

CA - general

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Affidavit of Alan Mallach, housing and
development consultant for IRS.

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CA 002271V

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MIDDLESEX COUNTY

URBAN LEAGUE OF GREATER]
NEW BRUNSWICK, et al.,]
]
Plaintiffs,]
]
vs.]
]
THE MAYOR AND COUNCIL OF]
THE BOROUGH OF CARTERET,]
et al.,]
]
Defendants.]
]
]

Docket No. C 4122-73

Civil Action

AFFIDAVIT

STATE OF NEW JERSEY)
 : ss.:
COUNTY OF BERGEN)

ALAN MALLACH, of full age, being duly sworn according to law, on oath,
deposes and says:

1. I am a ~~professional planning~~ ^{housing and development} consultant retained by the Urban League plaintiffs to consult on the issues of fair share methodology and ordinance compliance.

2. I voluntarily participated in the three planners' meetings in this action held on February 7, 13 and March 2, 1984, because I believed that they might assist in resolution of the case or simplification of the complex issues

posed by the Mount Laurel II remand.

3. Carla Lerman, the Court-appointed expert in this action, chaired all three meetings, which were attended by approximately 20 planners, including those retained by parties to this action, several involved in some capacity in other Mount Laurel actions, and in one instance by two ~~planners~~ ^{staff members of} the Rutgers University Center for Urban Policy Research. Ms. Lerman did not take the role of an advocate for any particular position but rather sought to elicit and explore the views of the various participants. The sessions involved a free-wheeling discussion among the planners present concerning all of the key issues raised by a regional fair share methodology. Disagreements were freely and vigorously voiced. No pressure was exerted to reach a consensus. It was apparent from the discussions and from the informal straw votes taken that each planner felt free to exercise and articulate his/her professional judgment on all issues.

4. Judge Serpentelli opened the first meeting by expressing his hope for a productive session and outlining the methodology proposed in the AMG v. Warren Township litigation, which he had already described to the counsel for all parties in this action at the case management conference on January 24, 1984. Judge Serpentelli was asked to rejoin the group near the end of the first day. After hearing some of the points covered by the group in that session, the judge sought to explore the reasoning behind various positions. The issue on which he focussed the most was the concept of a "commutershed" region for prospective need. In response to his questions, the planners supporting and opposing that concept explained their positions. Some discussion also occurred then about the vacant land factor and the problems with existing data.

5. At the second session on February 13, the planners spent most of the day working through the key issues concerning region and the allocation factors. There was extended, vigorous, and at times even acrimonious discussion concerning the vacant land, growth area, and wealth factors. The judge was again asked to join the group near the end of the day. At that time, the group described to the judge in some detail the concepts upon which consensus had tentatively been reached. The judge expressed concerns and asked a number of questions about the meaning and purpose of various concepts and the rationale for using or rejecting various factors. However, at no time did he indicate rejection of any concepts or direction that other concepts be incorporated or substituted.

6. The third session on March 2 ^{*review of the draft report and to a*} was devoted primarily to a discussion of a wealth factor, on which the group was almost evenly divided. A subcommittee was formed to develop a methodology for incorporating an appropriate wealth factor. To the best of my recollection, Judge Serpentelli did not participate at all in that session.

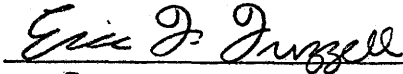
7. As I stated in my fair share report filed with this Court in December 1983, it is my opinion that there are a number of reasonable different approaches to the fair share issues posed by Mount Laurel II. I believe that the three planners' meetings helped to define better and to narrow the realm of reasonableness. In my judgment, the revised Court-appointed expert's report, dated April 2, 1984, which developed from those meetings, is generally a reasonable and acceptable methodology. Nevertheless, I continue to believe that the methodology presented in my original report is preferable in a number of technical respects, and would have no ^{*hesitation*} ~~hesitance~~ to so testify, if called upon

by plaintiffs' counsel. Although I participated voluntarily in the three planners' sessions, I did not then nor do I now feel pressured to accept or support any position that in my independent professional judgment is not sound.



ALAN MALLACH

SWORN TO and SUBSCRIBED
before me this 10th day
of April, 1984.



Eric F. Frizzell
An Attorney at Law, State of New Jersey