

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon.

v. : Criminal No. 08-

EDWARD J. MOSBERG : 18 U.S.C. §§ 666, 1341,
1346, 1349 & § 2

INDICTMENT

The Grand Jury, in and for the District of New Jersey,
sitting in Newark, charges:

COUNT 1

**(Conspiracy to Use the U.S. Mail to Defraud the
Public of the Parsippany-Troy Hills Planning Board
Attorney's Honest Services)**

1. At all times relevant to Count 1 of this Indictment:
a. Defendant EDWARD J. MOSBERG ("MOSBERG") was a commercial and residential real estate developer who owned and operated, in part, several development properties which were organized as limited liability companies ("LLC") or corporations in the State of New Jersey and elsewhere. MOSBERG oversaw each of these entities' business involvement with the Township of Parsippany-Troy Hills ("the Township") and the Township Planning Board ("the Planning Board"), including, but not limited to, efforts to obtain site-plan and subdivision approvals and resolutions from the Planning Board, and negotiation and

settlement of litigation or mediation relating to pre-existing Council on Affordable Housing ("COAH") obligations.

b. COAH was an entity created by the New Jersey legislature in response to the Fair Housing Act of 1985, and a state agency within the New Jersey Department of Community Affairs responsible for ensuring that each New Jersey municipality provided its fair share of low and moderate income housing. Generally, to meet its fair share obligations under COAH, a municipality had to (i) rehabilitate existing property units within the municipality as low and moderate income housing; or (ii) ensure that new property units to be built in the municipality were designated as low and moderate income housing. A municipality seeking to meet its COAH requirement could alternatively choose to enter into a Regional Contribution Agreement ("RCA") with another municipality to satisfy up to 50% of its low and moderate income housing obligations. In doing so, a municipality would agree to pay a fee to another municipality which, in turn, would provide such affordable housing units. A developer and municipality would typically enter into a Developer's Contribution Agreement ("DCA"), which permitted a developer to agree with a municipality to provide funds in lieu of building low and moderate incoming housing in the municipality, in exchange for the right to develop market-rate housing in the municipality.

c. The Planning Board exercised primary responsibility for future land use, and controlled and monitored all land development in the Township. The Planning Board also reviewed all site-plan and subdivision applications for compliance with land-use ordinances, reviewed proposed development applications, and periodically updated the Township Master Plan.

d. There was an individual who served as the Planning Board Attorney and, for a time, as interim Township Attorney (hereinafter "the PB Attorney"). The PB Attorney served as legal advisor on matters pertaining to the Planning Board's operations. The PB Attorney's duties included, but were not limited to: preparing reports and providing advice on whether site developments and subdivisions complied with land-use regulations and ordinances; providing legal advice and representing the Planning Board concerning all litigation and mediation involving the Planning Board; drafting resolutions for site development applications approved by the Planning Board; attending all Planning Board meetings; and interacting with the Township administration on land-use issues.

e. From in or about 1996 to in or about 2003, the PB Attorney was a member of a five-person COAH mediation team assembled to settle COAH-related litigation between MOSBERG's development entities and the Township.

f. In or about May 2006, the PB Attorney was appointed by Township resolution to serve as interim Township attorney. In that capacity, the PB Attorney was charged with representing the Township in obtaining wetlands that MOSBERG was supposed to donate, and in seeking a resolution concerning the remediation of a dam, both pursuant to an agreement between the Township and MOSBERG's Parkside Gardens development located in the Township.

g. The PB Attorney had two particular family members ("the Family Members" or, individually, "Family Member 1" and "Family Member 2").

The Public's Right to Honest Services

2. At all times relevant to Count 1 of this Indictment, the Planning Board, the Township and its citizens had an intangible right to the honest services of their public officials. As a Planning Board official, the PB Attorney owed the Planning Board and the Township and its citizens, pursuant to (a) New Jersey law and (b) his state common law obligation as a fiduciary for the public, a duty to: (a) refrain from receiving bribes and other corrupt benefits to: (i) improperly affect the performance of official duties, or (ii) coax favorable official action or inaction; and (b) disclose conflicts of interests and other material information in matters over which the PB Attorney exercised, and attempted to exercise, official authority and

discretion, that resulted in his direct and indirect personal and financial gain.

The Conspiracy

3. From in or about 1998 to in or about 2007, in Morris County, in the District of New Jersey and elsewhere, defendant

EDWARD J. MOSBERG

knowingly and willfully did combine, conspire, confederate and agree with the PB Attorney and others to use the United States mails for the purpose of executing a scheme and artifice to defraud the Planning Board, the Township and its citizens of the right to the PB Attorney's honest services in the affairs of the Planning Board and the Township, contrary to Title 18, United States Code, Sections 1341 and 1346.

4. It was the object of the conspiracy for MOSBERG to offer and give to the PB Attorney and the Family Members a stream of concealed corrupt personal benefits, often times conveyed and concealed in the form of favorable real estate transactions, to influence and reward the PB Attorney for exercising and attempting to exercise official authority and discretion to assist MOSBERG with development-related business with the Township and the Planning Board, without the public's knowledge, as specific opportunities arose. As part of the conspiracy, certain of the concealed personal benefits that MOSBERG gave to the Family Members included, but were not limited to:

a. Significantly discounted purchase prices for residential properties built by MOSBERG's development entities. Discounted purchase prices were approximately \$15,000 - \$20,000 less than comparable residential properties that MOSBERG sold to the general public to permit the Family Members to obtain greater profits upon resale;

b. Lenient settlement dates and arrangements that allowed time for the Family Members to identify 3rd party purchasers to successfully resell (or "flip") said properties to these 3rd party purchasers. This accommodation was contrary to the terms of the Family Members' property purchase agreements, which specifically provided that settlement would immediately occur upon the issuance of a certificate of occupancy ("CO"). Furthermore, the Family Members were exempted from paying a \$100 daily penalty, as indicated in the property purchase agreements, for such delayed closings on residential properties purchased from Glenmont Commons, a MOSBERG development located in the Township;

c. The purchase of properties without satisfying any mortgage contingency obligations as per the property purchase agreements, though these agreements required the Family Members to secure mortgage commitments from a lending institution;

d. Little or no deposit monies down for purchase of properties, while purchase documentation falsely inflated the

amount of money deposited on properties; and

e. Free options, upgrades and extras added to the properties, all of which costs MOSBERG's development entities absorbed, though the terms of the property purchase agreements stated that the Family Members were to pay for extras, options, and upgrades.

5. Specific examples of these personal benefits received by the Family Members are as follows:

Family Member 1 Properties

a. On or about May 31, 2002, Family Member 1 and Family Member 1's spouse signed a contract to purchase three townhouses, all located in Glenmont Commons. Family Member 1 agreed to purchase these properties for discounted prices of \$275,000 each - a price approximately \$15,000 to \$20,000 lower than other comparable homes sold at Glenmont Commons. Family Member 1 put a deposit of \$1,000 on each property (approximately .4% of sale price) and was not required to secure mortgage commitments from a lending institution to purchase the properties. Family Member 1 also received additional benefits, including:

i. **Property #1** - After agreeing to purchase this property on or about May 31, 2002 for \$275,000, Family Member 1 closed on Property #1 on or about January 27, 2003 - the same day that Family Member #1 sold it to a 3rd party for \$330,000 via

simultaneous closings. By flipping the property in this manner, Family Member 1 realized a net profit of approximately \$37,382 (before capital gains tax). Though the Township certified Property #1 for occupancy on or about November 27, 2002, MOSBERG did not require Family Member 1 to close on the property until on or about January 27, 2003, after a 3rd party buyer had agreed to buy Property #1 from Family Member 1. Additionally, Family Member 1 received approximately \$3,779 in upgrades to Property #1 paid for by Glenmont Commons with MOSBERG's approval.

ii. **Property #2** - After agreeing to purchase this property on or about May 31, 2002 for \$275,000, Family Member 1 closed on Property #2 on or about December 30, 2002 - the same day that Family Member 1 sold it to a 3rd party for \$335,900 via simultaneous closings. By flipping the property in this manner, Family Member 1 realized a net profit of approximately \$42,200 (before capital gains tax). Though the Township certified Property #2 for occupancy on or about November 12, 2002, MOSBERG did not require Family Member 1 to close on the property until on or about December 30, 2002, after a 3rd party buyer had agreed to buy Property #2 from Family Member 1. Furthermore, Family Member 1 received approximately \$3,779 in upgrades to Property #2 paid for by Glenmont Commons with MOSBERG's approval.

iii. **Property #3** - After agreeing to purchase this property for \$275,000 on or about May 31, 2002, Family Member 1

closed on Property #3 on or about February 11, 2003, and later sold this property on or about June 23, 2003 for \$360,000, thereby obtaining a net profit of approximately \$58,955 (before capital gains tax). Though the Township certified Property #3 for occupancy on November 22, 2002, MOSBERG did not require Family Member 1 to close on the property until on or about February 11, 2003. Property #3 was sold to a 3rd party on or about June 23, 2003. Furthermore, Family Member 1 received approximately \$3,779 in upgrades to Property #3 that were paid for by Glenmont Commons with MOSBERG's approval.

b. **The Primary Residence** - On or about January 3, 2002, Family Member 1 and Family Member 1's spouse signed a contract to purchase their primary residence, located at Glenmont Commons, for a discounted price of \$395,000 - a discount of approximately \$15,000 to \$20,000. Though the contract for sale stated that approximately \$79,000 was deposited to purchase the property, MOSBERG only required Family Member 1 to pay a \$1,000 deposit (approximately .26% of purchase price). On or about June 27, 2003, Family Member 1 purchased the primary residence and received approximately \$45,899 in upgrades, options and extras added to the property that were paid for by Glenmont Commons with MOSBERG's approval. These upgrades, options and extras included: kitchen and bath upgrades, installation of dual-zoned air conditioning system, carpet and flooring upgrades, toilet and

sink/bathroom upgrades, french door installation, ceramic tiling, fireplaces, whirlpool tub, skylite installations, vaulted ceilings, and hideaway stairs.

Family Member 2 Properties

c. In or about early 2003, MOSBERG told the PB Attorney to meet MOSBERG at the Glenmont Commons sales office in the Township. MOSBERG and the PB Attorney chose two townhouse units for Family Member 2 to purchase. MOSBERG advised the Glenmont Commons sales representative to place those properties on MOSBERG's account and instructed the sales representative not to collect any deposits. During this meeting, MOSBERG told the PB Attorney, in substance and in part, that no one should know about this and encouraged the PB Attorney to conceal their arrangement. On or about June 20, 2003, Family Member 2 signed a contract to purchase these two townhouses, located in Glenmont Commons, for discounted sales prices of \$300,000 and \$315,000, respectively. On or about September 20, 2004, Family Member 2, along with two individuals ("the Individuals"), one of whom was a longtime employee of the PB Attorney, signed a contract to purchase an additional townhouse located in Glenmont Commons for a discounted sale price of \$380,000. Though each contract for sale stated that a \$5,000 deposit was paid towards each townhouse, no such deposits were paid by Family Member 2 or the Individuals. Furthermore, neither Family Member 2 nor the

Individuals secured mortgage commitments from any lending institution to purchase the properties. Family Member 2 received additional benefits, including:

i. **Property #4** - After agreeing to purchase this property on or about June 20, 2003 for \$300,000, Family Member 2 closed on Property #4 on or about February 2, 2004 - the same day that Family Member 2 sold it to a 3rd party for \$349,900 via simultaneous closings. By flipping the property in this manner, Family Member 2 realized a net profit of approximately \$30,300 (before capital gains tax). Additionally, though the Township certified Property #4 for occupancy on or about December 19, 2003, MOSBERG did not require Family Member 2 to close on the property until on or about February 2, 2004, after a 3rd party buyer had agreed to buy Property #4 from Family Member 2. Furthermore, Family Member 2 received approximately \$3,000 in upgrades to Property #4 paid for by Glenmont Commons with MOSBERG's approval.

ii. **Property #5** - After agreeing to purchase this property on or about June 20, 2003 for \$315,000, Family Member 2 closed on Property #5 on or about March 19, 2004 - the same day that Family Member #2 sold it to a 3rd party for \$372,000 via simultaneous closings. By flipping the property in this manner, Family Member 2 realized a net profit of approximately \$35,698 (before capital gains tax). Though the Township certified

Property #5 for occupancy on or about December 23, 2003, MOSBERG did not require Family Member 2 to close on the property until on or about March 19, 2004, after a 3rd party buyer had agreed to buy Property #5 from Family Member 2. Family Member 2 also received approximately \$3,350 in upgrades to Property #5 paid for by Glenmont Commons with MOSBERG's approval.

iii. **Property #6** - After agreeing to purchase this property on or about September 20, 2004 for \$380,000, Family Member 2 and the Individuals closed on Property #6 on or about April 28, 2006 - the same day that Family Member 2 and the Individuals sold it to a 3rd party for \$450,000 via simultaneous closings. By flipping the property in this manner, Family Member 2 and the Individuals realized a net profit of approximately \$42,585 (before capital gains tax). Although the Township certified Property #6 for occupancy on or about December 8, 2005, MOSBERG did not require Family Member 2 and the Individuals to close on the property until on or about April 28, 2006, after a 3rd party buyer had agreed to buy Property #6 from Family Member 2 and the Individuals. Additionally, Family Member 2 and the Individuals received approximately \$3,000 in upgrades to Property #6 paid for by Glenmont Commons with MOSBERG's approval.

6. It was a further part of the conspiracy that the receipt of these and other benefits, collectively, allowed the Family Members to successfully flip residential properties and

derive substantial proceeds from their sales (the "sales proceeds"), and the PB Attorney to receive, directly and indirectly, significant monies and benefits from these sales proceeds, all while MOSBERG sought and did business with the Planning Board and sought and received official assistance from the PB Attorney in matters over which the PB Attorney exercised and attempted to exercise official authority and discretion. The PB Attorney conducted all of these real estate transactions for the Family Members and the Individuals. Aspects of many of these transactions were facilitated through the use of the U.S. mails. After paying settlement costs, the PB Attorney issued checks via U.S. mail to the Family Members and, in the case of Property #6, to the Individuals, which constituted the remaining real estate sales proceeds. After sales proceeds disbursements were made to Family Member 2, shares of the sales proceeds from the property transactions involving Family Member 2 were provided to the PB Attorney, after being concealed and transferred through various bank accounts held by certain members of the PB Attorney's family. As a result of this scheme, the PB Attorney received at least approximately \$36,000 in sales proceeds from the aforementioned real estate transactions. The remaining sales proceeds were retained by Family Member 1 or Family Member 2 and, in the case of Property #6, the Individuals, or used to pay debts, via U.S. mail, incurred by Family Member 2.

7. It was a further part of the conspiracy that, to conceal his and the Family Members' financial interest and dealings with MOSBERG, the PB Attorney did not disclose these dealings and matters to the Planning Board, while the PB Attorney exercised and attempted to exercise official authority and discretion in Planning Board business that involved MOSBERG and his development entities. To further conceal MOSBERG's and his conduct, the PB Attorney did not disclose his receipt of monies and other benefits, as set forth above, as a source of income on annual Local Government Ethics Law Financial Disclosure Statements, which were ultimately filed via U.S. mail with the New Jersey Department of Community Affairs in Trenton, New Jersey.

MOSBERG Receives Official Assistance from the PB Attorney in Matters Pertaining to the Planning Board and Township

8. It was a further part of the conspiracy that, in consideration for these benefits and in connection with their mutually beneficial relationship, the PB Attorney exercised and attempted to exercise his official authority and discretion as the Planning Board attorney to provide MOSBERG certain official favors and assistance, to include:

a. In or about January 1995, the PB Attorney recommended to the Township Mayor and Council that the Township not contest certain existing COAH and DCA agreements between MOSBERG and the Township. These agreements provided that MOSBERG

would satisfy certain obligations (building low and moderate income senior housing and making contributions pursuant to COAH agreements and DCAs made in connection with RCAs) to the Township in exchange for the Township's approval of MOSBERG's development projects. These agreements related to certain development properties of MOSBERG, including Vail Manor Developers ("Vail Manor"), Mazdabrook Developers ("Mazdabrook"), and Glenmont Commons, all located in the Township. On each of these developments, MOSBERG had not fulfilled his obligations in a timely manner. Because of the PB Attorney's recommendation not to contest existing DCA agreements between MOSBERG's development entities and the Township relating to COAH obligations, MOSBERG was able to present development applications to the Planning Board sooner, thereby allowing his development properties to be built at a faster rate, and without regard to whether MOSBERG conditionally satisfied his outstanding COAH obligations.

b. From in or about 1997 through at least in or about 2003, while the Township continued to take a legal position unfavorable to MOSBERG in its litigation with MOSBERG and his development entities over sewer-connection fees pursuant to developer's agreements, the PB Attorney repeatedly assisted in reviewing and endorsing developer's agreements on behalf of the Township with MOSBERG's development entities that included provisions which tended to undermine the Township's legal

position taken during the course of the litigation. These developer's agreements included provisions that (i) supported MOSBERG's development entities' sewer-connection fee calculations, rather than that of the Township; and (ii) exempted MOSBERG's development entities from payment of sewer-connection fees.

c. The PB Attorney ensured that proposed resolutions granting various property development applications presented by MOSBERG were drafted and completed quickly. As a result, the resolutions were ready for passage at Planning Board meetings more rapidly. Because MOSBERG's various property development applications were expedited by the PB Attorney, MOSBERG was able to apply for construction permits quicker and undertake development at a faster rate.

d. The PB Attorney and MOSBERG would plan, discuss and strategize regarding the course of litigation where MOSBERG's development entities were adversaries of the Township, which had the effect of substantially predetermining the outcome of litigation and development matters with the Township in ways favorable to MOSBERG's interests.

e. In or about April 1998, after the PB Attorney prevailed on behalf of the Township in a lawsuit against another real estate company ("the Company") that prevented the Company from developing Mazdabrook, MOSBERG received a secret

recommendation from the PB Attorney that MOSBERG purchase Mazdabrook and apply to build houses rather than apartments, since the PB Attorney knew that the Township would approve such construction. MOSBERG told the PB Attorney, in substance and in part, that if the PB Attorney helped MOSBERG relating to development approval for Mazdabrook, MOSBERG would help the PB Attorney. Shortly after receiving this secret recommendation, MOSBERG purchased Mazdabrook from the Company for approximately \$10 million and applied for development approval with the Planning Board. Thereafter, MOSBERG's development application for Mazdabrook was expedited by the PB Attorney. On or about April 17, 2000, the Planning Board approved a resolution authorizing MOSBERG to build 360 units at Mazdabrook, Residential East Recreation Area (approximately 194 townhouses and 166 single-family homes).

f. In or about spring 2006, at a restaurant in the Township, MOSBERG offered the PB Attorney a "six-figure" corrupt payment in exchange for the PB Attorney's official assistance in obtaining Planning Board approval to build additional housing units at Parkside Gardens in the Township. MOSBERG sought to build additional housing units at Parkside Gardens that exceeded the maximum number permitted pursuant to an earlier developer's agreement. MOSBERG wanted to build approximately 60 additional units, though the Township only would

approve approximately 40 units. While the PB Attorney was initially amenable to the proposition, MOSBERG and the PB Attorney were not able to complete this corrupt transaction because the grand jury's investigation became public shortly thereafter.

In violation of Title 18, United States Code, Section 1349.

COUNTS 2 - 7

(Mail Fraud)

1. Paragraphs 1 to 2 and 5 to 8 of Count 1 of this Indictment are hereby incorporated and realleged as if fully set forth herein.

2. From in or about 1998 to in or about 2007, in Morris County, in the District of New Jersey and elsewhere, defendant

EDWARD J. MOSBERG

knowingly and willfully did devise and intend to devise a scheme and artifice to defraud the Planning Board, the Township and its citizens of the right to the PB Attorney's honest services in the affairs of the Planning Board and the Township.

3. The object of this scheme and artifice to defraud was for MOSBERG to offer and give to the PB Attorney and his Family Members a stream of concealed corrupt personal benefits, often times conveyed and concealed in the form of favorable real estate transactions, to influence and reward the PB Attorney for exercising and attempting to exercise official authority and discretion to assist MOSBERG with development-related business with the Township and the Planning Board, without the public's knowledge, as specific opportunities arose.

4. On or about the dates listed below, in Morris County, in the District of New Jersey and elsewhere, for the purpose of

executing and attempting to execute this scheme and artifice to defraud, defendant

EDWARD J. MOSBERG

and others, knowingly and willfully placed and caused to be placed in a post office and authorized depository for mail, and took and received therefrom, and caused to be delivered thereon, certain mail matter, to be sent and delivered by the United States Postal Service as described below:

<u>Count</u>	<u>Date</u>	<u>Mailing</u>
2	September 26, 2003	Invoice for contracting services mailed to Glenmont Commons for bathroom upgrades, options and extras added to Property #5
3	October 16, 2003	Settlement letter mailed to MOSBERG and the PB Attorney notifying the parties of scheduled closing date for Property #4
4	December 20, 2004	Letter sent by MOSBERG legal representative to Family Member 2 and the PB Attorney accepting contract terms in connection with Property #6
5	April 25, 2005	A Local Government Ethics Law Financial Disclosure Statement for the PB Attorney for calendar year 2004, addressed to the New Jersey Department of Community Affairs, Trenton, New Jersey.
6	November 28, 2005	Settlement letter mailed to MOSBERG and the PB Attorney notifying the parties of scheduled closing date for Property #6

7

March 19, 2007

A Local Government Ethics Law
Financial Disclosure Statement for
the PB Attorney for calendar year
2006, addressed to the New Jersey
Department of Community Affairs,
Trenton, New Jersey.

In violation of Title 18, United States Code, Sections 1341
and 1346 and Section 2.

COUNTS 8 - 11

(MOSBERG's Offer and Giving of Things of Value With Intent to Influence and Reward)

1. Paragraphs 1, 5(c) and 8 of Count 1 of this Indictment are hereby incorporated and realleged as if fully set forth herein.

2. At all times relevant to Counts 8 to 11 of this Indictment, the Township received in excess of \$10,000 in federal assistance in the relevant one-year period.

3. In or about the dates set forth below, in Morris County, in the District of New Jersey, and elsewhere, defendant

EDWARD J. MOSBERG

did knowingly, willfully, and corruptly give, offer and agree to give things of value, as set forth below, to the PB Attorney and others with intent to influence and reward the PB Attorney in connection with a business, transaction, and series of transactions of the Township and the Planning Board involving a thing of value of \$5,000 and more:

COUNT	DATE	THING OF VALUE (Approximate)
8	February 2004	Property #4, including a portion of the sales proceeds in the amount of \$9,000
9	March 2004	Property #5, including a portion of the sales proceeds in the amount of \$17,000
10	Spring 2006	"Six figure" payment
11	July - August 2006	Property #6, including a portion of the sales proceeds in the amount of \$10,000

In violation of Title 18, United States Code, Section
666(a)(2) and Section 2.

A TRUE BILL

FOREPERSON

CHRISTOPHER J. CHRISTIE
UNITED STATES ATTORNEY