

Transcript of Deposition of ~~Alan~~ Alan Mallach (by Bacchetta)

pg. 20

ML0008855

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,

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, 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, May 7, 1979,  
commencing at 10 a.m.

**KNARR - RICHARDS, ASSOCIATES**

CERTIFIED SHORTHAND REPORTERS

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

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

**KARL Z. SOSLAND, ESQ.  
BY: BERNARD P. BACCHETTA, ESQ.  
Attorneys for the Defendant Pequannock Township.**

**VICTOR SELVAGGI, JR.  
Certified Shorthand Reporter**

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

I N D E X

WITNESS

DIRECT

**ALAN MALLACH**

By Mr. Bacchetta

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

2 MISS MASON: Initially before we begin,  
3 I would like you to state for the record that  
4 your township which you are representing, which  
5 is?

6 MR. BACCHETTA: Pequannock Township.

7 MISS MASON: Will pay Mr. Mallach's fees  
8 and travel expenses, a prorata share.

9 MR. BACCHETTA: Pequannock Township first  
10 will pay for the amount of time we will depose  
11 him and a prorata share of the travel expenses  
12 to and from.

13 MISS MASON: Okay.

14  
15 DIRECT EXAMINATION BY MR. BACCHETTA:

16 Q Mr. Mallach, my name is Bernard Bacchetta.  
17 I'm from Pequannock Township. You have been previously  
18 sworn, have you not? A Yes.

19 Q I will ask you a limited amount of  
20 questions today specifically regarding the Township  
21 of Pequannock.

22 Have you been to Pequannock Township yourself  
23 in the recent past? A Unfortunately, no.

24 Q Are you familiar with Pequannock Township  
25 other than having possibly studied the zoning ordinance?

1 A Not really.

2 Q Are you familiar with the amount of  
3 square acreage in the Township?

4 A I looked at that, but I don't recall it.

5 Q Are you aware of the amount of vacant  
6 acreage percentagewise in Pequannock Township?

7 A The percentage I don't know. The number of  
8 vacant acres I have looked at in the DCA Report.

9 Q Okay. What would that be?

10 A 748 acres. That is, of course, developable  
11 acres by their own definition.

12 Q Is 748 acres under water?

13 A That I really don't know. I believe in some  
14 cases that would have been excluded. If it were water  
15 body, I believe it would have been excluded from the  
16 DCA total.

17 Q Would flood plain area have been  
18 excluded from this as well? A Yes.

19 Q And I assume any area over a given degree  
20 of slope would be excluded as well?

21 A That's correct, 12 percent.

22 Q So there is approximately 748 acres that  
23 has a slope of less than 12 percent and that is not in  
24 flood plain? A That's correct.

25 Q Are you familiar with the sewerage



1 transportation.

2 Q Senior citizens would be serviced by  
3 any type of structure other than mid rise?

4 A Well, up to a point. The current thinking  
5 generally is for senior citizen developments not to  
6 require any form of stairs, climbing for the occupants,  
7 so that the two types basically that are available are  
8 one story, what are known sometimes as cottage develop-  
9 ments and mid rise. Theoretically, a two story  
10 elevator building would be possible, but that's not  
11 economical. So the alternative would be one story  
12 developments. This would be analogous to the type of  
13 housing, for example, you have in Leisure Village in  
14 the Pines or these kinds of retirement communities.  
15 The disadvantage to such housing is because you are  
16 only getting one story. It's very costly in terms of  
17 land consumption and it tends to spread over the  
18 landscape. Also, you have a problem with the one  
19 story developments, in that in a large development  
20 the distance that a senior citizen has to travel from  
21 his or her unit to community facilities, recreation  
22 facilities and the like increases rapidly to a point  
23 where it's really not very good, so you have certain  
24 built in limiting factors, the distance of land and  
25 so on for one story developments which, generally



1 speaking, particularly for areas that are relatively  
2 more developed, the mid rise option is usually  
3 preferable.

4 Q When you say usually preferable, state  
5 why. Is it statewide or -- A In areas  
6 of the State that have reasonably ample services to  
7 facilities.

8 Q When you are referring to services and  
9 facilities, are you referring to transportation?

10 A Transportation, availability of commercial  
11 facilities and the like, yes.

12 Q If there were a mass transit system that  
13 was not expensive, would there be a need for mid rise  
14 senior citizen apartments? A Well, I'm  
15 not suggesting that the nature of the mass transit  
16 system is dissponsative. It's one of the criteria  
17 you would use. I think given the sorry state of mass  
18 transit in New Jersey, generally, having any kind of  
19 mass transit system puts a community ahead of the game,  
20 as it were.

21 Q If there were a limited mass transit  
22 system and limited commercial facility, would there  
23 be a need for mid rise senior citizen apartments?

24 A Quite possibly, yes.

25 Q You can't apply that answer to Pequannock

1 Township specifically? A Not in any  
2 kind of hard and fast fashion.

3 Q Are you familiar with the or with any  
4 environmental restraints in existence in Pequannock  
5 Township? A No.

6 Q Are you familiar with the present demand  
7 for townhouses and garden apartments in Pequannock?

8 A Well, I'm not familiar with what demand might  
9 be generated internally say by the population of  
10 Pequannock to the degree that Pequannock is part of  
11 a wider region. I believe that I'm familiar with some  
12 of the demands in the region of which it's a part.

13 Q The region you referred to is what  
14 exactly? A Well, generally speaking,  
15 northeastern New Jersey which I guess has been defined  
16 by the Department of Community Affairs as the totality  
17 of eight northeastern counties.

18 Q And what you are saying, and correct me  
19 if I'm wrong, what you are saying is the demand that  
20 exists in these eight counties should be met in part  
21 by Pequannock Township? A That's correct.

22 Q Okay. Are you familiar with the present  
23 zoning ordinance in Pequannock?

24 A Yes, sir.

25 Q And you have had occasion to study that

1 ordinance? A Yes.

2 Q And you have studied the ordinance that  
3 it superseded as well? A I don't

4 believe so. I believe I only studied one ordinance.

5 Q For classification, the one I'm referring  
6 to is the one that was passed in December, 1978.

7 A I believe so. I could not swear to that, but  
8 I believe that I received an ordinance for the purposes  
9 of my review substantially after that date from the  
10 Public Advocate.

11 Q All right. A And if your  
12 ordinance was submitted to the Public Advocate, then  
13 I would have received it.

14 Q It was. Can you state which zones in  
15 the Pequannock Township Zoning Ordinance you would  
16 consider exclusionary? A All of them.

17 Q There is no zone that you would not  
18 consider exclusionary? A That's correct.

19 Q Would your same reasons apply insofar  
20 as the six residential zones are zoned, would your  
21 same reasoning apply as to why that particular zone  
22 is exclusionary? A Yes.

23 Q Would you briefly state your reasons  
24 behind it? A All of the zones  
25 require lot sizes and frontages that are in excess of

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least cost standards.

Q Anything else? A No.

Q Would you state your reasons as to why the non-residential zones in Pequannock are considered exclusionary? A By non-residential,

do you include the PRD?

Q For the purposes today we will include that, yes. A The PRD zones are the

principal zones in which residential uses are permitted other than the straight single family zones. I should point out first that these zones have an underlying use of single family subject to the R-87 or two acre lot standard. As PRD's, they are operating under the following standard which either eliminates the possibility of constructing least cost housing or reduce that possibility significantly, the minimum requirement of 100 acre tract with 1,000 foot frontage. The fact that 100 foot buffer is required both at the site boundaries or perimeter and between housing types. The maximum height requirement which precludes mid rise housing. The maximum density of four units to the acre in the PRD. One and three units to the acre in PRD-2, which are lower than least cost standards. The open space dedication of 35 percent in the PRD-1, and 50 percent in the PRD-2. The requirement that

1 there be two parking spaces per unit of which one must  
2 be in a garage.

3 I should say this does not apply to two family  
4 side by side houses. The minimum lot sizes for single  
5 family and two family houses constructed under the  
6 PRD zones which are in excess of least cost standards.  
7 I should comment that these do not apply to the PRD-2  
8 where the option is for purely townhouse and multi-  
9 family development. The minimum width requirement for  
10 townhouses of 25 feet which is in excess of least cost  
11 standards.

12 I believe that all of these provisions are in-  
13 consistent with least cost housing.

14 Q You mentioned that the PRD in Pequannock,  
15 the two PRD zones provide for three units per acre  
16 and four units per acre? A That's  
17 correct.

18 Q Is it your position that the figure of  
19 the number of units per acre should be determined  
20 exclusive of topographic conditions?

21 A Not necessarily. I think in selecting sites  
22 and developing the zone, topographic conditions should  
23 be taken into account.

24 Q Would they have a bearing on a number of  
25 units per acre? A That would depend

1 on a lot of specific factors, of course, but they may.

2 Q Are you aware of housing costs in

3 Pequannock Township? A Not with  
4 specificity.

5 Q In an area in which high density housing  
6 is constructed, what would be the ideal method of  
7 sewerage disposal treatment?

8 A Well, certainly some form of centralized  
9 sewerage disposal with treatment of the effluent is  
10 required. The ideal method would vary depending on  
11 the site characteristics and the location.

12 Q If there were an area upon which high  
13 density housing was constructed, is it your opinion  
14 that a package treatment facility would best service  
15 that particular development?

16 A If it was not feasible in an economical fashion  
17 to connect that development with an existing central  
18 sewerage system, yes.

19 Q Are you familiar with the percentage of  
20 the Township of Pequannock that is sewered at the  
21 present time? A No.

22 Q If an area upon which high density  
23 housing was constructed was not adaptable to any  
24 sewerage disposal system, what would be the alternative,  
25 in your opinion, for the best sewerage treatment?

1 A If it was not adapted to any sewerage disposal  
2 system?

3 Q I didn't mean sewerage disposal treat-  
4 ment. If there were no sewerage system in the vicinity  
5 to which a high density housing development could be  
6 connected, what would be the alternative?

7 A Then a specific study should be done to deter-  
8 mine which of the different types of smaller scale  
9 facilities would be most appropriate. This might  
10 include lagooning with discharge into the ground water,  
11 it might include a conventional package treatment  
12 plant discharging into a stream or it might include  
13 spray irrigation.

14 Q Can you discharge into a stream? Wouldn't  
15 this cause pollution of the stream?

16 A Well, again, it would depend on the quality of  
17 the plant that was created. The state of the art, as  
18 I understand it, and I should stress that I'm not a  
19 technical expert on sewer construction, I have a  
20 generalized knowledge from my housing work, but I'm  
21 not a sewerage engineer or anything of that sort, but  
22 it's my understanding that the state of the art with  
23 regard to package plants is such that a discharge  
24 could be treated to the point where it is, for  
25 practical purposes, drinkable water and that, except

1 perhaps under the most extreme conditions of stream  
2 purity, this could be discharged without significant  
3 affect on the quality of the water.

4 Q Wouldn't this refining of the effluent  
5 naturally have a bearing on the cost of the housing?

6 A Yes.

7 Q Driving costs upwards?

8 A Well, the more elaborate, the more sophisticated  
9 system you use, the cost would be greater.

10 Q If the area in which high density  
11 housing was proposed was an environmentally sensitive  
12 area, wouldn't it be correct to state that the sewerage  
13 disposal system for that particular area would not be  
14 able to be as extensive as in an area that was not  
15 as environmentally sensitive?

16 A I think it would depend on what particular  
17 environmental sensitivity you are dealing with.

18 Q Suppose we have an area that is basically  
19 underground rock as opposed to an area that has  
20 basically sand. Isn't it correct that the area that  
21 is basically underground rock would have a much more  
22 difficult time discharging the effluent than the sand  
23 area? A That's correct.

24 Q If it would have a much more difficult  
25 time discharging the effluent, wouldn't it stand to



1 reason it couldn't absorb that many number of units in  
2 that given area? A It would depend on

3 the kind of treatment. That would assume that for  
4 whatever reasons discharge into a stream was not  
5 feasible. If you are talking about discharge in the  
6 ground water or spray irrigation, it would probably  
7 have a bearing because you would need more land to  
8 provide treatment for a given amount of effluent.

9 Q And the net result of that could very  
10 well be a less number of homes in that given area?

11 A It's possible.

12 Q Is it your position that septic systems  
13 and wells are not well suited for least cost housing?

14 A Well, certainly not for multi-family housing.  
15 Though I think there are many situations where if you  
16 had a central sewerage system of some sort that  
17 treated the effluent, then you might also have a well.  
18 It's the combination of having a septic system and a  
19 well at the same time which is certainly not feasible  
20 for higher density housing except under some very  
21 unusual conditions.

22 Q Are you familiar with whether or not the  
23 Pequannock Zoning Ordinance provides for a given  
24 number of bedrooms in each garden apartment or a  
25 percentage of one bedroom, two bedroom apartments?

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A Not as far as I know.

Q Insofar as one family homes are concerned, what would be the largest lot size you

would consider proper? A For least cost housing?

Q Yes. A 5,000 square feet.

Q So we will say 50 by 100?

A Yes.

Q The lot size of 50 by 100 if in an area consisting of only septic systems and wells, would that be enlargeable?

Do you understand the question? Would a larger lot size be proper if the area only consisted of septic systems and wells? A Well, yes and no. A larger lot size would be appropriate because again barring very unusual soil and subsurface conditions, lot sizes of 5,000 square feet are not soundly handled with septic systems and wells. However, I would argue that in such an area if it was the case that there were no sewers, no public sewers available, that the opportunity should be provided for a developer who did provide sewers acceptable to the State DEP, to build lots of 5,000 square feet and in enough number so that it would be economically sensible to provide the sewer service.

1 Q Are you aware of the senior citizen  
2 housing complex now being constructed in Pequannock?

3 A No.

4 Q This will be a general question, not  
5 specifically regarding Pequannock, but if a municipality  
6 is unaware of any demand for housing, should it still  
7 zone for least cost housing? A Certainly.

8 Q Why? A Well, because if  
9 there is no land zoned for inexpensive housing, least  
10 cost housing, what you will, and the opportunity to  
11 provide it does not exist, the municipality would have  
12 no real way of knowing whether the demand existed, so  
13 that the only way really to determine whether it exists  
14 is to provide the opportunities to meet the demand.

15 In the case of Pequannock or leaving aside  
16 Pequannock specifically, but looking at the general  
17 area within which it is located, there is ample  
18 statistical evidence of need and demand, including  
19 the DCA studies and the like, so it would stand to  
20 reason that if the towns zone, they would find out.  
21 If it turns out there was no demand, the town would  
22 not be harmed.

23 Q Have you read the master plan of  
24 Pequannock Township? A I believe so.

25 Q Have you studied it in any way?

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A I was trying to remember. I believe I may have, but I don't remember specifically.

Q Are you aware of the population of Pequannock?

A Not off the top of my head. I did look it up. I have it here, in fact.

In 1970 the population of Pequannock was 14,350.

MR. BACCHETTA: I have no further questions at this time. That is the conclusion of my questioning for Mr. Mallach. I'm not sure if the attorney wishes to recross.

MISS MASON: No.

MR. BACCHETTA: Okay.

\* \* \*

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 previously 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: 5/16/79

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