

ML - Morris County Fair Housing Council  
v. Brenton Twp

5/18/79

Deposition of Alan Malloch

PT

ML0008736

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,

ML000873G

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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WITNESS

ALAN MALLACH

By Mr. Mills

By Mr. Buchsbaum

CROSS

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RECROSS

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

2 CROSS-EXAMINATION BY MR. MILLS:

3 Q Okay. My questioning will primarily  
4 center around the course of Morris Township whom  
5 I represent. Before that, I would like to have  
6 established your area of expertise because I am  
7 confused as to what you are going to testify to.

8 MR. BUCHSBAUM: Mr. Mills, before  
9 we go into questions, you were present when  
10 I discussed the arrangements of paying Mr.  
11 Mallach with Mr. Murphy on the record?

12 MR. MILLS: And what were they?

13 MR. BUCHSBAUM: That he would be  
14 paid for his time here at \$40 an hour plus  
15 proportionately for his travel time to and  
16 from Morris Township.

17 MR. MILLS: And is that \$40 an hour  
18 the same rate that is being charged to the  
19 Public Advocate?

20 MR. BUCHSBAUM: That is our stipula-  
21 tion.

22 MR. MILLS: Okay.

23 MR. BUCHSBAUM: And you agree to  
24 that?

25 MR. MILLS: I guess I have no choice.

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

1 Q Mr. Mallach, from what I understand  
2 from your first session in the maxi-case is that  
3 you are not a planner?

4 A I'm not a Licensed Professional Planner in  
5 the State of New Jersey.

6 Q I have your report dated March 12,  
7 1979 in which you say it is least cost housing  
8 and zoning ordinance provisions.

9 A That's correct.

10 Q And will that then be the limits of  
11 your testimony?

12 A With modest additions such as, for example,  
13 the supplement dealing with site visits and the  
14 like. But any additional work that may be done  
15 will be clearly in the context of least cost  
16 housing and zoning analysis.

17 Q We do not have to be concerned about  
18 the C.D.A. report? A That's correct.

19 Q Or fair share or any of the other  
20 factors that are involved?

21 A That's correct.

22 Q Okay. Very good. Well, now, how  
23 familiar are you with Morris Township?

24 A I would say moderately familiar.

25 Q Well, what do you mean by moderately

1 familiar? A Well, aside from  
2 having driven through parts of the township on  
3 various occasions during the past couple of months  
4 in preparation for the trial, I have paid two  
5 separate visits to different parts of the township.

6 Q Could you give me the dates, please?

7 A Well, the second date was April 4, 1979.  
8 I believe the first date was March 6, 1979.

9 Q Well, was it or wasn't it? Not  
10 whether you believe it was, but was it or wasn't  
11 it?

12 A When I checked my record, my  
13 calendar, working backwards, it was not 100 per-  
14 cent explicit on that point, but I'm reasonably  
15 certain it was.

16 Q So you made two visits to Morris  
17 Township? A That's correct.

18 Q And what was the duration of those  
19 visits? A Well, they were in

20 different pieces, but altogether I would say in  
21 the two days, I may have spent perhaps three or  
22 four hours--No, I think that's excessive--two to  
23 three hours in Morris Township.

24 Q And how many hours did you spend on  
25 April 4, '79? A I guess about

an hour.

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

1 Q One hour. And how many other towns  
2 did you visit on April 4th?

3 A Let's see. I believe six.

4 Q All right. And how did you visit  
5 the township? A Okay. This is  
6 specifically with regard to the April 4th visit  
7 or generally?

8 Q Yes, okay.

9 A The purpose--

10 Q No, I did not ask you the purpose.  
11 I said how did you make the visit, by airplane,  
12 by automobile? A By automobile.

13 Q Your automobile, somebody else's  
14 automobile? A This was Mr. Bisgaier's  
15 automobile, to be specific.

16 Q Okay.

17 MR. BUCHSBAUM: Excuse me. When you  
18 say a certain number of townships you  
19 visited, you are referring to a number of  
20 towns listed on the report?

21 THE WITNESS: That's correct. This  
22 is the towns in--

23 MR. MILLS: Yeah, I assume that that  
24 is what we were talking about.

25 MR. BUCHSBAUM: Okay.

1 Q Now, explain how you did this by car.

2 A On both occasions, which were both by car,  
3 we attempted to look at the different sites that  
4 appeared on the zoning map as having been zoned  
5 for one or another multi-family use and by so  
6 doing, this took us to a variety of different  
7 parts of the township.

8 Q And you are willing to say that in  
9 one hour you looked at all of those sites that are  
10 zoned in Morris Township?

11 A No, we spent--We looked at some of them on  
12 the first visit, some of them on the second visit.  
13 And I believe there may be one site--one or two  
14 sites that we still have not visited, but that I  
15 will.

16 Q Well, would you say that that one  
17 hour visit on April the 4th which then leaves us  
18 possibly two hours on March 6th, was enough to  
19 familiarize yourself with Morris Township's area  
20 and Morris Township's zoning?

21 A As I say, with the exception of one or two  
22 sites that we have yet to visit, I would say for  
23 the purposes of my work, yes.

24 Q Well now, you qualify it for the  
25 purposes of your work. What is the purposes of



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your work? A Well, to paraphrase what I said to Mr.--I forget his name.

MR. BUCHSBAUM: Mr. Murphy?

THE WITNESS: Mr. Murphy.

A The--

Q Well, let us not go back on testimony to somebody else.

A Well, when it's a repetitive question--No, let me explain.

The purpose of my analysis of the zoning ordinance out at the sites was in the context of the provision of the municipality for least cost housing and so it's in that context that I believe that my survey was adequate, again with the exception previously noted.

Q And what are they?

A That there are either one or two sites remaining to be visited.

Q And did you look at all the zones did you say? A No.

Q Did you not look at all the zones?

A I stated that I looked at those zones in which provision for multi-family housing is made in the language of the ordinance.

Q And could you tell me what zones

1 they are-- A These include--

2 Q --by reference to the zoning map of  
3 the Township of Morris?

4 A These include four zones: the GR-5 zone,  
5 the SC zone, the TH-6 zone and the TH-8 zone.

6 Q All right. So you say you visited  
7 the four zones? A Yes.

8 Q The GR-5, the SC, the TH-6 and the  
9 TH-8? A Yes.

10 Q Why did you not look at the RA-7,  
11 which is single-family detached residences and  
12 the B-7, which is single-family detached residences?

13 A Well, these are not multi-family zones, nor  
14 are they least cost single-family zones.

15 Q Well, have you not said previously  
16 in your report that 50-by-100 lots would be in  
17 your opinion part of least cost housing?

18 A That's correct.

19 Q And don't those two zones that I  
20 just mentioned provide for that?

21 A No.

22 Q And do any of those two zones I just  
23 mentioned provide for two-family residential use?

24 A Yes.

25 Q Which one?

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A The RB-7 zone.

Q But you still did not look at it?

A That's correct.

Q And for what reason?

A That it did not provide for that use under least cost standards.

Q Specifically in what respect?

A The lot size requirement.

Q Well, what lot size are you now referring to?

A I'm referring

to 10,000 square feet.

Q So that you are saying then that in your opinion a two-family house zone of 10,000 square feet with 70-foot frontage is not least cost housing?

A That's correct.

Q Okay. Now, let's go specifically then to Morris Township, now, as a whole in relationship to its least cost housing. Are you saying that Morris Township does not provide for least cost housing?

A I am saying that--I believe that Morris County provides for very little, if any, least cost housing.

Q I think you mean Morris Township when you said Morris County?

1 A Morris Township. The same is true of the  
2 county, but that's beside the point.

3 Q You do not consider that the garden  
4 apartments in the township and the townhouse zone  
5 and the-- A I think they have to  
6 be treated separately.

7 Q Excuse me. --and the two-family  
8 house zone and the small single-family lot zones  
9 do not provide any least cost housing?

10 A Well, I said very little, if any.

11 Q Very little, if any?

12 A Yes, I did not say that none of them  
13 provided any least cost housing.

14 Q Do you have any idea of how much  
15 acreage is involved in those particular zones?

16 A In some of them, yes.

17 Q All right. Recite which ones.

18 A Okay. With regard to the senior citizens'  
19 zone, the SC zone, there is one tract of land that  
20 contains, and this is not based on a precise  
21 measurement, but an approximate one, roughly six  
22 acres. There are three sites zoned for townhouses,  
23 either TH-6 or TH-8, which total some 30 to 35  
24 acres. Of these, I inspected two. There are to  
25 the best of my knowledge no sites zoned and

1 available for development in the garden apartment  
2 zone.

3 Q All right. Now, in your statement  
4 that Morris Township does not provide for least  
5 cost housing, then you are saying what is already  
6 built in Morris Township in a way that could  
7 qualify for least cost housing does not count on  
8 Morris Township's quota for least cost housing?

9 A The point of my answer when I said that  
10 Morris County--

11 Q Morris Township.

12 A --Morris Township, I'm sorry, at present  
13 does not provide is regarding what opportunity  
14 for present and future development exists under  
15 the zoning ordinance and the zoning map as they  
16 are presently constituted.

17 Q So that you give no credit whatso-  
18 ever to what has already been supplied in the way  
19 of least cost housing in Morris Township?

20 A I am not familiar with whether any of the  
21 housing in Morris Township is least cost.

22 Q Well, if not, then in view of the  
23 fact that your one-hour visit on April 4th and  
24 apparently two hours on March the 6th, do you  
25 think that then that qualifies you to then make

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of whether the zoning provides for it?

MR. BUCHSBAUM: Before you answer, we are and have provided--

MR. MILLS: Wait. Hold it. You cannot testify.

MR. BUCHSBAUM: I am not testifying.

MR. MILLS: Are you objecting to the question?

MR. BUCHSBAUM: I am just trying to put the question in context, which is that we have provided data concerning each of the townships in Morris County which we will rely on at trial. And also in terms of the fair share issues which I think you are getting at, Miss Brooks will be the prime witness.

MR. MILLS: Oh, I understood that in the beginning, in my questions. I am just concerned now as to what Mr. Mallach's thought is as to how much should be supplied by Morris Township.

Q All right. But understanding that then at the moment, Mr. Mallach, do you have any idea how much vacant land is available in Morris Township?

A I have relied on the

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I believe generally speaking the people involved in that study are competent professionals and that sort of thing and as professionals employed by a reputable State agency, I believe it's likely to be reasonably accurate.

Q But you have no idea at all as to its accuracy? A Not from personal knowledge.

Q Okay. Of the vacant land, do you know how much of that vacant land is available for development? A The study excluded--

Q No, forget about the study. I am asking you. Do you know?

A Exactly what do you mean by available I guess is my question.

Q Well, I think you perfectly well understand that there can be vacant land in a municipality, but that some of the land may be taken up by other governmental uses. I probably

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... say, from the figures. You mean  
the figure in the D.C.A. report?  
A That's correct.  
Q Okay. But you have no idea your-  
self? A From personal investigation?  
Q Yes. A No.  
Q All right. And then following that,  
if there is any vacant land available for develop-  
ment, you have no idea where it is either; do you?  
A That's correct.  
Q And again assuming that there is  
vacant land available for development, you do not  
even then know whether or not the land would be  
buildable; do you?  
A Well, again the two principal criteria  
dealing with that fact have already been taken  
into account and excluded from the total in the  
D.C.A. study.  
Q Well, again you keep referring to  
the D.C.A. study. And I am asking you as a



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It has been my understanding throughout my professional career and with every other professional with which I dealt that standard references from established governmental sources, whether they be the United States Census or others, can be relied upon. If I want to know the population of Morris County or Morris Township or New York City, I refer to the U.S. Census. I do not go out and count heads. So that--This whole point has to be understood in that context.

Q So that you rely then completely upon the D.C.A. study?

A For that specific item of information.

Q Well, I think we had several specific items; did we not?

A No, we did not.

Q The amount of vacant land, the amount of vacant land which is available and the amount of vacant land that is available if it is

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all lands with steep slopes, all lands in flood-  
plains and all lands in farmland had been excluded  
from the total.

Q All right. And you would then  
reach different conclusions if it subsequently  
were proved that the D.C.A. report was inaccurate  
or incorrect in those areas?

A Different conclusions in what regard?

Q Well, in regard to what we were  
talking about as to how much vacant land is avail-  
able, how much vacant land is buildable.

A Well, obviously those numbers change over  
time.

Q All right. Now, I am now referring  
to your report of March the 12th. Unfortunately,  
the pages were not numbered, so I numbered them  
myself. I did not number the title page, but then  
I started with the first page so that we can find  
ourselves quickly here. Okay?

So going to the first page in your report,  
okay, you state there that housing standards

higher than ten  
8 units to the acre and that certainly many of the  
9 kinds of land use provisions that would be possible  
10 at ten units to the acre are not perhaps strictly  
11 speaking required.

12 And, in fact, for example, if you talk  
13 about something like front yards on townhouses,  
14 now, clearly from a standpoint of health, safety,  
15 welfare and so on, there is no inherent need for a  
16 setback from, say, the sidewalk to the townhouse  
17 unit of more than three or four feet involved with  
18 a short flight of stairs or the like. On the other  
19 hand, in deference to what one might consider  
20 suburban character, the standards that I have  
21 provided here would make possible a setback of as  
22 much as 25 feet from the sidewalk to the front door  
23 of a townhouse.

24 Q All right. Now, sticking then for  
25 the moment with townhouses, I think in your report,

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Q Where do you get that standard from?

A Which standard?

Q That we just talked about, the ten dwelling units per acre.

A That standard was based on an analysis of the functional requirements of a townhouse site. In other words, if you are going to build townhouses, you have to provide land for the townhouses themselves, for the front yards or setbacks, rather, for rear yards for the use of homeowners, for adequate parking and for modest buffers and, if possible, a small passive open area. The--

Q What do you mean? Excuse me. I thought you were finished.

A These uses can be easily accommodated in a development that provides a density of ten units to the acre.

Q But in your response, you just said

1 small open spaces if possible. Doesn't that run  
2 contradictory to what you just said? First you  
3 say that you can do it and now in your answer you  
4 say if possible?

5 A Well, the point is open spaces in a town-  
6 house unit is not essential since each individual  
7 townhouse is provided with a yard that provides  
8 open space for the individual family and since  
9 one assumes that an enlightened municipality will  
10 provide such park and recreational facilities as  
11 is generally considered the obligation of a  
12 municipality.

13 However, if the configuration of the land  
14 so permits and if it can be done economically, I  
15 believe it is a good feature of such development  
16 to provide a small open area which can be a sit-  
17 ting area where people in the development can  
18 gather, which can provide common space for infant  
19 play and things of that sort.

20 Q And this can all be done on the ten  
21 dwelling units per acre?

22 A Yes.

23 Q But then you said if not, then you  
24 think that the municipality should supply that  
25 recreational area and the sitting area you are

1 Q And how do they do that?

2 A By increasing the cost of the units.

3 Q All right.

A. Mallach - cross 22

1 speaking of? A I don't think that's  
2 a matter of "if not." I think whatever a developer  
3 may be doing on a site, a municipality I believe  
4 it is generally accepted should provide recreation-  
5 al facilities for the residents of the community.

6 Q You are a housing expert as we  
7 established in the beginning. Have you ever  
8 designed a townhouse development with ten dwelling  
9 units per acre? A I'm not an  
10 architect.

11 Q Okay. Have you ever laid one out,  
12 let's say, not as an architect, but--

13 A I've laid one out for hypothetical purposes.

14 Q Only for hypothetical. Have you  
15 ever supervised the building of one?

16 A I have not.

17 Q You have not. Okay. All right.

18 Okay. Mr. Mallach, at Page 4 of your report,  
19 I guess the only way I can reference it would be  
20 Paragraph A in brackets, (Subparagraph 2). In  
21 talking about cost-generating features, you say  
22 there that requirements designed to meet visual,  
23 aesthetic goals. These include such requirements  
24 as, and you have listed them there, work against

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... or least cost housing need not  
be attractive or that aesthetics need not be  
considered-- A On the contrary.

Q Hold it--on the part of the overall  
housing of the municipality?

A On the contrary. What I'm saying is that  
these standards, these zig-zag and these no-look  
alike standards, have no meaningful relationship  
to aesthetics in any serious way. They are  
arbitrary.

They are based on a judgment as to--an  
aesthetic judgment that is certainly not any kind  
of informed consensus. And they do not in them-  
selves provide beauty and their absence would not  
preclude beauty.

These are no more firmly grounded in any  
sound aesthetic standards than would be an  
ordinance provision that would require a ten-foot  
high Greek god marble statue to be located in the  
center of the front yard of every house in the

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grounded than these standards in aesthetic principles.

Q So that you feel then and this, of course, is your personal opinion, that aesthetic goals are not required at all then in low or least cost housing? A No.

MR. BUCHSBAUM: He did not say that.

I will let the witness answer. He remembers his testimony.

A I did not say that. I believe that aesthetic goals are as important in least cost housing as any other type of housing. I simply state for the third time I believe that these standards do not promote aesthetic goals in any meaningful sense.

Q Okay. What aesthetic standards then or goals do you recommend in least cost housing?

A Unfortunately, no one has yet been able to come up with a meaningful aesthetic standard in a



7 others is the quality of the architect who designs  
8 it. And I know no way to impose that in the  
9 zoning ordinance.

10 Q Well, what does he design in it then  
11 to solve this question of aesthetics?

12 A He creates a beautiful design based on his  
13 training, talent, competence and experience and  
14 sensitivity.

15 Q Which according to you does not  
16 include any zig-zag standards or any setbacks or  
17 any look-alike standards or any requirements for  
18 open space? Is that so?

19 A No, again you are missing the point. The  
20 point is that if an architect, a talented archi-  
21 tect, sits down and designs a building, depending  
22 on the site, depending on the nature of the use,  
23 depending on a whole variety of factors that may  
24 include a variation in the setbacks if it's such,  
25 then again it may not. In other words, this is a

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understanding that this deposition was for the purpose of the mini-trial and specific comments with respect to Morris Township.

MR. MILLS: Well, I think these things--

MR. BUCHSBAUM: I do not know that I would cut you off, but I would certainly appreciate it if you would direct the questions to--

MR. MILLS: I do not think you would

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specific aesthetic judgment that's based in the context of a specific design for a specific site requiring an architect or a builder or an engineer to have a certain variation in setback every number of. That does not in itself make the design better or worse.

The same is true in a subdivision or town-house development where there are ordinance requirements that the unit shows significant variation from one another in doors, windows, facades, the like. A well-designed development may have such variations. Then again, it may not.

Some of the most awful developments that have come into being in my experience have been those where bad architecture combined with no-look-alike requirements has resulted in a develop-

... on page 5 of your report, again

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Paragraph 3, under these cost-generating features you say, "Requirements designed to displace cost onto developers and by extension residents of new housing are cost-generating factors." Is that right?

A That's correct.

Q Okay. And just specifically what are they? I mean those things, the way you state it there is very general. What are you talking about?

A Well, in the first case, this deals very specifically as noted in the report with the discussion in the Madison case about the site improvement costs and in that example, the observation of the Madison Court that the P.U.D. sites in Madison Township appeared to have been selected with an eye towards forcing the developers to bear the burden of expanding infrastructure for the benefit of the community

1 as a whole.

2 The second category is I believe also  
3 straightforward. Many municipalities have,  
4 particularly when dealing with large-scale develop-  
5 ers, imposed requirements whereby the development  
6 must take responsibility for a variety of services  
7 that are customarily the purview of municipal  
8 governments. These add costs specifically onto  
9 the development.

10 Q Okay. Morris Township does not do  
11 that in its zoning ordinance; does it?

12 A Not to my recollection.

13 Q Well, does it or doesn't it? You  
14 studied the township ordinance.

15 A Well, I believe the answer not to my  
16 recollection is fairly clear.

17 Q Okay. So that does not then apply  
18 to Morris Township then. So then the first ele-  
19 ments there, the facility improvements, are you  
20 stating then that the developer of least cost  
21 housing should not be required to make any of  
22 these on-site improvements?

23 A On-site improvements are generally made by  
24 a developer, certainly.

25 Q Well, you say then that they

well--

8 Q How about streets on which the  
9 property fronts, if there is no street there?

10 A How can the property front on a street if  
11 there is no street there?

12 MR. BUCHSBAUM: Could we go off the  
13 record for a second?

14 (The last question and answer are  
15 read.)

16 (A discussion is held off the  
17 record.)

18 (The luncheon recess is taken.)

19 Q Well, we are back on the record.  
20 And I had asked you a question which you objected  
21 to which I think rightfully so in that I did not  
22 make myself clear in that we were talking about  
23 infrastructure or facility improvements and we  
24 are talking about streets. And I think I said  
25 what if the development was not on a street.

1       What I meant was if it is not on a regular,  
2       improved street such as a paved street, would you  
3       not feel then that that requirement should be  
4       placed upon the developer of low cost housing?

5       A       Okay. It's a question of degree. This  
6       goes back to another issue where I believe in the  
7       general deposition I said in looking at sites,  
8       trying to decide which are the best sites for  
9       least cost housing, clearly the sites that are  
10      most accessible to things like streets, sewer,  
11      water and so on are preferable. So the difference  
12      would be if it's a matter of running a couple of  
13      hundred feet to provide frontage or to provide  
14      access to a major kind of road, that's a reason-  
15      able kind of expenditure. If it's a matter of,  
16      say, a quarter of a mile, then it's a highly  
17      debatable proposition. And I would not venture  
18      to suggest exactly where the break point between  
19      them would be.

20               Q       If, let's say, it does become a  
21      matter of a quarter of a mile, what then?

22      A       Well, then it goes back to looking at the  
23      overall zoning. If a municipality, for example,  
24      has zoned purportedly to provide least cost hous-  
25      ing and when one looks at the sites, one finds

1 that they are remote from existing roads and yet  
2 there is land that is not so remote from existing  
3 roads, that really raises a question of what the  
4 zoning is doing. This is the point of the Court  
5 in Madison, where the Town had placed in that case  
6 P.U.D. zones.

7 Q And what if there is no other land  
8 available? Then what?

9 A Then, of course, one does the best one can.

10 Q Okay. So in that case, where it is  
11 a matter of necessity, then you do not consider it  
12 a cost-generating provision?

13 A That's correct, when there is literally no  
14 alternative.

15 Q Right. Where in Morris Township's  
16 ordinances are there any of these cost-generating  
17 provisions that we are talking about?

18 A That one I am not familiar with any such--

19 Q If I told you there was no such  
20 provision, would you agree with that?

21 A I have no reason not to.

22 Q Okay. And I presume that the same  
23 thing we are talking about as far as streets are  
24 concerned would apply also to water and sewer?

25 A Yes.

1 Q And you would adopt that same, let's  
2 say, perhaps a quarter of a mile basis?

3 A I wouldn't want to suggest, you know, a  
4 specific amount. I was just giving that for  
5 hypothetical purposes.

6 Q Okay. Well, do you think then if  
7 it is beyond a quarter of a mile, that the  
8 municipality should then bear the cost of a new  
9 street and water and sewer?

10 A Well, from a practical standpoint, there  
11 is a standard of sorts provided in the Land Use  
12 Law which is embodied in some zoning ordinances  
13 dealing with the pro rata sharing of such off-site  
14 improvement costs, which is often applicable to  
15 such situations.

16 Q Well, would you say the same bear-  
17 ing then of off-site improvement costs should  
18 apply equally to regular housing developments as  
19 well as low cost, least cost housing?

20 A It's a grey area. I would think, for  
21 example, that if you had a municipality that  
22 literally had no developable sites, that could  
23 not be developed for least cost housing or pre-  
24 sumably, for that matter, for anything else with-  
25 out requiring major infrastructure costs and, as



1 is likely, those infrastructure costs benefitted  
2 other developers, other landowners and so on in  
3 addition to the specific owner trying to build a  
4 least cost housing development, then under such a  
5 circumstance, a municipality that was actively  
6 interested in encouraging least cost housing  
7 ought to consider picking up itself that pro rata  
8 share of the extension that was attributable to  
9 the least cost housing.

10 Q And what if it did not benefit other  
11 housing or other properties?

12 A Well, it should still consider it. Obvious-  
13 ly, how realistic it would be would be a matter of  
14 how much money it would be.

15 Q And if the municipality did do that  
16 for the low cost, wouldn't that then be discrimi-  
17 nation? A No.

18 Q No. You feel a municipality could  
19 spend public funds to extend these facilities to  
20 the low or least cost housing and not have to do  
21 the same thing for normal housing developments?

22 A I think again without presuming to be a  
23 lawyer, I think there is an abundant basis for  
24 the use of public funds for support of low and  
25 moderate income housing on the basis that it is

1 clearly a public purpose and--and of public value  
2 to the community.

3 Q Do you know of any such law?

4 A Well, for example, the Community Develop-  
5 ment--

6 Q No, that is not the question. Do  
7 you know of any such law?

8 A I am citing a law. Bear with me. Don't  
9 interrupt.

10 The Housing and Community Development Act  
11 of 1974 which deals with the expenditure of in  
12 this case federal funds explicitly requires that  
13 the funds be used principally to benefit the  
14 housing and living conditions of low and moderate  
15 income families and establishes a series of tests  
16 which are embodied in H.U.D. regulations to ensure  
17 that the funds are used towards that end. This  
18 is a program which is, as I am sure you are  
19 familiar, Morris County and through the County, a  
20 number of County municipalities participate in.

21 Q And that is all very well and good  
22 for federal funds. But what if there is no such  
23 program?

24 A Well, the point is not  
25 whether there is a program or not. The point is  
whether it is legal to expend funds for the

1 principal--principally to benefit low and moderate  
2 income housing and by extension low and moderate  
3 income people. And I think it's a reasonable  
4 assumption that if it's legal to spend federal  
5 funds for that purpose, it is legal to spend funds  
6 from other levels of government. And again I'm  
7 not portending to give a definitive legal opinion  
8 here, but it seems to be a basis.

9 Q Also under the cost-generating  
10 features on Page 4 in Paragraph A-1, you state  
11 the requirements here which you say are designed  
12 to enhance house value such as basements rather  
13 than slabs and extensive parking spaces.

14 MR. BUCHSBAUM: Which page are you  
15 on? There is a number on top.

16 MR. MILLS: Okay.

17 A You are referring to Page 2 in my numbering  
18 at this point. Is that correct?

19 A I guess I did not see those pages up there.  
20 Okay. A Yes, yes, the general section  
21 is numbered, even though the individual municipal  
22 ones are not.

23 Q Page 2? A Yes,  
24 that's correct.

25 Q Now, does Morris Township require

1 basements rather than slabs?

2 A Not to my recollection.

3 Q Does Morris Township require  
4 excessive parking spaces? A Yes.

5 Q Morris Township requires excessive  
6 parking spaces? A Yes.

7 Q How many do they require?

8 A Two per unit.

9 Q Isn't that what you recommended,  
10 two per unit? A No, it is not.

11 Q How many do you recommend?

12 A As I stated, I suggest that 1.5 for garden  
13 apartments and 1.8 for townhouses are adequate.

14 Q And what about single-family?

15 A Two in that case.

16 Q Two for single-families?

17 A That's correct.

18 Q So Morris Township is in line as  
19 far as single-families is concerned. All right.  
20 And does Morris Township have a requirement that  
21 they have enclosed garages?

22 A No.

23 Q Okay. And does Morris Township  
24 require more open space dedication than bears a  
25 reasonable relationship to the needs of the

1 occupants? A In the townhouse zone,  
2 yes.

3 Q To what extent?

4 A It requires that 25 percent of the site of  
5 a townhouse development must be dedicated for open  
6 space.

7 Q And what would be your recommenda-  
8 tion? A Well, again as I stated

9 before the lunch recess, within a townhouse develop-  
10 ment, strictly speaking, there is no need for  
11 dedicated open space. If one felt it was impor-  
12 tant, certainly no more than ten percent.

13 Q And I cannot find the page, but I  
14 thought that in your report you stated that 20  
15 percent was--

16 A I suggested as  
17 a general standard 20 percent, but that is with  
18 particular reference to garden apartments.

19 Q So Morris Township is not that far  
20 off. And what--

21 MR. BUCHSBAUM: Is that a question?

22 MR. MILLS: Yes, okay.

23 Q Answer it. Is Morris Township that  
24 far off? Put it that way.

25 A That's not quite as simple or entertaining  
as all that. I mean the point is obviously at

1 some point one has to draw a standard. And again  
2 as I stressed, the standards that I'm recommending  
3 in my report here are not absolute minimum  
4 standards. So you can say if it's a little worse,  
5 if it's a little more than, that it's not that  
6 far off.

7 The point is these points have been drawn  
8 well down the line as it were, so the difference  
9 between 20 percent and 25 percent is potentially  
10 significant. because the 20 percent is already, as  
11 I've said, more than strictly speaking required.

12 Q What are the standards that you have  
13 reference to? What is the basis for those  
14 standards? A The basis for these

15 standards is a very extensive or varied number of  
16 sources and practical experience dealing with  
17 different aspects of living in these units. The  
18 point is and the point that I'm trying to stress  
19 throughout this is when you are looking for  
20 standards and you are trying to go about this in a  
21 rational fashion, you don't pick numbers out of a  
22 hat and say 25 or 20 percent or whatever. You  
23 look at what a unit, a yard, a housing site, a  
24 what-have-you has to do in terms of providing  
25 adequate, sound living conditions for its

1 residents and then work backwards from that to  
2 looking at questions of numbers. So there are  
3 very few firmly-grounded absolute numbers in this  
4 business.

5 Q But you just came out with some  
6 numbers? A That's correct.

7 Q And we were discussing this--

8 A Yes.

9 Q --about excessive parking spaces.  
10 And where did you get those numbers?

11 A Okay, those numbers--And I believe if you  
12 look at the Common Defense transcript you will  
13 find some specific source references for those,  
14 but these are based on literature and available  
15 information about the number of cars that people  
16 living in different kinds of units, different  
17 sizes of units, are likely to have, making some  
18 allowance for additional space for visitors and  
19 service vehicles.

20 Q Well, then you have no quoted source  
21 for this. Is that right? I mean it is something  
22 you have-- A You will find in the  
23 transcript the specific quoted sources.

24 Q Supposing you give this to me?

25 A The two sources that are referenced for

1 this purpose include the volume entitled Planning  
2 and Design Criteria which is by DeChiara and  
3 Koppleman; and a New Jersey source entitled, if  
4 memory serves, Site Plan Review Guide or something  
5 to that effect.

6 Q And who put out this New Jersey  
7 Site Plan Review Guide?

8 A The New Jersey Department of Community  
9 Affairs.

10 Q Now, along the line here, you also  
11 recommended H.U.D. minimum property standards be  
12 applicable? A That's correct.

13 Q And these other guides that you  
14 mention, are they in conflict with the H.U.D.  
15 minimum property standard?

16 A No.

17 Q And aren't the H.U.D. standards  
18 nationally established? A Yes.

19 Q But earlier in your report, you  
20 recommended that supposedly, you know, the require-  
21 ments here be sensitive to the local inhabitants  
22 in the area in which, you know, these units are  
23 to be constructed?

24 A Yes.

25 Q Would not then there be some



1 deviation from these minimum standards because of  
2 that? A No, the local inhabitants of  
3 Morris County are not different in those regards  
4 from the local inhabitants of any part, for all  
5 practical purposes, of the United States in  
6 reference to same size. They eat and sleep in  
7 roughly the same fashion.

8 Q Well, then your statement then--  
9 Let me see if I can find it. I am quoting what  
10 should have been Page 1, but is not numbered, the  
11 first unnumbered page of your report where you  
12 say, in essence, recognizing that housing standards  
13 contain a strong cultural element, we have  
14 attempted to frame those presented here with at  
15 least some sensitivity to the suburban orientation  
16 of the communities to which it is addressed.  
17 That statement then makes no sense in view of  
18 what you said?

19 MR. BUCHSBAUM: Maybe I can put this  
20 in context because the particular subject  
21 of the H.U.D. standards is minimum square  
22 footage. And maybe Mr. Mallach can clarify  
23 this. As I read his report on Morris  
24 County, there was no standard for that  
25 particular characteristic in Morris

1 Township.

2 MR. MILLS: I appreciate your  
3 willingness to testify here, but I think  
4 you completely miss the point also. And  
5 if it is going to take all afternoon, we  
6 will get back to it.

7 MR. BUCHSBAUM: I object to that  
8 remark for the record.

9 A The cultural standards that I referred to  
10 and that I have already explained deal with a  
11 choice within density ranges of lower minimum  
12 densities and more liberal standards than might  
13 strictly speaking be required in terms of certain  
14 questions of density and land use. In the case  
15 of the floor area requirements of H.U.D. that  
16 are recommended here, I see no relationship  
17 between that and any plausible cultural variations.

18 Q Okay. Okay. Now, turning to your  
19 Page 4, you are suggesting, and I guess it is the  
20 bottom paragraph, you are suggesting that one  
21 acre recreational space could be created for  
22 every 40 to 45 units, common amount suitable for  
23 small child's play activities. And you are talk-  
24 ing about this under standards for detached  
25 single-family houses. Where did that standard

1 how you arrived at that 1.8 parking spaces. And  
2 then in townhouses, I believe you recommend 1.5--

3 A In garden apartments.

4 Q In garden apartments, yes, I am  
5 sorry. And I am wondering, in making that  
6 recommendation, did you take into consideration  
7 that in an area like Morris Township which we are  
8 talking about now, which is a suburban area, the  
9 fact that if both parents are working that live  
10 in that housing unit, that two cars would be  
11 required, one for the parent that has to commute  
12 to a job someplace and another for the other  
13 parent who may be working someplace else or ---

1 come from? A This is not being  
2 proposed here as an explicit standard.. I'm not  
3 advising that a municipality adopt an ordinance  
4 that one acre of small child play space be created  
5 for every 40 to 45 small lot units. I'm merely  
6 suggesting that this is an approach that could be  
7 taken towards creating additional open space  
8 while maintaining least cost standards in lot size  
9 and frontage.

10 Q Well, isn't this recommendation  
11 considerably below that recommended by the  
12 National Recreation Association?

13 A This is not a recommendation for the total

1 have the same number of cars as families of  
2 similar size and economic level living in other  
3 communities.

4 Q And you have given that deep  
5 consideration? A Yes.

6 Q And you are aware of the fact that  
7 there is no public transportation in Morris  
8 Township? A If memory serves,  
9 there is public transportation in a number of  
10 locations in Morris Township. You should be more  
11 informed.

12 Q Yes, there is a railroad at Convent  
13 Station. A There are also a num-  
14 ber of bus routes through town.

15 Q The bus routes are on Madison  
16 Avenue I believe. But are you aware of the fact  
17 that if you live, say, in the western section of  
18 Morris Township, you are four to five miles away  
19 from those places?

20 A Well, actually that is the case at the  
21 moment. The County is proposing a bus route  
22 along Route 24. And if there were intensive  
23 development of multi-family housing in that area,  
24 I don't doubt that that proposal would be imple-  
25 mented in short order.

1 Q But that does not exist; right?

2 And you still-- A Well, there  
3 are two answers to the question. First, where  
4 there is a reasonable prospect of providing pub-  
5 lic transportation, it can be provided. One of  
6 the advantages of a bus route over a train, for  
7 example, is that there is a great deal of flex-  
8 ibility in the planning process, especially as is  
9 the case in Morris County where you have a county  
10 that is taking an active role in providing and  
11 extending public transportation services. The  
12 second point is in the final analysis, the like-  
13 lihood of representative families of a given  
14 size and a given economic level of having a given  
15 number of cars is independent of, to a large  
16 degree, the availability of public transportation.

17 Now, one might be able to argue that if  
18 there is no public transportation and no prospect  
19 of there being public transportation, it's un-  
20 fortunate that such families do not have more  
21 cars. But that is another matter.

22 Q And if the public transportation  
23 never gets built, what happens then?

24 A You don't have to build public transportation.

25 Q All right. Supplied, if you wish

1 to argue. A I am still saying that  
2 is in the final analysis an irrelevant considera-  
3 tion, how many cars a family is likely to have.  
4 Now, again holding family size and economic level  
5 reasonably constant, I mean again the point is  
6 you can say that it should not be, but it is.

7 Q I do not understand that, you see,  
8 it should not be, but it is.

9 A Whether a given family holding economic  
10 level and size constant is likely to have one or  
11 two cars or three or four is not dependent upon  
12 whether there is public transportation in the area.

13 Q Yes, but we are talking about the  
14 reverse, where there is not public transportation,  
15 they need those cars.

16 A Not necessarily.

17 Q Not necessarily, okay. So then when  
18 I give you the proposition that if the party  
19 commutes by the railroad and has to go to Convent  
20 Station and lives in the western part of Morris  
21 Township, that he would then walk five miles to  
22 get to that railroad station? Is that what you  
23 are saying? A Obviously that would

24 vary with the individual.

25 Q Okay. Okay. On Page 6, your Page

1 6, now, under F, Standards for Senior Citizens'  
2 Housing, you make the statement there that, quote,  
3 "There is no particular justification to single  
4 out zones for senior citizen housing." Why do you  
5 make that statement?

6 A Because if a site is suitable for senior  
7 citizen housing, it will almost invariably be  
8 suitable for high-density housing for non-senior  
9 citizens.

10 Q But don't you think this runs some-  
11 what contrary to our again Municipal Land Use  
12 Law which states that the municipality can zone  
13 to encourage senior citizen housing?

14 A If you will read the rest of that sentence,  
15 and I forget the exact phrasing, at standards and  
16 densities consistent with other housing. That  
17 particular phrase could hardly be quoted in con-  
18 tradiction to this statement.

19 Q Well, then if you do not have a  
20 senior citizen housing zone, how do you guarantee  
21 that it is going to be built for senior citizen  
22 housing?

23 A Actually, it's sort  
24 of ironic that you should ask such a question  
25 because the problem has been the exact opposite,  
that because of municipal pressures, the only

1 subsidized housing that is being built in  
2 communities such as Morris Township is senior  
3 citizen housing. And the problem which has been  
4 commented upon by almost everybody concerned with  
5 low income housing needs is that no housing or  
6 virtually no housing for low income non-senior  
7 citizens is being built. I think it is quite  
8 safe to assume that given municipal preferences  
9 and given the political conditions of New Jersey,  
10 that the needs of senior citizens will still be  
11 met at least in proportion to their share of the  
12 total housing need.

13 Q I do not understand what you mean  
14 by that. Would you elaborate on that, please?

15 MR. BUCHSBAUM: Can you?

16 A Well, I thought it was more or less entire-  
17 ly self-explanatory, but I will try. What I'm  
18 saying is that if you create zones in which senior  
19 citizen and non-senior citizen housing can be  
20 built, there are many factors operating to ensure  
21 that at least a fair share of that, if I can  
22 slightly misuse that term, will be for senior  
23 citizens rather than exclusively for non-senior  
24 citizens.

25 Q But you cannot guarantee that that



1 would occur? A As much as anything  
2 in the field of housing, land use, can be guaran-  
3 teed, that can be.

4 Q Okay. Well, what difference does  
5 it make if you do zone separately for senior  
6 citizen housing? Why do you single that out and  
7 make the statement in your report there is no  
8 particular justification? What difference does  
9 it make if you do zone separately for senior  
10 citizens? A Because it has been

11 a common practice for many municipalities to zone  
12 for senior citizens as a way of singling out that  
13 need as one to be met and disregarding the other  
14 needs. Now, in the context of that entire section,  
15 Section F on Page 6, it's quite clear that my  
16 point is, first, that there is a need for senior  
17 citizen housing as part of the total and, secondly,  
18 that there are reasonable standards for that.

19 However, given the fact that zones suitable  
20 for senior citizen housing are also in the main  
21 suitable for non-senior citizen housing from a  
22 straight land use standpoint, there is rarely any  
23 basis for saying this zone should be purely for  
24 senior citizens.

25 Q Yeah, but what difference does it

1 make if you do have a separate zone for senior  
2 citizens? What is the difference?

3 A Well, leaving aside whether that can legal-  
4 ly be done under the Municipal Land Use Law, if  
5 a municipality has more than ample land zoned for  
6 other uses and has a--such as family low income  
7 housing, townhouses, garden apartments, small  
8 lot single-family units and the like, then from  
9 a practical standpoint it would probably not make  
10 a difference. However, from a standpoint of  
11 planning and housing standards, such a distinction  
12 is not rationally-grounded.

13 Q But then it is purely academic then  
14 because you just admitted it makes no difference?

15 A It's not purely academic. I'm saying there  
16 are circumstances under which it conceivably  
17 wouldn't make any difference, but again given  
18 practices that are common in municipal zoning, it  
19 could easily as is the case today in many munici-  
20 palities, make a difference.

21 Q Well, then couldn't you have the  
22 same comment to make then if you zone for a garden  
23 apartment zone and you zone for a townhouse zone?  
24 Aren't you doing the same thing?

25 A I would certainly argue that if you zone

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for multi-family, that such a zone again except for perhaps unusual circumstances, but as a general rule such a zone should provide either garden apartments or townhouses certainly.

Q And according to you, senior citizens?

A Yes.

Q But you do not make the comment as far as Morris Township is concerned where we have separate zones for townhouses--

MR. BUCHSBAUM: Wait a second.

What exact comment are you talking about here?

THE WITNESS: The first sentence after--

MR. BUCHSBAUM: No, no.

MR. MILLS: On Page 6 of Mr. Mallach's report, Paragraph F, under Standards for Senior Citizens' Housing, he made the comment, quote, "Generally speaking there is no particular justification to single out zones for senior citizen housing."

MR. BUCHSBAUM: What I am trying to understand is are you assuming garden apartment zoning necessarily excludes

1                    senior citizens?

2                    MR. MILLS: No, no, the question  
3                    was if he can make that statement under  
4                    Standards for Senior Citizens' Housing,  
5                    why does he not make the same under the  
6                    Standard for Townhouses and Standards for  
7                    Garden Apartments?

8                    A            I think it's self-evident. Again, senior  
9                    citizens, you are dealing with a population group.  
10                   And there is no rational basis here to single out  
11                   that such-and-such housing which may be of  
12                   physically different types should be occupied only  
13                   by a single population group. Townhouses and  
14                   garden apartments are uses that differ so that  
15                   even though I believe there is no particular  
16                   reason to distinguish, they're nonetheless separate  
17                   uses, so that it is a legitimate at least in  
18                   principle distinction to make.

19                   Q            On Page 10 of your report on the  
20                   fourth paragraph down, you are talking about  
21                   fixing the level of overzoning for least cost  
22                   housing. And you state that it must be done in  
23                   the context of market demand analysis for least  
24                   cost and other housing in the community. What  
25                   community are you talking about there?

1 A In the community, whichever community is  
2 analyzing precisely how much rezoning is appro-  
3 priate in its process of framing an ordinance  
4 that would meaningfully comply with the Madison  
5 and Mount Laurel standards.

6 Q Well, then in the case of Morris  
7 Township which we are talking about, you are  
8 talking about Morris Township then?

9 A Yes, that would be correct.

10 Q Then doesn't that conflict with the  
11 whole theory of the eight-county region which the  
12 Public Advocate has been stressing there?

13 A No.

14 Q We have then two different standards?

15 A No, the point here is, and this report  
16 provides a framework and as stated previously the  
17 framework makes clear that the general level of  
18 overzoning in the region should provide between  
19 three and five times the amount of land needed to  
20 meet the fair share. However, for a variety of  
21 reasons, there may be local variations in the  
22 pattern of land ownership, the pattern of housing  
23 demand and so on which would require either more  
24 or less overzoning in order for the fair share  
25 that is appropriate for that municipality to be

1 achieved. So that the exact amount of overzoning  
2 would take those factors into account. But over-  
3 all, it would fit within the regional context.

4 Q Where in your report do you recom-  
5 mend this three to five times the amount for over-  
6 zoning? A I do not know that it  
7 appears explicitly in the report.

8 Q Isn't it a fact that on Page 10 in  
9 the sixth paragraph which starts out with the  
10 figure one, you, in effect, are recommending 50  
11 percent overzoning? A No.

12 Q Well, what are you saying then in  
13 Paragraph 1 where you say, "Overzoning must make  
14 possible enough housing for families in need of  
15 least cost housing, recognizing that many units  
16 (generally around 50 percent) will not be occupied  
17 by such families."?

18 A Okay. What this means is that one of the  
19 reasons for overzoning taken in and of itself  
20 requires a factor of two-to-one. If you were  
21 merely overzoning just to deal with the fact that  
22 approximately half of the units that are likely  
23 to be built as least cost housing will not be  
24 occupied by the families in need, you would have  
25 to overzone by a factor of two-to-one. That would

1 assume that all of the land that you zoned for  
2 would be available, readily available on the mar-  
3 ket at a reasonable price and that all of the  
4 people buying that land would then proceed to  
5 build least cost housing on it.

6 So if you had a perfect housing market  
7 for least cost, which is an ideal state that  
8 clearly does not exist, you would have to zone  
9 by--overzone by a two-to-one factor simply to  
10 deal with that aspect of it. Now, given these  
11 imperfections in the housing market which I have  
12 discussed, my conclusion is that a reasonable  
13 range for where the zoning would likely to lie is  
14 three to five times the amount of land needed to  
15 satisfy the fair share. That, however, would  
16 vary somewhat from municipality to municipality  
17 based on the way the housing market works in that  
18 community.

19 Q Well, if I were to suggest to you  
20 that there is a greater demand for more expensive  
21 housing in Morris Township because of it being a  
22 very desirable community, would you then say that  
23 this overzoning would have to be increased beyond  
24 that three to five times?

25 A Quite possibly, yes.

1 not more so that anything less would have presum-  
2 ably less success in achieving least cost housing.

3 Q Well, other than overzoning, is  
4 there any way that a municipality can guarantee  
5 that least cost housing will be built?

6 A Well, in certain regards. for example

1 Q And what would the end result then  
2 be? A The end result would be that  
3 the Township would get some more expensive housing,  
4 multi-family, as well as some least cost housing.

5 Q And wouldn't the end result really  
6 be just to zone the remainder of the town for low  
7 cost housing? A I really can't  
8 say.

9 Q In this case, Morris Township, what  
10 if that much land is not available?

11 A You do what you can.

12 Q Now, do you have any proof of this  
13 point that we are talking about, that three to  
14 five times overzoning would actually make the land  
15 available to low cost housing and least cost hous-  
16 ing? A Again, this is not a

17 mathematical standard. The principles are estab-  
18 lished in the Madison decision. And the three  
19 to five times represents again a conservative  
20 effort to translate the principles that are clear-



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Q There are no community funds available in Morris County.

A Community development funds?

Q Yes, there are no community development funds available in Morris County for Morris Township.

A I--

MR. BUCHSBAUM: That is not a question. That is a statement. This counsel objects to it on that basis, but you can ask your questions.

MR. MILLS: He started to answer before I finished.

Q What I was stating was that there are no community development funds available for Morris Township. Given that fact, how else can Morris Township assist in this least cost housing?

MR. BUCHSBAUM: First off, you have noted our general reservation of rights for the record in terms of the record, but in this case, I am going to take the trouble to single out this question because it starts with an incorrect premise. You can answer that if you want.

A Okay. There are two or three answers to it. First, I am by no means as certain as

1 counsel, Mr. Mills, that there are indeed no  
2 community development funds being made available  
3 at present to Morris Township. Secondly, even  
4 assuming that's the case, community development  
5 funds are provided on an annual basis. And there  
6 is the opportunity to obtain funds next year, if  
7 not this year. Thirdly, even if the amount that's  
8 allocated to the County through which Morris  
9 Township would apply for its share is inadequate  
10 this year or next year, there are discretionary  
11 funds that are made available directly through  
12 H.U.D.

13 Indeed, since H.U.D. has a very strong  
14 policy concerned with the provision of low and  
15 moderate income housing, I believe if Morris  
16 Township were willing to undertake a bona fide  
17 commitment to use its resources, its good offices  
18 and so on affirmatively to encourage low and  
19 moderate income housing in the township, I  
20 believe that there would be very little difficulty  
21 in obtaining funds to at a minimum match costs  
22 with municipal funds and quite likely pay for the  
23 greater part if not the entirety of the special  
24 costs involved.

25 Q And you think that would be legal

1 to do that? A Certainly.

2 Q In Morris Township?

3 A Certainly.

4 Q Can you cite any legal authority  
5 for that?

6 MR. BUCHSBAUM: Well, you can answer  
7 if you can.

8 MR. MILLS: If he knows, he is mak-  
9 ing a statement that the municipality can  
10 use money to--

11 MR. BUCHSBAUM: We are talking about  
12 a matter that really should be in a brief.  
13 Your initial question started with that.  
14 And I do not want to see us get sidetracked  
15 into matters that we can brief at some  
16 point. The witness is testifying as to  
17 facts and expert opinions.

18 MR. MILLS: What are you saying?

19 MR. BUCHSBAUM: He can answer if he  
20 can.

21 MR. MILLS: Okay.

22 MR. BUCHSBAUM: I am not instructing  
23 him not to answer, but we are wasting time.  
24 That is what I am saying.

25 A I believe the authority can be found in

1 the Housing and Community Development Act of 1974  
2 and the accompanying federal regulations.

3 Q Now, supposing Morris Township does  
4 these things that you are talking about to  
5 encourage or assist in least cost housing and  
6 least cost housing becomes constructed. Is there  
7 any way that Morris Township can guarantee that  
8 the housing will be always available for low and  
9 moderate income people?

10 A Well, if the housing is constructed under  
11 a government subsidy program, the matter is not  
12 really a problem. For example, if you have a  
13 subsidized housing development constructed under  
14 the federal Section 8 Program, the commitment of  
15 subsidies to that development and the attendant  
16 control on the qualifications of who lives in  
17 that development can be made by H.U.D. for terms  
18 up to 40 years, which although it's not always,  
19 is as long a period as is relevant in this kind  
20 of situation.

21 When dealing with least cost housing that  
22 is not subsidized, in other words, that's built  
23 at moderate--built to sell or rent at moderate  
24 cost by private developers, the situation is more  
25 complicated. There is relatively little

1 experience with this matter. There are a number  
2 of approaches that have been discussed, but I'm  
3 not familiar with very much actual practical  
4 experience over the long haul.

5 Q Well, then you are saying it is your  
6 opinion that you see no way then that Morris  
7 Township could then ensure itself that if they  
8 did encourage and assist in--

9 MR. BUCHSBAUM: This is about the  
10 15th time that counsel has mischaracterized  
11 the previous statement of the witness.  
12 That is not what he said. He talked about  
13 subsidy programs.

14 I just wish counsel would not do  
15 this. The witness is quite capable of  
16 correcting counsel, but I do not see why  
17 we have to keep going through it.

18 A What I am saying now--

19 MR. MILLS: Hold everything now.  
20 Mr. Reporter, go back and read his answer.  
21 And I think you will find you are wrong,  
22 because he mentioned federal and H.U.D.  
23 first and then after that he said--

24 MR. BUCHSBAUM: Then you made a  
25 flat statement--

1 MR. MILLS: Then he mentioned  
2 unassisted. That is when I came in with  
3 my question. Can you read it back, please.

4 (A discussion is held off the  
5 record.)

6 A We are dealing with two types of least  
7 cost housing. With regard to housing that's  
8 built under a subsidy program, there is no  
9 problem with ensuring its continued occupancy to  
10 benefit lower income households. With regard to  
11 the second type, which deals with that that is  
12 not subsidized, there is--it is a more complicated  
13 issue.

14 There are techniques to ensure that at  
15 least some percentage of the units in a least cost  
16 development would be continually occupied by low-  
17 er income households. However, as I stated, they  
18 are relatively untried, so one can't be certain.  
19 So, in other words, it's not that they can't do  
20 it at all, but that at least with regard to the  
21 unsubsidized units, there is still some uncertain-  
22 ty because of the relative newness of the concept  
23 and the approaches involved.

24 Q Okay. What is this concept or  
25 approach that you are suggesting?

1 A Well, I think that there are a number of  
2 possibilities. For example, if, for example, you  
3 are talking about a rental development that is  
4 initially rented at modest rents and that has  
5 been assisted in some fashion, given the general  
6 prevalence of rental control, rent leveling  
7 ordinances affecting all kinds of housing, there  
8 would be certainly in my judgment no serious  
9 impediment to a municipality insisting on some  
10 form of continued control of rents to assure that  
11 the units stayed in the least cost range over  
12 time.

13 With regard to sales units, there are a  
14 variety of techniques. One point, if a unit has  
15 received some form of internal subsidy or assist-  
16 ance from community development funds or other  
17 funds, that could be then taken back in the form  
18 of, say, a second mortgage on the development on  
19 the unit, that if the person sold it, the money  
20 could then go back into a pool to subsidize an  
21 additional unit elsewhere.

22 There are many techniques. They tend to  
23 be complex in housing.

24 The Bergen County Housing Authority,  
25 incidentally, is wrking to apply some of these

1 techniques to its own program of constructing  
2 least cost housing where the land is bought with  
3 community development funds. Units are construct-  
4 ed and sold on that land.

5 Q Okay. Now, I listened very care-  
6 fully to what you are saying, but I still want to  
7 get where there is no subsidy to this housing.  
8 What controls can a municipality possibly have?

9 A Well, okay. As far as the rental develop-  
10 ment is concerned, that can be imposed with or  
11 without subsidies involved. But with regard to  
12 least cost housing generally, I think there are  
13 a number of issues. And some of these are made  
14 quite clearly by the Court in the Madison case  
15 really.

16 First is at least part of the purpose for  
17 least cost housing is the provision of filtering.  
18 I believe it's understood that not all least cost  
19 units will be occupied by lower income people and  
20 that to some degree the benefit of generating  
21 that construction is by opening up additional  
22 existing housing in the community. The second  
23 point is that to think of a least cost housing  
24 objective as a kind of once and for all thing, we  
25 build the units, here they are and that's that



1 in perpetuity, I think is misleading. I think  
2 what we are talking about here is an ongoing  
3 program of providing housing.

4 As long as housing at all income levels is  
5 at short supply, then there will be problems see-  
6 ing to it that the less affluent people benefit  
7 from the housing. So this has to be seen in the  
8 context of a process whereby housing continues to  
9 be provided as housing needs exist, as households  
10 are formed.

11 Q Are you answering my question that  
12 a town cannot protect itself against this type of  
13 thing or are you saying something else?

14 A I'm not sure what you mean by protect it-  
15 self.

16 Q Well, I said leaving out the  
17 absence of any kind of subsidies, whether they be  
18 federal, state or local, and a municipality zones  
19 for least cost housing and encourages least cost  
20 housing, how can the municipality guarantee that  
21 this will actually be least cost housing?

22 MR. BUCHSBAUM: Other than rent  
23 control? You are talking about single-  
24 family houses actually?

25 MR. MILLS: I did not say other

1 than rent control. I said how can they.

2 A This goes back basically to part of the  
3 overzoning issue. If a municipality simply zones  
4 for least cost housing--

5 (A discussion is held off the  
6 record.)

7 Q Did you answer that question or  
8 shall we go back to it?

9 A Why don't you read back just the last part  
10 of the question.

11 (The second previous question and  
12 answer are read.)

13 A --it does so, and the Madison Court clearly  
14 understands this point, without the certainty  
15 that the units will be used or that the land will  
16 be used rather in its entirety for least cost  
17 housing. This is part of the purpose for over-  
18 zoning.

19 You have to recognize or accept that some  
20 of the housing built in a zone that permits least  
21 cost housing will not be least cost and, further-  
22 more, that some of the housing that may be least  
23 cost will be occupied by families who could  
24 afford more expensive housing. This is why the  
25 whole thing has to take place within the market

1 demand. The only exception for this, of course,  
2 is where one has affirmatively gone about promot-  
3 ing subsidized housing.

4 Q Well, we prefaced the whole question  
5 leaving out the subsidy.

6 A Okay.

7 Q I did not get from your answer then  
8 that there is any real control that a town can  
9 enforce that would then protect against this low  
10 cost housing either being built or if it is built  
11 and occupied to continue to be occupied?

12 A To some degree. That's the point of over-  
13 zoning.

14 Q Is the municipality the only one  
15 who should be involved in low cost housing?  
16 What I have reference to is the State of New  
17 Jersey where the State owns in a number of municipi-  
18 palities State-owned land. Should not the State  
19 also be required to use that for low cost housing  
20 or least cost housing?

21 A Well, this goes somewhat far afield. I  
22 think it is an interesting question.

23 Usually the land that the State owns is  
24 used for a very particular purpose. It's a park.  
25 It's an institution. And it may or may not be

1 amenable for use for housing.

2 On the other hand, I would certainly think  
3 it desirable to the degree that the State owns  
4 land that it can be used for housing, least cost  
5 housing in particular, and that is not needed for  
6 other purposes, that it could be used for develop-  
7 ment of least cost housing.

8 Again, in the final analysis, and I think  
9 Madison is very clear on this point, too, the  
10 principal obligation of the municipality is to  
11 make the opportunities available for private  
12 organizations, be they developers, builders, non-  
13 profit housing sponsors, but through its zoning  
14 provisions or its overzoning provisions, if you  
15 will. But to the degree that the municipality,  
16 through use of municipally-owned land or the  
17 State through suitably State-owned land contri-  
18 buted to that, so much the better.

19 Q One final question: It is my  
20 opinion that the only real and practical way to  
21 solve the whole problem of least cost housing for  
22 low and moderate income families is for the State  
23 to come in and do it on a state basis where the  
24 State can provide the funds and infrastructure  
25 and all of the requirements. Do you agree with

1 that or not? A I don't think so.

2 There are a lot of factors involved.

3 I think in terms of providing really low  
4 income housing, that a low income person,  
5 typically defined as people earning 50 percent or  
6 less of the median income in the area, can really  
7 afford has got to have some kind of subsidation  
8 involved. And from a practical standpoint, even  
9 though there are ways that a municipality can  
10 help a project along, if you will, the amount that  
11 is really needed is beyond a municipality's  
12 resources to provide on its own. And if it's  
13 going to be built in any large numbers, probably  
14 the only place the subsidies are really going to  
15 come from is the federal government.

16 Now, that doesn't mean that least cost  
17 housing doesn't benefit some significant popula-  
18 tion groups. And again this is what the Madison  
19 Court comes back to, that to the degree that there  
20 are subsidies that can be made available, heaven  
21 knows they should be used. And to the degree  
22 that you can get the state and federal governments  
23 to move towards meeting housing needs, they should  
24 do so.

25 But since that's unpredictable, the Court

1 finally concluded that in the here and now one  
2 had to at the municipal level provide the oppor-  
3 tunity for least cost housing because that was  
4 the closest that could be got to, that goal.

5 Q But now you are stating what you  
6 felt that the Court said. But my question was or  
7 my question is do you agree or disagree that  
8 isn't really it the only practical way, for the  
9 State to come in and do it?

10 A In regard to low income housing, as you  
11 say, state and federal, perhaps, but in terms of  
12 full spectrum of housing needs--I mean if housing  
13 in a given area, say, is at present being built  
14 for prices, say, at \$80,000 and up, say, and  
15 through zoning for least cost housing, one could  
16 produce a fair amount of housing that people could  
17 buy, say, for \$45,000 or \$50,000 or whatever,  
18 that's not low income housing. But it does bene-  
19 fit some people who are not otherwise being bene-  
20 fitted. And through filtering, as the Court goes  
21 into in great detail, it would facilitate other  
22 people improving their housing elsewhere. So it's  
23 not either/or really.

24 Q All right. Now, weren't you the  
25 author of this book, Housing and Suburbs?

1 A: Yes.

2 Q Okay. You were cited in here as  
3 being the author. And on Page 11, you made a  
4 recommendation. And I will read it. It says,  
5 this is your recommendation, "The creation of a  
6 New Jersey community facilities agency empowered,  
7 one, to sell bonds for the construction of new  
8 community facilities and infrastructure and to  
9 provide financial support independent of use sur-  
10 charges and municipal contributions for the repay-  
11 ment of the bond; and, two, to administer a pro-  
12 gram of state assistance to meet the operating  
13 costs in the municipalities." And the rest of it  
14 I do not think makes too much difference.

15 Now, that was your position when you  
16 authored this report; wasn't it?

17 A That was the position of the County  
18 Municipal Government Study Commission.

19 Q Well, I believe that on Page II it  
20 says that the principal author of this report was  
21 Alan Mallach. Are you Alan Mallach?

22 A Yes.

23 Q So you now are denying making that  
24 recommendation?  
25 A No, I am mere-  
ly pointing out what I believe is a significant

PENGAD CO., BAYONNE, N.J., 07002, FORM 2048

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 attor-  
ney 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 inter-  
ested in the action.

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

Dated: 5/18/79

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