there any other authorities in the field that  
25 have defined low and moderate income, other than what

1 you use?

2 A. I can't give you the name of any specific author-  
3 ity, but for what it is worth, general acceptance of  
4 the terms, are that low and moderate income are those  
5 incomes at which the current market conditions cannot  
6 by themselves provide new housing for families in those  
7 groups.

8 Q. Give me that again?

9 A. Low and moderate income may be defined as the  
10 amount of income at which it is not possible under  
11 current market conditions for private development with-  
12 out some assistance to supply housing for those groups.

13 Q. So, it is feasible that someone making \$20,000 a  
14 year could be under some set of circumstances low income?

15 A. That's correct.

16 Q. Now, isn't it true there is certain reports that  
17 are put out by such agencies as the Delaware Valley  
18 Regional Planning Commission that sets certain income  
19 levels, \$5,000, \$10,000, \$15,000, etc., and allocate  
20 housing figures to ranges such as those?

21 A. I am sure there are.

22 Q. You are familiar with that type of a breakdown?

23 A. Sure.

24 Q. You don't accept those breakdowns as having any  
25 real significance?

1 A. No. I think each one of those breakdowns have to  
2 be evaluated before one can make an opinion as to what  
3 significance they have and for what purpose. Since  
4 there is no agreed upon definition of income categories  
5 for the purpose of housing, people who deal with the  
6 subject make different definitions, depending upon the  
7 problem they are trying to deal with. Sometimes the  
8 definitions are made in a certain way because the data  
9 which is available for people who are doing long term  
10 planning are only available certain ways. You are  
11 limited by the fact most of your regional data is a  
12 function of census material, and a group like the  
13 Delaware Regional Planning Commission may rely upon the  
14 census and, therefore, for convenience sake, take the  
15 material that comes out of the census files. Others  
16 like the Regional Tri-State Planning Commission in the  
17 New York Metropolitan area will conduct its own study  
18 to get different data and make different definitions.

19 Q. What criteria did you use for your evaluation of  
20 the problems in Mount Laurel?

21 A. Well, when Lou Glass and myself discussed the  
22 questions of the fair share plan, I think my definition  
23 was somewhat close to the definitions set forth under  
24 Section 8. I felt that 50 percent of current median  
25 income, at the time you are looking at it, 1975-76,

1 probably was good enough a cutting point to define low  
2 income. I think that I had questions in my own mind  
3 whether 80 percent or 100 percent of median income was  
4 the appropriate place to define the upper limits for  
5 moderate income families.

6 Q. What have you used in your report, or did you  
7 plan on using, as the median income for Mount Laurel?

8 A. At this point, I don't think I am going to get  
9 into that area. I may, but I don't know yet. My report,  
10 as I prepared it, as far as draft form, just deals with  
11 the zoning, subdivision ordinances and various selected  
12 sites. I haven't had the occasion yet to grapple with  
13 the problem of defining income.

14 (Off the record discussion.)

15 Q. So it is fair to say, through off the record  
16 discussion with your counsel, that you are not really  
17 going to get involved in the median income and the  
18 numbers of fair share in Mount Laurel Township?

19 A. Well, with a caveat, of course, when we have a  
20 trial on this matter and we are trying at that point to  
21 elicit information for the Court, questions may come up  
22 as to the relationship between zoning, subdivision, soil  
23 erosion and other ordinances we are dealing with, and its  
24 impact upon housing costs and who can afford it. I think  
25 at that point I would have to make some conclusions as

1 to what I was talking about as to various income groups.  
2 So, I don't want to leave counsel with the impression  
3 I won't think about it, nor come to some conclusions.

4 Q. Are you familiar with the Burlington County  
5 housing allocation plan?

6 A. Yes, I am.

7 Q. Would that have been referred to in your report  
8 at all?

9 A. Probably not.

10 Q. Have you had an opportunity to review the ordinance  
11 that was passed in May of '76 by Mount Laurel Township?

12 A. Ordinance #1976-5, I believe.

13 Q. Assuming that is the amendment.

14 A. The one that incorporates the three new zones and  
15 fair share, I have studied that ordinance.

16 Q. Have you had the opportunity to review the sites  
17 that the proposed amendment to the Zoning Ordinance  
18 applies to?

19 A. I have reviewed two of the three sites. I have  
20 not looked at the Larchmont site.

21 Q. What are your criticisms, if any, of that  
22 ordinance and of the sites?

23 A. Let's take the sites first. The proposed site for  
24 the multi-family is behind the shopping center. I think  
25 it is called the R-5 site. I don't think it is an

1 adequate site for a number of reasons. In my field  
2 inspection of the site it was a wet site, poorly drained,  
3 some stream problems in it. It is bounded by a number  
4 of highways, so that the probable noise levels on the  
5 site make it difficult to be used as a housing site,  
6 generally surrounded by nonresidential uses. I am not  
7 restricting my view, by the way, to the uses within  
8 Mount Laurel. Obviously, I take uses of adjoining  
9 properties, which happens to be another municipality,  
10 or access to the site is through other municipalities  
11 through Nixon Road. I don't think that is a very good  
12 access at this time. Inherently, it is a one site kind  
13 of zoning, which I question and would be what I describe  
14 as might be spot zoning, but the direct impact is that  
15 the decision whether it can be used for its intended use  
16 is now subject to only one landowner, who may elect for  
17 whatever reasons not to use it, or he may decide, because  
18 only he has that particular zone that is available. I  
19 believe when a land scarcity situation is created for  
20 particular housing, you just about prohibit that type  
21 of housing. In other words, if there are relatively  
22 few acres available for a particular use and there is a  
23 demand, the price is the function, because of the fact  
24 there is very few acres. Those are my criticisms of  
25 that site, though, and others, which I will have to put



1 together in better fashion. I don't think it is a  
2 wise choice as a site.

3 Also, I think the Lindenwold High Speed Line runs  
4 through it or close to it. That is the general plan.

5 The single family sites --

6 Q. Stick for the minute on that site. Is there a  
7 demand, if you know, for low and moderate income housing  
8 in South Jersey?

9 A. Yes.

10 Q. What is your basis for your answer to that?

11 A. That within the last fifteen or twenty years,  
12 no one has built any with the exception of a few  
13 projects by HFA, since between 20 and 40 percent of the  
14 population falls into the low-moderate income category,  
15 would suggest there is a tremendous pent-up demand.

16 Q. You are saying there is a need, but is there a  
17 demand, are there developers in the market that are  
18 looking for sites to build low-moderate income housing?

19 A. I would think so; yes.

20 Q. Do you know of any?

21 A. Myself.

22 Q. You have already stated it has been your experience  
23 it is almost 100 percent subsidized, one type or another.  
24 Are there subsidies today to implement a low or moderate  
25 income housing project?



1 A. Yes.

2 Q. What programs are they?

3 A. HFA Mortgage Assistance and Section 8, and yet to  
4 be disclosed future programs of development in low-  
5 moderate income housing. Unfortunately, a lengthy  
6 process. Most people who start it, by the time they  
7 get to the point of financing hope something else is  
8 available. I think that has been the history of the  
9 field for the last twenty years. Experience has proven  
10 out if you start a project, and it is the right kind of  
11 project, they get built. I know from my own experience  
12 we have dealt with three, 4,000 units in the state and  
13 many of them looked questionable at the point we started,  
14 if you can put it together and you like the site, they  
15 all eventually do get built and the incentives are  
16 sufficient so there is a market.

17 Also remember, of course, that the low-moderate  
18 income developer has a unique position since no one  
19 else is building any of this housing, the question of  
20 marketability is important to any developer, anything  
21 you build which is low-moderate income, you can sell,  
22 so there is that additional consideration.

23 Q. You are saying if you build low and moderate  
24 income housing in Mount Laurel you don't need a market  
25 study as to the need here?

1 A. As a practical matter, I don't think you do; no.

2 Q. There is people that would come into Mount Laurel  
3 and occupy these premises?

4 A. I would think so; yes.

5 Q. You would advise your clients not to even do a  
6 market study of whether there is need in Mount Laurel?

7 A. Well, it depends on how big a job you are talking  
8 about. If you are talking of 100, 200 units, there  
9 isn't any need for a market study. If you are talking  
10 about 1000 units, something of that nature, you would  
11 certainly want to take a market study. It is a question  
12 of absorption. I don't think there is any question if  
13 you build a -- assume the normal rent-up period is  
14 three, four, five or six months, 100, 200 units would  
15 be absorbed very quickly. I looked at a HFA job not  
16 far from Camden or Gloucester County last week, three  
17 hundred and some odd units of those which were finished  
18 were already rented up, there was a waiting list for  
19 this type housing.

20 Q. Where was that?

21 A. Some place in Gloucester or Camden.

22 Q. Is that HFA?

23 A. Yes.

24 Q. What is that?

25 A. Housing Finance Agency.

1 Q. That was in Gloucester City?

2 A. I don't recall. There was like twenty projects,  
3 that I had to visit for clients and one turned out to  
4 be an HFA job. There was three hundred and some odd  
5 units.

6 From my experience, much smaller communities with  
7 less growth, like Bridgeton, there we did 200 units..  
8 There was no market study. It rented up. In the same  
9 community, somebody else built one, I think, about the  
10 same size, I don't know whether they had a market study,  
11 but they all rented up.

12 Q. Of course, you don't compare Bridgeton with Mount  
13 Laurel, though, so far as ratio as to the relocations are con-  
14 cerned and to the Urban Renewal that is going on, there  
15 is a lot of people who have lost their home down there,  
16 didn't they, with the Urban Renewal programs?

17 A. Yes. I don't know what the percentage was, but I  
18 expect -- I do know. I think that something like 30  
19 percent of the units were assisted in relocation housing,  
20 the other 70 percent were other people not living in  
21 relocation housing. That statement didn't make sense.  
22 Let me restate it, if I might.

23 That Bridgeton project, I believe, 30 percent of  
24 the people came out of housing which was to be demolished,  
25 the other 70 percent came from other sources, from other

1 parts of the housing inventory.

2 Q. Now, when you select a site for a client to  
3 construct low and moderate income housing, and I mean  
4 low and moderate income of the people who will occupy  
5 them, of course, you have certain criteria involved for  
6 unique problems of these tenants or owners, or whatever  
7 the case may be; isn't that correct?

8 A. That's correct.

9 Q. Isn't it true that some of the criteria have to  
10 do with access to public transportation?

11 A. That's correct, for the elderly, not in a rural  
12 area. In a rural area, low-moderate income housing, you  
13 assume is by car, not by public transportation. It  
14 doesn't exist, really.

15 Q. How about location to jobs?

16 A. There is jobs, let's say, in a ten, fifteen mile  
17 radius. I don't think you are really concerned with  
18 that. That is not a major criteria. The major criteria  
19 is, first, the cost of the property, because you are  
20 limited to a cost of about \$1500, \$1800 per dwelling  
21 unit, depending on the kind of units. You are concerned  
22 with the site which is relatively easy to develop, that  
23 is, doesn't have any problems such as this site has, wet  
24 conditions. You are certainly concerned with the amen-  
25 ities of the site, there are no adverse environmental

1 impacts such as noise -- in fact, if you have noise  
2 problems, severe land use conflict problems, the site  
3 normally will not be acceptable.

4 Q. Did you do any noise studies on the high density  
5 site, the R-5 site?

6 A. I didn't use the site, I may.

7 Q. Are you also interested whether water or sewer is  
8 available in the vicinity?

9 A. Yes.

10 Q. Now, you mentioned that you could keep your land  
11 cost down to 1500 to 1800 per dwelling unit. Doesn't  
12 the zoning kind of control that?

13 A. Zoning very much affects this; yes.

14 Q. In other words, if someone had property worth  
15 \$50,000 an acre, if you rezoned it to an R-5 Zone, that  
16 pretty much puts the value of that land, although it  
17 may be detrimental to the landowner, the zoning dictates  
18 the value of the land, if he can only use it for that  
19 high density, the buyers are not going to pay that  
20 amount of money, so, we are not really concerned with  
21 what the value would be for another use, if it can only  
22 have this one use?

23 A. I would think you would be perfectly correct if  
24 the total quantity of that land was such that an owner  
25 looking at the problem from an economic point of view,

1 would make the decision that X hundred acres is avail-  
2 able and he owns X percentage and if he wanted to dis-  
3 pose of it within a reasonable period of time, he has  
4 to adjust his price accordingly to meet whatever the  
5 market conditions are.

6 Now, in the case we are talking about, we have  
7 relatively few acres which makes it a highly scarce  
8 situation. As I read that ordinance, it only provides  
9 multi-family housing be built on it. It doesn't provide  
10 as I understand it, the ordinance, I could be incorrect  
11 on this, that it has to be assisted housing.

12 Q. What do you mean by assisted housing?

13 A. Housing which receives some form of state or  
14 federal or local assistance, so as to insure that its  
15 use is for low or moderate income families. Without  
16 that caveat, I or yourself, or anybody could go to that  
17 landowner and say I want to purchase that land, I want  
18 to use it under the R-5 Zoning, make an application and  
19 build middle income housing and be able to meet the  
20 price set by the landowner.

21 For instance, I have a situation, the land is  
22 worth \$50,000 -- to use your example -- then ten units  
23 to an acre or whatever the density is, the landowner  
24 says fine, middle income housing, it is worth three or  
25 \$4000 an acre. The buyer says fine, I will buy. That

1 happens, I think, when you have a very limited quantity.  
2 The landowner can say look, it is not worth it to sell  
3 it at \$1500 a unit or \$15,000 an acre, if it is worth  
4 \$50,000 before. This is a case of spot zoning. I  
5 would rather take the option of setting up another  
6 lawsuit against Mount Laurel in getting that zoning  
7 put off, because the costs to me are too great. I think  
8 you have a fair shot at it too.

9 Q. From your experience and your background, know-  
10 ledge of Mount Laurel, where would you have proposed  
11 such a high density site, an R-5 Zone?

12 A. First, I wouldn't consider it high density. Eight,  
13 ten units to the acre is by no stretch of the imagi-  
14 nation high density.

15 Q. What do you consider high density?

16 A. I think high density is generally accepted in the  
17 planning profession of thirty or sixty units to an acre  
18 and over. Buildings of multi-story nature. Medium  
19 density is multi-family buildings which are two or three  
20 stories in height. Low density is single and semi-  
21 detached. That is the definition FHA uses, not my  
22 definitions.

23 Q. So, what density do you think would be practical  
24 if it were just a garden type apartment, a minimum amount  
25 of density before it would be feasible in Mount Laurel?

1 A. Well, that is a two part question, not just  
2 density but the quantity of land available and how it  
3 is available. The answer to your question is the answer  
4 I gave to Lou when we talked about this a couple of  
5 months ago, and I thought to prevent the problem of  
6 making land exclusive for a zone and limiting its use  
7 to that use and providing an economic situation where  
8 the land would not be disposed of, the better planning  
9 concept would be to consider a floating zone, wherein  
10 any area zoned for residential use, or a decision having  
11 been made that land is appropriate for people to live  
12 on it, could be used for multi-family low-moderate  
13 income housing, if the showing was made by an applicant  
14 that particular site would be useful and would not have  
15 an adverse effect on other things.

16 Q. What other things?

17 A. It wouldn't overburden a particular school. It  
18 wouldn't cause a flight from an existing development.  
19 It wouldn't locate in a location where you didn't have  
20 access to schools, parks, services, what have you.

21 Q. How does the developer prove to a planning board  
22 or zoning board that his project will not cause a flight  
23 from the surrounding existing housing?

24 A. It is pretty easy. There are enough case studies  
25 of housing having been built in low-moderate incomes



1 adjacent to existing developments to show that if there  
2 is a halfway decent design, the size is correct, if  
3 there are competent people operating it, it doesn't  
4 result in any flight.

5 MR. BISGAIER: I would like to make one  
6 statement on the record here about these con-  
7 versations between Peter Abeles and Lou Glass.  
8 I object. Peter is making references and I  
9 object to any references to those conversations.  
10 We had agreed they were confidential and not to  
11 be used for purposes of litigation. That was our  
12 understanding. I would ask Peter not to continue  
13 to make references to those conversations, and,  
14 likewise, I would object to Lou Glass' deposition  
15 or testimony that he made reference to them for  
16 purposes of attempting to work something out.  
17 I think it was perfectly clear with all of us  
18 sitting together at that time, that was confi-  
19 dential and not for litigative use. That was  
20 your understanding as well, right?

21 MR. TRIMBLE: You have so admonished Peter  
22 to stop talking about the conversations between  
23 Lou Glass and yourself.

24 THE WITNESS: Admonish or reminded?

25 MR. TRIMBLE: Both.

1 Q. I assume you know land values generally in Mount  
2 Laurel?

3 A. I think I can take educated guesses at it.

4 Q. I think for the purpose of this questioning, we  
5 can assume that the minimum price, and I am probably  
6 doing some guessing, the minimum price is around \$4000  
7 an acre. If they go to \$8000 -- I am talking about raw  
8 unimproved land, not subdivided.

9 A. Other than land still used for farming and may  
10 have such conditions that may not be used for our  
11 purpose which may be less, but, generally, land which  
12 is being held for the purpose of sale is probably  
13 starting at \$4000 an acre.

14 Q. Using that general criteria, what would be the  
15 density, the minimum amount of density using apartment  
16 type housing on it and garden apartments scale, without  
17 getting into the mid-rise and high-rise development  
18 that Mount Laurel should have zoned for?

19 A. Between twelve and fifteen units to the acre.

20 Q. You are saying that because that would then fall  
21 within the fifteen to 1800 --

22 A. No, I am saying that because that level of develop-  
23 ment is, I think, a generally acceptable level of de-  
24 velopment for that particular kind of housing. The  
25 twelve to fifteen units per acre figure provides for

1 some good economics of development which are important  
2 as land values. I don't know if the density question  
3 is that related to the cost per unit as much as the  
4 total amount of acreage value for a particular use,  
5 as related to land values. It would be a large impact  
6 upon land values per unit if there is, say, two or 300  
7 hundred acres available for that kind of housing than  
8 whether you had twenty acres available and move the  
9 density from ten units to twelve to fifteen, because  
10 you are talking about, to my mind, a classic problem  
11 of scaracity. If you limit quantity to a certain kind  
12 of land for a specific use to a very small number, you  
13 create a scaracity situation.

14 Q. By the same token, if the zoning is earmarked for  
15 low and moderate income housing only, and Mount Laurel's  
16 fair share is ultimately decided to be, for the purposes  
17 of this discussion, 1000 or 1500 units for the next 25  
18 years, it is ridiculous to zone 300 acres, because it  
19 would exceed the figure three or four times and someone  
20 looking at that zoning would say it is ridiculous to  
21 buy 100 acres or whatever, because I am only allowed to  
22 build 30, 50 a year. What difference does it make how  
23 much it is zoned for, because the restrictions limit  
24 the construction?

25 A. I would take the opposite point of view. I would

1 take the point of view that if it -- let's say, hypo-  
2 thetically, you had a goal to meet, 1500 units that  
3 would be desirable to zone 300 acres for a number of  
4 reasons. Of course, assuming that the use of the land  
5 is not restricted just to a particular income group,  
6 because there is no concept zoning that I know of, where  
7 you can zone land by income groups.

8 Q. Until Mount Laurel came along?

9 A. I don't know if that is quite true. That may not  
10 be. It is not the proper way to do zoning. If a piece  
11 of land is suited for multi-family housing, it should  
12 be suited for multi-family housing, whether a family  
13 makes \$7000 a year, \$14,000, 21 or 28. I think the  
14 basic consideration is of deciding the appropriate use  
15 for land and going with the use and not with such a  
16 factor as income. That is my view.

17 Now, if you zoned 300 acres for that, intending  
18 part of that 300 acres to be used by developers to  
19 provide low-moderate income housing, you do, I think,  
20 a couple of very important things. (a) There is no  
21 question of scaracity; there shouldn't be with that  
22 number. For example, you zone ten times the amount of  
23 land for single family than is needed for the next year,  
24 you zone ten times the amount of land as needed for  
25 industrial use the next ten years, I think since one

1 does that for every other use, one should do that under  
2 the zoning concept for this use, more than is needed,  
3 which does the following: it reduces the economic  
4 pressures on it; it provides that individual developers  
5 would have to make the hard decisions of marketability,  
6 suitability. I don't think planners and planning boards  
7 and councils can at one point make a decision that a  
8 particular piece of land is the best and only site for  
9 a particular use. That is the discretion that is left  
10 to the individual developer. This is traditional in  
11 the zoning concept, as I understand it, that has de-  
12 veloped in the United States since Euclid vs. Ambler.

13 Q. What is your criticism, if any, of the R-6 Zone?

14 A. This is the single family zone on Spring Road?

15 MR. BISGAIER: Hartford.

16 A. When I examined the land I found standing water  
17 on the site. I examined a topography map and I think  
18 that is a condition that you would normally get twice  
19 a year on that site.

20 Q. That may be the driest site in Mount Laurel. We  
21 have water all over town.

22 A. I did find a couple of pieces which are a little  
23 bit drier. So, I really wonder about the soil qualities,  
24 the water conditions and the topography. I don't think  
25 it is good planning. Practically, we are dealing with

1 a policy of low-moderate income housing within a  
2 community that the only choice that you want to give  
3 your future citizens, who are in the low-moderate income  
4 bracket, is to live only where they are permitted. To  
5 a large extent, it is not a good social policy, I think,  
6 and it doesn't make common sense in terms of the concept  
7 that there should be choice in housing. What you have  
8 done there, I think you said future low-moderate single  
9 family use, the only place you can live is in the poor  
10 part of town. I don't think that is a good concept in  
11 terms of exciting someone wanting to build there, nor  
12 does it create an environment for future development  
13 of the community.

14 I have problems with this location and  
15 quality of the site. Of course, you have the same  
16 problem with this site and the quality of land for every  
17 other income group, because there is no statement as to  
18 income in all other zones in your allowed choice where-  
19 ever they like to live. I don't think it is proper  
20 within zoning to restrict people by income to live in a  
21 certain place. I don't think it is good zoning, aside  
22 from the question of the site. I think it is a poor  
23 zoning concept.

24 Q. Your criticism for the physical site itself is a  
25 wet site?

1 A. Yes, and its location.

2 Q. A predominately mincrity neighborhood, apparently?

3 A. I don't know. There may be other areas where you  
4 have better road conditions. You may have some side-  
5 walks through the area, maybe better proximity to the  
6 schools. I didn't look at it that intensive. It was a  
7 site shoved in the corner. Again, the same question of  
8 availability. The site is labeled as a nature area.

9 The owner, apparently, has elected, for whatever reason,  
10 to tell the public that this is an area designed for  
11 birds and bees. This is my conclusion.

12 Q. It is zoned aesthetically to me.

13 A. You may be right. He may be right. That is  
14 exactly the point, you have someone making an individual  
15 land decision. If he elects, for whatever reason, to  
16 continue to hold that land for the birds and bees, then  
17 the result of it is exclusive zoning. You have pro-  
18 hibited the development of it.

19 Q. Are you familiar, as an aside, along with your  
20 thinking Moorestown's recent construction of housing  
21 for the minorities?

22 A. No.

23 Q. He apparently built some units right in the  
24 ghetto neighborhood.

25 A. Sure, very often, and that is the result, I think.

1 of the kind of problems we are dealing with. You have  
2 difficulty finding good sites in good areas to deal  
3 with substantive social problems. One reason is that  
4 the Federal Government issued a description, I think,  
5 in 1974, you can look up the congressional record, it  
6 is the requirement that no low-moderate income area be  
7 built in areas which are presently, so-called, impacted  
8 areas. For instance, let's say, this R-6 site has been  
9 a multi-family site, that site may not be -- I am not  
10 sure, I am not sure it as strong a problem, it is quite  
11 possible that a question could be raised -- the question  
12 would be raised that might lead to the rejection of the  
13 site because it is an impacted area. There is a lot of  
14 wisdom now, not enough, but some.

15 One thing, you know, is not to go and build new  
16 housing in areas which are bad areas. You are dealing  
17 with a whole series of sociological and cultural problems,  
18 which you don't have when you start with an area that is  
19 not stigmatized as being bad. You and I wouldn't want  
20 to buy a house in an area we felt was a bad area. If  
21 we bought, we may not be interested in maintaining it.  
22 On the other hand, if we elect to buy a house in an area  
23 that is a good area, we tend to have a different attitude  
24 toward the housing.

25 Q. Now, the third, the R-7 use, you said you haven't



1 had an opportunity to study that?

2 A. I have analysed only from the seventh. Section 7,  
3 I believe is Larchmont and is comprised of 310 multi-  
4 family units. Please correct me if that is incorrect.

5 Q. We won't hold you to the number. Ten percent is  
6 31 units.

7 A. Now, I think you know, as well as I know, no one  
8 can build a project of 31 units.

9 On that count, the R-7 is an impractical and, I  
10 think, possibly a useless attempt to deal with the  
11 problem.

12 Q. So, you visualize the zoning for R-7 as just  
13 taking 31 units aside somewhere and building them  
14 independently of the rest of the section?

15 A. Under the present method of development, as I  
16 understand them, and financing them, the only way to do  
17 the job is by cutting out a little piece and saying,  
18 here, this is site X for 31 units for low-moderate  
19 income housing. It is not for me to second guess either  
20 FHA or HFA, but my opinion would be, having worked with  
21 these agencies in the past, if you walked in there for  
22 31 units, they would laugh at you.

23 Q. Wouldn't they be available for Section 8 moneys?

24 A. Sure, but how can you build a 31 unit project with  
25 a mortgage for 31 units, who is going to give you a

1 mortgage?

2 Q. Let's assume they built 300 units, townhouse  
3 construction, and the ordinance permitted 31 of them  
4 available for Section 8, and if the builders do as they  
5 do, he gets certain benefits from the zoning.

6 A. I am sure you know, but if it is new housing under  
7 Section 8, it has to be the prevailing wage. Now, a  
8 builder is not going to find any subcontractor, as a  
9 practical matter, and say, look on those 31 units, the  
10 carpenter is going to get \$9 a unit and on the rest he  
11 gets \$6. You are not going to find a mortgagee who will  
12 agree that 31 units will have a market price substantially  
13 different than the other 90 percent. It is an impractical  
14 situation.

15 Q. You say the market price, you are talking about  
16 a sale situation?

17 A. Valuation. Unfortunately, under the present  
18 programs, when you build government housing, or housing  
19 to be assisted by the government, you have to build  
20 better quality and different conditions than conventional.  
21 You have to conform to minimum property standards. For  
22 example, what you could do for Section 8, you don't have  
23 to do for conventional. The result, where you have a  
24 garden apartment, it might add up to \$18,000, \$20,000,  
25 where you are government financed a garden apartment

1 will end up to be \$30,000.

2 Q. Per unit?

3 A. Per unit.

4 Q. That is because the standards are higher in the  
5 construction?

6 A. The standards are higher, the MPS and prevailing  
7 wage.

8 Q. What is MPS?

9 A. Minimum Property Standards. You are just dealing  
10 with a different animal. I don't think, and I think  
11 you would agree with me, you can't get a mortgage --  
12 mortgagee, rather, to have a situation where you get 31  
13 odd ducks. The way you would do it is by subdividing  
14 a section and saying, here, we will build 31 units under  
15 a separate mortgage. You can get your mortgage under  
16 HFA. HFA has a rule, for instance, which they don't  
17 enforce, which they would like to enforce, they accept  
18 no project less than 100, 120 units.

19 FHA, while they don't have a stated policy will  
20 look at you with a lot of skepticism, if you come in  
21 with a 31 unit project. They are going to ask you how  
22 you are going to make it work.

23 Q. Well, under that theory, could you make anything  
24 in Mount Laurel work if the initial construction is of  
25 much lower numbers if it is ultimately determined our

1 allocation is something less than 50? In other words,  
2 you are saying you, really, practically, can't fit in  
3 any of these programs?

4 A. No.

5 Q. You can't or no, you can?

6 A. If your allocation is less than 50 total.

7 Q. Per year?

8 A. Per year, then if that was the situation, every  
9 two years somebody could build a project.

10 Q. And if the allocation is something like 20 a year,  
11 would it almost be impractical because they would have  
12 to accumulate five years numbers before he could put a  
13 project together?

14 A. For multi-family housing; that's correct. Not for  
15 single family. Multi-family; yes.

16 Q. Have you ever been involved in any mobile home  
17 studies?

18 A. Yes.

19 Q. Is it your opinion that this is a viable altern-  
20 ative to the fair share numbers?

21 A. I don't understand that question.

22 Q. If a mobile home park, hypothetically, were per-  
23 mitted in Mount Laurel Township, do you feel as a land  
24 planner, knowing what you know about Mount Laurel and  
25 South Jersey, generally, and the problems in housing,

1 etc., that this would be a viable alternative to Mount  
2 Laurel, satisfying their housing problems in low and  
3 moderate income?

4 A. You tell me what you mean by a mobile home park?

5 Q. Do you know what the cost of mobile homes are  
6 going to be in a park and density?

7 A. If you are talking about travel trailers, or are you  
8 talking about units to be built under the Factory Built  
9 Housing Act, which comes in effect January 1, '77 in  
10 this State, it is like talking about the difference  
11 between chickens and eggs. Are you talking about  
12 housing to be built, that will be certified under the  
13 Factory Built Housing Act?

14 MR. BISGAIER: They would have to be, at  
15 least, consistent with the mobile home standard.

16 Q. That standard that went into effect in June, I  
17 understand, of '76, nationwide.

18 A. That is the industry standards. That is not the  
19 State standards. Now, State standards, which I think  
20 are generally recognized standards employed by most  
21 states, but industrial standards are quite different.  
22 It is quite a different product, where you and I visualize,  
23 it is not the trailer from Florida in the winter to  
24 summer in South Jersey, and go back to Florida, nor is  
25 the park in which a fellow is selling, basically, a

1 48 single wide unit, as we knew them prior to, I think,  
2 '72, that occupied a site. The mobile home park, which  
3 doesn't describe what will happen in the next ten years  
4 as a concept, will bring probably 30, 40 percent of the  
5 nation's housing, sofar as we can see, but we have done  
6 about -- I haven't done it, but my company has done  
7 about \$200,000 worth of work for federal, state and  
8 county governments in just this area.

9 Q. Those units, you are suggesting, as I get it,  
10 these units are more of a permanent nature than the old  
11 ones, where somebody comes in and parks for two or three  
12 months, then leaves for another state?

13 A. There is no similarities. The only similarity is  
14 that the unit wasn't built insitu. The only thing that  
15 was built on the site was the foundation and site work.  
16 The unit comes from some place else. That is the re-  
17 lationship between old mobile home parks and what you  
18 will have in the next ten years, I expect. I am not  
19 absolutely sure.

20 (Recess.)

21 - - - - -  
22 PETER ABELES, previously sworn, resumed  
23 BY MR. TRIMBLE:

24 Q. We were discussing mobile home parks, and I think  
25 we will agree that is probably a misnomer as to the way

1 they are being proposed to be built in the future?

2 A. It is factory built sites.

3 Q. So, it is more like a modular type construction,  
4 built somewhere else and brought to the site and put up  
5 on the site, whether it is in one piece or two pieces  
6 doesn't make any difference. Now, you have mentioned  
7 something that takes effect in January, '77?

8 A. That's correct.

9 Q. What is that?

10 A. I am not absolutely sure, but I think it takes  
11 effect on January 1. It is a State law which provides  
12 for State inspection of housing built out of the State,  
13 certified to by State inspectors, and meeting State  
14 housing codes for that kind of housing, which means the  
15 practical effect is that New Jersey will be in a position  
16 to use factory built housing which they haven't been in  
17 a position to do so until now.

18 Q. How about housing that is built outside the State?

19 A. Or within the State.

20 Q. Anywhere else, but not on the site, that is,  
21 moved to the site is generally what we were talking  
22 about in the way, for lack of a better term, the mobile  
23 home park or of the future, is only mobile because it  
24 is brought to the site and that it may never be removed  
25 from the site, it is going to be permanently fixed to

1 the real estate, apparently?

2 A. That's correct. It changes from a chattel  
3 mortgage type situation to a real property situation.

4 Q. And as a land planner, what is your opinion of  
5 that type of housing and its relationship to fair share  
6 numbers for a municipality?

7 A. That kind of housing, if you were to permit it,  
8 would meet the housing needs of some of the families  
9 who were upper regions of moderate income to the lower  
10 reference of middle income market. It is an added  
11 dimension to the total market supply by extending down-  
12 ward the cost of single family and semi-detached housing  
13 from the current stick built downward by an interesting  
14 number of dollars.

15 Q. Have you ever done any studies on densities of  
16 this type housing units in its relationship to land  
17 values and costs, etc.?

18 A. I have not, but my office has done extensive work  
19 on that subject.

20 Q. Do you have any knowledge of density numbers that  
21 would have any meaning in that area?

22 A. Not today, but I could.

23 Q. Could you supply that information?

24 A. I could. I could become prepared in that area,  
25 probably. What I would like to do, it would be better,



1 an officer in the company, Mr. Hackel, who has been in  
2 charge of state and county studies of just this subject  
3 for the last two or three years, he would really be the  
4 best person to talk about it. He is very familiar with  
5 it. He just finished, as a matter of fact, a compila-  
6 tion on a national basis of all the zoning ordinances  
7 which deal with this problem, to try and find a model  
8 ordinance for Montgomery County, next to Washington,  
9 just to use this new kind of housing, to meet the  
10 housing needs of moderate income people. It is a very  
11 similar kind of situation.

12 (Off the record discussion.)

13 Q. Are there any programs, federal or state, that  
14 you are aware of concerning this type of construction  
15 that would permit people of lower income means to get  
16 into those units?

17 A. I don't think there is a program for low income  
18 families. That is not quite true. There is FHA  
19 Insurance for mobile homes. There is FHA programs --  
20 Farmers Homeprograms for development of the mobile home  
21 park sites. I am not sure whether it helps low income  
22 families. I do know that the program, probably, is  
23 going to be very useful for moderate income families.

24 Q. Concerning the Section 8 program, which is a rent  
25 subsidy program, isn't it true that existing housing

1 can be used for that program?

2 A. It is true.

3 Q. Are you familiar with the rental levels in Mount  
4 Laurel Township?

5 A. Under Section 8, what the fair market would be?

6 Q. Yes.

7 A. I have got them.

8 Q. You have them, and you are conversant, generally --  
9 I am not going to hold you to the exact number.

10 A. I can look them up.

11 Q. Have you reached a conclusion of whether tenants  
12 could get into Mount Laurel under existing housing,  
13 based on the levels permitted under Section 8?

14 A. Well, I will ask you the question, to get into  
15 what?

16 Q. Into apartments.

17 A. How old would the apartments have to be?

18 Q. I don't know. You have to tell me.

19 A. The problem is that the Section 8 existing rentals,  
20 fair market, are so low, what we are finding, it is very  
21 difficult to find existing housing in new areas which  
22 work. That is, the landlord, let's say, has got to get  
23 \$50 and over. In the existing Section 8 it provides  
24 only \$40. It doesn't work. It is designed not to work  
25 at this point.

1 Q. When you say new construction, if somebody built  
2 apartments in the last two or three years, and made  
3 them available for the Section 8 program, it would not  
4 work?

5 A. I don't think so.

6 Q. Why not, because the levels are too low for  
7 Section 8 for that construction?

8 A. Yes. Not only that, you have another little  
9 wrinkle, the rates set in the register are the fair  
10 market rate. The actual rates FHA may give you may be  
11 less than that. The regulations may give you the com-  
12 parable, which may be up to the fair market, but not  
13 necessarily the fair market. FHA very often says we  
14 don't want to give you the fair market. Let's say 184,  
15 two bedrooms, we think the comparable to be 160. Let's  
16 have the unit for 160. The landlord says you got to be  
17 out of your mind, I am getting 240.

18 Q. If the landlord says -- if the Section 8 people  
19 say we will give you 160, does that mean that the most  
20 he can charge is 160, or is that the most that the  
21 Section 8 people will supplement it?

22 A. That is the most he can charge.

23 (Off the record discussion.)

24 Q. Have you taken into your thinking in reviewing  
25 Mount Laurel the existing planned unit development?

1 A. In what context?

2 Q. In, specifically, the various units, high density  
3 units that have been approved and are on the books of  
4 Mount Laurel Township as ready or planned for construc-  
5 tion over the next twenty year period, and for the  
6 purpose of this discussion, we will use a figure of  
7 approximately 10,000 high density units, either apart-  
8 ments or townshouses.

9 A. Well, I take exception to calling them high  
10 density. I think I know precisely what you are talking  
11 about, but in my judgment, they will not have a bearing  
12 on the problems of housing for low-moderate income people.

13 Q. Why is that?

14 A. If anyone of those 10,000 units was to be realized,  
15 let's say, by the start of construction on September 1  
16 of this year, and be ready by February or March, you  
17 are looking at rent levels in the area of \$300 per  
18 month. \$300 a month is \$3600 a year, and that is  
19 probably outside of the reach of families, as we would  
20 define them under whatever definition we would like to  
21 use.

22 Q. And, apparently, you have excluded any public  
23 subsidized rental program in those units because of not  
24 having a housing authority?

25 A. No. The practical matter, I excluded it, because

1 I can't see how you could do it. There is no way you  
2 can make it work. FHA is not going to -- well, you  
3 could do it if you were willing to provide total tax  
4 abatement for those new units. You would save, let's  
5 say, \$6800 per year per unit for the owner, something  
6 like that. That might bring the cost down. I am  
7 guessing, really.

8 Q. We are not going to hold you to the figure.

9 A. \$2800 would be \$220 a month -- no, it still  
10 wouldn't work. Even if the Township of Mount Laurel  
11 said in order to meet the demands we will eliminate  
12 real estate taxes, if we could do it for those units,  
13 I suspect -- I am not sure, but I think it would still  
14 be out of range between your fair market values that  
15 are existing. They would certainly give you fair market  
16 on those. It would be interesting to FHA, maybe -- no,  
17 you are getting close if you gave total tax abatement.

18 Q. Does Section 8 require tax abatement?

19 A. Not at all.

20 Q. What is the problem with one building a planned  
21 unit development with a lot of high density, and a  
22 Section 8 program be enacted in the town through one  
23 method or another, it would appear from my understanding  
24 that the rent levels in Mount Laurel, as they exist  
25 today, are well within the limits set by Section 8?

1 A. Today, yes, but if you start building tomorrow,  
2 you know, you figure out what the rentals will be, they  
3 are going to be vastly different than what they are on  
4 existing units, because I would assume that your average  
5 unit was built four years ago, multi-family units, some  
6 built eight years ago, some built, maybe, let's say,  
7 last year. You take your 1970 components of housing,  
8 you add it up, and you probably would come in for 30 or  
9 40 percent less than if you started this year. You know  
10 that as well as I do. If nothing else was changed, just  
11 the inflation in your building costs would change that.

12 Q. Aren't rentals that can be charged with new con-  
13 struction, wouldn't they pretty much compare to the  
14 existing rentals on the old construction?

15 A. No.

16 Q. Well, the market is going to control. They can't  
17 build new apartments, townhouses in a town and charge  
18 \$100 more a month than they are getting in Ramblewood  
19 Village, because they won't rent.

20 A. I think you put your finger on it before when you  
21 said we have 9,000 or 10,000 approved, which haven't  
22 been built yet. I ask you why they haven't been built?  
23 You answer the question now?

24 Q. I don't know. What is the answer?

25 A. The answer is in 1970, you were looking at

1 permanent financing, 7 1/2 percent. Today you are  
2 looking at 10 percent. In 1970, you were looking at  
3 construction costs of 11, \$12 a square foot. Today you  
4 are looking at 16, 18 to 20. So all these units which  
5 you have approved, many of them will never get built,  
6 because at the present time -- they will get built  
7 eventually, they will get built for a different group,  
8 they will get built for the middle income group, who  
9 are going to pay \$300 a month for two bedrooms, plus  
10 \$50 and \$60 on top of that for their own utilities,  
11 because the only alternative that the middle income  
12 group, two or three to a single family, will be in the  
13 80's, 90's. That is what happened. The real culprit  
14 is inflation. Inflation, shortage of capital, change  
15 in the price structure for building and labor; there are  
16 a lot of culprits.

17 Q. Are any of those controlled by Mount Laurel  
18 Township?

19 A. No.

20 Q. Density and zoning and some other collateral items,  
21 really, are not major items in cost?

22 A. You will have to provide the necessary, but not  
23 sufficient conditions, then the federal programs and  
24 the developers who are interested provide the sufficient  
25 conditions. It is no different than it was before.

1 BY MR. ROGERS:

2 Q. What are these conditions?

3 A. These conditions, the availability of right sites,  
4 good location, supply of land, willingness of the town  
5 to assist developers who are concerned with this par-  
6 ticular sector, in reducing some of their front end  
7 costs, understanding the fact that programs built under  
8 government housing, built under government programs  
9 have different kinds of standards and qualities. The  
10 ordinance ought to be related to that. To give you an  
11 example, you have a substantial section of the ord-  
12 inance which deals with guaranteed performance bonds,  
13 things like that. One of your conditions should be that  
14 anytime you have low-moderate income housing being built,  
15 all those sections don't need to apply, because the agen-  
16 cies which undertake to supervise development require  
17 those things. If they are required twice, you are kill-  
18 ing them.

19 Your front end costs, for example, in your 1976-5  
20 Ordinance, you have a requirement for five studies  
21 exclusive for the R-5 Zone. Now, that just adds to the  
22 burdens and unnecessarily so. So, if you went back over  
23 the ordinance, removed all those things which were  
24 unnecessary, you would provide necessary conditions,  
25 plus the availability of land.

(Off the record discussion.)



1 BY MR. ROGERS:

2 Q. I jotted down four items under these necessary  
3 provisions on the part of the Township, availability  
4 of right sites, supply of land, and reduction of front  
5 end costs, and the elimination of guarantees if they  
6 were posted elsewhere. That is a recapitulation of what  
7 you said?

8 A. That is precisely what I said.

9 Q. Can you elucidate more on reduction for front end  
10 costs, what is entailed there?

11 A. As an example -- I don't know, I am not sure if  
12 you have read many items in your new amendment, you have  
13 a cost there for a traffic impact study, environmental  
14 impact study, municipal impact study and one or two  
15 others. That is \$10,000, an expensively priced program.  
16 Let's say you do a 100 unit job --

17 Q. That is a culprit?

18 A. That is \$100 right there per unit. There is a  
19 couple of those things. Each time they get added in,  
20 who is going to pay for it, and how are you going to  
21 get it. You have performance guarantees, waiting times.  
22 You have an interesting schedule of who is eligible under  
23 that section. Let's say there are two or three people  
24 who are, hypothetically, interested. The way I see that  
25 work, as a practical matter, a developer really doesn't

1 know where he is in terms of whether he is going to get  
2 permission, whether or not someone ahead of him filed  
3 or didn't file. We all know what the cost is in carrying  
4 a project, it is not insignificant. While you are  
5 waiting for nonprofit, which as I think is a priority,  
6 one waiting to get governmental assurance, and by the  
7 time council makes a decision, three, six months have  
8 passed, quite possibly, we all know how long it takes  
9 planning boards to act, or councils. Six months, on  
10 a \$100,000 piece of land is three or \$4,000, he adds  
11 to your ten, you have \$13,000. Another requirement,  
12 for instance, this aesthetic review, the requirement  
13 that the housing has to be looked at in terms of general  
14 character, which doesn't appear in the enabling statute,  
15 I don't know how you grant yourselves that power,  
16 frankly, but, let's say it appeared some place in the  
17 enabling statute and it is effective this month for a  
18 builder to change the appearance of each unit, or each  
19 structure to comply with that, it is going to add, we  
20 estimated in the office, anywhere from one to 5 percent  
21 on the capital side. You go on and on. Each time you  
22 add an imposition, you go away from what I consider the  
23 necessary. It seems to me there may be other ways of  
24 handling the problem.

25 MR. BISGAIER: This will be all specifically

1       laid out in this report.

2               MR. ROGERS: All right. I will abandon  
3       the area for the time being.

4       Q.       You talked about the R-7 Zone, and you talked  
5       about the 10 percent requirement therein imposed on the  
6       particular PUD section. You said because of the size  
7       of the project it couldn't be built. Now, there are a  
8       number of municipalities that have enacted a percentage,  
9       some of them 10 percent.

10      A.       Figuratively 10 to 15 percent.

11      Q.       For a requirement for low and moderate income  
12      housing; is that correct?

13      A.       That's correct.

14      Q.       Would you then say those ordinances are completely  
15      ineffective?

16      A.       They are different. Your own ordinance says one,  
17      then you require 10 percent, the other ordinances say a  
18      number of other things.

19      Q.       Such as?

20      A.       Such as that in the event that the developer does  
21      it under this section, he gets a land bonus, X number of  
22      additional units per acre. That requirement is for  
23      housing to be built under it are different. That  
24      municipality will adopt power, water and sewer, tax  
25      abatement will be available. You have only done the

1 very first thing, saying it is required, but it doesn't  
2 go on to say what the municipality has to do to make  
3 it a reasonable chance for a developer to carry through.  
4 It has to promote some incentive.

5 Q. Would you say that the ordinances that merely  
6 deal with percentage of units are ineffective?

7 MR. BISGAIER: I think it would be helpful  
8 if you clarify what specific ordinance. Some of  
9 these could apply to 10 percent, 20,000 units.  
10 You are focused on the 31 available, doing a  
11 project of 31 units, aren't you?

12 MR. ROGERS: No.

13 MR. BISGAIER: Okay. This is just your  
14 idea of a percentage situation?

15 MR. ROGERS: A hypothetical situation.

16 Q. Is it a viable ordinance?

17 A. We don't know. There is only one project that I  
18 know of which is being developed under that kind of  
19 ordinance which is in South Brunswick, and you have not  
20 seen the low-moderate housing come out of the ground  
21 yet. When I see that, I will tell you.

22 Q. You are familiar with ordinances of that type  
23 that do no more than specify a certain percentage of new  
24 construction; is that correct?

25 A. I have written a book on it, just about.

1 Q. What is the book?

2 A. A study for the State of New Jersey dealing with  
3 how zoning can be used to reduce land costs, the cost  
4 for housing, which resulted in the South Brunswick  
5 Ordinance.

6 MR. TRIMBLE: Is that published for the  
7 State?

8 THE WITNESS: It is going to be published  
9 one of these days. It was done a year ago.

10 MR. TRIMBLE: Is that available for us,  
11 Carl? Do you have it?

12 MR. BISGAIER: I don't have it.

13 THE WITNESS: The Department of Community  
14 Affairs said they are publishing the same study  
15 they had done, I think, in Princeton Township,  
16 by the Real Estate Research Corporation from  
17 Chicago, to try and solve the same problem from  
18 a different angle, try to see and to work out  
19 things by using zoning subdivision regulations  
20 to accelerate wider choice in housing. I didn't  
21 read it myself. I am not all that familiar with  
22 it.

23 MR. TRIMBLE: See if you can get that from  
24 the Division of Community Affairs.

25 THE WITNESS: Talk to Connie Gibson. I

1 am told it is being published.

2 BY MR. ROGERS:

3 Q. Do you think rezoning would create low and  
4 moderate income housing?

5 A. It can help.

6 Q. Can it create it by itself?

7 A. No; obviously.

8 Q. Is that because of the definition, the need of a  
9 subsidy, the definition of what is the component parts  
10 of a house, land is only one, price of land is only one  
11 condition, and as you know, from your own experience,  
12 sitting on a planning board there are twenty or thirty  
13 hoops someone has to go through, between the concept I  
14 want to build and opening the door, so those concepts,  
15 some of those hoops are controlled by the local munic-  
16 ipality, others are controlled by the market price?

17 A. It is a dynamic situation. It is not a statistic  
18 situation. Right now, we are seeing interest rates  
19 coming down just a bit. Let's think, hypothetically,  
20 if interest rates keep coming down, two or three, we  
21 are back to seven or eight, we are in a different ball  
22 game, the ball game may change, but if you are interested  
23 in creating the environmental or low and moderate income  
24 housing, you have got to set those necessary conditions.  
25 So when the time is there, there is opportunity for

1 somebody to do it, to meet the market demand, he can do  
2 it. Right now, my view, I guess as you gather, what we  
3 have under the new ordinance, it doesn't set those  
4 necessary conditions.

5 Q. These conditions, which were four, which we  
6 discussed as examples --

7 A. There are more.

8 Q. Can you give me more?

9 A. I gave the ones off the top of my head. I will  
10 give you more when that report is prepared. There are  
11 things that you imposed which are unusual, just upon  
12 that -- let's say, a general conclusion, you impose  
13 things which are unique to the R-5 Zone, which you don't  
14 regulate in any other zone. On the other hand, there  
15 is nothing in the R-5 Zone which makes it easier. The  
16 R-5 Zone is horrible; there are a series of hoops to  
17 run through, particularly, the land, where you pick one  
18 spot in an industrial area.

19 Q. Let's talk about the regulations. Did you find in  
20 the R-5 Zone impositions unique to that zone that are  
21 not imposed on other zones, R-1, R-3, R-4, which are  
22 existing zones?

23 A. I am not a lawyer and I just read the ordinance  
24 as a layman and planner might read it. I thought what  
25 I read in the R-5 Zone, you have to do these special

1 studies. I didn't think they referred to any other  
2 zone; correct me if I am wrong.

3 Q. Would you change your mind if you found they  
4 applied to all other zones in the township?

5 A. Not really, because now, you are treating every  
6 zone equally. You are just creating more hardships for  
7 everybody.

8 Q. Do you feel the hoops, as you call them, offer  
9 protections that are worthwhile to the township, both  
10 to the group coming in and building and the existing  
11 dwellings?

12 A. I will be a little bit facetious, permit me.

13 MR. BISGAIER: Don't.

14 A. (Continuing) If your zoning was properly done,  
15 if you had faith that your land decisions were correct,  
16 then you should not require, after a person had elected  
17 to use a piece of land, to restudy the entire matter.  
18 That is what zoning is for. That is what you should do  
19 in the first instance. If you say a piece of land should  
20 be used for a number of units to the acre, you should  
21 have at that point made the traffic study, the environ-  
22 mental study, and everything else to come to the con-  
23 clusion that was the right location. Why make a developer,  
24 after he has acquired a piece of land prove it to you.  
25 I have never heard that done under normal zoning. It  
is just not the way it is done. The zoning ordinance



1 is presumed to have inherent common sense and land use  
2 validity to it. You don't have to go back at the place  
3 of the beginning to prove that parcel 418 on that map  
4 over there can handle the traffic. If you zone 418 for  
5 PUD, you know it can handle traffic.

6 Q. You say the studies are not traditional?

7 A. They certainly are not.

8 Q. What municipalities do you represent at the  
9 present time?

10 A. Not very many; two or three.

11 Q. What are they?

12 A. Englewood.

13 Q. It is built?

14 A. Right. Leonia. Those are the only two which we  
15 are representing.

16 Q. Other than the DeSimone project in Englewood, do  
17 either of those municipalities have low or moderate  
18 income housing that were put in during your tenure?

19 A. Do you want an answer to that?

20 Q. Yes.

21 A. Yes; a number of projects.

22 (Off the record discussion.)

23 Q. What types of programs did these projects come  
24 under?

25 A. Any program that happened to be available.

1 Q. What were they?

2 A. For example, the Greater Englewood was a 236  
3 project.

4 Q. That is currently developed?

5 A. No. King Gardens was a 236 built after 236  
6 was foreclosed. They went back and asked for permission  
7 and got the money. The earlier project, public housing  
8 project was built under FHA. The low income family  
9 project is being built by the local Housing Authority  
10 with Section 8, and the Leonia project, Section 8, with  
11 FHA financing. You are talking about six or 800 units  
12 since DeSimone, and an interesting thing, each of those  
13 projects, the question was how were they going to get  
14 it, at that time, we are ready to go ahead; you are  
15 looking down a bleak road. The town was interested in  
16 getting it done. If you found ways of doing it -- it  
17 is a classic example, you don't let the clarity in  
18 terms of programs -- lack of clarity get in your way.  
19 If you have the initiative, you get them built, and they  
20 have got it, seven or 800 units of really first class  
21 housing for both rental and condominiums.

22 Q. Who were the sponsors?

23 A. Local groups, local publicly spirited groups  
24 aided by local attorneys, and local planners combining  
25 and in some cases the use of private interest groups,

1 limited dividend people who stepped in and did part of  
2 it, made a profit, but all of them are, basically, in  
3 the sense they are owned by non-profit -- they are  
4 owned by the tenants themselves, except public housing,  
5 which is owned by the Public Housing Authority.

6 Q. Could we define both low and moderate as --  
7 permit me to rephrase the definition -- Is that requir-  
8 ing subsidy of some sort?

9 A. That is my definition.

10 Q. You talked about the R-5 site. You talked about  
11 the criteria for site selection for low and moderate  
12 income property. My notes indicate that you stated the  
13 important criteria for the topographical conditions  
14 cost of land, the amenities, probably including the  
15 lack of noise and a non-important criteria was avail-  
16 ability of jobs and availability of public transportation?

17 A. In the Mount Laurel instance.

18 Q. Why in the Mount Laurel instance?

19 A. If you are doing a low-moderate income study in  
20 a sparsely settled county, where the county was prim-  
21 arily agricultural, there were no jobs around -- for  
22 example, in this particular county, we vary from areas  
23 which are hardly developed, with very low density, and  
24 there is nothing out in the area which have a lot of  
25 jobs. I would think you would have to take a hard look--

1 if you went further to the east of here, twenty, thirty  
2 miles to the east, where industrial development hasn't  
3 occurred, in terms of the question of jobs, it might  
4 not be appropriate to build housing out there. But in  
5 the western end, closer to the Camden-Philadelphia  
6 region, where there are a lot of jobs, you don't have  
7 to have a job next to the site. Since the average  
8 travel distance quoted by the Department of Trans-  
9 portation for America commuting to work is fifteen  
10 miles, half of America travels fifteen miles. So,  
11 let's say, you want to save travel costs, low-moderate  
12 income travelling, let's say, five, ten miles, I think  
13 you would have to take a circle of five, ten mile jobs  
14 within that circle, and that would satisfy the need for  
15 jobs. You wouldn't have to have a job adjacent to the  
16 site. It doesn't need that. People don't always work  
17 exactly where they happen to live. It is freedom of  
18 choice in job employment. There are jobs within the  
19 general travel range. Travel for inter-county area is  
20 not an important criteria, and transportation is, whether  
21 we like it or not, prepared to accept it for the low-  
22 moderate income, and in terms of number of cars, terms  
23 of cars per family, it is different from the middle  
24 income, they don't have a second or third car there,  
25 the wheels are not there, not the same kind of wheels,

1 but the wheels are there.

2 Q. Is the criteria for site selection for low and  
3 moderate income property any different from site selec-  
4 tion for any other income group?

5 A. Outside of the land cost, development cost?

6 Q. No, including that.

7 MR. BISFAIER: Federal criteria are you  
8 referring to? I am not too clear on that.

9 A. I think I know what he means. If you are doing  
10 a conventional job, you don't have to adhere at this  
11 point to any standards. If you are doing an assisted  
12 project, where you have to have state or federal money,  
13 you have to be concerned with noise quality. There is  
14 a difference there. The R-5 site is a private develop-  
15 ment built by conventional assistance. He would not  
16 have to answer to anybody, but if you took it to a  
17 state or federal agency, and they went out to look at  
18 the site and get a nice rating, if it is 55 or 65,  
19 depending on the kind of housing he is building, they  
20 would say no. It will happen within ten years, when  
21 the same criteria for conventional housing, when the  
22 mortgagees will begin to say, you know, has there been  
23 that study, that housing adjacent to interstate high-  
24 ways have depreciated the cost, because of noise, than  
25 housing further away, the mortgagee will then become

1 to get concerned for acceptance of even conventional  
2 private single-multi-family housing.

3 Q. You state it is your concept of the law of the  
4 State of New Jersey, land should not be zoned by income  
5 groups. Don't you feel the Mount Laurel decision changed  
6 that concept of law that did exist?

7 A. Well --

8 MR. BISGAIER: Peter will answer almost  
9 any question that is put to him. I don't know  
10 what probative value it would have.

11 THE WITNESS: It is a legal question,  
12 isn't it, Bob?

13 MR. ROGERS: I will change it.

14 Q. Don't you feel that there is a requirement upon  
15 the Township of Mount Laurel in complying with that  
16 court decision, as a planner, not a lawyer, to zone for  
17 income groups?

18 A. I think there is in that decision requirements in  
19 zoning in the future. Mount Laurel has to take into  
20 account the impact of its zoning on income groups.

21 Q. Do you distinguish zoning, as a planner, not  
22 legally, for income groups, differ by income groups?

23 A. Very much so.

24 Q. Do you see a negative impact -- apparently you  
25 do -- when you zone by income groups?

1 A. I do.

2 Q. Can you explain what that is?

3 A. Your starting problems are with building and  
4 getting an overall gain. You have denied people  
5 freedom of choice to live where they want to live,  
6 contrary to our previous understanding of the use of  
7 zoning. Zoning, as I understand it, is to protect  
8 health, safety and welfare of citizens of the munic-  
9 ipality, not to impose threats upon them.

10 Q. I would suppose, as a part of this zoning, by  
11 income group was a portion of your discussion of  
12 necessary conditions, supply of land, exclusive nature  
13 of the site, to that type of use. Now, you stated a  
14 better concept than making land exclusive to that use  
15 would be to create a floating zone, if it holds down  
16 the cost?

17 A. That's correct. Not only hold down cost, it does  
18 a number of things which are appropriate.

19 Q. What are they?

20 A. It provides freedom of choice of location,  
21 approximate price opportunity for the developers to  
22 make their judgment as to the most suitable location.  
23 It will certainly affect land costs substantially and,  
24 finally, from the very long range fabric of the community,  
25 it insures, I think, a more varied land use pattern

1 from a social point of view. I think it is socially  
2 desirable that other communities in the future are not  
3 segregated by income, but rather be mixed to the degree  
4 that is appropriate.

5 Q. Therefore, wouldn't it be true, everything you  
6 say is always true, for other income groups from all  
7 types of residence, if, indeed, not true from commercial  
8 and industrial uses, also all the criteria you are  
9 talking about?

10 A. I am of the opinion, which you may not agree  
11 with, if land is suitable for residential purposes,  
12 generally within certain limits -- let's say, from one  
13 unit to the acre to fifteen, twenty units to the acre,  
14 that might be as far as you really want to go with  
15 making precise decisions as to the ultimate use of that  
16 land.

17 Q. As a planner in New Jersey, licensed planner, you  
18 have to be familiar with some of the case law in New  
19 Jersey, are you not?

20 A. Well, a little bit; yes. Modestly familiar.

21 Q. You are familiar with Rockhill vs. Chesterfield,  
22 the concept of floating zones?

23 A. That, you have got me there. No, I am not familiar  
24 with it.

25 MR. ROGERS: I have no further questions.

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C E R T I F I C A T I O N

I, HARRY J. BATEMAN, a Notary Public of the State  
of New Jersey, hereby certify that the foregoing is a  
true and correct transcript of my original stenographic  
notes taken by me in the captioned matter.

  
Harry J. Bateman, C.S.R.  
Notary Public