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9-28-76

oral deposition of

Transcript of Peter Ables &
Mullach

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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 :

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September 28, 1976

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Oral depositions of PETER ABELES & ALLAN MALLACH,
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. BISGAIER, Deputy Director, Dept. of the
Public Advocate
for the Plaintiff

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

FARR, BRANDT, HAUGHEY, PENBERTHEY & LEWIS, ESQS.,
BY: EDWARD A. PENBERTHEY, ESQ.,
for Davis Enterprises as Plaintiff-
Intervenor

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1 PETER ABELES, previously sworn, resumed
2 BY MR. TRIMBLE:

3 Q. Mr. Abeles, this is a continuation of a previous
4 deposition that was held here at the Municipal Center,
5 and since that time, I have been advised by your attorney,
6 Mr. Bisgaier, that you will not, in fact, have a written
7 report to submit prior to the trial; is that correct?

8 MR. BISGAIER: Do you want him to answer
9 that? At this point, we don't have one. If we
10 do, we will get it, with an opportunity to take
11 further depositions. At this point, there is no
12 written report to be submitted to the Court.

13 MR. TRIMBLE: I kind of understood that
14 from our conversation, if we had known there might
15 have been a written report, we probably could have
16 delayed this, waiting for that report.

17 Q. Since your last deposition, there has been some
18 court action and now we have an intervention, there is
19 another party in the suit, and the attorney for the
20 other party is at the depositions today and may want to
21 ask you some questions.

22 But in summation of your previous deposition, is
23 it true that you have examined all three sites that have
24 been zoned under the Amendatory Ordinance?

25 A. No, I have only examined two of the sites, the

1 multi-family and the single family. I did not physically
2 inspect the site in the PUD.

3 Q. Did you say the multi-family site was wet, in
4 your first deposition?

5 A. That's correct.

6 Q. And would you describe what you mean by being wet?

7 A. When I visited the site, it was early this year,
8 I guess sometime in March or April, I found on the site
9 standing water. I found on the site a stream that was
10 draining very slowly, and I found indications by the
11 nature of the vegetation that the soil structure was of
12 a condition which would suggest continual exposure to
13 water.

14 Q. You said you went to the site in March or April.
15 Was the site known by the township in March or April?

16 A. Well, I knew where it was. I think Lou Glass and
17 myself had discussed the location of the site earlier.

18 Q. I see you are looking at what purports to be a
19 sketch of the general area of the multi-family site.

20 A. That's correct.

21 Q. Can you mark on that sketch where you think the
22 site is?

23 A. This map doesn't contain the subdivisional lines.
24 I will just draw a circle of the general area of the
25 site in red.

1 (Sketch marked D-1 for identification.)

2 Q. And did you testify that there is only one road
3 into the site?

4 A. That's correct.

5 Q. And what road was that? Nixon Drive?

6 A. That's correct.

7 Q. You determined that from physical observation?

8 A. That's correct.

9 Q. If this site were high, firm ground, would you
10 have any other criticisms of it?

11 A. Yes. Further criticisms are that it is very close
12 to a series of major highways, and local county high-
13 ways, state highways, so that when you are on the site
14 there is very high exposure to traffic noise, and since
15 there are large areas of Mount Laurel where you don't
16 have the situation, where you have a series of highways
17 intersect, you wouldn't have these noise problems.
18 This, probably, is a rather poor selection as a rental
19 site.

20 The site is also surrounded by nonresidential uses,
21 generally, and thus it is not related to from a land
22 use point of view to residential areas. In that respect,
23 it is isolated from the normal residential pattern of
24 the community.

25 I also indicated that it was my belief that in

1 this site there is a proposal for the future extension
2 of the Lindenwold High Speed Line, and it doesn't make
3 a great deal of sense to propose extensive development
4 for a site, which at some point in the future may
5 also become the location of a rail system.

6 My next criticism of the site was its special
7 nature. It is the only piece of land so designated
8 under the new Zoning Ordinance, and as such, sets up
9 an economic situation in which the normal relationship
10 of supply and demand for land does not exist.

11 Q. Now, isn't it true, if you want to put low income
12 housing in a municipality, that it should have access
13 to public transportation?

14 A. It depends upon the nature of the municipality.
15 If you are talking about a municipality where the
16 general pattern of the journey to work is public transit,
17 such as a developed site or a much older suburb, where
18 car ownership is not the only method of transportation,
19 then that is a useful relationship. In the context of
20 Mount Laurel, for a municipality like Mount Laurel,
21 where low income, middle income, moderate income people
22 depend on their private automobile as a primary method
23 of getting to work, the method between public trans-
24 portation and housings specifically for low income
25 people is not important, especially when it doesn't

1 exist.

2 Q. You say public transportation doesn't exist in
3 Mount Laurel?

4 A. Well, the Lindenwold High Speed Line doesn't yet
5 exist to that site.

6 Q. Have you done any kind of study of Mount Laurel
7 as to whether there is any public transportation in
8 Mount Laurel?

9 A. No, I have not.

10 Q. Isn't the location of the jobs in relation to
11 the site of a low and moderate income housing project
12 important?

13 A. Yes, it is.

14 Q. Where are most of the jobs in Mount Laurel?

15 A. I would say in this vicinity.

16 Q. By the way, on the noise problem, have you done
17 a noise study at that site?

18 A. No; I have not taken any meter readings.

19 Q. You say the site is surrounded by nonresidential
20 uses. Are there any obnoxious or offensive uses around
21 that site?

22 A. I am not quite sure what your meaning of obnoxious
23 or offensive is, within the context of this deposition?

24 Q. Well, you criticized the site because it is
25 surrounded by nonresidential uses. However, there are

1 | many light industry uses that are extremely compatible
2 | with residential uses, like research labs, and people
3 | would be happy to live next to a well-landscaped re-
4 | search lab. Now, what uses surround this area that
5 | makes you to be critical of it?

6 | A. The shopping center certainly is one. It is a
7 | source of a great deal of activity and, certainly, the
8 | back side of a shopping center is not exactly a pleasant
9 | vista one would like to associate with a housing site.

10 | The general commercial activities along the
11 | highway on Lenola Road, there is motels and eating
12 | establishments, gas stations, what have you. Those are
13 | some of the surrounding uses which are not attractive.

14 | Q. Would it be a plus for this site as a location
15 | for low and moderate income housing, the fact that the
16 | people could walk to a shopping center?

17 | A. I don't think so. The kind of savings -- well,
18 | first of all, people with a low or middle income gen-
19 | erally make choices as to where they shop. To pre-
20 | suppose that one's location at the back side of a
21 | shopping center would, therefore, give an economic
22 | advantage of any kind, it is, probably, fallacious.
23 | People try to make different trips to different places,
24 | to make the best bargains they can, first.

25 | Secondly, in the same framework as the journey to

1 work, the normal way of going to retail facilities, in
2 the context of a community such as Mount Laurel, is by
3 private car. I think people make choices, and, there-
4 fore, they will have the car in any case, for the fore-
5 seeable future, they will use that to make choices.
6 If you are located behind a particular retail facility,
7 I don't think it is an important or significant reason
8 for the location of the only low or moderate income
9 housing site in a community, as extensive as Mount
10 Laurel.

11 Q. If you had been the land planner to suggest an
12 amendatory ordinance to conform with the Mount Laurel
13 Supreme Court decision, what would you have recommended?

14 A. I would have recommended either one of two
15 approaches. In the first approach, I would have rec-
16 ommended the designation of sufficient zones in terms
17 of number of sites of sufficient acreage, so that a
18 reasonable market would have been created for the sale
19 of land to developers interested in multi-family housing.
20 I would have suggested to the township that the quantity
21 of land and quantity of sites for families in the low
22 to moderate income bracket bear on a percentage basis,
23 the same relationship as sites available to other income
24 groups, so that the ability to make land available for
25 residential purposes is the same, regardless of the

1 income of the family. That is one possible approach.

2 Q. You are saying the same as all other income
3 levels, that the low-moderate income housing should be
4 on a one to one ratio with all other uses in the town
5 in residential housing?

6 A. So there is no misunderstanding, if a finding,
7 let's say, is made that 60 percent of the population
8 in the next five or ten years enjoys the economic
9 status to be able to purchase housing on a free market
10 basis, and 40 percent does not enjoy that status, then
11 I would have suggested that a proper zoning plan might
12 provide that 60 percent of the land zoned for residential
13 be of the character that is normally developed for non-
14 assisted housing, and 40 percent of such a character
15 for assisted housing, or housing that developers would
16 develop for families in the low and moderate income
17 brackets. That is one possible approach.

18 The second approach would be dependent upon a
19 floating zone concept. Since any land which is zoned
20 residential, presumably by a town planner, such as
21 myself, I wasn't in the position of advising the town-
22 ship, would meet certain basic criteria suitable for
23 residential development. Then there is really not a
24 great deal of difference in the land character between
25 land to be used for low-moderate income families, and

1 land to be used for upper income families, when a
2 development proposal specifically is designed to meet
3 the special housing needs of low or moderate income
4 families, and if the proposal meets certain reasonable
5 tests as to the appropriateness, then any land zoned
6 for residential use could then be converted for that
7 particular use.

8 Q. What would these tests be as to the appropriate-
9 ness of the project?

10 A. Well, existence of water and sewer, or reasonable
11 extension of water and sewer, reasonable relationship
12 to schools and/or educational facilities, the absence
13 of major land use conflicts.

14 Q. Such as what?

15 A. Such as interstate highways, or industrial-
16 commercial uses, which should not be next to a resi-
17 dential zone.

18 Q. How about the objections of existing residents,
19 should that be taken into consideration, in your view?

20 A. In zoning or in politics?

21 Q. In the appropriateness tests that you have
22 suggested.

23 A. I am not quite sure what you mean by the objection
24 of local residents.

25 Q. You mentioned at your previous deposition, it is

1 not always appropriate to put a low and moderate income
2 housing project in a neighborhood where there are, for
3 instance, expensive homes, there may be friction, and
4 I asked, I think, at the previous deposition how do
5 you make that determination, or why is that important
6 and you say, well, experience has shown -- I am para-
7 phrasing of course -- that is not always appropriate,
8 to put low income and moderate income housing in a
9 highly used residential neighborhood, because there is
10 problems sometimes?

11 MR. BISGAIER: We should note that you
12 are paraphrasing his deposition which we haven't
13 had the opportunity to review. I don't specifically
14 recall that testimony myself. I think you can
15 just direct specific questions; it would be better.
16 Q. Didn't you mention something about the appropriate-
17 ness of the site the last time, and whether there is
18 going to be neighborhood objection to it, and this can
19 be determined ahead of time?

20 A. I don't recall my response at the last deposition
21 in that framework. Frankly, I don't recall even dis-
22 cussing it, but I would stand corrected if I saw the
23 deposition. Assuredly, however, there is no question
24 most people, whether they are low income or upper income,
25 always have the reaction of being the last one in, and

1 I think it is part of human nature, that you get people
2 objecting to somebody building a home on a vacant piece
3 of ground, because it is nice to have a vacant piece of
4 ground or something else there. As a practical matter,
5 I am certainly well aware of that, within the context
6 of a floating zone concept, where one of the methods,
7 I think, that deal with that is not by making planning
8 decisions on just straight forward objection that we
9 don't want it, but to provide for design controls, so
10 that you don't have to have a situation where you have
11 one type of housing cheek to jowl. You know, it is
12 certainly appropriate to have between different types
13 of housing, whether they be the same income group, but
14 have a different nature or a different income, different
15 nature of housing, some kind of a land space which
16 doesn't put multi-family right up against some single
17 family lots. That is perfectly appropriate, and floating
18 zones should make provision for that kind of a separator,
19 but I don't think good planning should be based prim-
20 arily on, even substantially upon the fear of one group's
21 location of another. If you follow that to a logical
22 conclusion, you would have all people of one income in
23 certain townships, certain parts of the state, people of
24 another income group in a totally different part. As
25 I understand Urban Development in New Jersey, we seem

1 to have succeeded quite well with the notion families
2 of different income backgrounds can live quite well in
3 close proximity to each other, rather than the converse,
4 but there is no question that you do get a lot of
5 hollering and screaming.

6 Q. So, if the township to exact an ordinance, and
7 this is a hypothetical situation, that provided for a
8 floating zone in all of its residential districts, for
9 instance, that, of course, would by its very nature
10 take into account the appropriateness of water, sewer,
11 schools and the absence of conflicts of uses, etc., we
12 would then be saying you are allowed to bring low and
13 moderate income housing in a residential zone in Mount
14 Laurel Township, would that satisfy the Supreme Court's
15 decision, in your opinion, as a land planner?

16 A. I think so; yes.

17 Q. You think that alone would bring low and moderate
18 income housing into Mount Laurel?

19 A. No.

20 Q. Am I to take from that, you are saying that the
21 Mount Laurel decision by the New Jersey Supreme Court
22 really can't be implemented by zoning alone?

23 A. Only in part. To be precise, and I think there
24 is a need here for exactness in this area, when we talk
25 about low and moderate income housing, there is a need

1 to make some very fine and exact distinctions. I think
2 it is, at least, in my opinion, when we talk about
3 families with incomes defined as low income, their
4 provision of housing for such families can only at the
5 present time come from only two sources, either through
6 state, federal and local assistance in terms of the
7 financing and development, or through the availability
8 of such a quantity of housing on the market that the --
9 there develops a market for homes which have been used
10 by other groups which now come on the market at lower
11 prices for families in the moderate bracket, and which
12 is by far --

13 Q. To be more exact, what you are talking about is
14 your low and moderate --

15 A. Well, let's say low would be 50 percent of the
16 annual median income for the municipality.

17 Q. For the individual municipality?

18 A. Yes.

19 Q. 50 percent of the median?

20 A. 50 percent of the median, and moderate would be
21 from 50 to, let's say, 100 percent of median under
22 current economic conditions. That, of course, can change
23 as factors affecting -- let's say, for the last couple
24 of years and for the foreseeable future, next three or
25 four years, 50 percent of median might be an appropriate
definition of low income, as any other definition. From

1 moderate income would be from 50 to 100 percent of
2 median income.

3 Now, the larger of the two groups is obviously
4 the median income who have more families in that group-
5 ing, and within that grouping you have got to make a
6 distinction within groupings, depending upon a number
7 of factors, some of the housing could only become avail-
8 able, again, if there is intervention from a govern-
9 mental entity in terms of underwriting the costs, but
10 for other parts of that same economic group, the housing
11 could be provided by conventional methods, with little
12 or no intervention.

13 Q. Would you have any idea what the price of a home
14 would be for low income and moderate income under those
15 criteria?

16 A. When you say price of a home, would you include
17 rental housing or multi-family, or are you just looking
18 for a price for a free-standing single family home?

19 Q. Yes.

20 A. For the first part of the question -- Lou, can I
21 have your calculator?

22 Q. While he is getting the calculator, how would you
23 work rentals into your formula?

24 A. Well, it is really not much of a difference. The
25 general accepted rule of thumb is that a family in all

1 economic groups, except upper income groups, ought to
2 use about 25 percent of income for shelter, shelter
3 costs, with the exception of, of course, very low in-
4 come families, very low income families with large
5 families, the general rule of thumb is that such families
6 ought to use less than 25 percent of income for shelter.

7 For upper income groups, of course, the percentages
8 are different, but for the -- I think the bulk of the
9 population, excluding the very, very low and very, very
10 upper part, the general rule of thumb is 25 percent, and
11 you can take any housing formula and given some para-
12 meters of what the annual cost of shelter is, all you
13 have to do is multiply that annual cost of shelter times
14 the consonant of four, and you get the income. Con-
15 versely, you can do it in the reverse order. So, for
16 instance, if we are to say that median income today,
17 let's say, is \$14,000, if we apply the definition of
18 low which is 50 percent of median income, or \$7000, and
19 we apply the notion that 25 percent is to be paid for
20 shelter, which is \$1750 per year or \$145 per month,
21 then you can deduce what kind of housing product you
22 can get for \$145. Obviously, on the single family
23 market, \$145 doesn't even cover the basic costs of
24 taxes and utilities. So, there is nothing left for the
25 initial cost of the housing in terms of single family

1 housing, which only proves the point, I guess, in low
2 income families there has to be some intervention,
3 because they are closed from the market prices, because
4 no one is producing acceptable housing units today that
5 you can pay interest and amortization on it, utility
6 charges, maintenance, upkeep, insurance and taxes at
7 that price range.

8 Q. How about mobile homes, would they be eligible,
9 do you know, to participate? Are you familiar with any
10 statistics on mobile homes, whether 145 would make you
11 eligible for mobile homes, whatever that term might
12 mean?

13 A. That is a very wide area, which I am not really
14 that familiar with.

15 Q. This is no trick question. If you really don't
16 know, just say that you are not that versed, you don't
17 want to get --

18 MR. BISGAIER: I myself am not clear on
19 the question, whether federal funds can be used?

20 MR. TRIMBLE: No, he comes up with a figure
21 of 145 a month, what the low income people could
22 afford, and there is, obviously, no single family
23 dwellings without subsidies that they could afford.
24 My question is, well, does that figure work out
25 in the mobile home industry?

1 MR. BISGAIER: Conventional loans being
2 used?

3 MR. TRIMBLE: Yes.

4 A. I don't know. There are some very tricky parts
5 to that, which are just not -- I don't know the munic-
6 ipal taxing policy which have mobile home parks, and I
7 don't know what their taxes are. Mobile homes do serve
8 as a major source of free-standing housing for low
9 income people throughout the United States, but, again,
10 that depends on -- to give you a precise answer, I
11 would have to really do a little bit of work.

12 Q. Did you do any kind of study on rentals in Mount
13 Laurel Township? Do you have any idea what the rental
14 units are getting in Mount Laurel Township?

15 A. No, I don't.

16 Q. Is there a program presently available for rental
17 subsidies in the United States?

18 A. There are two programs, or, even, perhaps three
19 programs available for rental subsidies in the United
20 States at this point and time. There is the Section 8
21 program for both existing and new rental housing. There
22 is a leasing program under Section 101, which is, I
23 think, still in effect, which does practically the same
24 thing. By rental subsidy, you mean directly to the
25 occupant?

1 Q. Yes.

2 A. None of those programs are directly to the
3 occupant. Those programs, I believe, involve both the
4 occupant, the owner and in some instances, local
5 authorities.

6 Q. Would any of those programs be available to Mount
7 Laurel as the law exists today in Mount Laurel?

8 A. As the law exists in Mount Laurel, which law are
9 you referring to?

10 Q. Any law. Is there any law in Mount Laurel that
11 would restrict the use of those programs for rental
12 units in Mount Laurel, are there any restrictions?

13 A. Of course, it is a restriction in Mount Laurel.

14 Q. Is there any impediment for any of those programs
15 in Mount Laurel?

16 A. One of them, probably both of them, and here I
17 just didn't bone up this morning on the legislation,
18 I am sort of guessing at it, it is a fairly complicated
19 program. Under the existing program there has to be
20 an authority established to make application to the
21 Housing and Urban Development Department of the United
22 States through its regional offices, for allocations
23 under the existing housing programs, and such an authority
24 can either be a local LPA, local public authority, it
25 can be a housing authority or it can be the governing

1 body, or its designee. For leasing under the older
2 program, the 101 program, I believe you need a local
3 housing authority. In the case of leasing of units in
4 new construction, you would need, first, a certificate
5 of need.

6 Q. The same thing as a resolution?

7 A. A resolution of need. As a practical matter, I
8 don't think you could do it without a resolution of need.

9 Q. Does Mount Laurel have that, do you know?

10 A. I am not aware of whether it does or doesn't, and
11 you would need a provision for appropriate tax abatement,
12 I think, in many, if not most instances.

13 Q. Does the Section 8 program need a housing authority
14 or local public authority?

15 A. For the existing units, it does, yes, if you want
16 to lease out existing units. People just don't -- let
17 me put it in this framework. A resident of Mount Laurel,
18 or nonresident of Mount Laurel, doesn't simply come up
19 and walk to a rental agent's door and say I would like
20 to have two bedrooms on the corner there, and I can only
21 pay \$25, because of my income, and Uncle Sam will pay
22 the rest. It is a little bit more involved than that.
23 There has to be an authority which has, first, the allo-
24 cation, the appropriation made to it, and secondly, does
25 the necessary paperwork in terms of eligibility of the

1 recipient of a certificate, rent certificate and,
2 thirdly, annual inspection as to the suitability of
3 the unit itself, whether it meets the minimum property
4 standards.

5 Q. Now, new construction for that to be eligible,
6 some governmental authority must, apparently, review
7 the building plans, make sure it conforms to some minimal
8 standards?

9 A. Under new construction, the housing must meet the
10 minimum property standards of HUD, as a practical
11 matter, and must also meet property standards of the
12 New Jersey Housing Finance Agency, I would think. It
13 is rather unlikely somebody would built an FHA insured
14 and non-insured Section 8 project without HFA project
15 involvement. You would need involvement of both agencies,
16 full involvement of both agencies. You would then
17 require the resolution of need and the usual tax abate-
18 ment requirements.

19 Q. Did you say, in your previous deposition, that
20 the criteria for HUD and the State authority is fairly
21 high, and it causes the price to be substantially higher
22 than conventional rental housing?

23 A. I said the latter part, not the former part. What
24 I might have said --

25 Q. I realize you are just trying to recollect. I

1 am not going to hold you to the fact whether you did
2 or did not.

3 A. The MPS, Minimum Property Standards of HUD are
4 often higher than property standards either contained
5 in the zoning code or in the BOCA Code. In addition,
6 where you have federal funds involved, this is a most
7 important point. I don't think minimum property
8 standards are that important. More important is the
9 Davis Bacon provisions. The provisions of the Davis
10 Bacon Act, which is a federal law, I am not that familiar
11 with it, but the general provisions are all construction,
12 where federal funds are involved it must be either
13 union wage or prevailing wage. It so happens that in
14 New Jersey, especially South Jersey, for light con-
15 struction, there is a very substantial difference be-
16 tween the rates involved and strictly commercial non-
17 union light construction, and construction involving
18 prevailing wage. That certainly has an impact upon the
19 final housing cost.

20 Another factor, of course, is that the mortgages
21 involved in Section 8 assisted housing are generally
22 forty year mortgages. So, the standards of construction
23 are higher than conventional construction where the
24 mortgage terms are generally thirty years or less.

25 Q. Now, your formula for moderate income housing

1 would be, I assume, just double what your figures were
2 for the low?

3 A. Right.

4 Q. Or at least the upper top of moderate would be?

5 A. \$290 on a monthly basis is the sum advisable for
6 shelter.

7 Q. Isn't in conceivable that Farmers Home could
8 handle a mortgage with a \$290 monthly payment in Mount
9 Laurel under the amendatory Zoning Ordinance of 6000
10 square feet per lot?

11 A. If you had a supply, you know, reasonable price,
12 I think Farmers Home would probably work. I am not
13 sure whether this is a Farmers Home area. I am assuming
14 it is.

15 Q. Assuming it is, and we can represent to you that,
16 and at the trial most of Mount Laurel Township, especially
17 the zone that is rezoned for that, is eligible for
18 Farmers Home.

19 A. Farmers Home would put a limit of \$32,000 on a
20 house total cost, with a mortgage, probably, of 28,
21 something of that nature, and when you work the residues
22 out, you are talking about a construction price of
23 \$22,000, something in that area, 20,000, which means
24 you have got to have a raw land price of probably 1500,
25 \$2,000.

1 Q. Per lot?

2 A. Yes.

3 Q. Then you have to have a lot that is easy to
4 develop, where development costs are quite reasonable,
5 because those costs can become very expensive very
6 quickly?

7 A. Farmers Home is generally done in rural areas
8 where there isn't standards for subdivision development,
9 which are rather low.

10 Q. For added improvement of the subdivision?

11 A. Yes. Normally, you wouldn't look for curbs and
12 gutters. You would be looking for simple asphalt roads
13 on a light bed. You wouldn't require underground
14 utilities, electric power and things like that. Farmers
15 Home -- just to flush this out a little bit more, their
16 determination of price, what they will go for, is usually
17 the lowest that is currently being manufactured some
18 place in the region. If it turns out that in the region
19 there is some fellow has to have a subdivision, small
20 lots, with a very simple development schedule, he sets
21 the plateau. If you want to go to Farmers Home, you
22 have to be at that plateau or just a little bit under
23 that. I am saying this because under your subdivision
24 standards, I am somewhat skeptical whether you can work
25 that under Farmers Home.

1 Q. You haven't made a study as to costs and as to
2 the criteria under the local ordinance to see what it
3 would cost to put a home on a 6000 square foot lot in
4 that particular zone?

5 A. I have looked at it. I have looked at it from
6 the first trial, what those road standards are, six
7 inch base, and six inch bituminous. For instance, I
8 recall the road widths were more than generous, more
9 than you really need for small subdivisions. They are
10 much higher than MPA, Minimum Property Standards. Under
11 a subdivision, you would need, I think, it is nine feet
12 for each direction of travel, so you could do with an
13 eighteen foot cartway. I think your lowest is about
14 thirty feet, I think. So, those are very expensive
15 items. For every square yard, you are talking about
16 big dollars.

17 MR. TRIMBLE: Mr. Rogers, do you have any
18 questions?

19 BY MR. ROGERS:

20 Q. In your hypothetical ordinance, you used two
21 approaches. The first one dealt with the number of
22 sites?

23 A. Yes.

24 Q. The purpose was to affect the cost of land?

25 A. That's right.

1 Q. And the floating zone concept, what was the
2 purpose of that?

3 A. The same way, to insure that a project, whether
4 it is done conventionally or through government assistance
5 does not stop at the first instance. As a matter of
6 fact, the cost of land per unit is beyond that. You
7 can provide under either conventional or government
8 programs, where the objectives are to reduce the cost
9 of housing. While zoning is not intended to regulate
10 land costs, as I understand it, the effect very often
11 is to regulate land costs. For example, in Mount Laurel
12 we have just two zones specifically set aside for low
13 and moderate income housing, and the total acreage for
14 those two zones compared to the total acreage of the
15 rest of the community which couldn't be developed is
16 infinitesimal, in the sense that the highest degree of
17 scaracity is created in the zones where you want the
18 cheapest costs. In that sense, zoning has a direct
19 effect upon the possibility of housing at levels less
20 than you currently have them.

21 Q. Does the density of a zone reflect on its costs?

22 A. Generally; yes.

23 Q. Does lot size reflect on costs?

24 A. Yes.

25 Q. Frontage requirements, does that reflect on the

1 costs?

2 A. Generally; yes.

3 Q. So that if there were an area in Mount Laurel
4 Township that permitted -- if an applicant selected an
5 area in Mount Laurel Township and desired to build
6 housing in accordance with the density of an R-5 area,
7 multi-family housing, and that area isn't in the R-5
8 area, some place different, and he secures an approval
9 to build that house in that density, in your opinion,
10 would that piece of ground be cheaper than the ground
11 zoned R-5 presently?

12 A. It is an interesting question. It all hinges
13 upon the words somehow. If, somehow, a developer made
14 an arrangement to purchase a piece of land, let's say,
15 in a flood plain which now its practical value -- there
16 is no economic value, because, again, you couldn't do
17 anything less than sheep farming, and then, somehow, to,
18 let's say, get a variance or rezoning, without that one
19 condition, was able to have that area zoned ten units
20 to the acre, he would have a tremendous windfall. The
21 end product would be housing at the market price. If
22 the somehow, the caveat said the approval was only given
23 to an applicant which makes a bonafide application
24 which would result in the development of housing, whose
25 purpose is controlled, whose property is controlled,
then, somehow, as a technique of zoning, would have a

1 direct result in assisting families of low-moderate
2 income to find housing in Mount Laurel. It all, really,
3 hinges upon the control one imposes, and how one uses
4 zoning to the particular end that you have in mind.

5 Q. Wouldn't the municipality have to control the
6 price of land directly?

7 A. No. If the municipality as it now does -- as a
8 matter of fact, in your ordinance, which I believe is
9 in effect, there is a provision in there, if I recall,
10 which gives certain priority to applicants for certain
11 dwellings, closeness of houses. If you wanted to make
12 any change to any land, we would look at any application
13 for any land, and if, it was a local non-profit housing
14 company, they were able to secure a piece of single
15 family half acre of land, let's say, \$2000 an acre, and
16 they came in here and we found everything in good shape,
17 it was going to help with the problems of low-moderate
18 income families, then you would have gotten the land
19 cost of \$2000 a dwelling, which would then directly help
20 in the development of a low-moderate income project.
21 On the other hand, you left out that very important
22 control, you say anybody can come in and get approval
23 on a floating zone which will actually make a lot of
24 developers very much richer, and not do very much in --
25 not do anything, as a matter of fact, in dealing with

1 the problem for which you designed the floating zone
2 for. As it stands now, it seems to me, that Mount
3 Laurel made the decision that it is proper to judge
4 applications for use not just upon the land, but upon
5 who the applicant is and what his purpose is. You have
6 taken one step. You have taken the other step, as we
7 did before, hypothetically, when I was a local planner.

8 Q. Is the resolution of need needed for federally
9 funded construction?

10 A. No.

11 Q. Is it necessary for federally funded construction?

12 A. State.

13 Q. Is tax abatement required by State law?

14 MR. BISGAIER: You mean statutorily
15 required? Is it a legal question?

16 A. As a practical matter or legal matter?

17 Q. Answer them both, if you want.

18 A. I won't give legal answers, because I would be
19 cited for practicing law without a license, which
20 frequently happens to me. As a practical matter, I
21 think you have got to provide some sort of tax abate-
22 ment under the present market conditions. It may change
23 as our tax laws, but at the present, the Jersey tax
24 structure makes it pretty much impossible.

25 Q. Is tax abatement required statutorially for federal

1 programs?

2 A. No.

3 Q. Is it required as only a practical matter then?

4 A. Yes, with the exception of some very early pro-
5 jects in the late 1950's, early 1960's. I don't think
6 much has been built in the State without tax abatement,
7 certainly in the northern part of the State, There
8 might be one or two projects in the very southern part
9 of the State built in the early days of FHA.

10 Q. As a practical matter, would a developer, whether
11 he be a sponsor of low and moderate income housing, or
12 a developer of high priced conventionally financed
13 housing, buy ground that he doesn't already own, before
14 securing his approval?

15 A. Buy ground which he doesn't own?

16 Q. Yes, would he go out and buy a piece of ground
17 outright and own it in fee before securing developmental
18 approvals?

19 A. It depends; yes and no. For example, I think in
20 Mount Laurel, under present conditions, he would be a
21 fool if he did.

22 Q. How about municipalities that you represent, have
23 you had that occasion?

24 A. Yes. I have a client now in Montclair which is a
25 town in the northern part of the State, where a client

1 of ours will take title to land before he has his
2 approvals, because there is no question in that town,
3 everybody wants to see the project go ahead. There is
4 no worry about it. In many instances where we have
5 worked with low and moderate income programs, we have
6 had direct local participation and assistance. You
7 normally go and secure your ground whenever it is
8 appropriate. You don't wait upon the approvals, because
9 you know in advance that if you have got a reasonable
10 project, meeting the local ordinances and codes, there
11 is no reason why you should not pick up the ground.

12 Q. You mentioned the need of an authority. For new
13 construction is an authority needed?

14 A. If you are building direct public housing,
15 obviously, you would need an authority, but for most
16 housing today, you would not need an authority as defined,
17 let's say, in the HUD regulations.

18 Q. Is the authority that is necessary for rentals
19 necessarily a municipal authority?

20 A. No, it could also be a regional authority.

21 Q. Could it be a non-governmental authority?

22 A. No. It has to be an authority established, as I
23 understand it, by law under the powers given to local
24 governing bodies to establish authorities, for given
25 counties to establish authorities. It has to be directly

1 in line with the local governing bodies, basic powers.

2 MR. BISGAIER: To this extent, the testi-
3 mony is not -- obviously, the best evidence would
4 be the regulations here which would speak for
5 themselves. It is really a legal question, isn't
6 it? I am not clear whether you are asking a
7 legal question what the regulations require, or
8 if you are asking what the best technique would
9 be. Are you asking a legal question or a practical
10 question?

11 MR. ROGERS: I believe I am asking a
12 legal question, but I understand your expert can
13 interpret the regulations, certainly.

14 MR. BISGAIER: He may if he chooses to,
15 but, again, the best evidence is the regulations
16 themselves, which are there for all of us to look
17 at.

18 MR. ROGERS: However, his understanding
19 of it would reflect on his testimony, as the need
20 for authorities.

21 MR. BISGAIER: With that caveat, you can
22 go along.

23 Q. What particular uses other than shopping centers,
24 that you mentioned surround the zone designated as R-5?

25 A. Industrial.

1 Q. Are those uses developed?

2 A. Some, I believe, are.

3 Q. What do they consist of?

4 A. I don't recall. Plants of some kind.

5 Q. Do you know the types of job categories that
6 those plants that are in existence offer?

7 A. I believe I have that, but I don't recall what
8 they are.

9 Q. Do you know the types of job categories that the
10 shopping center offers?

11 A. Retail sales type jobs.

12 Q. Is that type of job available characteristically
13 for a low income person?

14 A. In Mount Laurel low and moderate. It is not
15 restricted to a particular economic group.

16 Q. Are those job opportunities within walking
17 distance of the R-5 designated zone?

18 A. Job opportunities are open to whoever gets there
19 first and who is most qualified, not distance between
20 one's house.

21 MR. BISGAIER: Why don't you answer the
22 question are they within walking distance?

23 A. (Continuing) They are within walking distance.

24 Q. You mentioned the prospective location of the
25 High Speed Line within that district; is that correct?

1 A. That's correct.

2 Q. Do you know what area would be taken from that
3 zone by the development of such a High Speed Line?

4 A. I don't have the detailed plans available to me,
5 so I can't tell you precisely. It is just my under-
6 standing from finding things out about the site, that
7 the High Speed Line is supposed to go through the site.

8 Q. Do you know whether it goes through the site, or
9 whether it provides a terminal at the site?

10 A. I believe it is a terminal.

11 Q. Do you know what areas will be served by the
12 High Speed Line?

13 A. I think the areas of Camden and Philadelphia.

14 Q. Are there existing job opportunities in Camden and
15 Philadelphia for low and moderate income people?

16 A. I believe there are.

17 MR. ROGERS: I don't have any other
18 questions.

19 MR. PENBERTHEY: I just have a couple.

20 BY MR. PENBERTHEY:

21 Q. In your recommendations on how you would plan the
22 zoning of municipalities, the first point, you would
23 provide for more than one site, and you used a formula
24 which was based upon rendering land available in the
25 township as the land -- in the same percentages as the

1 income levels that reside in that township?

2 A. Reside or expect to reside.

3 Q. If you had a housing market where the minimum
4 price for an available house was \$40,000, then your
5 percentage would be based upon a formula that would
6 provide housing for all of those people who could not
7 afford a \$40,000 home, but could afford a home of lesser
8 amount?

9 A. That's correct.

10 Q. That would be unrelated to whether they were
11 federally assisted, or whether they could obtain that
12 housing on their own?

13 A. That's correct. I see zoning only as a necessary
14 but not sufficient condition.

15 Q. And you determined how many units would be
16 required in that municipality based upon a study of need?

17 A. That's correct.

18 Q. Have you made such a study?

19 A. No.

20 Q. Then you went to another concept which was a
21 floating zone concept, which you listed several criteria,
22 one of which was consistency with adjoining uses, and
23 we got into a discussion on low or moderate income
24 bordering higher income areas. Do you feel it is a
25 good idea to provide for development of an area for

1 | one income level or is it better to provide for develop-
2 | ment of an area which accommodates varied income levels?
3 | A. It is an extremely difficult question that would
4 | require an extremely complicated answer. It all de-
5 | pends on what one's meaning is of different areas.
6 | For example, I would certainly find no argument with a
7 | notion that said if you had fifty houses for one group
8 | here, a little subdivision next, fifty houses for another
9 | group, I really consider that a mixed neighborhood.
10 | If, on the other hand, you have 500 of one income group,
11 | 500 of another income group there, I said -- I don't
12 | know if that is really very separated or mixed. It
13 | depends upon the scale. I don't know if I know enough
14 | about that subject to suggest what a suitable scale is
15 | which works well, as a practical matter, both in terms
16 | of what people want and will accept, and what works well
17 | for the society as a whole, because there are two
18 | questions here, I think, which may not always come to
19 | the same conclusion. But my general notion is that
20 | based upon experience, people in different income groups
21 | seem to be able to live rather well side by side. This
22 | is a judgmental thing. Those are the kind of things I
23 | would be more for than in a neighborhood concept which
24 | would separate people by income and set up situations
25 | where you have a town of all one group of people at one

1 end and another group, by income, at the other end. I
2 don't think that works very well over the long run.
3 It is a complicated question and a complicated answer.
4 Q. Your feeling would be it would be better to provide
5 for a spread of uses within a municipality, rather than
6 to concentrate all the low income at one given site,
7 you would prefer to have more sites available and just
8 expand the usage within those sites, so that you would
9 accommodate people earning, say, \$7000 to \$14,000 within
10 the development, rather than limit that development to
11 \$7000 income families -- am I reading you correctly?
12 A. You are reading me precisely.
13 Q. And there is no doubt in your mind that income
14 levels of people earning \$7000 a year can be compatible
15 with people earning \$14,000 a year?
16 A. I think that is quite possible. Also, I think
17 within the context of that question, one has to remember
18 people don't go on for long periods of time earning the
19 exact amount of income. Peoples income goes up as well
20 as goes down. I think over a time neighborhoods which
21 are physically created to accommodate a wide group tend
22 to become more mixed as the neighborhood matures, and
23 some people will meet good fortune and stay, some people
24 will meet bad fortune and stay. I think any matured
25 subdivision, let's say, of ten, fifteen years of age,

1 which might have started out like the old Levitt sub-
2 division, very narrow income framework, when you look
3 at them later in their life, they tend to be very mixed,
4 and they tend to be very sound, because I think that is
5 a better alternative to housing for everybody, than the
6 approach of segregating people, which is, perhaps, the
7 beginning of creating suburbs and slums.

8 MR. PENBERTHEY: That's all I have.

9 BY MR. ROGERS:

10 Q. How would you propose to accomplish that, Mr.
11 Abeles?

12 A. In the context of Mount Laurel?

13 Q. Yes.

14 A. In the hypothetical situation where I was the
15 town planner?

16 Q. Yes, sir.

17 A. I would accomplish that by enacting either one of
18 two approaches that I suggested at the outset. I would
19 accomplish it by encouraging to the degree that you
20 allow municipal developers of various kinds of housing
21 to come in, so that you have got a decent grain or mix,
22 and you don't end up with only housing people who can
23 afford the \$65,000 can buy. You would have developers
24 coming in and building \$40,000 houses as well as the
25 Farmers Home, as well as people doing housing schemes

1 in which it is rental or a cooperative, or there is
2 sufficient assistance to get people of other income
3 groups. I think it can be accomplished.

4 Q. In your two approaches that you spoke of earlier,
5 aren't they creating separate pockets of development
6 by income, the same as the approach used in the R-5
7 and R-6 Zones of the township?

8 A. It depends on what you consider pocket and what
9 you consider the right scale. You have a lot of un-
10 developed land area here, and I would think, for example,
11 if you had a multi-family zone, or enough zones where
12 somebody could create 100, 120, 150 units, with enough
13 of those around, you made sure that some of them went
14 to meet the income needs below the median income, and
15 you would get that salt and pepper effect. The same is
16 true of your subdivisions. If you encouraged the develop-
17 ment of new subdivisions, let's say, 25 or 50 homes on
18 the new small lots that the builder is looking for, to
19 use the factory built housing, you would establish 25
20 or 50 families whose income was in the moderate income.
21 I think the scale of 350 units or 100 units is peripher-
22 ally appropriate at the beginning. What I was responding
23 to in the previous series of questions was, I find a
24 system where you have isolated lots, like multi-family--
25 we talked about the Moorestown Mall, which can't be a

1 part of the fabric, because it is surrounded by non-
2 residential uses, or so isolated, for instance, if you
3 had one large zone and you wanted to deal with the
4 problem in one full sweep, you would design 500 or so
5 acres for low income housing, that would be a bad
6 decision.

7 Q. Do you think 50 to 100 units is a satisfactory
8 number?

9 A. On single family units you need that kind of
10 scale to make it worthwhile. On multi-family, you need
11 100 to 150, that kind of scale to make it worthwhile,
12 because the scale has an effect on economics.

13 Q. Are those numbers justifiable both from develop-
14 ment economic standards and sociological standpoint,
15 mixing income groups?

16 A. On the sociological point, my guess would be
17 what works. On the economic point, I can show you no
18 terms of numbers. It makes less sense for somebody to
19 develop a five unit subdivision than a 350 unit sub-
20 division. You are not going to get Kauffman & Broad
21 coming to Mount Laurel trying to build the lowest price
22 housing on a five unit subdivision than they would do
23 if it was 450. The same with factory built, who are
24 looking for the 60 by 100 lots, because they are in the
25 business now of providing homes substantially less than

1 the conventional stick built on 50 to 20,000 square
2 foot lots.

3 Q. In response to Mr. Penberthey, you mentioned
4 Willingboro, there is a mixture of income groups; is
5 that correct?

6 MR. PENBERTHEY: He said Levittown, not
7 Willingboro.

8 A. There is one, I think, in Willingboro.

9 Q. Was that done by any creation of any funding for
10 housing in Levittown?

11 A. Yes. It depended on the VA mortgages, very much
12 so. Everybody mortgaged out in the days when the
13 interest rates were 3 1/2 percent. It wasn't the rate,
14 it was the absence of money. The Federal Government
15 stepped in with the VA housing program. People who
16 inhabited the original Levitt are primarily war veterans,
17 and beginning their family cycle. They only got housing
18 because the Federal Government stepped in and said,
19 here is a 100 percent loan, basically.

20 Q. On 100 percent of housing, that town was built
21 that way?

22 A. I assume so. I don't know for a fact. It doesn't
23 have to be, because the sale -- the application of the
24 VA mortgage was who the applicant was than who was the
25 builder.