

ML - Morris County Fair Housing Council

3/18/17

v. Beacon Twp

Deposition of Alan Mallach

P 58

ML000870 G

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

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,

ML000870G

Plaintiffs,

vs.

DEPOSITION
OF
ALAN MALLACH

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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I N D E X T O W I T N E S S E S

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WITNESS

ALAN MALLACH

By Mr. Clapp

By Mr. Buchsbaum

CROSS

2

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

2 CROSS-EXAMINATION BY MR. CLAPP:

3 Q Mr. Mallach, my name is Roger Clapp.
4 I am conducting this deposition in the mini-trial
5 part of this case on behalf of my client, Harding
6 Township. You have previously been sworn in this
7 matter and are still under oath. Is that correct?

8 A Yes.

9 MR. CLAPP: And Mr. Buchsbaum prior
10 to the commencement of the deposition ask-
11 ed me if it is the understanding on my
12 part on behalf of Harding Township that we
13 are paying Mr. Mallach's pro rata amount
14 of his time with respect to this deposition
15 and for this day, Harding Township's pro
16 rata part of his time and transportation.
17 There will be a number of other mini-
18 depositions taken today and Harding Town-
19 ship will share on the basis of \$40 an
20 hour for the amount of time that is alloca-
21 ted to Harding Township. Is that correct,
22 Mr. Buchsbaum?

23 MR. BUCHSBAUM: That is correct,
24 including, as I said, the pro rata time
25 for transportation. Thank you.

1 Q Mr. Mallach, you have had your
2 deposition taken many times before. And I be-
3 lieve you understand the purpose of my questioning.
4 The principal point I would like to make now is
5 that if any question I ask is not clear, please
6 so indicate so that I can clear up any problems
7 with the question. A Certainly.

8 Q Did you visit Harding Township in
9 connection with this case?

10 A Yes, I did.

11 Q All right. Had you ever visited
12 Harding Township prior to this case?

13 (A discussion is held off the
14 record.)

15 Q Do you remember the question?

16 A Have I visited Harding Township before.

17 Q Yes. A I have passed
18 through Harding Township before either on the
19 interstate or on Route 202 on a number of occasions.

20 Q On those occasions, prior to your
21 visit in connection with this case, was there any
22 purpose in visiting or was it mainly a passage
23 through the township?

24 A It was mainly a passing through. I remem-
25 ber on another occasion I drove through the

1 township in order to drive through and look at the
2 Great Swamp.

3 Q Do you remember what roads you
4 traveled on on that occasion?

5 A I believe there's a county road, I forget
6 the number, that more or less meanders through
7 the middle of the township and through the center
8 of the swamp and then on into I guess it's Passaic
9 Township.

10 Q All right. Did you visit the Great
11 Swamp at that time? A Yes.

12 Q Do you recall when that visit was?

13 A Oh, this would have been a couple of years
14 ago.

15 Q All right. And how long did you
16 spend in the township including the Great Swamp
17 on that visit? A Oh, a couple of
18 hours.

19 Q Was the purpose of that visit to
20 visit the Great Swamp? A Yes.

21 Q Other than that visit to the Great
22 Swamp and prior to this case, any other trips to
23 Harding Township? A Not that I
24 recall.

25 Q When did you make your visit to

1 Harding Township in connection with this case?

2 A On the 4th of April.

3 Q All right. And do you remember
4 when you first arrived in Harding Township

5 approximately? A It would have
6 been, oh, mid-morning.

7 Q How long were you in Harding Town-
8 ship? A Approximately an hour.

9 Q Do you remember what roads you were
10 on? A Basically since we were not

11 looking at specific sites, we drove more or less
12 around the middle of the township. Specifically,
13 we came into Harding Township from Bernards Town-
14 ship on what becomes County Road 663, drove to
15 New Vernon, some in the central part of the town-
16 ship, and then left the township by County Road
17 646.

18 Q At that time, did you stop the
19 vehicle? A I don't believe so.

20 Q Were you looking for any particular
21 sites? A No.

22 Q Can you describe what you saw during
23 that hour's travel around the township?

24 A Yes, the township or those areas we saw are
25 generally of rolling country with a mix of, let's

1 say, four different types of use which would be
2 some woodland, limited farming, scattered what
3 one might call estates and scattered single-
4 family houses of a more conventional character.
5 There are some older houses close to the road.
6 And there are new houses or more modern houses
7 being built usually further back from the road on
8 what appear to be large lots. These tend to be
9 very large houses. I would guess 3,000 or more
10 square feet.

11 In New Vernon proper, there is a more
12 concentrated sort of development, this being a
13 village. And it contains again principally single-
14 family houses and substantial houses, but more
15 close together as characterizes a village and a
16 limited number of commercial activities, a gas
17 station, grocery store, a few other such things.

18 Q Can you name the number of roads
19 that you might have been on during that hour?

20 A Three or four.

21 Q Other than that hour, have you done
22 in connection with this case any other field work
23 in Harding Township? A No.

24 Q Do you plan to do any other field
25 work? A I may. I do not consider it

1 a high priority in terms of additional work for
2 the case.

3 Q Do you have any specific objective
4 when you say you may?

5 A If the opportunity presents, I would like
6 to perhaps look at the area that's been zoned for
7 the P.R.N., but I don't consider it an essential
8 element of the case in terms of my work, my
9 testimony.

10 Q The inference from that answer is
11 that you have not seen that area?

12 A Well, except to the degree that one can
13 see it from the highway. It does--It does front
14 on the highway.

15 Q When you say the highway, what high-
16 way? A Interstate 287.

17 Q Do you know the physical condition
18 and repair of the roads in Harding Township?

19 A Well, the county roads seem in adequate
20 repair. They're normal two-lane country roads.
21 They're not high-speed roads, but they're adequate
22 for moderate levels of traffic at moderate speeds.

23 Q What about the municipal roads
24 apart from the county roads?

25 A I couldn't speak of those with any detail.

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Q Do you know if you were on municipal roads or county roads?

A I think we were on principally county roads.

Q Are there any interstates in Harding Township?

A There Interstate 287 goes through the western part of the township.

Q Any interchanges on that interstate in Harding Township?

A I don't know if any interchanges are in Harding Township, but the interchange in Bernards Township near the A.T.& T. complex is certainly readily accessible from the western part of Harding Township.

Q Do you know how many miles of state roads or county roads or municipal roads there are in the township?

A I can't give you mileages. The only state road I'm familiar with in Harding Township is Highway 202 which goes also through the western part of the township. I could probably give you a ballpark idea of the number of miles.

Q Well, it is not necessary. You are referring to what map as you are answering this?

A Oh, this is the official map. I shouldn't say official map, that as a term of art. This is

1 the map of Morris County published by the Morris
2 County Board of Freeholders.

3 Q And did you use that map when you
4 were in Harding Township or are you just using it
5 in referring to it now if you recall?

6 A I believe I used this map. I'm not cer-
7 tain, but I believe so.

8 Q Did you get lost at any point in
9 Harding Township? A We got lost at
10 one point. I'm not sure if it was Harding or
11 whether it was later, somewhere in that vicinity.
12 It was just--We got somewhat confused right at
13 the--I guess the western edge of Harding Township
14 near the Chatham Township line.

15 Q Any explanation for that which you
16 can offer other than getting lost?

17 A The roads in that area tend to come together
18 at rather unusual angles. And we weren't sure for
19 a while which road we had found ourselves on.

20 Q Is there any public transportation
21 serving Harding Township?

22 A I'm not familiar with any. There may be
23 along 202. No, there does not appear to be any
24 public transportation service in Harding Township,
25 although there is in a number of adjacent

1 communities that are accessible.

2 Q What adjacent communities are you
3 referring to, Mr. Mallach?

4 A Well, there is train service through
5 Passaic Township, Stirling and Gillette. There
6 is bus service and train service in Madison and
7 Chatham. And, of course, there is extensive
8 service, public transportation service, in Morris-
9 town.

10 Q And do you know what the distances
11 of the nearest public transportation that you
12 just referred to is from Harding Township?

13 A I would guess there may be as little as
14 two or three miles.

15 Q And do you know what an average
16 distance might be from, let's say, the center of
17 Harding Township to those facilities?

18 A Four or five miles probably.

19 Q Do you know if there is any public
20 water in Harding Township?

21 A No. I don't know that is.

22 Q Do you know if there is any water
23 company willing to extend the water service, pipe-
24 lines, to Harding Township?

25 A I don't know.

1 Harding Township? A From some other
2 municipality?

3 Q Yes. A I don't know.

4 Q And you have no idea of the avail-
5 ability or lack of availability of public sewer-
6 age in Harding Township?

7 A That's correct.

8 Q Do you have any proposal as to how
9 the housing units you are proposing for Harding
10 Township will be sewerred?

11 A Well, I have spoken in the Common Defense
12 deposition in general terms about ways that
13 exist to sewer multi-family developments in the
14 absence of a public sewer system. And although
15 I have done no specific study of Harding Township,
16 I have no reason with which I am familiar as to
17 why those would not be applicable or potentially
18 applicable in sites in Harding Township.

19 Q Apart from the Morris County soils
20 survey of the S.C.S., do you know anything about
21 the soils in Harding Township?

22 A No.

23 Q Do you know what the soil capacities
24 are in Harding Township to receive effluent?

25 A I believe it varies.

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Q What is the minimum feasible size of a site for first spray and second for lagooning?

A Again, it varies very widely. The spray facilities require what may be extensive sites, again depending on the soil characteristics. The lagooning facilities usually do not require very large sites.

Q When you say not very large, can you be more specific?

A Five, ten acres; spray may require more than that.

Q Do you know what the circumstances are with the D.E.P. in New Jersey as to the approval of either spray or lagoon sites?

A I believe in principle they support both of them. And there are at least some operational facilities of both sites in New Jersey which received the D.E.P. approval.

Q Do you know what environmental constraints there may be on development in Harding Township?

A I have not done a study of that.

Q Do you know what streams flow through Harding Township?

A I know that there are some, but I don't know the specific

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1 names offhand.

2 Q Do you know if any of those streams
3 are headwater streams or origins of streams?

4 A That I don't know.

5 Q Do you know where the streams flow
6 as they go through Harding or leave Harding?

7 A Well, they generally flow from north to
8 south.

9 Q Do you know if the streams flow in-
10 to the Great Swamp? A Some do.

11 Logically, some must. Again, it's just on the
12 basis of simple geography, but like I haven't
13 studied that specifically.

14 Q All right. Do you know if some
15 streams do not flow into the Great Swamp?

16 A I don't know.

17 Q Do you know anything about the
18 assimilative character of the streams?

19 A No.

20 Q Do you have an opinion as to the
21 effect on development in Harding Township that the
22 existence of sensitive streams would have?

23 A Well, it's a factor that would have to be
24 taken into consideration.

25 Q Can you describe what weight or

1 anything more descriptive about using it as a
2 factor? A Well, again that would
3 depend on much more knowledge of some of the
4 specific factors you mentioned in terms of the
5 current water standards, the assimilative capa-
6 city and so on. But it's possible that in some
7 cases there would be nondegradation standards
8 that would be applied. And that would have to be
9 applied to the manner in which sewage treatment
10 would be handled.

11 This would argue in cases that either a
12 spray or a lagooning approach may be preferable,
13 to a more conventional approach of discharging
14 treated effluent directly into the streams, for
15 example. But again, this would have to be done
16 on a case-by-case basis.

17 Q Do you know of the existence of
18 floodplain areas in Harding Township?

19 A No.

20 Q Would that have any effect on
21 development, namely the existence of floodplain
22 areas? A Well, to some degree

23 it would limit development since development is
24 generally limited within floodplains.

25 Q You indicated some familiarity with

1 or environmental factors on a community basis.
2 It's my understanding that the Public Advocate
3 has retained an expert who is specifically quali-
4 fied as an environmental planner.

5 Now, since the areas overlap, I mean it's
6 quite possible that some of my testimony will
7 touch on environmental issues, but I certainly
8 will not be presenting a major environmental
9 presentation.

10 Q Who is the environmentalist you are
11 referring to, Mr. Clarke?

12 A Mr. Clarke, that's correct. That's with
13 an "e" on the end.

14 Q As a housing consultant, what is
15 your opinion as to how or whether environmental
16 factors would affect the development of least
17 cost housing in Harding Township?

18 A I think it varies very widely. As I may
19 have stated, there are certain environmental
20 conditions which make development generally un-
21 advisable, which might include extremely steep
22 slopes, floodways and the like. There are other
23 environmental conditions where development is
24 possible, but where cost of mitigating environ-
25 mental factors has to be taken into account. This

1 can be minimal or quite substantial, again depend-
2 ing on a very wide variety of specific site
3 conditions.

4 In terms of least cost housing, certainly
5 all other things being equal, it is better to
6 build least cost housing on sites where the cost
7 of environmental mitigation are modest rather
8 than extensive. The key issue, of course, is all
9 other things being equal.

10 If you have a community or an area where
11 it becomes impossible to provide housing without
12 such costs and the housing is needed in that area,
13 then it becomes a matter of balancing the two
14 factors. So I don't see environmental constraints
15 as an absolute bar on least cost housing, although
16 they are a factor in comparing alternative sites
17 and locations certainly.

18 Q Given Municipality A with environ-
19 mental constraints and Municipality B with lesser
20 or without environmental constraints, does it
21 affect the fair share of those two municipalities?
22 Just that. A It could. One of the
23 factors that's used in a fair share is vacant,
24 quote, "developable," unquote, land. And although
25 people do differ as to precisely how to define

1 developable, there is a general consensus that at
2 least some environmental factors should be taken
3 into account when evaluating that characteristic,
4 which is a very important one for fair share
5 purposes.

6 Q When you say some environmental
7 factors, can you list what you are referring to
8 when you say some?

9 A Again, there is considerable difference as
10 to which should be taken into account. Okay.
11 The two which I believe there is a consensus on
12 are floodplain lands and steep slope lands,
13 although one must acknowledge that there is not
14 really a consensus, professional consensus, as to
15 how steep is steep.

16 Q In your opinion, what is steep for
17 this purpose, as to what constitutes an environ-
18 mental constraint which would cause a problem for
19 a construction of least cost housing?

20 A I would say somewhere in the area of 20
21 to 25 percent would certainly be steep.

22 Q Do you disagree with the D.C.A.
23 formulation, the statewide housing allocation, as
24 to what they say is steep?

25 A I'd say 15 percent, which is the figure I

1 believe they use, is probably more than necessary.
2 And, in fact, what is quite interesting is look-
3 ing around Morris County, the large number of
4 multi-family developments of those in Morris
5 County generally that have been built on slopes
6 of greater than 15 percent.

7 Let me make sure whether the 15-percent
8 figure is indeed the one they use.

9 (A discussion is held off the
10 record.)

11 A I stand corrected. The figure the D.C.A.
12 uses is 12 percent, in which case my comment is
13 still the same. Clearly this is an overly far-
14 reaching standard I believe.

15 Q Do you know what growth or absence
16 of growth there has been in Harding Township in
17 recent years?

18 A To the best of
19 my knowledge, the only growth in Harding Township
20 has been limited construction of individual
single-family houses in relatively small numbers.

21 Q What is the basis of your knowledge?

22 A This is building permit records as well as
23 observation.

24 Q So you are not aware of any other
25 construction other than single-family homes?

1 A That's correct.

2 Q Do you know the history through the
3 years of Harding's development?

4 A No.

5 Q Is Harding a developing municipality
6 in your opinion? A Yes.

7 Q What do you base that on?

8 A I base that on the overall size and land
9 availability in Harding Township, coupled with
10 its location in a centrally-located part of a
11 metropolitan area.

12 MR. BUCHSBAUM: Just note for the
13 record that the position has been taken
14 by us that the question of developing
15 municipality is ultimately a legal question,
16 but we do not have any objection to Mr.
17 Clapp's asking the question now under the
18 general reservation we have made throughout
19 the depositions. We reserve the right to
20 object at trial.

21 Q Do you base your opinion on anything
22 else other than what you have just said?

23 A No, I think what I said is ample basis in
24 the context of the Supreme Court decision on this
25 point.

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Q Do you know what school facilities are available in Harding Township or neighboring communities serving Harding Township?

A Not specifically.

Q Do you know if there is capacity in the existing school systems, additional capacity for additional students?

A No.

Q Do you have an opinion as to this case in how it affects the provision of least cost housing, what the ratio of police to population should be?

A No, the ratio

of police to population or--

Q In a township like Harding?

A In a township the nature and extent of a local police force tends to be a function of its overall growth, development. At this point, since Harding has a small and relatively scattered population, it would be likely that they have a police force that is both small and unspecialized in a sense that it has a couple of patrolmen, but does not have all the different specialties and units and so on that a larger community police force would have.

Q This is a supposition?

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A This is a supposition.

Q You do not have facts on this?

A That's correct; but the point being, in any event, as the community grows, whether the housing is least cost, most cost or somewhere in between, that the police force can be expected to grow as well as the normal function of municipal services.

Q And would you expect your proposal and the client that you are working for in this case, proposals for housing, would have a growth for Harding that was the same as if there were not these proposals for least cost housing?

A Not necessarily since I think it's implicit in the case of the plaintiffs that Harding should change its zoning at least to some degree to allow growth that has not characterized the town up to now. And in the absence of such a litigation, I can think of no reason why Harding Township would change its zoning from its present standards.

Q Which would cost more as far as least cost housing goes, to renovate existing facilities or to build new ones?

A It can't be answered with an either/or

1 because there are just too many variables that
2 come into play in something like that.

3 Q Can you be more enlightening in
4 response to the question? What are some of the
5 variables? A Well, the variables

6 in terms of renovating--In terms of renovating an
7 existing sewer system, the issue is exactly what
8 kind of work has to be done, what is the nature
9 of the system.

10 Now, for example, one of the things that
11 is the case with many of the existing sewage
12 systems in the older parts of New Jersey, for
13 example, is that they are effectively impossible
14 to renovate to bring them up to a standard that's
15 comparable with what would be expected of a new
16 sewage system.

17 So, for example, Hoboken is an interesting
18 case. Hoboken had sewers installed something like
19 150 years ago. They were wooden.

20 Over the last 150 years, the wood has
21 rotted. The only thing that makes it possible
22 for the sewage to flow from those individual
23 houses to the treatment facility in Hoboken is
24 the fact that during that 150 years, the earth,
25 rocks, dirt, sand, mud, whatever, around those

1 pipes has firmed up to the point where it basic-
2 ally conveys the sewage.

3 Now, this is obviously patently inadequate.
4 The sewer flows--

5 Q How many wooden piping systems do
6 you know of? A Quite a bit of Hudson
7 County is like this. In Newark, for example, you
8 have for the most part, more modern, relatively
9 speaking, treatment facilities, but you have com-
10 bined storm and sanitary sewers throughout most
11 of the city. What this means is that whenever
12 you have a big storm, the Passaic Valley Sewerage
13 Treatment Plant, which is responsible for Newark's
14 effluent basically, has to pump raw sewage into
15 the lower Passaic River because if they didn't,
16 the flow would be so great, they would back up
17 and geysers would erupt out of every toilet and
18 sink in the City of Newark.

19 Now, the cost of providing separate storm
20 drains and sewers in a city like Newark would be
21 vastly in excess of the cost of constructing
22 most new sewage treatment facilities. So the
23 renovation costs of existing sewage facilities,
24 for example, in urban areas, to bring the treat-
25 ment levels and sanitary levels up to modern

1 standards and to eliminate such things as infil-
2 tration, which in many urban sewer systems the
3 flow that winds up coming into the treatment
4 plant is perhaps only 70 or 80 percent of the
5 flow that goes into the pipes at one end. In
6 other words, 20 to 30 percent of all of the sew-
7 age leaks out through holes in pipes, gaps, leaks,
8 cracks, whatever, into the soil during the jour-
9 ney to the treatment plant.

10 So, in any case, the point I guess of all
11 this anecdotal rambling is that there are so many
12 factors involved in renovating existing systems,
13 but that generally renovation is as expensive as
14 new construction may well be.

15 Q If you disperse the urban popula-
16 tion to the suburbs or exurbs, will that in any
17 way revitalize the urban areas?

18 A It's hard to tell. I think if you provid-
19 ed opportunities for urban people in the suburbs
20 or exurbs--And I think it's important to stress
21 that even under the most optimistic or far-
22 reaching proposals, nobody is really talking about
23 dispersing the urban population in anything
24 remotely like its entirety or even a majority of
25 it.

1 If the population had more opportunities
2 and perhaps was dispersed in part, I think this
3 would relieve many of the physical and service
4 burdens on many of the municipalities and might
5 create circumstances in which revival was more
6 likely, more realistic. I think as long as the
7 cities such as Newark, Jersey City and the like
8 are caught on a kind of a treadmill of service
9 and facility demands and the like, there is
10 relatively little opportunity.

11 Q If society promotes the growth of
12 the suburban or exurban areas, will society be
13 able to afford to revitalize the urban areas?

14 MR. BUCHSBAUM: Excuse me, but
15 before you answer, it seems to me the
16 Supreme Court has adopted a philosophy in
17 Mount Laurel which goes in a certain
18 direction. I am not clear, maybe it would
19 help Mr. Mallach in answering the question,
20 exactly how the question you just asked
21 ties into the issues in this case given
22 the Supreme Court's statements in Mount
23 Laurel about suburban obligation.

24 MR. CLAPP: I am looking for dis-
25 coverable evidence, Mr. Buchsbaum, as to

1 his opinions and nature of his testimony
2 in this case.

3 MR. BUCHSBAUM: All right.

4 MR. CLAPP: I think it is a proper
5 question is my response. You can reserve
6 your objections.

7 MR. BUCHSBAUM: Objections are
8 reserved, as it were.

9 A I think there are a number of different
10 issues involved. Certainly society is not mono-
11 lithic and populations are not. I think the
12 first point is, and this really goes back to the
13 previous question as well, is that in looking at
14 opportunity, we are talking not only of the
15 cities qua cities as entities of a physical and
16 geographic nature, but also of people and
17 opportunities for people.

18 I certainly find the view--I'm not suggest-
19 ing that it's held here, but I know that it is
20 held by many people that the people who live in
21 the cities in a sense should be held hostage in
22 the interests of an abstract entity known as the
23 city. I find such a view to be objectionable.

24 I mean what is important is the opportuni-
25 ties for decent living for people. And in the

1 final analysis, I think in a sane society, the
2 interests of abstract geographic entities are
3 secondary to the interests of human beings.

4 (A discussion is held off the record.)

5 Q Do you know if there is any indus-
6 try in Harding Township?

7 A I do not.

8 Q Do you know if there is any commerce
9 in Harding Township?

10 A Well, there's the--As I mentioned, there
11 is limited commercial activity in New Vernon. I'm
12 not familiar with other commercial activity. I
13 believe there is some commercial establishments
14 along 202.

15 Q Do you agree with this proposition:
16 That the less industry and the less commerce
17 basically the fewer employees, the less require-
18 ment for fair share housing?

19 A Generally speaking, yes, and I believe
20 most fair share plans factor in employment as one
21 of the elements in arriving at a fair share.

22 Q When you say generally speaking,
23 are there any exceptions or what are the--

24 A I'm certain that there are exceptions,
25 though the ones that in my judgment are the most

1 solid--Well, for example, the State plan which is
2 a serious effort, it does include employment.

3 And I believe that the--I can't recall
4 specifically. I think that in the Madison case,
5 there is language generally supporting the use
6 of employment as a criterion.

7 MR. BUCHSBAUM: Did you say as one
8 criteria?

9 THE WITNESS: Yes, or a criterion.

10 Q What is the housing stock in
11 Harding Township? Do you know?

12 A Single-family houses for the most part.

13 Q How many houses have you seen in
14 Harding Township roughly?

15 A Perhaps one, perhaps a couple of hundred.

16 Q Do you know how many houses exist
17 in Harding Township?

18 A I would guess it's a thousand or less. I
19 can give you an exact or more or less exact
20 number.

21 Q No, I was really asking you from
22 your own personal knowledge, from what you have
23 seen, not from the statistics. And that was your
24 answer on what you observed?

25 A Yes.

1 Q Do you know the cost of housing in
2 Harding Township?

3 A Again, I don't have the exact figure off-
4 hand, but it's very high.

5 Q What is your basis for saying that?

6 A The data that's published by the Division
7 of Taxation on usable sales.

8 Q Any other basis?

9 A No.

10 Q Does distance from shopping centers
11 or jobs affect the fair share of housing, oppor-
12 tunity for least cost housing?

13 A Shopping centers, no. Clearly by building
14 the employment into the community in the fair
15 share plan, that relates to the question of dis-
16 tance. I mean one could theoretically at great
17 length and with great complexity construct some
18 kind of an elaborate model that would be based on
19 the actual physical locations of all the jobs or
20 all the major employers, say, within a region and
21 then measure distances and the like, but such a
22 thing would be hopelessly unwieldy. So from a
23 practical standpoint, by using employment in a
24 community, one gets a reasonable surrogate of
25 that factor.

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Q So that in your formula on determining the number of least cost housing units that should be supplied, you would look to the municipality's employment?

A I do not have a formula. I'm not presenting a formula in this case.

Q All right. Let me rephrase the question. In your opinion as a housing consultant in dealing with the provision of opportunity for least cost housing, what job area would you look to?

A I would like to know the number of jobs in the municipality relative to the number of jobs in the region in which it was located.

Q All right. And in determining the jobs in a region, doesn't there have to be some model or some statistical analysis done?

A Well, a tabulation.

Q But it is not affected by the distance between the jobs and the residents as to that does not affect the number of housing units to be provided by a municipality?

A Well, beyond the number of jobs that exist in the municipality, to measure the distance between a municipality and the jobs is really an

1 unmanageable kind of proposition. I mean if you
2 look at a region such as the northeast New Jersey
3 area and you take any municipality, you certainly
4 have, for starters, the question of where in the
5 municipality, which jobs, where in the other
6 municipalities they're located.

7 Like take Harding, for example. One of
8 the largest employers in that part of the region
9 is the A.T.& T. complex in Basking Ridge. The
10 A.T.& T. complex is quite literally a stone's
11 throw from Harding Township. So there are some
12 3500 jobs which are located just across the stream.

13 Q What is the nature of those jobs,
14 Mr. Mallach, if you know?

15 A I do know. It's quite a wide cross-
16 section of white-collar employment, ranging from
17 relatively low-paying secretarial and technical
18 jobs right on up to exceptionally well-paying
19 executive jobs.

20 Q I want to interrupt you as to the
21 comparison between the municipality and the region
22 in the jobs. A So that the fair
23 share analyses with which I'm familiar have
24 generally taken the approach of just using
25 tabulations of jobs in the municipality, in the

1 region. And so because of the difficulties of
2 arriving at a logical basis for doing otherwise,
3 it is just overwhelming.

4 For example, well, to go back to the case
5 of A.T.& T., could you imagine the complexities
6 of developing a mathematical model which would
7 distinguish, let's say, if the A.T.& T. plant
8 was in Lyons instead of Basking Ridge, which is,
9 after all, a distance of miles, and then try to
10 factor it for every major employer in the region?
11 It's clearly an unworkable proposition.

12 Q Do you know how much vacant land
13 is available in Harding Township?

14 A I have done no study. The only source I
15 have looked at on this is the D.C.A. study.

16 Q And when was that study prepared?

17 A In the late 1960's.

18 Q And when were those statistics
19 gathered for that study?

20 A Sorry, the statistics were gathered in the
21 late 1960's. The study itself was published in
22 1978.

23 Q And do you have anything more
24 recent than statistics gathered in the late '60's?

25 A No.

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Q Do you know what the Morris County Master Plan provides for Harding Township?

A Not specifically.

Q Do you know what the Tri-State Regional Planning Association provides?

A No.

Q Have you read the Harding Township Master Plan? A I don't believe so.

Q And the Harding Township environmental inventory? A No.

Q Apart from the D.C.A. housing allocation, have you read any planning documents which deal specifically with Harding Township?

A I did read the Morris County Master Plan, though I don't recall its specific points regarding Harding Township. Other than that, I don't believe there were any.

Q What Harding Township documents have you read for the purposes of this case?

A The documents that I've read have been the Township zoning ordinance and zoning map.

Q Is that it? A Yes.

Q Can you tell me where any particular zone is located in Harding Township as far as your observation of the municipality? I

1 understand that you can point to the map.

2 A In general terms, yes.

3 Q When you say in general terms, is
4 that from your observation of the map or observa-
5 tions of the municipality?

6 A Well, some of both.

7 Q Do you have any commentary or
8 criticism of the Harding Township ordinance
9 other than what is set forth in your report?

10 A I do not believe so.

11 Q Can you be more specific than you
12 do not believe so? Is there something that
13 would lead you to a different belief or--

14 A Well, certainly not at this point.

15 Q How do you define least cost hous-
16 ing as a general proposition, Mr. Mallach?

17 A Housing including both single and multi-
18 family housing of a variety of types constructed
19 under standards that provide for, as I believe
20 the Court put it more or less paraphrasing, the
21 least cost housing consistent with standards of
22 health and safety.

23 Q Do you have your report on Harding
24 Township with you? A Yes.

25 Q All right. I understand that it

1 is a five-page report. Is that correct?

2 A That's correct.

3 Q Now, other than the general 12-
4 page, I think 12-page, commentary, did you make
5 or prepare any other specific reports dealing
6 with Harding Township? A No.

7 Q So we are just dealing with the
8 five-page report? A That's correct.

9 Q On the first page of that report,
10 is it your position that Harding Township should
11 have all of the seven types of housing that are
12 set forth? A With the exception of
13 the seventh, which is optional. In other words,
14 as I pointed out in the commentary, a planned
15 unit development or planned residential develop-
16 ment zone can be a means for least cost housing,
17 but is certainly not in the least a least cost
18 housing type.

19 Q If Harding Township's alleged fair
20 share for least cost housing was met in your
21 opinion with one type of these housing types
22 listed on Page 1 of the report, is it your testi-
23 mony that the other types would be necessary?

24 A That's correct. I believe the language of
25 the Court decision is quite explicit on providing

overzoning should be applied to Harding Township?

A Certainly.

Q And do you have a position as to what factors for overzoning should be applied to Harding Township? A Yes.

Q What is your opinion?

A Again, this is not with specific regard to Harding Township, but generally speaking again as I believe I've gone over in my report, overzoning has to deal with a number of factors of which they fall into three broad categories. One is the possibility that least cost units may be constructed, but occupied by people who are substantially more affluent than the people for whom the units one might say are meant. This is cited very explicitly in the court decision.

A second is the reasonable likelihood given realities that if X acreage is zoned for least cost housing, a certain part of that acreage will not be available either at all or will not be available for the purposes of least cost housing construction for any of the usual reasons why some owners don't want to sell and other owners who do want to sell wanted to do so only at a price that's in excess of what may be feasible

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1 for least cost housing construction.

2 Thirdly is the possibility given realities
3 in the marketplace that if a piece of land is
4 zoned for least cost housing, it could be bought
5 at a modest price by a developer, but yet develop-
6 ed for housing that is not least cost. In other
7 words, if a piece of land can be developed, say,
8 for townhouses at ten to the acre, a developer
9 may decide that his profit margin is much greater
10 on townhouses at six to the acre with a variety
11 of amenities and luxury features, so that he will
12 choose to built at more than least cost standards
13 in that area.

14 So the point of overzoning is to balance
15 all of these factors in order to provide a rea-
16 sonable likelihood that some land in reasonable
17 proportion to the fair share, whatever it may be,
18 does nonetheless become available for the construc-
19 tion of least cost housing.

20 Q Given those factors, do you have a
21 multiplier that you would apply, for example, to
22 the D.C.A. statewide housing allocation study to
23 accomplish overzoning for Harding Township?

24 A I've suggested that as a general approach,
25 a multiplier in the area of three to five times

1 appears to be most logical. I think, and I
2 believe I suggested this in the report, that at
3 such a time as one goes about a rezoning process,
4 that at the time one does much more specific
5 analysis within a specific community, looking at
6 the market factors affecting that community to
7 arrive at a more pointed number specific to the
8 community.

9 Q Do you know if that is going to be
10 done by the Public Advocate for the communities
11 in this case by one of the witnesses?

12 A I don't believe it would be. I believe
13 it really belongs to a second stage.

14 I would hope that in the event that the
15 Court agrees with the contentions of the Public
16 Advocate as regards the defendant, that this would
17 be part of the remedial process that will take
18 place subsequently, though certainly it would be
19 reasonable for a municipality to undertake such
20 a study in advance.

21 MR. CLAPP: I do not have any other
22 questions.

23 MR. BUCHSBAUM: Just a few questions
24 to clarify.
25

1 RE-CROSS-EXAMINATION BY MR. BUCHSBAUM:

2 Q At one point you testified that the
3 standard of four units per acre for apartments
4 did not meet your desired least cost level of ten
5 to fifteen. A Yes.

6 Q I am just reviewing a report and
7 the number that you have there is 15 to 20.

8 A Well, I believe the point was that for
9 townhouses, at least ten, for garden apartments
10 at least 15, but that certainly above 15 would be
11 equally reasonable.

12 Q And, second, you were asked ques-
13 tions about lot frontage and lot size minima.
14 And you gave answers with respect to each, 5,000
15 square feet and 50 feet. Were those absolute
16 minima or conservative choices among the potential
17 range of choices for least cost minima?

18 A They were certainly not absolute minima.
19 They were a reasonable choice. One can build and
20 one does build as, for example, mobile home parks
21 and many lakeside subdivisions and so on on even
22 smaller lots.

23 Q And, third, you stated in response
24 to questions that there was a relationship in
25 most fair share plans between the amount of

A. HARRISON - CROSS 37
1 employment and the ultimate fair share determined
2 for a community. I take it that there would be
3 other factors normally involved in determining
4 fair share as well?

5 A Certainly two factors that are almost
6 invariably found as well are some measure of
7 vacant or vacant developable land availability
8 and some factor dealing with wealth.

9 MR. BUCHSBAUM: All right. I have
10 nothing further on that.

11 (The witness is excused.)

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

MORRIS COUNTY FAIR HOUSING C:
COUNCIL, et al,

Plaintiffs,

vs.

CERTIFICATE

BOONTON TOWNSHIP, et al,

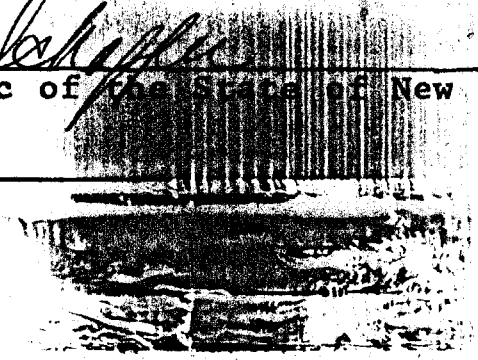
Defendants.

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: 5/18/79



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