

ML - Morris County Fair Housing Council
v. Beanton

11-Feb-1980

Deposition Upon Oral Examination of Mary E. Brooks

pg. 23

ML000419G

SUPERIOR COURT OF NSW JERSEY
LAW DIVISION - MORRIS COUNTY
DOGK2T NO. L-6001-78 f.^.

MORRIS COUNTY FAI.i HOUSING COUNCIL,
MORRIS COUNTY BRANCH Q?' THE NATIONAL
ASSOCIATION FOR TH2 ADVANCEMENT OF
COLORED PEOPLE and STANLEY C. VAN
i"2SS, PUBLIC ADVOCATE OF THE STATE
OF NE:-7 JERSEY,

:
:
DEPOSITION Ufo,r
ORAL EXAMIM'^TIOI
:
OF
:
MARY E. BROOKS.i
:

Plaintiffs,

-vs-

300NTON TOWNSHIP, CHATHAM TOWNSHIP,
CHESTER TOWNSHIP, DENVILLE TOWNSHIP,
EAST HANOVER TOWNSHIP, . FLORHAM PARK
BOROUGH, HANOVER TOWNSHIP, HARDING
TOWNSHIP, JEFFERSON TOWNSHIP,
KNNELON BOROUGH, LINCOLN PARK BOROUGH,
MADISON BOROUGH, MENDHAK BOROUGH,
KENDHAF TOWNSHIP_f- MONTVILLE TOWNSHIP,
MORRIS TOWNSHIP, MOIUIS PLAINS BOROUGH,
MOUNTAIN LAKES BOROUGH, MT. OLIVE
TOWNSHIP, PARSIPPANY-TROY HI..X3
TOWNSHIP, PASSAIC TOL/NSHIF, PEQUANNOCK
TO\vNSHI?, ^AI-IDOLFH TOWNSHIP, RIVERDALS
BOROUGH, ROCKAWAY TOWNSHIP, ROXBURY
TOI^ISHIF and V/ASlii:IGICN TO;/N3HIP,

Defendants.

B E F O R E :

VICTOR SELVAGGI, JR., a Notary Public and
Certified Shorthand Reporter of the State of New Jersey,
at the MORRIS TOWNSHIP MUNICIPAL BUILDING, Woodland
Avenue, Morris Township, New Jersey, on Monday, February
11, 19S0, commencing; at 10 a.m.

KNARR - RICHARDS, ASSOCIATES
CERTIFIED SHORTHAND REPORTERS
OFFICES IN MORRISTOWN & NEWTON
10 PARK SQUARE BOX 241.R.D. S
MORRISTOWN, N.J. 07960 NEWTON, N.J. 07860
539-7150 383-2866

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
n
22
23
24
25

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

THE PUBLIC ADVOCATE
BY: CARL C. SISGAIER, ESQ.
Attorneys for the Plaintiffs.

MESSRS. MATTSON, MADDEN & POLITO
BY: MARY LYNNE MC DERMOTT, ESQ.
Attorneys for the Defendant Passaic Township.

VICTOR SELVAGGI, JR.
Certified Shorthand Reporter

I N D E X

WITNESS

DIRECT

MARY E. BROOKS

By Miss McDermott

2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 * A ii Y 2. BROOKS, previously sworn, recalled;
2 CONTIL;UFD DIRECT EXAMINATION BY MISS MC DESMOTT:

3 Q You are aware that you are still under
4 oath? A Yes.

5 Q And sworn to answer the truth to the
6 best of your knowledge.

7 In giving credit for housing that has been
8 built between 1970 and 1980, would houses that sold for
9 a least cost value be considered even if they were not
10 new housing?

11 MR. BISGAIER: You are talking about
12 resales for existing housing?

13 Q Resales. A You mean
14 giving credit as we talked about earlier on the housing
15 allocation plan?

16 Q Right. A I think
17 that's a possibility. It's not customary, but it could
18 be done.

19 Q Okay, who would you recommend that
20 **would** do the re-evaluation of the needs for least cost
21 housing when the master plans come up for review
22 pursuant to the statute in New Jersey?

23 A On the housing allocation plan?

24 Q Right. A New Jersey
25 Department of Community Affairs.

1 Q And I believe that you suggested a
2 community go to the DCA when they had to have their
3 master plan revised and ask them to update their
4 allocation plan? A I indicated I
5 thought that was a possibility if they were concerned
6 about that update.

7 Q Do you have any idea how long it
8 would take to update the DGA housing allocation plan?

9 A No, I don't,

10 Q Okay. Do you have a date when the
11 DGA allocation plan should be updated in the **future?**

12 A I certainly haven't suggested one at **this**
13 point.

14 Q Okay. Do you know how many years
15 go
16 should/by before it should be updated?

17 A There really isn't a should on it. As I
18 indicated before most housing allocation plans are
19 updated periodically and sometimes it's annually and
20 sometimes every five years.

20: Q Is there any set date?

21 A No, there isn't.

22 C Okay. ^Twhat was the criteria that
23 was used in preparing the area wide housing opportunity
24 plans? A The previous attorney

25 asked me the same question. It's a set of regulations

1 that are developed for the area wide housing opportunity
2 plans.

3 Q Are all the plans the same? The ones
4 you mentioned for Akron, Norfolk and Boston, do they
5 use the same criteria? A They are all
6 operating under the same regulations. The plans are
7 not similar by any means, although in order to be
8 approved, they must meet a set of criteria and there
9 are right now 31 approved throughout the country.

10 Q But the plans can vary even under the
11 regulations? A Definitely.

12 Q Okay. In one of your statement[^].
13 Section 8 programs are being utilized by Morris County.
14 What I was concerned was what you meant by utilized.

15 A It means the funds have come into the county.

16 Q And then they are distributed to the
17 communities or to certain projects?

18 A On the Section 8?

19 Q Yes. A They are not
20 distributed to municipalities. Generally they are
21 either made available to the owner or manager of a
22 project. Generally that's the way they are administered.

23 Q And do you know whether there are
24 records of where these Section 8 programs are present
25 active in Morris County? A Certainly

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 The HUD area office should have that information,

2 Q Have you reviewed such information?

3 A Not other than in the documents I've indicated
4 earlier.

5 Q Okay. So would you know whether there
6 are any Section 8 programs in Passaic Township at this
7 time? A Not that I'm aware of.

8 Q Okay. Is it your opinion that a
9 community with a small amount of vacant developable
10 land in existence should use all its remaining land
11 for low moderate income housing?

12 MR. BISGAIER: I think that question
13 is mostly speculative.

14 THE WITNESS: It's a difficult ques-
15 tion to answer without some qualifiers.

16 Q What more data would you need to
17 answer that question? A As I've

18 indicated before I think a municipality should make
19 every effort it can to provide housing for low and
20 moderate income people and to meet the needs that exist,

21 if it is possible and necessary for it to use all of
22 the available resources that it has remaining to
23 itself, then I find that appropriate. Given the kinds
24 of, I don't know, whatever planning principals or
25 whatever we talked about previously.

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 Q So it would be your opinion that they
2 could use all the remaining land for least cost housing
3 and not set aside any land for any commercial or
4 industrial uses? A Without knowing

5 more information, that's just impossible to answer.

6 Q Okay. What type of information would
7 you need to make an opinion on that question?

8 MR. BISGAI2R: What is the specific
9 question you are asking?

10 MISS MC DERMOTT: I asked her whether
11 if a community was small in amount of vacant
12 developable land, if they used it as sfif
13 suggested for least cost housing, whether a
14 portion of that land should be set aside for
15 some commercial or industrial uses and she
16 said she couldn't answer that question
17 without more data and I wanted to know what
18 types of data she needed to know or informa-
19 tion to answer that question.

20 THE WITNESS: Well, this is probably
21 going to be as vague as the question was.
22 I would certainly need to know more about the
23 present development pattern of the community,
24 what resources it had available to itself
25 to provide housing and what kinds of other

1 projections there were for development in
2 the jurisdiction.

3 Q Okay, If a community has a small
4 amount of land that is used for commercial or industrial
5 uses, should that community in providing areas for
6 least cost housing also provide areas for further
7 commercial and industrial uses in order to provide
8 further jobs for people who are residing in the
9 community?

10 A Again, that's
11 impossible to answer without knowing more data. It
12 depends on what is presently available and what the
13 demand would be.

14 Q Could it be possible that they should
15 have some additional commercial to offset population
16 growth?

17 A That's possible.

18 Q Okay. If no housing is presently
19 being built in the municipality for reasons of, as I
20 previously said to you, a sewer ban posted by the
21 Department of Environmental Protection, would any of
22 the incentives which you recommended in that one report,

23 j^SUr December report to build least cost housing make
24 any difference in providing additional housing stock?

25 A If the sewer ban were still operating and
that sewer ban is stopping any additional growth?

Q Yes. A The incentives

1 operate within a pattern of development, so it would
2 not supersede a sewer ban,

3 Q Okay. What type of criteria is used
4 in what you call the interjurisdiction Section 8
5 programs? Specifically you mentioned the Delaware
6 Valley Planning Authority.

7 MR. BISGAIER: Can I have that ques-
8 tion again?

9 Q What type of criteria is used in
10 formulating the interjurisdictional Section 8 fair
11 share plans? A I need to **cleap.**

12 up the question a little bit, if you don't **minCU sffey**
13 are really not interjurisdictional fair share **plans**
14 and the Delaware that you referred to --

15 ^ It's from my notes.

16 A I'm not sure. You might be mixing two
17 different agencies that I talked about. The inter-
18 jurisdictional Section 8 programs that I talked about
19 earlier were part of a HUD initiative program to
20 etieourage regional planning agencies to develop
21 regional housing mobility programs and the inter-
22 jurisdictional Section 8 programs were required part
23 of that in order for them to receive the funds and
24 carry out the programs. Again, there are a set of
25 requirements that describe generally how that program

1 ought to be operated. There are various ways that
2 interjurisdictional programs can be conducted. They
3 can be over different types of regions, they can be
4 administered by different types of agencies. The
5 administrative responsibility can be divided up
6 differently so that different agencies take on dif-
7 ferent responsibilities for different administrative
8 responsibilities within the Section 8 program. What
9 it does generally is take a set number of certificates
10 for Section 8 housing assistance and make them available
11 over a larger region than what a single housing
12 authority has normally available to itself, so that
13 household with a certificate for Section 8 housing
14 assistance can move between or among jurisdictions.

15 Q Do they make fair share plans, housing
16 plans under this particular program, the interjurisdic-
17 tional? A Not as we have talked
18 about it before. They frequently come up with
19 allocations that are agreed upon of the Section 8
20 certificates, but they are not, as we have talked about
21 it earlier, a fair share plan.

22 Q Okay. In your December 14, 1979
23 report you give a variety of different methods of
24 providing least cost housing. Is that correct?

25 A Yes.

1 Do any of the programs in that study
2 cost two to two and a half times the income of the low
3 and moderate income persons in that area where the
4 study is operating or where the program is operating?

5 A As I believe you know there are a significant
6 number of programs covered in that handbook. To
7 answer the question generally, yes, there are and
8 probably most of them in that, a good number of them
9 attempt to use the initiative developed or an incentive
10 developed so that a developer or a housing authority
11 can provide housing within the limits of the Section 8
12 program or some other State or Federal program and
13 frequently those, the limits on income housing cost
14 ratios are 25% of income for housing.

15 Q Do they specifically list that ratio
16 in these programs? A Sometimes. That
17 is the limit within the Section 8 housing assistance
18 program that the household pays for the unit. It does
19 not always represent what the actual cost of the unit
20 is.

21 Q I see. Can you specifically refer
22 to any programs in your handbook, the report of
23 December 14, 1979, in which the housing costs two to
24 two and a half times of the income?

25 A Not without going back through it.

1 Q Okay. Is it your opinion that if
2 Passaic Township for example changes its zoning so as
3 to provide the opportunity for least cost housing to
4 be built, that the housing will, in fact, be constructed?

5 A Would you repeat the question?

6 (The Reporter reads back the last
7 question.)

8 THE WITNESS: Well, it's certainly
9 possible. The probability is increased if
10 the township takes certain number of steps
11 to insure that that would happen.

12 Q By steps, do you mean something 'TOOre
13 than just zoning? A That would be
14 an example, yes.

15 Q Okay. Is it your opinion that the
16 communities have an obligation to do more than just
17 zone, but also to provide further incentives for the
18 least cost housing? A Is that my
19 opinion?

20 4. Q Yes. A Yes.

21 Q Okay. The discussion of region, that
22 you would have used a larger region including parts
23 of New York along with parts of New Jersey, my ques-
24 tion is what parts of New York would you have included
25 in your region and what parts of New Jersey?

I
1 A What I've indicated previously is that the
2 area represented by Region 11 in the New Jersey Housing
3 Allocation Plan is in my opinion part of the New York-
4 **Newark** Metropolitan Area and that that larger region
5 in my mind seems appropriate for consideration of
6 housing issues and the development of housing plans.

7 Q What other areas would you include
8 other than New Jersey? Manhattan, Brooklyn, what parts
9 of New York or other states?

10 A There are a series of considerations that I
11 want to make before settling on a region. The Tri-
12 State Regional Planning Commission in my mind **would**
13 be one alternative. The combination of the, I'm
14 completely blank on the term, the New York-Newark
15 standard consolidated area and I'm not sure that's the
16 correct consolidated statistical area, would be a
17 second alternative.

18 Q So you as of this date haven't
19 specifically studied what exact region you would have
20 included if you made the region larger? You haven't
21 defined the boundaries? A Not specifi-
22 cally, no.

23 Q Okay. My last questions are with
24 reference to D3-5 for Identification and I'll just go
25 through it quickly with yes or no questions, if possible.

1 You can correct me if I'm wrong and that will be all my
2 questions.

3 This is specifically in reference to Passaic
4 Township. In your housing allocation report, you
5 allocated the present housing needs, referring to the
6 August 30th report also on Passaic and I'll just go
7 through the numbers. In your report of August, 1979,
8 you determined that Passaic Township's present housing
9 needs were 142 units. Is that correct?

10 A Yes.

11 Q And in determining that figure you
12 used a dilapidated housing figure of 49 in Passaic, Is
13 that correct? A Yes.

14 Q And an overcrowding figure of 66 in
15 Passaic? A Yes.

16 Q And for people who were unable to
17 find housing at two to two and a half times their
18 income, that would be 351 A Yes.
19 It is more precisely households paying over 25%.

20 Q Okay. Now, you added those three
21 figures and times it by an overlap figure of 9.4%?

22 A And subtracted the overlap, yes.

23 Q And subtracted the overlap figure
24 from that? A Yes.

25 Q Why didn't you use an overlap figure

1 for entire Region 11 as opposed to Newark SMSA?

2 A The development of the overlap figure is
3 based on some rather detailed census data that is not
4 available for the entire region and it was available
5 for certain SMSA's.

6 Q Was it available for the Jersey City
7 SMSA? A Yes.

8 Q And was it available for the Paterson
9 Passaic, Clifton - A You have them
10 in the wrong order, but yes. Those are indicated in
11 my report.

12 Q Okay. Could you have ~~average figures~~ ~~to~~ ~~be~~
13 figures or compiled them? A We discussed
14 this earlier and in my opinion that would not be
15 accurate.

16 Q Okay. The subtotal of the dilapidated,
17 overcrowding and the figure for those who are paying,
18 more than 25%, plus the overlap, I guess it is 136?

19 A Yes.

20 Q Could you then explain that vacancy?
21 On your chart you have 23 in parenthesis plus six.
22 Could you just explain that calculation?

23 A The 23 is the calculation of the total number
24 of units needed for an adequate vacancy rate. The 6
25 is a proportion of that total which represents the

1 proportion of low and moderate income households as
2 defined by New Jersey DCA for Morris County.

3 Q How did you come up with the 23? I
4 didn't understand that. A There is
5 a factor used as a vacancy rate factor and it's a
6 percentage and it's merely multiplied times the sub-
7 total to obtain a number of units necessary to maintain
8 an adequate vacancy rate.

9 Q Do you have the vacancy factor? Do
10 you know what the number is?

11 A I gave all these out earlier.

12 Q If you are sure that's in it, I just
13 ask you.

14 You took that vacancy factor and timed it
15 against the 136? A No, times the 23
16 -- I'm sorry, yes, times the 136.

17 Q I understand. And the 6 comes from,
18 is it from the DCA Report? A They use
19 25.7% of Morris County's population, 1970 as low and
20 moderate.

21 Q Okay. In Morris County alone?

22 A Yes.

23 Q Okay. Why did they differentiate and
24 use just a county for that type of figure?

25 A New Jersey DCA did not make that calculation.

1 They used the total vacancy rate factor. They did not
2 identify the proportion of that representing the low
3 **and** moderate income population,

4 Q This is your calculation?

5 A Yes.

6 Q And you used it just for those persons
7 in Morris County? A I used a different

8 figure for **each** of the counties representing the
9 proportion of low and moderate income housing in that
10 county as defined by the New Jersey DGA.

11 Q Why did you use a countywide figure
12 as opposed to a regional figure? f -

13 A Because at this point the calculation is
14 identifying present housing needs by individual
15 jurisdiction within the county,

16 Q Then why did you use the town's low
17 and moderate income persons as opposed to the county's
18 breaking it down to just the community itself?

19 A If data were available I could have done that).
20 I'm not sure I would have if the data were available
21 **and** I'm not sure whether or not it is. Obviously the
22 calculation would have been a much more difficult one
23 under those circumstances, but I would have to check
24 the accuracy. I would have some hesitancy in using a
25 municipal figure for each municipality. Without looking

1 at the data, I can't really answer the question.

2 Q But this category of present housing
3 needs is the need in the particular municipality, am
4 I correct? A Yes.

5 Q Without going into a regional, without
6 looking to the region, you are just looking in this
7 particular category to what is happening in one
8 municipality and what their present needs were in 19702

9 A Yes.

10 Q Okay. After adding the vacancy to the
11 subtotal, you come up with 142 for the present housing
12 needs, is that correct, for Passaic?

13 A Yes.

14 Q What happened to the 23? You have
15 136 subtotal and you have the 23 plus 6.

16 A 23 is the total number of units using the
17 vacancy rate factor, multiplying that times the sub-
18 total and it's that figure from which the proportion
19 of units representing the vacancy factor are calculated
20 **based** on the proportion of low and moderate income.

21 y I see. So the 23 is for vacancy for
22 any and all units regardless of whether they are low
23 and moderate income? A Yes«

24 Q And the 6 is breaking it out just for
25 the low and moderate income persons?

1 A That's right.

2 Q You have a present housing need of
3 **142:** for Passaic Township. Is that correct?

4 A Yes.

5 Q Then the allocation of 1970 needs,
6 present needs to Passaic is 456. Is that correct?

7 A Yes.

8 Q . Could you explain on DB-5 under the
9 column G that has compilation of 1970 needs, what the
10 .14 in parenthesis is? A You recognize
11 we have been through this all before?

12 Q Most of the stuff I remembered, **but**
13 some of the things I don't understand and I want to be
14 sure that I understand my town's calculations.

15 A The .14 is the relationship of Passaic
16 Township's present housing needs to the regions'
17 housing needs in New Jersey DCA Housing Allocation
18 Plan. I applied that same ratio to the adjusted figure
19 in this town.

20 |5f-; Q The .14 comes from the DGA?

21 A Comes from that ratio. It is that ratio.

22 Q And again it would be column f,
23 allocation prospective needs, the .45 in parenthesis
24 is again the ratio? A It's the same.

25 Q Okay. And the unadjusted allocation

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

1 then for Passaic Township of prospective needs is one
2 three five eight. Is that correct?

3 A Yes.

4 Q And your development limit for Passaic
5 Township is based on the vacant developable land in the
6 DCA Allocation Report? A Yes.

7 Q Okay. And you have a development
8 limit here of 14,872 units? A Yes.

9 Q Okay. And in your charts you have
10 no assisted units since 1970 for Passaic Township. Is
11 that correct? A That's correct*

12 Q But the only units that, you have? are
13 those that were done in the study that was **conducted**
14 with the Public Advocate and the data from, I believe
15 you testified it was Morris County?

16 A No, the assisted units data was compiled by
17 the New Jersey Department of Community Affairs.

18 Q Okay. And that same figure, those
19 figures are in the DCA Report?

20 A In an appendix, yes.

21 Q Okay. What is the final allocation
22 for Passaic Township? A 2,310.

23 MISS MC DERMOTT: Okay. I have no
24 other questions. Thank you.

25 MR. 31SGA1ER: I would just like to

1 put on the record prior to today's deposition
2 that Mr. Latzer and Mr. Scangarella were here
3 and informed by counsel that there is an
4 interest on the part of someone from McCarter
5 & English to also participate in the deposition
6 and I've informed everyone that it may not be
7 possible to have any further days of deposi-
8 tions of this witness prior to the end of the
9 court deadline due to her own schedule and
10 mine. The possibility of one day may be
11 available which I will inform them of in the
12 next couple of days and ask them **to consider**
13 that and the questions that they **are asking**
14 in order to avoid what I consider to be a
15 continuous stream of redundant questions. I
16 was informed on Friday for the first time
17 that an additional day would be necessary
18 beyond today and informed Miss Carella of
19 Clapp & Eisenberg that an additional day may
20 be possible. She informed me everyone would
21 be here today who intended to take Miss
22 Brooks' deposition.

23 MISS MC DERMOTT: Thank you.

24 * * *

25

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

MORRIS COUNTY FAIR HOUSING
COUNCIL, et als,

Plaintiffs,

-vs-

BOONTON TOWNSHIP, et als,

Defendants.

CERTIFICATE

I, VICTOR SSLVAGGI, JR., a Certified Shorthand
Reporter and Notary Public of the State of New Jersey
certify that the foregoing is a true and accurate
transcript of the deposition of MARY E. BROOKS, who
was first duly sworn by me at the place and on the
date hereinbefore set forth.

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



A Notary Public of the State of New Jersey

Dated: _____

2/20/80

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046