

ML - Morris County Fair Housing Council
v. Boonton Township

April 23, 1979

~~1708~~ Transcript of Oral Deposition of Alan Mallaeh (by Bernstein)

Pg. 18

ML000883S

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,

ML000883S

CIVIL ACTION

Plaintiffs,

NOTICE TO TAKE
ORAL DEPOSITIONS

v.

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 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,
Morris Township, New Jersey, on Monday, April 23,
1979, commencing at 9:30 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 A P P E A R A N C E S:

2 THE PUBLIC ADVOCATE
3 BY: CARL C. BISGAIER, ESQ.
4 Attorneys for the Plaintiffs.

5 MESSRS. SACHAR, BERNSTEIN, ROTHBERG, SIKORA
6 & MONGELLO
7 BY: DANIEL S. BERNSTEIN, ESQ.
8 Attorneys for the Defendants Chatham Township
9 and Mendham Township.

10 MESSRS. EINHORN & HARRIS
11 BY: GARY R. PLATT, ESQ.
12 Attorneys for the Defendant Denville Township.

13 MESSRS. YOUNG, DORSEY & FISHER
14 BY: JAMES H. MAC DONALD, ESQ.
15 Attorneys for the Defendant Hanover Township.

16 MESSRS. SCANGARELLA & FEENEY
17 BY: SUSAN NUSSBAUM, ATT'Y.
18 Attorneys for the Defendant Lincoln Park Borough.

19 MESSRS. MATTSON, MADDEN & POLITO
20 BY: M. LYNNE MC DERMOTT, ATT'Y.
21 Attorneys for the Defendant Passaic Township.

22 MESSRS. WILEY, MALEHORN & SIROTA
23 BY: FREDRIC J. SIROTA, ESQ., and
24 ROBERT S. GOLDSMITH, ESQ.
25 Attorneys for the Defendant Rockaway Township.

 VICTOR SELVAGGI, JR.
 Certified Shorthand Reporter

I N D E X

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

WITNESS

DIRECT

ALAN MALLACH

By Mr. Bernstein

2

1 A L A N M A L L A C H, previously sworn, recalled;
2 DIRECT EXAMINATION BY MR. BERNSTEIN:

3 Q Mr. Mallach, I'll be interrogating you
4 on behalf of Mendham Township. I understand that you
5 have previously been sworn. A That's
6 correct.

7 Q Do you have your report on Mendham Town-
8 ship? A Yes.

9 Q Mr. Mallach, can you tell us where the
10 R-5 zone is located in Mendham Township?

11 A No.

12 Q Can you tell us where any of the zones
13 are located in Mendham Township?

14 A No.

15 Q Can you tell us whether or not the R-5
16 zone is unreasonable? A The R-5 does
17 not provide for least cost housing.

18 Q Do you know whether or not the R-5 zone
19 is based on severe environmental constraints that
20 would require this much area for a one family home?

21 A I am not familiar with any environmental
22 constraints that might serve as a basis for requiring
23 five acres for a one family home.
24

25 Q So you would say as a matter of law that

1 .. five acre zoning is unreasonable?

2 A I'd say it is likely to be, I believe.

3 Q How about the R-3 zone which requires
4 three acre minimum lot size for one family homes. Can
5 you tell us whether or not that restriction is unreason-
6 able?

7 A In the absence of very
8 specific and extremely severe environmental constraints,
9 it would be.

10 Q And the same would be true of all the
11 zones in Mendham Township, correct?

12 A That's correct.

13 Q But you don't know what the environmental
14 constraints are in Mendham Township, do you?

15 A That's correct.

16 Q So you really can't tell us if any of
17 these zones are reasonably based on the environment
18 and therefore reasonable zones?

19 A That's correct.

20 Q You have not visited Mendham Township?

21 A I have visited Mendham Township.

22 Q Could you tell us the streets that you
23 were on in Mendham Township?

24 A I don't remember the specific street names.

25 Q Could you tell us the day when you were
in Mendham Township? You may refer to your notes if

Mallach - direct

4

1 you have notes on this. A I was in
2 Mendham Township on both of the dates during which I
3 visited Morris County municipalities. These included
4 April the 4th. I think the other date was March the
5 6th.

6 Q And how did you get to Mendham Township?

7 A By car.

8 Q Can you tell us which road you took in
9 order to get to Mendham Township?

10 A I believe it's the main road that goes east-west
11 through the Township and I believe that's Route 24.

12 Q And I believe you testified that you
13 can't tell us what roads you were on in Mendham Township.

14 Is that correct? A That's correct.

15 Q How long were you in Mendham Township on
16 each of the occasions you were there?

17 A Very briefly.

18 Q Would you say that in total you were in
19 Mendham Township for less than one half hour?

20 A In total on both occasions?

21 Q Yes, sir. A I believe it
22 was at least a half hour.

23 Q But less than one hour in total?

24 A Most probably.

25 Q Can you tell us what you saw in Mendham

1 Township. A I was not concerned with a
2 detailed examination of the Township. However, I saw
3 a community principally composed of large single family
4 houses scattered in what might be called an exurban
5 landscape.

6 Q What does exurban mean?

7 A Exurban means that although suburban in
8 character, it tends to be further from the centers of
9 the region than what would be considered the inner
10 suburbs and it would tend to have a more dispersed
11 settlement pattern, a greater ratio of open area to
12 developed area, again than inner suburbs.

13 Q Can you tell us if there are any other
14 exurban areas in Morris County that you noted on your
15 track? A I believe there are a number.

16 Q Can you give us the names of those that
17 come to mind? A If I could refer --

18 Q Refer to your notes.

19 A I didn't take notes on that specific character,
20 but I have a map. I think many of the Morris County
21 municipalities contain mixed characteristics in this
22 regard. I would say, for example, communities such as
23 Mendham, Chester and Washington are certainly of an
24 exurban character.

25 Q How about Harding?

1 A Harding is most probably so, although the
2 location is somewhat more central, the physical
3 characteristics are similar to those of Mendham or
4 Chester.

5 Q Are there any other exurban communities
6 that you could note from the map which are defendants
7 in the present lawsuit? A Well, I think
8 the ones I mentioned are the ones that most clearly
9 fall into the character in the classic sense of the
10 term. I think a number of the communities have exurban
11 characteristics even though they have other character-
12 istics as well. This would include Mount Olive,
13 Rockaway, Kinnelon. This is not -- there is no hard
14 and fast line here. Perhaps Jefferson, perhaps Roxbury.

15 Q Are there any other characteristics of
16 exurban communities that you can explain to us today
17 other than what you have said?

18 A Well, there are a variety of characteristics
19 which vary widely. One characteristic, the example has
20 been noted that they intend to be more affluent than
21 the inner suburbs. Another is that they tend to have
22 a less extensive infrastructure than more fully developed
23 inner suburbans. Again, as I may have mentioned, they
24 have larger amounts of vacant land.

25 Q Now, you described seeing one family homes

1 in Mendham Township. Can you tell us any other salient
2 things that you saw on your trip, anything that you as
3 a housing consultant would think would be relevant to
4 the present lawsuit? A I think it's
5 an attractive community with generally rolling terrain,
6 fairly extensive stands of woods, a number of streams
7 and a great deal of vacant land.

8 Q Now, in your report on Mendham Township
9 you noted that there's a requirement that each home
10 have 800 square feet. Do you consider this to be an
11 exclusionary provision or a provision which is contrary
12 to least cost housing? A It is
13 contrary to least cost housing.

14 Q As a realistic matter, you as a housing
15 consultant would not expect any home that would be
16 built in Mendham Township to have less than 800 square
17 feet, would you? A That's correct.

18 Q And, in fact, you would only advocate
19 smaller size minimum square footage for one and two
20 bedroom homes, I would assume?

21 A Yes.

22 Q And you don't know of any one and two
23 bedroom homes that have been built in Morris Township
24 within the past 20 years, do you?

25 A Mendham Township.

1 Q Any one or two bedroom homes that have
2 been built in Morris Township? A No.

3 Q From a practical standpoint this would
4 have no affect, the 800 square foot requirement?

5 A In the context of the present exclusionary
6 ordinance.

7 Q What I'm interested in, as a realistic
8 matter you wouldn't expect anyone to be building homes
9 under 800 square foot in Mendham Township even if there
10 are no mimimum restrictions, would you?

11 A If the other provisions remained the same, that's
12 correct.

13 Q Well, do you know of any small lots any-
14 where in Morris County, lots that you would consider
15 to be nonexclusionary or that complied with least cost
16 housing where three or four bedroom homes have a square
17 foot area of less than 800 square feet?

18 A No.

19 Q And there aren't too many one family
20 detached homes built with one or two bedrooms, are there?

21 A There are quite a few.

22 Q In the suburban areas?

23 A Yes.

24 Q In developing communities in New Jersey?

25 A Yes.

1 Q In Morris County?

2 A Yes.

3 Q Okay. You say that there are one and two
4 bedroom homes being built in Morris County?

5 A I don't know that any are being built at the
6 present, but there are many that have been built and
7 exist and stand.

8 Q Where? Do we have suburban communities
9 in Morris County where we have one and two bedroom
10 homes? A Yes.

11 Q Could you tell us what communities where
12 there is a substantial number?

13 A One comes to mind is Randolph Township.

14 Q Where in Randolph do we have these homes?

15 A I'll give you the exact areas.

16 Q First, are these summer residences that
17 were built in Randolph Township, bungalows or colonies
18 of small homes that people would come to in the
19 summertime? A They are not at present.

20 Q They were originally, weren't they?

21 A In many cases, yes.

22 Q What I would like to know is what town
23 do we have year round housing that was built as year
24 round housing where the original builder built one and
25 two bedroom detached one family homes that you know of?

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 I'm not familiar with any.

Q You would agree that as a housing consultant it would be an inefficient use of the land to build one and two bedroom detached one family homes?

A Not necessarily.

Q Well, you testified when I queried you on behalf of the Common Defense that townhouses are almost always built with three bedrooms and occasionally with two and less frequently with four bedrooms. Do you remember that? A Yes.

Q Now, if townhouses are never built with one bedroom units and seldom with two bedroom units, why would you expect a one family detached home to be different? A I wouldn't expect the typical one family detached home to have one or two bedrooms, but I could think in a development, particularly a development that was designed to appeal to say older people, senior citizens, empty nesters, what have you, a subdivision of detached single family homes, especially if you use mobile homes as examples of detached single family homes, it might well be one bedroom, more probably two bedrooms, rather than one bedroom.

Q Mr. Mallach, with regard to Mendham Township, do you know what public transportation serves

1 the community?

2 MR. BISGAIER: Excuse me. Does he know
3 that off the top of his head or can he refer to
4 documents?

5 MR. BERNSTEIN: He can refer to whatever
6 he has.

7 THE WITNESS: Let me refer to a document,
8 if I might.

9 Q Sure. A There is no bus
10 route at present serving Mendham Township. There is a
11 proposed bus route.

12 Q So you know of no public transportation
13 serving Mendham Township? A Not at
14 present.

15 Q Are there any major innerse dates which
16 traverse Mendham Township? A No.

17 Q Do you know what industry is located in
18 Mendham? A No.

19 Q Do you know what commerce is located in
20 Mendham? A No.

21 Q Do you know whether or not Mendham is
22 served by public sewers? A No.

23 Q Do you know the environmental problems
24 involved in constructing dwelling units in Mendham
25 Township? A No.

1 Q Do you know the number of low and moderate
2 income families living in Mendham Township?

3 A No.

4 Q Do you know what the County master plan
5 designates for Mendham Township in the way of low and
6 moderate income housing? A I don't
7 believe the County master plan makes specific municipal
8 designations of low and moderate income housing.

9 Q Okay. Do you know what the County master
10 plan designates for Mendham Township in the way of
11 future growth? A Not off the top of
12 my head, but I believe there is a copy in here.

13 Q So all you would do now is read what is
14 in the master plan? A That's correct.

15 Q Your study didn't take into account of
16 what was said in the County master plan, did it?

17 A No, it did not.

18 Q Do you know how much of vacant developable
19 land there is in Mendham Township?

20 A I forget the number, but from the Community
21 Affairs study, there was a substantial amount.

22 Q So you are willing to rely on the Depart-
23 ment of Community Affairs publication?

24 A As a ballpark figure, yes.

25 Q And do you know when that study was

1 prepared? A The study itself was
2 prepared in 1976 and '77.

3 Q And what statistics were used in preparing
4 this study? A A variety of statistics.

5 Q The date? A Which
6 statistics?

7 Q In determining whether or not the
8 percentage of the town that was developed, did they
9 use '77 statistics in '77 or exactly what statistics?

10 A They used statistics which I believe were based
11 on field work done in the later 1960's.

12 Q So that their studies would not be up to
13 date for 1979? A No.

14 Q In fact, it sounds like if the field work
15 was done in the late '60's, that their field work is at
16 least 10 years old? A That's correct.

17 Q And one would expect a development would
18 have taken place in all of these Morris County commu-
19 nities in the last 10 years?

20 A To varying degrees. Very limited in many
21 communities.

22 Q In which towns was the development in
23 the last 10 years limited, in your opinion?

24 A Well, Mendham Township was one.

25 Q Could you give the other towns where you

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

feel the development, and we are speaking of residential development? A Yes.

Q You feel residential development has been limited in Mendham Township for the last 10 years. Can you tell us the other towns where development has been limited in the last 10 years and you can refer to your documentation? A Well, to give you

an answer I would have to go through the building permit records to refresh my recollection quite extensively.

Q So the only one you can testify about right now is Mendham Township?

A That's correct.

Q Would it be a fair statement, Mr. Mallach, that with regard to your analysis of Mendham Township, you are not stating that any single zone is unreasonable, but that the entire zone is unreasonable for failing to provide sufficient opportunities for the construction of least cost housing?

A Well, the entire zoning ordinance is unreasonable, therefore each separate zone is in itself unreasonable, in that it is part of an exclusionary ordinance.

Q You would have no problems with any of the zones or all of them as they exist presently so long as sufficient space was provided in the community for least cost housing?

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 I think again with the possible exception of the five acre zone which may not be justifiable on the basis of any environmental standard of which I'm familiar. I think all of them could be allowed if the municipality had adequate land for least cost housing.

Q It's not your purpose to tell us how much land should be zoned by Mendham Township for least cost housing, but merely to analyze what you consider to be the salient points in the Mendham Township Zoning Ordinance, correct? A That's correct.

MR. BERNSTEIN: Stop.

* * *

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

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

MORRIS COUNTY FAIR HOUSING
COUNCIL, et als,

Plaintiffs,

v.

BOONTON TOWNSHIP, et als,

Defendants.

CERTIFICATE

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 of the State of New Jersey

Dated: _____

4/27/79

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

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