

Transcript of Deposition of Alan Malach

pg. 35

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WITNESS

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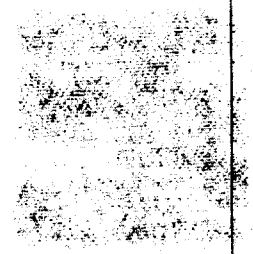
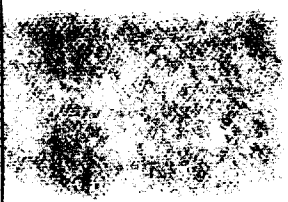
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Alan Mallach

By Ms. Poole

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



1 ALAN MALLACH,

2 having been previously been duly sworn,
3 resumed the stand and testified as follows:

4 DIRECT EXAMINATION BY MS. POOLE:

5 Q I'll just start out by saying that I
6 haven't been present at any of the other depositions
7 of you, but I've read the transcript of Dan Bernstein's
8 deps. A Yes.

9 Q And I've read your report and the report
10 on the two towns that I represent, Madison and
11 Mount Olive.

12 And so I don't want to have, neither of us
13 wanting to go over all of that ground again. I
14 have a couple general questions just to make sure
15 that I'm understanding your housing and planning
16 philosophy correctly.

17 I gather that you advocate as much as possible
18 the removal of all exclusionary-type provisions of
19 the Defendants' zoning ordinances?

20 A That's correct.

21 Q And that would, and least cost, a
22 measurement of the least cost housing, can be built
23 with reasonable health and safety standards, and
24 that you establish certain minimum lot sizes for
25 single-family and minimum, I don't know whether I

1 should say high or low densities, for the garden
2 apartment and the townhouses.

3 Can you just give me a quick rundown on that.

4 A Well, generally speaking, what I tried to do
5 was in a rough way arrive at numerical standards
6 that were consistent with the least cost principles
7 that were enunciated in the Madison decision.

8 And these develop for single-family housing,
9 for example, minimum lot sizes of no more than
10 5,000 square feet for garden apartments, if I
11 recall, densities of no less than fifteen units
12 per acre, and for townhouses, densities of no less
13 than ten units per acre.

14 Then there are other standards dealing with
15 such matters as lot width of frontage.

16 Q Okay. And also you espouse the principle
17 of fair share, least cost based on certain criteria
18 of appropriateness?

19 A That's correct. I believe in the principle
20 of fair share. I haven't done any technical
21 analysis of fair share in this litigation, but I
22 certainly do believe in it as a general principle.

23 MR. BISGAIER: I think you should be,
24 both be careful in terms of the precise use
25 of language in terms of use of the term

1 least cost as that is what has been allocated
2 in a fair share plan.

3 THE WITNESS: I'm not suggesting, I'm not
4 suggesting that at all.

5 Q You want to elaborate a little bit.

6 A Well, I'm saying fair share is essentially a
7 process by which one allocates housing for low and
8 moderate income households.

9 Q As opposed to least cost or differentiated
10 from? A It's an important ~~dis-~~

11 tinction. A least cost housing unit is a housing
12 unit which may or may not be occupied by a low and
13 moderate income household.

14 Low and moderate income household is a house-
15 hold which in turn may or may not be able to be
16 accommodated by least cost housing.

17 So it's the latter, it's the households that
18 are being allocated. And the goal of the plan is
19 to come up with the means of accommodating those
20 households within which least cost housing may or
21 may not be the vehicle or a vehicle.

22 Q Okay. I guess I had a question in that
23 if all exclusionary provisions of a zoning ordinance
24 are removed, is it your feeling that, to what degree
25 will that promote, let's say, will that promote the

1 various Municipalities receiving a fair share of low
2 and moderate income?

3 A I suspect it would vary for one region to
4 another and from one municipality to another within
5 the region.

6 Q Okay. But it wouldn't, I gather from
7 reading your supplemental report on remedies, that
8 this would not be any kind of a guarantee that
9 additional, you feel that additional action is
10 needed?

11 A That's correct, as a general rule. Certainly,
12 in and of itself eliminating exclusionary zoning
13 provisions would not guarantee a meeting of fair
14 share goals, that's correct.

15 Q Okay. Now, if I can get on to Mount Olive
16 as a specific case, in addition to familiarity with
17 the zoning ordinance, are you familiar with Mount
18 Olive yourself? Have you been there?

19 A Yes.

20 Q How many times?

21 A Oh, I don't recall specifically. Certainly I
22 have been through the Town on 206 and just passing
23 through or by it a number of occasions. I've made a
24 couple of specific trips to look at the Town in the
25 light of this litigation last spring.

1 Q Last spring?

2 A Yeah.

3 Q How would you characterize Mount Olive?

4 By characterize, I'm referring to some of the
5 characteristics that you've made in your reports
6 and other testimony, such as rural, suburban,
7 working-class community, that type of thing.

8 A Mount Olive is a large municipality. It's large
9 enough to have a variety of development types within
10 it.

11 I'd say it's essentially a suburban community
12 with a great deal of recent development of a
13 suburban character in terms of both single and
14 multi-family housing, with some areas that still
15 have a rural character to them, and some areas, I
16 guess particularly right around Budd Lake, that has
17 what is a very typically western Morris County look
18 of the one time seasonal small lot community that
19 has become largely year-round community in recent
20 years.

21 Q But you would define it, in general,
22 say suburban and rural?

23 A Oh, absolutely.

24 Q Are you aware of how much of the acreage
25 in Mount Olive is still in rural use?

1 A I have no idea offhand. It could be considerable
2 acreage.

3 Q I know that approximately 3,000 acres
4 are in farmland assessment which--

5 A Actually, I would have thought it would have
6 been more than that. Yes, but because that is
7 not very much at all for a community that size.

8 Q Now, at least I notice to what I've
9 read, it would appear that your planning and
10 housing philosophy includes the removal of such
11 things as minimum tract sizes for multi-family
12 development.

13 In other words, I think Mount Olive is ten
14 acres for some, twenty acres for others as the
15 minimum tract size.

16 Do you have any problem with, say, the
17 location of a multi-family unit cheek by jowl,
18 right next to these areas that are still in farmland?

19 A Well, not inherently. Actually, I suspect
20 that most of the multi-family development that
21 has taken place in Mount Olive is on areas that
22 were once farmland or at least--

23 Q Indeed, almost everywhere; right?

24 A There is cheek by jowls here that were once
25 farmland. I think there is a whole other set of

1 ideas about farmland preservation, which is a
2 separate area.

3 ^{CO} But certainly I do not believe that there's any
4 incompatibility inherently between multi-family
5 housing properly designed and situated and so forth
6 and single-family uses or more rural uses, and that
7 the number of such units in one place does not
8 really affect that compatibility.

9 In other words, if you put 500 multi-family
10 units in the midst of an otherwise rural area,
11 you would probably have a much more significant
12 and, perhaps, jarring affect than if you had twenty
13 here and fifty there and so on.

14 Q Would you even, would you recommend a
15 buffer area at all between farming activities, like,
16 a turkey farm or something, and high density?

17 MR. BISGAIER: To protect the turkeys or
18 the people?

19 Q I guess coming from a farm family, to
20 protect the farm turkeys.

21 A Again, there is a tricky question there. I
22 think you're talking about a lot of different things.

23 From the standpoint of sort of aesthetic or
24 visual standards, there is certainly no reason for
25 a buffer area.

1 In terms of certain practical considerations
2 associated with farming, I'd, even though I'm not
3 from a farming family, I do know something about
4 farming and work with farmers on a number of things.
5 And one of the things that I've found is that
6 farming becomes less and less valuable when you're
7 more and more surrounded by developments, regardless
8 of, you know, specific buffers that might be intro-
9 duced or so forth, just because there is a growing
10 incompatibility.

11 I've certainly found, it's been my experience
12 that where farmland has been abutted by single-
13 family subdivisions, the problems have been just
14 as great, if not greater, than when farmland has
15 been abutted by multi-family housing.

16 So there is a problem with the relationship
17 of farmland to development generally, and it's a
18 complicated one. And I'm not at all certain how
19 one deals with it. But I have no reason to believe
20 that that problem is worse when you're talking about
21 high density multi-family development as distinct
22 from single-family subdivision. In fact, it might
23 even be the other way around. Because of multi-
24 family development, you might be more readily able
25 to control land use patterns, access patterns and

1 so on, which might otherwise harm the farming.

2 Q Are you aware of the type of growth that
3 Mount Olive has undergone in the past ten years
4 relative to the rest of Morris County?

5 A I don't have the exact statistics, but I know
6 that it's quite substantial.

7 Q Have you read the Morris, the Mount Olive
8 Planner's Affidavit or the report, I don't know
9 whether you could call it a report or affidavit,
10 John Lynch, Jay Lynch?

11 A I read over it. It was quite some time ago,
12 but I did read it at one point.

13 Q According to his affidavit, since 1970
14 building permits records indicate that Mount Olive
15 has issued permits for about 3500 plus multi-family
16 units compared to a total of 6200 for Morris County
17 as a whole.

18 Another way to look at it is also since 1970,
19 plans have been approved for 8200 units with an
20 additional 1500 under, which could come in under
21 the 1978 zoning ordinance.

22 Now, also according to the Jay Lynch affidavit,
23 this would represent about four and a half times the
24 fair share statement by the Department of Community
25 Affairs, Statewide allocation formula.

1 Now, do you know of any other of the Defendant
2 Municipalities that are in, undergoing this type
3 of growth in density and in multi-family units?

4 A At present, no.

5 Q What other Defendant Municipalities
6 would you consider comparable in, to Mount Olive
7 either in terms of potential growth or size? It
8 is one of the largest in the law suit.

9 A Well, there are a number, quite a number of
10 municipalities in the County that are large and
11 have at least in theory substantial growth potential.
12 Mount Olive is certainly one of the largest and
13 has one of the greatest growth potentials.

14 Q Some of the criteria that you've used
15 in zoning ordinances have included seeing whether
16 they provide for the housing needs for low and
17 moderate income, whether there is adequate land for
18 non-residential uses that can be reasonably
19 anticipated to take place, whether environmentally
20 sensitive areas are protected and whether growth
21 and population is balanced with transportation and
22 community facilities.

23 Particularly addressing yourself to the last,
24 how do you see Mount Olive as far as it is growing
25 very rapidly, it does not have, it is not, does not

1 have a public transportation line to it, do you
2 consider that a limiting factor?

3 A Well, I think public transportation is something
4 that's basically a very flexible kind of system.

5 I haven't reviewed for today the information on the
6 public transportation systems to Mount Olive, but I
7 would think if there is no bus service, for example,
8 to Mount Olive at present, which surprises me, it
9 would be not a difficult matter for such service to
10 be provided. And in terms of public transportation,
11 you are talking about busses rather than trains?

12 Q Yes. They're not going to build a
13 railroad. A No. People don't build
14 railroads anymore.

15 Q I don't recall when you were characterizing
16 them, did you characterize Mount Olive as a working
17 class community? I think I suggested that. I don't
18 think you did. A No.

19 Q Do you know what Mount Olive's, what the
20 average income is in Mount Olive compared to the
21 rest of Morris County?

22 A Not offhand.

23 Q It is slightly less, a little less than
24 New Jersey as a whole, less than Morris County.

25 A Of course, that would be 1970 which--

1 Q Right. Going over your least cost
2 provisions on Mount Olive, first of all, would you
3 consider that Mount Olive has a great variety,
4 flexibility of housing?

5 A Under their ordinance?

6 Q Under their ordinance.

7 A Up to a point. They provide for most of the
8 different types of housing that I looked at. They
9 do not provide for either mobile homes or mid-rise
10 or high-rise apartments.

11 Q How many of the other Municipalities
12 provide for either of these, either mid-rise, high-
13 rise apartments or mobile homes?

14 A I couldn't give you a number offhand. But of
15 the Defendants in this litigation, not very many.

16 Q How about the number of garden apartments?

17 A The number of garden apartments?

18 Q That are either, or as far as the zoning,
19 the zoning for garden apartments, how does that
20 compare with other Municipalities in this law suit?
21 Do you know the maximum density per acre for garden
22 apartments in Mount Olive?

23 A In Mount Olive, it's somewhat more complicated
24 than that. See, the maximum density for garden
25 apartments is a net figure of ten units per acre.

1 In any development, however, that must be
2 combined with at least fifty percent townhouses
3 or two-family houses which have a maximum net density
4 of six units to the acre, and an additional forty
5 percent open space as well as roadways and the like,
6 must be provided.

7 So from a practical standpoint, any development
8 that would be built under the provisions of the
9 Mount Olive ordinance and that included the maximum
10 number of garden apartments permitted, would have a
11 gross density of probably somewhere in the area of
12 3.5 to 4.8 units per acre.

13 Q Compared to the 10 to 15 that you think
14 would provide least cost?

15 A That's correct.

16 MR. BISGAIER: The use of the terms,
17 again, the standard 10 or 15 was what Mr. Mallach
18 considered to be a minimum standard, not
19 necessarily--

20 MS. POOLE: The minimum standard that
21 could result in least cost housing.

22 Q Okay. Given that this is a community in
23 transition, no longer rural but suburban and growing,
24 do you feel that the forty percent open space
25 requirements are excessive?

1 A Yes.

2 Q And that the suburban character could be
3 conserved with less?

4 A Yes.

5 Q How much less?

6 A A great deal less.

7 Q If you do away with the open space or
8 minimize it, and you have a much higher density,
9 population density, how would you propose to keep
10 that suburban characterization?

11 A Well, I think a suburban characterization is
12 not really a function of the amount of land that's
13 been set aside for open space, but is a function of
14 the character of the development in the community.

15 The type of densities that I'm talking about,
16 ten units to the acre, fifteen units to the acre,
17 are suburban density. They're the sorts of densities
18 that we applied to a site, resulting development that
19 is typically suburban in character, garden apartments,
20 rowhouses.

21 The same is true of small lots, single-family
22 houses. I think you'll find that if you look at
23 densities in an urban area, you'll find that, for
24 example, typical urban densities for low-rise
25 housing are likely to be anything from twenty-five

1 to forty units to the acre, leaving aside the
2 densities that you achieve when you reach high-rise.
3 So it's a whole different type of development, and
4 it's that that essentially dictates the character
5 of the community.

6 Q Would you go over for me just briefly
7 the concept of overzoning.

8 A Okay. It's not really my concept of over-
9 zoning.

10 Q The concept.

11 A It's a concept that was enunciated in the
12 Madison decision and is grounded in some fairly
13 fundamental realities of real estate and development;
14 namely, that if one hopes to accommodate low and
15 moderate income families through the construction
16 of least cost housing, one has to recognize that
17 and create zones in which there are no impediments
18 to least cost housing.

19 One has to recognize that there will be a
20 number of things intervening between the zoning
21 provisions on the one hand and the accommodation
22 of low and moderate income households on the other.

23 And these include such factors as including
24 some singled out specifically by the Court in the
25 Madison decision, as the fact that a large number of

1 least cost units will be accommodated, I'm sorry,
2 will be occupied by more affluent families seeking
3 to economize.

4 On other tracts, the housing that will be
5 built will not be least cost because the builder,
6 developer may choose to use this land for something
7 else.

8 On yet other tracts, and, that, considerable
9 tracts, the land will just not be available for
10 development.

11 I think it's a very common fallacy held by
12 lay people that land being vacant is, therefore,
13 available for development. Land is, in many cases,
14 the owner may not be willing to sell. In other
15 cases, he may be willing to sell in theory but
16 puts a price on the land that is clearly unrealistic.

17 In other cases, and this applies to a surprisingly
18 large number of parcels, there is some impediment
19 in terms of either title or ownership or estate or
20 what have you making the land essentially unmarket-
21 able.

22 So for all of these various reasons, there's a
23 substantial gap between the zoning on the one hand
24 and the accommodation of low and moderate income
25 families on the other. So that one must provide

1 far more land for a given use than the theoretical
2 amount required to accommodate the number of house-
3 holds. In order to establish that, after all of
4 these different factors have their respective
5 impacts, the actual number of households in need
6 accommodated at the end of the process reflects
7 the goals.

8 Q Okay. So if you take a community like
9 Mount Olive that is not generally characterized by
10 large private estates on six acres, ten acres and
11 so forth, would you need less overzoning to insure
12 that you have some accommodations for low and
13 moderate income people at the bottom of the process
14 than you would in the community which is more
15 affluent, more--

16 A It's possible. I couldn't say more than that.
17 It clearly, as I believe I stressed in my report,
18 one, there are differences between municipalities
19 in the amount of overzoning that would be required
20 based on any number of these factors. And, two,
21 in order to pinpoint these differences within
22 specific municipalities, a very carefully targeted
23 kind of analysis has to be done.

24 So I would not be able to venture an assessment
25 as to Mount Olive's relative place in the scheme of

1 things.

2 Q Would you say that Mount Olive presently
3 bears the larger burden of development, if you can
4 call development a burden, or a larger part of the
5 development of the region than many or most of the
6 other municipalities because of the relatively greater
7 area that's zoned for multi-family housing?

8 A Well, I think in the past ten years, say, based
9 on the information from Mr. Lynch's affidavit, it
10 seems, that seems to have been the case. Whether
11 it's likely to be the case in the next ten years,
12 I really couldn't say.

13 Q If we look at your analysis of least
14 cost provisions as to the Mount Olive zoning
15 ordinance, you don't take the position or, do you,
16 that, that every townhouse zone or every garden
17 apartment zone should be so described as to permit
18 least cost housing?

19 A Well--

20 Q Or because of the process you just
21 described.

22 A As I understand it now, the thrust of the
23 Court decisions, I gather, the Madison decision
24 in particular, is that if the adequate amount of
25 land allowing for overzoning as described is

1 provided for the different least cost housing types,
2 there's certainly no bar to a municipality having
3 other zones elsewhere that are not least cost. I
4 personally cannot understand why this would be
5 necessary or particularly desirable from a planning
6 standpoint, but that's a separate matter.

7 Q In other words, the sort of factors that
8 you just described would certainly result in it
9 not all going to least cost housing, so that you'd
10 end up with that mix anyway?

11 A Exactly.

12 Q As I understand it, some either, in
13 your least cost, least cost housing calculations,
14 you need some kind of either public water and public
15 sewerage or at least not a septic or some kind of
16 package plan as far as sewerage those areas.

17 A For the most part, yes.

18 MR. BISGAIER: Can I have that question
19 and answer read back.

20 (At which time the requested information
21 was read back by the Reporter.)

22 A Well, I assume as I read the question as it
23 were, it was that you would need either public water
24 or public sewer or some kind of public treatment
25 plant, and the answer is, generally speaking, yes.

1 Q In a town like Mount Olive where at
2 present the availability of public sewerage is a
3 limiting factor, would that have any impact on
4 minimum tract size? Is there anything that you
5 know of, is there any minimum tract size below
6 which it's not feasible to use such things as
7 package plans?

8 A Well, there are, there are economies that are
9 obtained, excuse me, when you go up to certain sizes.
10 I think current figures are that probably somewhere
11 in the area of 150 to 200 units may be required for
12 a cost efficient system. On the other hand, that
13 certainly does not dictate a minimum tract size.

14 Q Well, it wouldn't dictate a minimum tract
15 size, but wouldn't it, if you got smaller than would
16 support a hundred and fifty units, then you got an
17 additional cost; right?

18 A Well, I think one has to distinguish between
19 appropriate matters for regulation and those that
20 are inappropriate.

21 We're not saying that there should be a maximum
22 tract size clearly so we're not saying that one should
23 impose inefficiency on the developer.

24 I mean, in essence, the requirement that
25 sewerage treatment be adequately handled without

1 causing ground water pollution is an appropriate
2 matter for regulation.

3 Dictating the conditions under which a
4 developer may find it efficient or not efficient
5 to do so is not an appropriate matter for public
6 regulation. If a developer chooses to spend more
7 money than what a third party might consider to be
8 cost efficient in order to build a package plan for
9 a smaller development, I cannot for the life of me
10 see why that's an appropriate matter for public
11 regulation.

12 Q According to Mr. Lynch's affidavit,
13 the existing and approved units in Mount Olive
14 Township is approximately 11,400. There could
15 be constructed in R-2 and R-3 zones together now
16 another approximately 3,000. That's two and three
17 acre, two and three units per acre.

18 In total, his affidavit states that over
19 2,900 more housing units can be built in Mount
20 Olive bringing the total housing capacity to
21 approximately 14,400. And that would accommodate
22 under the present zoning ordinance about 2.5 times
23 the 1977 estimated population of the Township.

24 Now, under the zoning ordinance as presently
25 stands, and considering that the kind of constraints

1 that that zoning ordinance includes, do you think
2 that there will be a lot of low and moderate income
3 or housing for low and moderate housing people
4 precluded by the ordinance as it stands even with
5 that number of units coming on line? Maybe there's
6 no way to say.

7 A Well, I won't, I won't ask you to read the
8 question back.

9 Q No, don't. Maybe I should start again
10 and make it simpler. Let me go at it this way,
11 maybe.

12 In the Mount Olive zoning ordinance as you
13 interpret it there really is no least cost housing--
14 excuse me for a second. Off the record.

15 (At which time a discussion is held
16 off the record.)

17 A I do not believe there's any opportunity for
18 least cost housing or for additional least cost
19 housing under the present ordinance, no.

20 Q But that doesn't mean that low and
21 moderate income families cannot be accommodated;
22 correct?

23 A Well, it makes it
24 unlikely in the extreme, to say the least, because
25 if we start out with the premise that even where
least cost housing is provided, there are still

1 many obstacles to low and moderate income families
2 being accommodated in more than a fraction of those
3 units.

4 And then if we look at an ordinance where there
5 is no provision for least cost housing, it certainly
6 makes the housing of low and moderate income families
7 extremely remote. One or two might slip in, maybe
8 a little more.

9 Q What about other housing needs, would you
10 say that Mount Olive has made a substantial contri-
11 bution to other than low and moderate income housing
12 needs over the past, well, say, since 1970?

13 A To some degree, yes.

14 Q Well, could you go so far as to say to a
15 greater degree than almost every other Municipality
16 in Morris County because of the sheer number of--

17 A Well, again having not really reviewed the
18 statistics in any degree, I would be hesitant to go
19 quite that far.

20 MR. BISGAIER: I'm just curious on that
21 question. Is that the kind of question where
22 the data would speak for itself, or are you
23 asking him to draw a conclusion from--

24 MS. POOLE: I would think, I think the
25 data speaks for itself, yes.

1 A I wouldn't be surprised. I just don't happen
2 to know the data offhand.

3 Okay. Even though the gross density
4 units per acre that you figured out considering
5 the development mix, I guess you call it, in
6 Mount Olive, even though that can't be said to
7 really approach the densities that you envision
8 in least cost housing, how do they compare with
9 the other Municipalities in Morris County, or
10 wouldn't you have that?

11 MR. BISGAIER: Let me just say that
12 that kind of analysis is essentially what
13 was done by Mr. Mallach in his initial report
14 where the same standards were applied to
15 every Municipality in the County.

16 In order for him to properly answer the
17 question, I think you would have to essentially
18 read into the record that report.

19 MS. POOLE: That won't be necessary.

20 MR. BISGAIER: And I think a copy of it
21 was made available, I'm pretty sure, to all
22 counsel. If it hasn't been, you know, we'll
23 make it available to you.

24 MS. POOLE: You mean the least cost
25 housing report with the various--

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MR. BISGAIER: Yes.

MS. POOLE: Okay. I only have Madison and Mount Olive, but that may well be because it was just together and not necessarily--so I don't have the other ones. I'll check that.

Q Just to kind of sum up, I think you said that permitting least cost housing in the various zones in Mount Olive or in their zoning ordinance as a whole would not in itself be a guarantee, but that you would need further affirmative, affirmative controls?

A That's correct.

Q Such as setting aside certain portions of the various or certain areas of the various types of housing for subsidized housing?

A That would be a possibility. Well, there are a variety of things in terms of the zoning ordinance as such.

You would have such things as provisions for low and moderate income housing, least cost or multi-family housing.

You could have provisions for different standards for such un-subsidized housing that would be for constructing of subsidized housing.

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1 Q Different standards?

2 A Yeah. So, for example--

3 Q You mean building standards?

4 A Density standards, allow a higher density,
5 for example.

6 Q You mean approaching 19 or 20 units,
7 that sort of thing?

8 A Sure. You could use community development
9 block grant funds, for example, to buy land that
10 would make good subsidized housing sites, or use
11 the money, perhaps, to reduce the cost of such land,
12 if the asking price was, if the asking price was
13 higher than would be feasible for subsidized housing
14 development.

15 Q Okay. I'm going to change my County here
16 and go to Madison. I have a few questions on that,
17 if I can find them.

18 I assume you have been to Madison on the same
19 basis you went out to Mount Olive?

20 A Yes.

21 Q Went through the town. How does Madison
22 compare to the other Municipalities in Morris County?

23 A Okay. Madison--

24 Q Size-wise?

25 A --is a smaller community, substantially smaller

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than Mount Olive. And I would guess on the small side as the group of Defendant Municipalities go. And it's, I guess, an older suburb or a more mature suburb as distinct from a new suburb which one might be able to describe Mount Olive as.

Q How would you compare the size of Madison to Mount Laurel? I did say Laurel that time.

A I believe it's smaller.

Q Much smaller?

A That I really couldn't say.

Q Madison has about 4.2 square miles.

A I guess that could be considered much smaller.

MR. BISGAIER: Mount Laurel is 22.

THE WITNESS: Right. That was the one I knew.

Q Madison has a population density of about 4,000 per square mile. How does that compare to the density, general density of an established suburb? What would you consider it?

A I would guess that's within what I would call an older suburb, of course, is likely to be a more developing newer suburb.

Q Now, you would consider a suburb with a population, no longer growing?

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1 A Well, growing, yes, not at the explosive or
 2 dramatic level of Mount Olive, to pick one example
 3 at random, but perhaps still growing.

4 Q Do you know how much vacant land there is
 5 for development in Madison?

6 A No.

7 Q According to Madison's planner, Harvey
 8 Moscovitz, it's about seven percent.

9 And how would you compare that to the vacant
 10 land available for development in the other
 11 Defendant Communities?

12 A I suspect that that varies very widely from
 13 one Defendant to another.

14 And I think there's a major problem implicit
 15 in that sort of thing with the definition of what
 16 is meant by vacant and what is meant by available
 17 for development.

18 I think you would find there's substantial
 19 disputes between experts as well as local
 20 and other people as to what those two
 21 So given that range of disput

22 it's really hard to make a cor

23 Q On that point o.
 24 and what's vacant and what's a
 25 Mr. Moscovitz currently a total o.

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1 fifteen percent remains vacant, but only 187 acres
2 uncommitted. Part of that is about 185 acres, in
3 the Dodge Estate.

4 A That's the Prudential development.

5 Q Right. That's zoned, I don't know what
6 you call it, office, mixed. And there are two,
7 126 units or 132 townhouse developments already
8 with either preliminary or final approval, which,
9 at least, in our interpretation would take that
10 out of available, since that would give the
11 developer or the holder the approval, the vested
12 interest in that, at least for a period of time.

13 Of the 187 acres that's uncommitted, it's
14 scattered in small parcels. Well, what Mr. Moscovitz
15 calls relatively insignificant size. I'm sure that
16 that's an area that you disagree on.

17 But if we, you've given that being about seven
18 percent, how would this compare with the other
19 exclusionary zoning cases with which you have worked,
20 specifically the cases in which the argument of the
21 developed community was made? How does Madison
22 compare with communities that have been considered
23 developed?

24 A I don't believe that I've ever participated in
25 a trial where a serious argument was made that a

1 Municipality was developed.

2 I was involved in one case that, where it
3 looked like that was going to be an issue, but the
4 litigations had evaporated long before trial.

5 When I say a serious argument, I mean something
6 that I would consider intellectually serious as
7 distinguished from being a make/wake thing to
8 bolster the case.

9 I think clearly in terms of the numbers that
10 were essentially agreed on for vacant acreage in
11 cases like the Mount Laurel decision and the
12 Bedminster, Madison, these cases the numbers
13 usually were in the thousands rather than the
14 hundreds of acres.

15 Q How about Demarest or Washington Township
16 as far as vacant land available in those cases?

17 A I was not involved in those cases. I have
18 read the Court decision. I recall there are figures
19 in the area of 100 acres discussed in those decisions.

20 When you say that Madison, I don't know
21 said that--let me start that again.

22 When you get down to under 200 acres of
23 uncommitted land, what would you characterize as
24 development or further development for that, such
25 a town, Madison, particularly?

1 A Well, I think that there's a number of issues
2 implicit in that question. The first is, and I
3 believe this came up probably at an inordinate
4 length in the maxi-trial depositions back when,
5 is the question of whether the distinction between
6 development and developed Municipalities has any
7 intellectual soundness to it, leaving aside its
8 adoption in certain Court decisions.

9 And the answer is, no, there's certainly no
10 such thing in terms of the actual processes of
11 development. The processes of growth as a hard
12 and fast distinction.

13 If one looks, for example, this struck me at
14 some time ago, I did an analysis that had to do
15 with where the most multi-family units in New Jersey
16 were constructed. The time period happened to be
17 '65 to '72, which because of that Mount Olive was
18 not up there.

19 But three of the four Municipalities at the
20 ~~HE~~ the list, each of which had thousands and
21 ~~thousands~~ thousands of units constructed, would have certainly
22 been characterized, if one adopts the kind of
23 characterization we're engaging in, prior to all of
24 that development as "developed" municipalities.
25 They included Fort Lee, they included Hackensack

1 and I believe they included the City of Newark.

2 Development takes place on the basis of demand,
3 on the basis of appropriate land use regulations
4 and a variety of other things. Land that is at
5 least nominally in some form of use is typically
6 used for, at higher intensities if the development
7 pressure is there. The sellers are willing and the
8 Municipal regulations permits it.

9 This is, of course, what has been happening
10 with a community such as Fort Lee. So since you
11 asked how, you know, what my characterization would
12 be, my characterization is it's a meaningless
13 distinction.

14 Q However, the Courts have made it?

15 MR. BISGAIER: Hopefully not for too
16 long.

17 Q At present, the only realistic outlook
18 for low and moderate income housing, housing
19 low and moderate income families in Madison
20 housing planned by the Madison Housing
21 Authority? Not necessarily. That would

22 Q I mean, under the
23 ordinance, what else?

24 A Well, under the current
25 find it hard to imagine that the

1 Authority could construct housing, unless they
2 obtained a waiver of at least some provisions
3 under the current zoning ordinance.

4 Q I believe they are, they are, I'm not
5 sure. Let me see what the density is. I think I
6 have it here. Thirty units on three scattered
7 sites. I guess I don't have the, I can't recall
8 exactly what that density is. I think it's about
9 12 units per acre.

10 Let's say it's the closest approximation to
11 what you're talking about. Madison has a grant
12 and the grant has been awarded for the acquisition
13 of three sites for this kind of housing.

14 Are you aware of, do you know whether or not
15 any of the other Defendant Municipalities has
16 Housing Authorities that are undertaking this kind
17 of activity?

18 A I believe, I think it's seven of the
19 do by virtue of their participation in
20 County Housing Authority. I mean
21 before, part of the Hous'
22 what activity they're "

23 MS. POOLE: Ok

24 (At which time th.

25 adjourned.)

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MORRIS COUNTY FAIR HOUSING
COUNCIL, MORRIS COUNTY BRANCH
OF THE NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF COLORED PEOPLE
and STANLEY C. VAN NESS, PUBLIC
ADVOCATE OF THE STATE OF NEW JERSEY,

Plaintiffs,

CERTIFICATE

-vs-

BOONTON TOWNSHIP, CHATHAM TOWNSHIP,
CHESTER TOWNSHIP, DENVILLE TOWNSHIP,
EAST HANOVER TOWNSHIP, FLORHAM PARK
BOROUGH, HANOVER TOWNSHIP, HARDING
TOWNSHIP, JEFFERSON TOWNSHIP, KINNELON
BOROUGH, LINCOLN PARK BOROUGH, MADISON
BOROUGH, MENDHAM BOROUGH, MENDHAM TOWNSHIP,
MONTVILLE TOWNSHIP, MORRIS TOWNSHIP, MORRIS
PLAINS BOROUGH, MOUNTAIN LAKES BOROUGH,
MOUNT OLIVE TOWNSHIP, PARSIPPANY-TROY HILLS
TOWNSHIP, PEQUANNOCK TOWNSHIP, RANDOLPH
TOWNSHIP, RIVERDALE BOROUGH, ROCKAWAY TOWNSHIP,
ROXBURY TOWNSHIP and WASHINGTON TOWNSHIP.

Defendants.

I, MICHELE HEADD, 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 deposi-
tion of ALAN MALLACH, 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 these depositions were taken and
further that I am not a relative or employee in this case,
nor I am financially interested in this action.

Michele Headd

A NOTARY PUBLIC OF THE STATE OF NEW JERSEY
My Commission Expires November 1984

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