

~~V&A~~ ^{ML} General

12 July - 1984

Affidavit of Alan Mallach

~~re~~ re: substance of the consultants'
meetings and correction of
a misrepresentation of his
trial testimony.

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ATTORNEYS FOR PLAINTIFFS

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 4-122-73

Civil Action

AFFIDAVIT OF ALAN MALLACH

OCEAN COUNTY)
) : ss:
NEW JERSEY)

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

1. I have been retained by the Urban League, and have acted
on behalf of the Urban League, throughout the abovementioned
litigation as their expert on planning, zoning, and housing.
In that capacity I attended three meetings of the consultants.

to the parties in that litigation during the course of which issues related to fair share housing allocation were discussed, and the fair share approach known as the "consensus" approach was formulated.

The sequence of events in those meetings was as follows: Two meetings, each lasting nearly all day, were held on February 7 and 13. In all significant respects, the "consensus" approach was substantiated complete by the end of the February 13 meeting. A formal presentation was made subsequently in Judge Serpentelli's courtroom on which all counsel were present and at which time the consultants provided a detailed description of the proposed fair share allocation approach. Counsel were given full opportunity to question the consultants, and a written statement describing the "consensus" methodology was distributed to those present.

3. Subsequent to the presentation of the methodology to counsel, a third meeting was scheduled, for the purpose of reviewing the matters that had been agreed upon by February 13 and eliciting any residual concerns that any participant might have. That meeting took place on March 2. No substantive changes, whatsoever in the methodology already established, and communicated to counsel, were made as a result of the March 2 meeting. At that meeting there was extensive discussion of the use of a further allocation factor, that of the number of children, but the issue was not resolved at that time. Subsequent resolution of that issue was the result of subcommittee meetings and telephone communications with the consultants, with no involvement of any counsel.

4. Although Mr. Meiser and Mr. Eisdorfer were present at the march 2 meeting, their presence, as the preceding paragraphs should make clear, ~~had no substantive effect on the process by which the "consensus fair share methodology was developed, or on the substance of the methodology.~~ The planning group was neither swayed nor manipulated by the presence of these two individuals. Indeed, the only substantive position ascribed to either Mr. Meiser or Mr. Eisdorfer in Ms. Lerman's deposition testimony attached to Mr. Paley's affidavit - that the 20\$ add-on was insufficient - was rejected by both the consultants' group and by Ms. Lerman.

5. In paragraph 10 of his certification, Mr. Paley misrepresents my trial testimony. The thrust of my testimony, which was that of my personal opinion and not a part of the "consensus" methodology, to which Mr. Paley refers was that to the extent that there is a net increment in lower income households in a region, there must be an increment as well in the number of housing units available for those households. This, to me, is a nearly self-evident proposition. The conclusion that I drew from this point was that the extent to which a municipality could receive credit toward its 1990 fair share for units built prior to 1980 was necessarily limited.

I did not argue, as Mr. Paley suggests, that "no municipality..... could possibly meet its prospective need obligation...." On the contrary, I believe that many municipalities can and will meet their prospective need obligations, without undue hardship or burden, through careful and sound planning and zoning policies. Finally, in any event, the testimony incorrectly characterized by Mr. Paley dealt with the subject of fair share "credits", a

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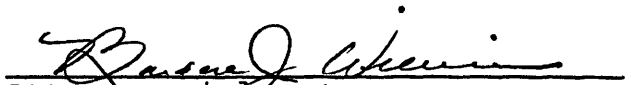
topic that was not addressed at all in the "consensus" fair share methodology.

6. In conclusion, contrary to Mr. Paley's assertions, there was no anti-municipal bias on the part of the participants in these meetings. On the contrary, there was general sensitivity on the part of all involved to the concerns of local governments in carrying out their Mount Laurel obligations. This sensitivity, in my opinion, is fully reflected both in the "consensus" fair share methodology itself, and in Ms. Lerman's report of April 2, 1984- setting forth that methodology.



ALAN MALLACH

Sworn to before me this 12th day
of July, 1984


Attorney-at-law in the State of
New Jersey