

ML - Morris County Fair Housing Council  
v. Beerton Twp

~~4/23/79~~  
5/17/79

Deposition of Alan Mallach

P 40

ML 0008699

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

ML000869G

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,

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,  
PASSAIC TOWNSHIP, PEQUANNOCK TOWNSHIP,  
RANDOLPH TOWNSHIP, RIVERDALE BOROUGH,  
ROCKAWAY TOWNSHIP, ROXBURY TOWNSHIP  
and WASHINGTON TOWNSHIP,

Defendants.

Morris Township, New Jersey  
Wednesday, April 25, 1979

B E F O R E:

MARK SCHAFFER, a Certified Shorthand  
Reporter and Notary Public of the State of  
New Jersey, at the Morris Township Municipal

**KNARR - RICHARDS, ASSOCIATES**  
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539-7150                                      383-2866

1 A L A N M A L L A C H , previously sworn.

2 CROSS-EXAMINATION BY MR. BUZAK:

3 MR. BUCHSBAUM: We have gone on  
4 record previously with respect to the  
5 billing by Mr. Mallach in this case. It  
6 has been agreed that he would be paid at  
7 the rate of \$40 an hour for his time dur-  
8 ing the deposition, plus each community  
9 would pay a proportionate share of his  
10 travel back and forth to Morris Township.  
11 Do you agree with that?

12 MR. BUZAK: Yes, I do. And with  
13 respect to the fact that we are for the  
14 purposes of this deposition representing  
15 four municipalities, I would ask that he  
16 either divide up his time four ways in  
17 terms of this deposition or give us one  
18 bill so to speak and we will allocate the  
19 time one-fourth each, whatever is easier  
20 for him. It really does not matter.

21 MR. BUCHSBAUM: Which would you  
22 prefer?

23 MR. BUZAK: It would probably be  
24 easier for you to give us a number of  
25 hours.

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THE WITNESS: Okay.

MR. BUZAK: And then we will just split that up among the four municipalities.

MR. BUCHSBAUM: Fine, thank you.

Q All right. Mr. Mallach, with respect to this case, you are aware that we represent Kinnelon, Randolph, Washington Township and for the purposes of the deposition, East Hanover.

And as a little background, what I am going to do is go through your report furnished by you to Mr. Bisgaier, review generally some of the statements and bases for the statements contained in there and as we get into the more specific details in your report to have you review the requirements of the various zoning ordinances in those four towns and comment on them. Okay?

MR. BUCHSBAUM: Mr. Buzak, I have no objection to the procedure, which is fine. I just want to make you aware that some of these issues have been dealt with in the Common Defense deposition.

MR. BUZAK: Okay. For the record, I did receive the first two days of depositions of Mr. Mallach. I reviewed

1 the first day a little bit more extensively  
2 because I had a little bit more time. I  
3 will try not to repeat those questions.

4 MR. BUCHSBAUM: Fine. I would not  
5 want to have it necessary to apply for a  
6 protective order if 15 towns are asking  
7 the same questions after there was a  
8 Common Defense deposition that was supposed  
9 to take care of that problem. If it did  
10 happen, we would start considering that.

11 Q Okay. Let's begin with the report.

12 Mr. Mallach, I assume that you have a copy of  
13 your report that was furnished entitled Least  
14 Cost Housing in Zoning Ordinance Provisions Pre-  
15 pared on Behalf of the Southern Burlington  
16 N.A.A.C.P., et al versus Boonton, et al, dated  
17 March 12, 1979. I want to begin my questioning  
18 right at your introductory page.

19 You refer in the first full paragraph  
20 there, the first full paragraph, you refer to the  
21 first part of this report presenting minimum  
22 standards for least cost housing in the context  
23 of Mount Laurel and Madison. What I would like  
24 you to do is to define as best you can the term  
25 least cost housing.

1 A Okay. To my mind, least cost housing as  
2 the term was used in Madison simply means the  
3 least expensive or least costly housing that can  
4 be constructed with reasonable standards of health  
5 and safety and which includes within it a variety  
6 of separate housing types, including both single  
7 and multi-family types, and also would include  
8 implicitly housing built under subsidy programs  
9 for low and moderate income households.

10 Q Okay. Regarding the mix of housing,  
11 is that essential in terms of producing least cost  
12 housing?

13 A Yes, because each of  
14 the different types of housing address a somewhat  
15 different housing need. So in terms of meeting  
16 the universal need that least cost housing  
17 addresses, each of the different types plays its  
18 part.

19 Q So your standards, and I do not  
20 want to get into them fully at this time, but  
21 your standards then would involve not only multiple-  
22 family dwellings, be it owner-occupied or renter-  
23 occupied, but also single-family dwellings, semi-  
24 detached single-family or duplex dwellings and  
25 the like. Is that correct?

A That's correct.

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Q You also refer to the term govern-  
ment subsidy in your definition of least cost  
housing. And I think you said that it involves  
housing which is or contains the minimum floor  
area and minimum safety and health requirements  
with an adequate mix which can be built I think  
you said either privately or there was a subsidy  
program. Is that correct?

A That's correct.

Q Now, how does the subsidy program  
enter into the technical aspects of least cost  
housing? A In the context of this  
report and these standards, it really does not.  
The assumption is that if one provides zoning for  
least cost housing according to the various  
technical standards, then to the degree that  
there are subsidy funds available, people apply-  
ing to build under them and so forth, then that  
will be dealt with separately. So it's not  
really part of the report as such.

Q Okay. But in terms of the fact that  
if a dwelling unit, and I take it in the abstract,  
costs \$40,000 to construct, including all the  
amenities and the roads and the trees and whatever,  
and in the context of that hypothetical that is

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1 least cost housing units under the standards that  
2 you have developed in your memorandum, that if  
3 government subsidies are available to build it,  
4 the actual cost of that structure in terms of the  
5 private sector, let's say, would be \$30,000 a year  
6 instead of \$25,000? Is that the proper picture  
7 that I am supposed to be looking at?

8 A It may be a minor distinction. Typically  
9 the subsidy programs apply the carrying costs of  
10 the unit to the tenant rather than the actual  
11 construction. So let's say you build that hypo-  
12 thetical \$40,000-unit and it qualifies for a sub-  
13 sidy program so that a tenant who would not  
14 ordinarily be able to buy a \$40,000-unit can move  
15 into that house. Then the subsidy program, for  
16 example, under one government program would pick  
17 up part of the interest on the mortgage so that  
18 the person could afford it.

19 So it doesn't actually affect the cost of  
20 ~~the unit. It comes in in terms of subsidizing~~  
21 the ongoing costs to the buyer or tenant.

22 Q Okay. That is an interesting dis-  
23 tinction. In terms of the need for least cost  
24 housing, is it not true that the cases you have  
25 cited, Mount Laurel and Madison, which I am sure



1 you have read many more times than I have, were  
2 dealing with providing housing opportunities for  
3 low and moderate income people? Is that correct?

4 A That's certainly the case in the Mount  
5 Laurel decision. The Madison decision I believe  
6 somewhat broadened it. I believe if you recall  
7 there's a quotation that Justice Conford cites  
8 with approval at one point from the Public Advo-  
9 cate's amicus brief that deals with meeting the  
10 housing needs of, quote, "low income", moderate  
11 subsidized or moderate income people who need  
12 subsidies to be decently housed in what they call-  
13 ed I think moderate, conventional households.

14 In other words, those families who are  
15 perhaps more affluent than those for whom the  
16 subsidy programs apply, but are nonetheless  
17 evidently ruled out of the new market by virtue  
18 of zoning restrictions and the like. So the  
19 reach of the Madison decision in that regard I  
20 think is wider than that of Mount Laurel.

21 Q In terms of providing this least  
22 cost housing, and let's assume that you are correct  
23 in the broadening effect of the Madison case in  
24 terms of the population to whom the directives  
25 were made, do you know of any, let's say, price

1 per foot for the housing, the various mix, and if  
2 you want to limit it to townhouse units as what  
3 you consider to be a proper density and proper  
4 size or whatever and single-family dwellings,  
5 whatever, do you have a number in mind?

6 A For the finished cost of the units?

7 Q That's right.

8 A No.

9 Q Okay. What I am trying to get at,  
10 Mr. Mallach, and this has troubled me throughout  
11 this case so far and from reading the decisions,  
12 is that zoning in and of itself not only does not  
13 build housing, of course, but in terms of the  
14 effect on construction costs, is minimal. That is  
15 my theory. Okay?

16 And what I want to know from your report  
17 and from your experience and your expertise,  
18 either in a percentage way or some way, what  
19 effect does it have in dollars? Are we talking  
20 about a significant amount of dollars or percent-  
21 ages that would pragmatically affect the housing  
22 market and provide housing opportunities for low,  
23 moderate and maybe even middle income persons?

24 A Well, I may disappoint you in terms of the  
25 rather limited number of numbers that I can give

1 you. But in general outline, the point is in my  
2 judgment that zoning does make a very considerable  
3 difference. And I think this is, for example,  
4 most readily apparent in terms of minimum floor  
5 area requirements.

6 If, for example, a municipality requires,  
7 say, 1500 square feet floor area and a perfectly  
8 adequate, say, three-bedroom house can be con-  
9 structed containing, say, between 900 and a  
10 thousand square feet floor area, then each of  
11 those extra 500 to 600 square feet adds money to  
12 the cost. Although admittedly, secondhand, I  
13 gather at the moment that construction costs, I  
14 don't mean total finished costs, but just the  
15 brick and mortar part for no-frills housing in  
16 the Morris County area is going for between  
17 \$25 and \$30 a square foot. So that these are  
18 indeed very massive costs.

19 Other costs may be quite substantial.

20 Land costs, in this case it will obviously vary  
21 from community to community because land costs do  
22 vary on a finer grain than construction costs.

23 But increasing density, increasing the  
24 number of units that can be put on a given piece  
25 of land does reduce the unit cost, land cost in

1 the--for the house or apartment. Density stan-  
2 dards, frontages, either explicit frontage  
3 requirements or implicit frontage requirements  
4 that grow out of density and other kinds of  
5 standards, creates significant costs by virtue of  
6 the fact that most infrastructure costs are  
7 dependent on the number of front feet that have  
8 to be served with roads, curbs, gutters, sidewalks,  
9 sewer and water pipes and the like. So that  
10 these are clearly very major things. Other areas,  
11 other specific features in themselves may have  
12 smaller dollar impacts, but, of course, the  
13 cumulative effect would still be very great.

14 Q Okay. If we use your \$25 to \$30  
15 a square foot for the bricks and mortar as you  
16 termed it and we take the thousand square feet  
17 that you mentioned in terms of single-family  
18 dwelling, we are talking about \$30,000 for the  
19 dwelling unit? A \$25' to \$30',  
20 yes.

21 Q Okay. And to that you add the land  
22 cost and the improvement cost. Do you have any  
23 idea in terms of, let's say, road improvements?  
24 And when I say road improvements, I mean the  
25 entire, as you would term it, infrastructure of

1 preparation for this. That would be reduced some-  
2 what in terms of what an individual house would  
3 bear depending on whether the subdivision was  
4 laid out so that each road had a unit on either  
5 side of it sharing many of the costs.

6 Q Okay. And I recognize, Mr. Mallach,  
7 that some of the questions that I am giving you  
8 are difficult in terms of not giving a sufficient

A. Mallach - cross

12

1 the road including sanitary sewer lines, water  
2 lines, storm sewer lines, the road itself, the  
3 curbing, the sidewalks, that entire amount?

4 Do you have a price per foot for--

5 A I think--

6 MR. BUCHSBAUM: Are we talking  
7 about single-family homes now? I just  
8 want to make sure.

9 MR. BUZAK: Yes, yes, for the  
10 purposes of this question, let's keep it  
11 at a single-family home.

12 A It varies a great deal depending on the  
13 standards that you are constructing to. Now, for  
14 example, obviously the width of the road and the  
15 standard of the road make a great deal of differ-  
16 ence. The road itself I mean in this case and  
17 things like whether sidewalks are required on  
18 both sides or one side. So--

1 earning over 50, but 80 percent or less.

2 Now, these are the two types for whom  
3 subsidy programs are applicable. The moderate  
4 convention, if you will, or middle--The next  
5 group that is nonetheless relevant, although  
6 above the subsidy group, is often defined as  
7 earning for a typical family of four between 80  
8 and 120 percent of the median income.

9 Q Do you know the median income of  
10 Morris County? A Not precisely,  
11 I believe it would be somewhere in the area of  
12 22 to \$23,000.

13 MR. BUCHSBAUM: Just trying to be  
14 helpful here, the median income here used  
15 at the federal standard is published and  
16 I think appended to some of our deposi-  
17 tion answers.

18 MR. BUZAK: I think you did. And I  
19 seem to think it was for--

20 MR. BUCHSBAUM: It was for the  
21 Newark metropolitan area, which would be  
22 in the nature of 17 to \$18,000 for a family  
23 of four.

24 MR. BUZAK: I seem to remember  
25 Morris County being 13 or 14 or \$15,000.

1 THE WITNESS: Not today. That  
2 would be a 1970 census figure which has  
3 increased significantly, admittedly  
4 principally because of inflation. But it  
5 would be about 13 to 14 in 1970 dollars  
6 and that would translate into something in  
7 the low 20's, say around 22 I guess today.

8 Q Now, therefore, in terms of low  
9 income persons, you are talking about people who  
10 are earning, using the 22,000 as a standard,  
11 approximately \$11,000 or less?

12 A Roughly, yeah. This would be--Well, the  
13 way this would work would be for a typical family  
14 of four, it would be in that range. For a larger  
15 family, it would be more or a smaller family, or  
16 single individual, it would be less.

17 Q I want to relate that to housing  
18 since that is your field of expertise. The  
19 typical standard in terms of the amount of annual  
20 income that could be used or should be used for  
21 housing needs used to be 25 percent. Over the  
22 last few years, that has increased to sometimes  
23 over 50 percent. Now, have you done any studies  
24 or analyses or do you have access to any studies  
25 or analyses which would give us the number, the

1 dollar number, which low income families of four  
2 would have for housing needs, available for hous-  
3 ing needs? A It varies very widely.

4 I mean the figure of 25 percent of gross income  
5 spent on shelter is in my judgment still a  
6 reasonable goal, even though it's apparent that  
7 large numbers of families do spend more.

8 I think people would agree that 50 percent  
9 is clearly a hardship level. But the federal  
10 government in their Section 8 Program, which is  
11 their principal subsidy program for low income  
12 families, as well as in their Public Housing  
13 Program provide that no family in those units  
14 must pay more than 25 percent of their income for  
15 rent. So this is certainly established as their  
16 goal and a reasonable goal generally.

17 In practice, a very large part of the lower  
18 income population does pay much more than 25 per-  
19 cent of their income for rent, a far larger part  
20 than more affluent people do. But I believe that  
21 a goal of 25 percent, perhaps as much as a third,  
22 but not more than that, is reasonable.

23 Q Now, you were talking about rental.  
24 How about in terms of ownership, purchasing?

25 A Well, monthly--



1 be able to afford it?

2 A The people around the top of the range  
3 possibly could.

4 Q So are you saying then the housing  
5 that you are advocating in terms of least cost  
6 housing will not be available to low income  
7 persons as we have defined them and will be  
8 available to the upper level of the moderate  
9 income people, that is, those in the 17 or \$18,000-  
10 range?

11 A In terms of a direct  
12 purchase, yes.

13 Q Well, is there a difference in  
14 rental? I thought we had established earlier  
15 that we are talking about the same ratio so to  
16 speak?

17 A Well, I guess the  
18 difference would be that you are talking about a  
19 rental unit, for example, if it's a garden apart-  
20 ment, it would be possible to construct that unit  
21 for less than--and thus rent it for less than a  
22 detached house.

23 Q Okay. And I suppose we ought to  
24 get into that. In terms of an attached unit,  
25 ownership unit, which would be a townhouse or I  
guess a condominium, but for our purposes a town-  
house because your report dealt to a great extent

1 with townhouses, what is the cost of a unit? I  
2 think you indicated that 1200 square feet, if I  
3 am not mistaken, was the number, the number of  
4 square feet in what you found an acceptable town-  
5 house?

6 A No, no, the point of  
7 the 1200-square-foot figure was to use a hypothe-  
8 tical number that would be large enough to account  
9 for most eventualities for the purposes of working  
10 from that to doing the space requirements. I  
11 would not consider that that would be considered  
12 a minimum.

13 Q Okay. What would you suggest would  
14 be a minimum for, using the same standard, a three-  
15 bedroom townhouse?

16 A About the same as with a detached house.

17 Q So about 900 or a thousand?

18 A That's correct.

19 Q And in terms of cost for the bricks  
20 and mortar, do you have any knowledge of the  
21 average per foot cost?

22 A The construction cost would be slightly,  
23 but not significantly less than with a detached  
24 single-family house.

25 Q Okay. In terms of improvements,  
road improvements, let's stick with road

1 improvements, using the infrastructure theory,  
2 are we still in the same category, between 60 and  
3 90? A Yes, except that the number  
4 of feet involved per unit is quite substantially  
5 reduced. For example, with a detached single-  
6 family house, even under least cost standards,  
7 your frontage could be 50 feet, perhaps 40 feet,  
8 but it's unlikely that it would be less. With a  
9 townhouse, your frontage could be perhaps 16 or  
10 18 feet per unit. Again, with this, you would  
11 have to trade off some additional site improve-  
12 ments in terms of the provision of common parking  
13 areas, but the savings would still be substantial.

14 Q And I assume then also in regard to  
15 the cost of land on a per unit basis, it would  
16 be reduced? A Yes.

17 Q On the other hand, is it not true  
18 that a piece of property zoned for townhouses,  
19 for example, given, let's say, ten acres, okay,  
20 is going to be more expensive than the same ten  
21 acres zoned for one-acre single-family dwellings?

22 A Yes, more expensive per acre, but less  
23 expensive per unit. It's a very important dis-  
24 tinction.

25 The cost per acre goes up. If you drew a

1 curve or a line showing cost per acre, it would  
2 show a rise. But if you superimposed a curve show-  
3 ing the increased density on it, that would show  
4 a much steeper rise.

5 So, in other words, let's say hypothetically  
6 an acre that you could build a single house on  
7 might cost \$10,000. \$10,000 is both the acre and  
8 the unit cost. If you could build two houses on  
9 it, it may go up to 15.

10 Now, the unit cost would have been \$7500 a  
11 unit with townhouses typically. And again this  
12 varies from one municipality to the next. And  
13 this is based on general rather than municipality-  
14 specific information. Typically, townhouse land  
15 costs tend to run again, depending on the permit-  
16 ted density, anything from, say, perhaps \$30,000  
17 an acre. If you can build them at five to the  
18 acre, you might have it at \$6,000 a unit, up to  
19 somewheres between 40 to \$45,000 an acre if you  
20 could build ten or more to the acre, at which  
21 point your per unit land costs would work them-  
22 selves down to, say, around \$4,000.

23 Q Now, in terms of land in Morris  
24 County presently zoned for multi-family or town-  
25 houses, do you have any knowledge of the cost of

1 that per acre? A There is so  
2 little land zoned for multi-family use in Morris  
3 County, certainly in the municipalities that are  
4 the subject of this litigation, and of them so  
5 little of it is vacant and more or less readily  
6 buildable, so that the land prices would not  
7 necessarily reflect the general pattern.

8 Q How about in terms of single-family  
9 areas or areas zoned for single-family in cost  
10 per acre? A I don't have any

11 current figures for Morris County. I do suspect,  
12 however, that within the county or among the  
13 defendant municipalities it's probably an enor-  
14 mous variation. But I don't have any numbers to  
15 give you.

16 Q In fact, do you have any idea of  
17 the actual cost per unit of a townhouse in any of  
18 the towns that we represent, let's say, Randolph  
19 Township, to take the example, where they do have  
20 townhouse zoning there?

21 A You mean how much it would cost to build  
22 townhouses under that ordinance or something to  
23 that effect?

24 Q That is right.

25 A No, I don't.

1 Q All right. And I assume that holds  
2 true for any of the other towns, at least the  
3 towns that we represent?

4 A Correct, yes.

5 Q Mr. Mallach, perhaps we are going  
6 off somewhat in the deposition in terms of ques-  
7 tion and answer, but my point is that the housing  
8 that is being advocated, although constituting  
9 least cost housing under the standards you set  
10 forth in your report, costs so much that it is  
11 barely affordable. In fact, it is not affordable  
12 by low income persons and it is barely affordable  
13 by moderate income people. And yet the theory  
14 continues that the housing is being provided for  
15 low and moderate income people.

16 A Not quite.

17 MR. BUCHSBAUM: Is that a question?

18 MR. BUZAK: That is where I am going  
19 in terms of the questioning, to try to  
20 get numbers and try to come up with a cost  
21 per unit of a townhouse or a cost per unit  
22 for a single-family dwelling or whatever.

23 MR. BUCHSBAUM: There is one thing  
24 I wanted to make clear. I am not 100  
25 percent sure of this, but I believe we will

1                   be having an expert with specific refer-  
2                   ence to housing costs.

3                   MR. BUZAK: I hope he will read  
4                   Mr. Mallach's report so we can try to  
5                   coordinate his prices with Mr. Mallach's  
6                   theory. And that is what I am trying to  
7                   get at. Okay.

8                   MR. BUCHSBAUM: I am just saying  
9                   that to maybe help you get along in your  
10                  questioning here.

11                  MR. BUZAK: That would be fine. I  
12                  certainly would hope that.

13                  A           All right. With regard to the general  
14                  premise, I am assuming that the question is given  
15                  thus: Do you agree with that statement?

16                  Q           Yes.                   A           And my answer  
17                  is not entirely or yes and no. I think it is  
18                  clear that housing without subsidy cannot be  
19                  constructed so that low income families and a  
20                  substantial part of what we have dubbed the  
21                  moderate income subsidized families can afford  
22                  them directly. However, the thrust of least cost  
23                  housing and the theory underlying it does go con-  
24                  siderably beyond that in a number of ways.

25                  First, that there is a substantial

1 population, including those people who are in the  
2 upper shall we say one-third of the moderate in-  
3 come subsidized group as well as the entire popula-  
4 tion characterized as middle income, who are  
5 effectively dealt out of the new home market by  
6 current practices and who could be better housed  
7 by least cost housing even without subsidies.

8 The second point is that over and above  
9 the direct benefits for this share of the popula-  
10 tion in terms of being able to directly move into  
11 new housing that would be created through zoning  
12 for least cost, you have a second theory which  
13 was enunciated at some length in the Court  
14 decision which is filtering. And the key thing  
15 about filtering is--And there is pretty good  
16 agreement among the sources--is two things:  
17 First, that filtering does exist; but, second,  
18 that filtering is an inefficient--or rather than  
19 it's inefficient, it has certain built-in  
20 inefficiencies, the result of which is the more  
21 chains in a filtering step, the worse it works.

22 Q All right. Can you, for the  
23 record, define what you mean by filtering?

24 A Okay. Filtering is a market concept which,  
25 in a nutshell, holds that as new housing is built,



1 people who have existing units move into that new  
2 housing, opening up existing units for people who  
3 generally cannot afford the new housing, but can  
4 afford the units that are being opened up and so  
5 on and so forth down the chain.

6 Now, in theory, you could hypothesize a  
7 whole chain whereby in the long run everybody who  
8 moves into a new unit or every existing household  
9 that moves into a new unit opens up something and  
10 that sooner or later a low income family benefits  
11 at the end of the chain. From a practical stand-  
12 point, it doesn't work that way.

13 The further away the new unit is from the  
14 low income family, the less likely the low income  
15 family is likely to benefit because the more like-  
16 ly either the chain is going to be broken some-  
17 wheres along the line, or if you have a lengthy  
18 chain by the time the low income family benefits  
19 at the very end, the unit that he moves into is  
20 hardly worth having.

21 So with least cost housing, it is one of  
22 the principles. The filtering goal of least cost  
23 housing is that a least cost unit will translate  
24 into a used unit of good quality being available  
25 for a lower income family, much more efficiently

1 than if the new unit were an expensive unit.

2 Q Okay. I understand that.

3 A And that is a very important part of the  
4 theory.

5 Q Okay. I understand that. I under-  
6 stand what you are saying. However, if we start  
7 off with a cost of, and let's take the single-  
8 family units that we used, which would come out to  
9 between 25 and \$30,000 for the bricks and mortar  
10 and somewhat above that in terms of improvements,  
11 and given the appreciation that real estate has  
12 realized throughout the years and most recently,  
13 does not that break down the theory of filtering  
14 whereby one who buys this \$30,000-unit, let's say,  
15 or \$35,000-unit today who might be upper, moderate  
16 income will sell it not for 35, but will sell it  
17 for 45 and, in effect, not open up the market to  
18 someone below him, but someone who was above him  
19 when he bought it?

20 A Not necessarily because the filtering works  
21 at the beginning rather than at the end or the  
22 filtering that the Court is concerned with. And  
23 the example would be, let's say, you have this  
24 35 or \$40,000-house. And the person who moves  
25 into it, let's say hypothetically, leaves a house

1 let's say somewhere in an inner suburb in Essex  
2 County that is then sold at \$29,000 to a less  
3 affluent person; or alternatively given the fact  
4 that there tends to be a fair number of apartments  
5 that rent in many cases in garden apartment  
6 developments and in other cases in older buildings,  
7 basically sound apartments that rent for consider-  
8 ably less than new ones coming on the market, say  
9 still in the high 200's range, that such a person,  
10 a working class family that's lived in an apart-  
11 ment might buy one of these houses and free up  
12 that apartment for somebody less affluent. So  
13 the theory is that it works at that point of the  
14 chain rather than at the resale point.

15 Q But the housing that is being  
16 bought, this \$30,000-unit or \$35,000-unit by the  
17 person who is leaving his \$29,000-unit immediately  
18 gets into the chain and, therefore, when that  
19 person who has now bought his \$35,000-unit leaves,  
20 he is not leaving a \$29,000-unit anymore, he is  
21 leaving a 35, 40 or \$45,000-unit. So what you are  
22 saying is that the filtering process happens once?

23 A No, it continues. It keeps happening. It  
24 is best the first time. The lower the unit, the  
25 better it works.

1                   Filtering continues to happen all the time  
2 to some degree. The point is it works best when  
3 the purchase is lowest. The further--

4                   Q           Well, the person who is selling the  
5 unit is selling it at a low price?

6                   A           At the lowest price, yes.

7                   Q           That is when it works?

8                   A           Right, it works best, but it continues to  
9 work to some degree as you go along.

10                   Q           You mentioned perhaps the person not  
11 only owning the \$29,000-house, but renting a unit.  
12 And you mentioned that some of the units that are  
13 good stock rental units are being rented at a low  
14 rent and will become available for persons of low  
15 and moderate income.

16                   First of all, do you have any studies or  
17 empirical data or documents of others which indi-  
18 cates either the median rents for a unit in let's  
19 take either Morris County or what you have defined,  
20 I do not mean you individually, but which the  
21 plaintiffs have defined, as the region?

22                   A           No.

23                   Q           Is it not essential to the theory  
24 that you raise that there are units of the price  
25 and of the condition that you mention in your

1 theory in either Morris County or the region?

2 MR. BUCHSBAUM: Before the witness  
3 answers, maybe I can clarify something.  
4 The Supreme Court has adopted this theory  
5 as an operative fact in favor of least  
6 cost housing, so to some extent the theories  
7 are given. Mr. Mallach can say what he  
8 wants about it, but it is the law of the  
9 State.

10 MR. BUZAK: Well, I do not agree  
11 with that. I think that the Supreme Court  
12 mentioned filtering in Madison. I think  
13 they talked about it. I think that the  
14 theory exists.

15 My problem is that in practicalities,  
16 I am not sure it exists. And that is why  
17 I am trying to question Mr. Mallach on it,  
18 because we have used that theory of filter-  
19 ing. It has been used by the Supreme  
20 Court. It has been used by Mr. Mallach.  
21 And it is the general catch-all kind of  
22 answer.

23 And I do not mean to denigrate your  
24 answer of how do we supply the low and  
25 moderate income people when the cost of

1 housing is so high, no matter what you do,  
2 no matter whether you have a high density  
3 and very few improvements. The answer has  
4 always been filtering. And what I am  
5 trying to get at, and again I am digressing  
6 from question and answer here to try to  
7 create a dialogue, what I am getting at is  
8 that I do not think it works. I think that  
9 the apartment units that are available,  
10 that are good, good housing stock, are not  
11 cheap or inexpensive unless there is a rent  
12 leveling ordinance or a rent control ordi-  
13 nance in effect. Other than that, given  
14 the market factors, those units are renting  
15 at a substantial rent.

16 Q Okay. So you gave me the theory  
17 that the apartment dweller leaves and buys the  
18 house and opens up the apartment. And I said what  
19 is the rent of the apartment? And you said, well,  
20 I know of good housing stock that is being leased  
21 at a low rent or a rent which low income people  
22 could afford. And--

23 MR. BUCHSBAUM: Okay. Well, as you  
24 know, we have reserved our right to object.  
25 And we are not stopping this line of

1                   questioning here. I am just putting you  
2                   on some extra notice with respect to this  
3                   specific line.

4                   We are all free to disagree with  
5                   the Supreme Court. And I certainly do not  
6                   agree with all the pronouncements, but  
7                   your line of questioning may run into that.  
8                   And--

9                   MR. BUZAK: Let me repeat the ques-  
10                  tion. And perhaps I am falling into the  
11                  trap that I do not want to fall into very  
12                  early in the game here or late depending  
13                  on how you look at it.

14                 Q           And that is, do you have any data  
15                 regarding rental costs of what you consider good  
16                 housing stock?                           A           I have no  
17                 current data.

18                                 (A discussion is held off the record.)

19                 Q           In addition to that, in addition to  
20                 the rental situation, when you get back to the  
21                 housing situation, that is owner-occupied housing,  
22                 are you aware of any studies or data available  
23                 showing housing stock, and let's take single-  
24                 family owned dwellings, which is available in the  
25

1 County of Morris or the region which would sell at  
2 a price that could be afforded by low or moderate  
3 income people? A Well, there is

4 extensive data not on the stock as a whole but on  
5 sales transactions on an annual basis. And there  
6 is housing that can be bought by at least a sub-  
7 stantial part of the additional moderate income  
8 population, perhaps some of the low income popula-  
9 tion. It tends to be located in core cities and  
10 some inner suburbs. I doubt if there is much if  
11 any in Morris County, but in parts of Essex,  
12 Hudson, Union, perhaps in a few of the southern  
13 Bergen municipalities.

14 Q You mentioned the data available.  
15 Have you looked at that data?

16 A Yes.

17 Q And what is it? Where is it derived  
18 from? A The data that I refer to on

19 sales is based on the annual tabulation and com-  
20 pilation of usable sales as they're called by  
21 municipality by the New Jersey Division on Taxa-  
22 tion.

23 Q And does that report indicate solely  
24 the price paid for the unit?

25 A That's correct.



1           Q           It does not indicate the condition  
2 of that dwelling?           A           That's also  
3 correct.

4           Q           So, therefore, you cannot really  
5 draw the conclusion that housing stock of good  
6 quality is available based on that data?

7           A           It's not certain. Now, this is a--Rather  
8 the northeast New Jersey area generally is a  
9 difficult area in many ways by virtue of the  
10 extremely high cost of new housing that has been  
11 available and the extremely limited market for  
12 which that new housing is accessible. So that  
13 you get into a situation where housing in the  
14 moderate price range, certainly good housing, in  
15 the moderate price range, is affected by scarcity  
16 factors and is likely to be bid up, which ironic-  
17 ally enough is one of the major reasons for pro-  
18 viding least cost housing. So that the general  
19 workings of the housing market in the area can be  
20 restored to some kind of reasonable balance.

21           Q           But why do you say that it will?  
22 It seems to me that it is just as likely that the  
23 unit, the least cost unit being built today, when  
24 sold, will not be even close to the price that it  
25 has been paid for.

1 A Not ad infinitum. This is--

2 Q Well--

3 A This is a consideration because least cost  
4 production, least cost demand, interacts with the  
5 demand and the production for more expensive  
6 housing. This goes, in fact, to some of the  
7 issues having to do with overzoning. In other  
8 words, if today there were tracts zoned all over  
9 Morris County or all over the region for, say, a  
10 few hundred least cost units, it's unlikely that  
11 most of the units built in that land would be in-  
12 deed least cost. It stands to reason that if you  
13 have equally strong demand for expensive housing  
14 and inexpensive housing, a developer is likely as  
15 often as not to build more expensive housing.  
16 And, indeed, even if the zoning ordinance provi-  
17 sions are extremely modest and would permit least  
18 cost housing, he may choose voluntarily to choose  
19 larger, more lavish units in order to command a  
20 higher price and a higher profit margin and so  
21 forth. So that the least cost market is not like-  
22 ly to be effectively addressed in large numbers  
23 unless the more expensive housing market is also  
24 being addressed more efficiently than it appears  
25 to be today.

1 Q Are you saying that there should be  
2 more higher cost housing available to stop the  
3 trend or the inflation trend, the appreciation  
4 rate of those units?

5 A Effectively, yes.

6 Q Okay. You also mentioned or under-  
7 lying your answer was the fact that this apprecia-  
8 tion is not going to continue ad infinitum. I  
9 will ask you the obvious question. How do you know?

10 A Okay. I've lost my thread here.

11 (A discussion is held off the  
12 record.)

13 A I don't know this. I mean that it will  
14 end. I can't certainly put a time on it. But  
15 the level of appreciation is to a large degree a  
16 function of scarcity, imposed scarcity partly  
17 because of land use restrictions, partly for a  
18 variety of other reasons. As long as the imposed  
19 scarcity continues and housing demand also con-  
20 tinues at high levels, which is the case at the  
21 present, the pressures will continue to push  
22 prices up and inflation will add to that. If,  
23 however, either of those significantly is mitigat-  
24 ed, then there's a reasonable likelihood that the  
25 pressure will slacken.

1           Now, certainly production of large numbers  
2 of least cost or reasonably near to least cost or  
3 what-have-you housing in significantly large num-  
4 bers than is presently the case could relieve  
5 some of this pressure. Equally, any change in the  
6 rate or level of household formation would relieve  
7 this pressure. So if either of those happen, then  
8 you could see some change.

9           Q       Okay. You mentioned that the  
10 scarcity is a significant reason for the tremen-  
11 dous appreciation in the high cost of housing  
12 today. And you also said that such scarcity was  
13 caused in part by zoning and then other factors  
14 in addition to that. Can you give me any number  
15 in terms of percentage or concept of how much of  
16 it is caused by zoning? Is it one percent of the  
17 total problem? Is it 50 percent of the total  
18 problem?

19           A       I could not possibly  
20 guess. It's not the kind of thing I think that  
21 lends itself to that kind of numerical analysis.

22           Q       Okay. And I do not disagree with  
23 you at all. But my point is that is not the  
24 housing problem created and continued in exist-  
25 ence by factors other than zoning and, in fact,  
significantly by factors other than zoning?

1 A I guess in some ways the difference is a  
2 difference of degree. Clearly zoning plays a  
3 part. And I--

4 Q There is no question about that?

5 A I guess the difference is how large a part.

6 Q That's right.

7 A And I believe even though again I can't  
8 put a number on it, that it is a large part. But  
9 it is not amenable to precise mathematics.

10 Q Go ahead.

11 A Just to clarify a previous answer, the  
12 dollar figures of income ranges we are referring  
13 to were based on 50 and 80 percent respectively  
14 of the estimated Morris County median income and  
15 in other aspects of the proofs as well as dealing  
16 with the various housing programs a median income  
17 figure is used for the entire region which tends  
18 to be a lower figure than that for Morris County  
19 by itself.

20 Q Okay. And in terms of our discus-  
21 sion then, would it result in a lower, even lower,  
22 income level for what is considered low income  
23 persons or moderate income persons?

24 A That's correct.

25 MR. BUCHSBAUM: The regional figure

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would do that?

MR. BUZAK: That is right.

THE WITNESS: Yes, yes, right.

Q If perhaps a person around the moderate range could afford a house 30 to \$35,000 or we are talking about \$17,000, certainly the moderate range when we are talking about 13 or \$14,000 would not be able to purchase that unit?

A That's correct. I don't know where the exact numbers would be, but certainly you are right in principle.

(The witness is excused.)

\* \* \*

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

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

MORRIS COUNTY FAIR HOUSING :  
COUNCIL, et al, :

Plaintiffs, :

vs. :

CERTIFICATE

BOONTON TOWNSHIP, et al, :

Defendants. :

I, MARK SCHAFFER, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, certify the foregoing to be a true and accurate transcript of the deposition 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 the action in which this deposition was taken, and further that I am not a relative or an employee of any attorney or counsel employed in this case, nor am I financially interested in the action.

*Mark Schaffer*  
A Notary Public of the State of New Jersey

Dated: 5/17/79

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