

ML - Morris County Fair Housing Council

6/11/79

v. Boonton Twp

Deposition of Alen Mallach

p 17

UML 000 8746

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,

ML000874G

DEPOSITION OF:
ALAN MALLACH.

Plaintiffs,

-vs-

BOONTON TOWNSHIP, CHATHAM TOWNSHIP,
CHESTER TOWNSHIP, DENVILLE TOWNSHIP,
EAST HANOVER TOWNSHIP, FLORHAM PARK
BOROUGH, HANOVER TOWNSHIP, HARDING
TOWNSHIP, JEFFERSON TOWNSHIP, KINNELON
BOROUGH, MENDHAM BOROUGH, MENDHAM TOWN-
SHIP, MONTVILLE TOWNSHIP, MORRIS TOWN-
SHIP, 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.

B E F O R E:

VICTOR SELVAGGI, JR., a Notary Public
and Certified Shorthand Reporter of the State of New
Jersey, at the MORRIS TOWNSHIP MUNICIPAL BUILDING,
CONVENT STATION, NEW JERSEY, on Wednesday, May 30,
1979, commencing at 11 a.m.

KNARR - RICHARDS, ASSOCIATES

CERTIFIED SHORTHAND REPORTERS

OFFICES IN MORRISTOWN & NEWTON

10 PARK SQUARE Box 241, R.D. 5
MORRISTOWN, N.J. 07960 NEWTON, N.J. 07860
539-7150 383-2866

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S:

THE PUBLIC ADVOCATE
BY: VERICE M. MASON, ATT'Y.
Attorneys for the Plaintiffs.

MESSRS. KENIHAN & COHEN
BY: JAMES M. KENIHAN, ESQ.
Attorneys for the Defendant
Jefferson Township.

VICTOR SELVAGGI, JR.
Certified Shorthand Reporter

I N D E X

WITNESS

DIRECT

ALAN MALLACH

By Mr. Kenihan

2

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 A L A N M A L L A C H, previously sworn, recalled;

2 MISS MASON: Initially I would like to
3 have Mr. Kenihan agree that Jefferson Township
4 will pay the cost of Mr. Mallach's depositions
5 here today. That will be \$40 an hour and a
6 prorata share of his travel expenses beginning
7 at ten o'clock.

8 MR. KENIHAN: As an incident to the
9 procedure for taking depositions, we are
10 required to contribute and we will do so.

11 MISS MASON: Thank you.

12
13 DIRECT EXAMINATION BY MR. KENIHAN:

14 Q Mr. Mallach, I represent Jefferson
15 Township. Although we may get into some general
16 discussion, I'm particularly concerned with any
17 opinions that you have pertaining to Jefferson Town-
18 ship. I'm not going to go into any preliminary
19 instructions because you have been through this before.

20 First of all, with reference to your background,
21 not as a planner, but as an individual engaged in
22 planning, can you tell me what types of clients you
23 have represented in the past, what categories of
24 clients you have represented in the past?

25 A I've had a fairly wide cross section of clients

1 including governmental agencies at the Federal, State
2 and local levels, developers, corporations engaged in
3 development and non-profit civic organizations.

4 Q And you have been engaged by them for
5 what purposes? A Well, the purposes
6 vary, of course. They generally fall into three or
7 four areas. One has to do with housing activities of
8 different sorts. This is actually to attempt to develop
9 housing or to provide technical services in support of
10 a housing development. For example, a market study or
11 feasibility study or cash flow analysis or something
12 of that nature.

13 The second area would be studies or activities
14 relating to zoning, often, although not entirely with
15 regard to litigation.

16 A third area would include economic planning,
17 research analysis. This will include economic impact
18 studies and the like; and the fourth area would be
19 social research, social surveys, community studies,
20 community needs and the like.

21 Q Have you specifically ever been engaged
22 by developers or public agencies for the purpose of
23 drawing up plans for construction of housing?

24 A I'd have to say a qualified yes. I mean, I'm
25 not an architect, so the actual design of the buildings

1 would not be within my purview. What I have done has
2 been to develop what one might call a program for
3 housing. For example, I've looked at a site, evaluated
4 the ordinances applicable to it. I've evaluated the
5 various government programs in order to come up with
6 a concept that might include the type of housing, the
7 number of units, the bedroom mix, the proposed rents
8 or sale prices and things of this sort and then
9 essentially come up with a package that is then given
10 to the architect to do the actual design.

11 Q Have you ever been charged with the
12 obligation of preparing or drafting a zoning ordinance
13 for a municipality? A No.

14 Q Now, in your considerations with reference
15 to the zoning of a municipality, have you given any
16 consideration toward the environmental aspects of a
17 particular region? A Well, it would
18 depend on the context. Do you mean in terms of my
19 specific analysis for this case?

20 Q You have done what type of analysis
21 relative to Jefferson Township?

22 A With regard to Jefferson Township, at this
23 point the only analysis I have done has been to review
24 the zoning ordinance in light of least cost housing
25 standards.

1 Q All right. Now, you have prepared a
2 certain report which I don't have before me, but it
3 was several pages, as I recall it.

4 As regards an evaluation of least cost housing,
5 do you consider at all the environmental aspects of
6 the municipality, of Jefferson?

7 A No.

8 Q Why not? A Because the
9 standards for least cost housing essentially are
10 independent of the possible environmental constraints
11 that may exist on certain sites or certain locations
12 for the Township. Clearly the environmental constraints
13 that affect certain areas are relevant when a town sits
14 down and identifies which areas should be zoned for
15 what or which are the most suitable sites for least
16 cost housing as distinct from other uses, but the
17 basic least cost standards are themselves not affected
18 by those environmental constraints.

19 Q All right. When you talk about least
20 cost housing, what elements are you specifically
21 considering? A Okay. There are
22 at least three elements. One is the availability of
23 a wide variety of different housing types. In other
24 words, single family houses on small lots, garden
25 apartments, townhouses and so forth.

1 portation systems in the County and in the towns.
2 Again, that does not affect the definition of least
3 cost housing or the evaluation of the ordinance as
4 such. It may have a bearing when the time comes to
5 decide the degree or the nature of the remedy for an
6 invalid ordinance.

7 Q All right. In order to be able to
8 determine what least cost housing is as regards
9 Jefferson Township, must you not of necessity know
10 the transportation problems, the water problems, the
11 sewerage problems in order to determine exactly what
12 is the norm, if there such a thing for least cost as
13 it relates to Jefferson Township?

14 A No.

15 Q Why not? A Well, again
16 it goes back to the distinction I made earlier. There
17 are a set of standards. Now, if we take townhouses,
18 we establish a certain net density on a building site
19 that is appropriate for townhouses. Assuming that
20 there are sites in Jefferson Township where environmental
21 factors are not so overwhelming as to make that density
22 impossible, and I know of no reason why that should not
23 be the case, those density factors are equally applicable.

24 Now, when you get into factors such as water
25 supply, sewerage systems and so on, clearly the

1 standards do not dictate the nature of the water
2 supply or the sewerage system. Clearly those are
3 going to vary from a practical standpoint from town to
4 town. The objective would be when applying this to
5 Jefferson Township to identify sites, locations within
6 the town for multi-family housing, least cost housing
7 and so on where the most economical means could be
8 arrived at for providing water supply, for providing
9 sewerage treatment that met reasonable standards. The
10 same would be true for transportation. Clearly the
11 idea would be to provide sites that would have the
12 best available transportation linkages relative to
13 what is available overall in Jefferson Township.

14 Q Are you aware as to whether those
15 reports, which I assume are being drawn up by the
16 Public Advocate, by other experts dealing with those
17 factors such as transportation, water, sewerage, are
18 going to be provided to you for your use in this
19 matter or whether your reports are going to be
20 provided to them so that there is some comprehensive
21 understanding of exactly what is anticipated to be
22 required for Jefferson Township as a standard?

23 A Well, obviously the experts, to the best of my
24 knowledge all the expert reports being prepared for the
25 Public Advocate are being shared among all of the

1 experts. I've received copies of those reports that,
2 to the best of my knowledge, represent what has been
3 done so far.

4 Q All right. Well, the crux of this
5 action at present is that Jefferson Township has failed
6 to provide for least cost housing and as an aspect of
7 that I would assume that you had been asked then to
8 develop an opinion as to what least cost housing is
9 or should be in Jefferson Township. Is that right?

10 A Again, I would have to go back to the earlier
11 statement. I've been asked to develop an opinion or
12 theory as to what least cost housing is. I have not
13 made a distinction for the reason that I tried to
14 explain between what that is in one municipality
15 versus another.

16 Q Let me go over this with you so that
17 perhaps I'll understand a little better what you are
18 getting at.

19 You have a schedule in one of your reports that
20 is, as regards Jefferson -- A There are a
21 total of three pages there.

22 Q Okay. Now, the first you have under
23 least cost provisions, number one relates to small
24 single family detached houses, small lot single family
25 detached houses and you indicate none, with the smallest

1 lot being 10,000 square feet and that's footnoted.

2 What does the none relate to?

3 A The none relates that there is no provision
4 under the Jefferson Township Ordinance for small lot
5 single family detached houses as defined in the
6 general section of this report.

7 Q That does not say that there does not
8 presently exist in the Township lots of lesser than
9 10,000 square feet?

10 A No, it does not
11 say that. It merely says under the provisions of the
12 ordinance in effect there is no zoning for that and
13 no possibility of building it under the ordinance.
14 There may be prior non-conforming lots, of course.

15 Q Okay. Does the municipality, for lack
16 of a better word, get any credit under your theories
17 for the existence of what may now be non-conforming
18 smaller lots?

19 A Well, I have to
20 qualify the answer in advance that I am not -- I can
21 speak to that in terms of my opinion. As to whether
22 that reflects the position of the Public Advocate in
23 the case is not necessarily so because I am not, as I
24 understand it, going to be testifying on behalf of the
25 Public Advocate on the fair share issue which is
essentially what that relates to. So with that quali-
fication I can give you my personal opinion on that.

1 Q Well, let me ask you this: I'll ask you
2 your opinion in a second, but I want to preface it with
3 this. If you are indicating, which I am sure you are
4 that Jefferson does not provide least cost housing or
5 a standard for least cost housing, I'm not sure which
6 at this point, if you do not recognize the existence
7 of minimum lots of less than 10,000 square feet, are
8 you not ignoring what the municipality already has?

9 A I think, if I may say so, you are confusing
10 apples and oranges in a sense.

11 Q All right. A The issue of
12 a litigation, as I understand it, this is my under-
13 standing of the entire line of cases in this regard,
14 is the ordinance or ordinances of a municipality, that
15 they do or do not meet a body of standards that were
16 set down in a court. That is one issue. Assuming
17 that a court finds that an ordinance is not consistent
18 with the standard set down in Mount Laurel and Madison,
19 you therefore come into a secondary area, a question
20 of what, if anything, a municipality is obligated to
21 do about it and that to my mind is where this question
22 may arise. It does not arise in the context of the
23 ordinance. It may arise in the context of what a
24 municipality's obligations may be.

25 For example, one could argue, I'm not sure I

1 hold this position, but one could argue that if a
2 municipality already has a substantial amount of
3 inexpensive modest housing in it, that given an
4 identical ordinance on its face with a much more
5 affluent municipality elsewhere, that the obligation
6 of the more affluent municipality would be more
7 extensive in terms of remedy and that would be one
8 issue where that might arise, but it would not affect
9 the analysis of the ordinance at the first level.

10 Q All right. Now, your same answer would
11 relate to two family houses. When you say it's not
12 permitted, you are not talking about what is there,
13 you are talking about what the present ordinance
14 permits? A That is correct.

15 Q Now, you have garden apartments under
16 number four. You have it's permitted in the RM Zone,
17 but not under least cost standards. Tell me what you
18 mean by that. A What it means, as
19 you may recall I mentioned three tests, if you will,
20 for least cost housing. One being the fact that the
21 use is permitted, the second it was without exactions
22 and the third that it was under the least cost
23 standards consistent with health and safety, so the
24 RM Zone meets the first test, but does not necessarily
25 meet either or both of the subsequent tests, so there-

1 fore even though garden apartments are permitted, they
2 would not be permitted for least cost garden apartments.

3 Q Now, have you broken that down as to
4 exactly what the deficiencies are?

5 A These would appear on the second and third
6 pages.

7 Q Okay. Now, you have number six is mobile
8 homes. It says not regulated in the ordinance, refer-
9 ence to Chapter 124 in zoning ordinance noted.

10 I'm not sure I understand what you mean by that.

11 A What that means is that the zoning ordinance
12 appears to incorporate a provision dealing with mobile
13 homes that appears in another ordinance that had not
14 been provided to the Public Advocate, at least at the
15 time I did the analysis, so in other words, in the
16 absence of that, it was impossible to draw a conclusion
17 as to the status of mobile homes.

18 Q Okay. You don't also get into the
19 question dealing with the census or population growth
20 in a township as regards your particular field of
21 analysis?

22 A No. I believe that's
23 generally in Mary Brooks' scope of her work for the
24 case. I know her report includes a number of tables
25 dealing with the relevant census data.

Q Now, when you say absence of cost

1 outside zoning concepts? A Well, how
2 the standards are derived in the first place is
3 independent of zoning. I mean, then, of course, one
4 can embody them in the zoning ordinance. For example,
5 one would try to develop such standards on the basis
6 of sort of functional requirements, what amount of
7 land you need to do the things that have to be done
8 on a site for it to be good sound housing. Then you
9 work from that to arrive at methods that you could
10 incorporate in a zoning ordinance.

11 Q All right. Just so I'm clear in my mind,
12 your opinions and analysis are not projected toward
13 providing exactly what Jefferson should be incorporating
14 in the ordinance in specific terms of specifics to
15 meet your opinion of what least cost housing means?

16 A I'm not sure that's the case. I think the
17 standards that I present in the general section of my
18 report are appropriate for incorporation as a basis
19 for what is incorporated in the ordinances of Jefferson
20 or any other municipality in the County.

21 Q Why is it necessary to provide for
22 single family detached units at a lot size which
23 could be built with attached units at the same density
24 with lower costs? A Well, I think

25 there are two answers to that. The first answer, of

1 course, is that in the Supreme Court in both the -- I
2 guess in the Mount Laurel decision in particular and
3 the Madison decision as well, that this idea of
4 detached houses on very small lots as a particular
5 type of housing that should be provided. The second
6 answer is that within, I guess one might call the
7 American cultural context, if you will, there is a
8 particular association of the detached house with
9 child rearing, and as a desired housing type for
10 families that are in the child rearing age group as
11 well as for other families, generally. It's a very,
12 very highly desired type of housing for a large part
13 of the population, so that it's appropriate in terms
14 of meeting the housing needs of the population as a
15 whole and to provide at least some detached single
16 family housing at modest standards, as well as the
17 detached single family housing units at higher
18 standards that are generally provided amply in most
19 zoning ordinances.

20 MR. KENIHAN: Excuse me one minute.

21 (There is a discussion off the record.)

22 MR. KENIHAN: I really don't have any
23 other questions.

24 MISS MASON: Fine.

25 * * *

HEMLOCK

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

MORRIS COUNTY FAIR HOUSING COUNCIL, :
et als, :

Plaintiffs, :

-vs- :

CERTIFICATE

BOONTON TOWNSHIP, et als, :

Defendants. - - -

I, VICTOR SELVAGGI, JR., a Certified Shorthand Reporter and Notary Public of the State of New Jersey certify that the foregoing is a true and accurate transcript of the 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 this action in which this deposition was taken and further that I am not a relative or employee in this case, nor am I financially interested in this action.

Victor Selvaggi, Jr.

A Notary Public in and for the State of New Jersey

Dated: 6/11/79

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2045