

ML-Morris County Fair Housing Council
v. Barton Twp

5/13/19

Deposition of Alan Melbach

p 35

ML0008885

MORRIS COUNTY FAIR HOUSING : ML000888S
COUNSEL, 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, :

Plaintiffs, :

-vs-

DEPOSITION OF:

BOONTON TOWNSHIP, CHATHAM TOWN- :
SHIP, CHESTER TOWNSHIP, DENVILLE :
TOWNSHIP, EAST HANOVER TOWNSHIP, : ALAN MALLACH
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 TOWN- :
SHIP, ROXBURY TOWNSHIP and :
WASHINGTON TOWNSHIP, :

Defendants. :

Morris Township, New Jersey
Thursday, April 19, 1979

B E F O R E :

MARK SCHAFFER, a Certified Shorthand Reporter
and Notary Public of the State of New Jersey, at the

KNARR - RICHARDS, ASSOCIATES

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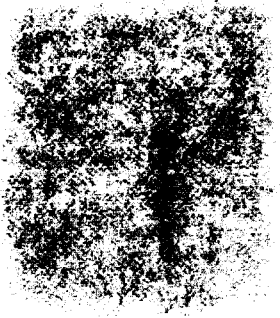
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Morris Township Municipal Building, Morris Township,
New Jersey, on Thursday, April 19, 1979, commencing
[REDACTED] 0:00 o'clock.

P E A R A N C E S :

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

MESSRS. SACHAR, BERNSTEIN, ROTHBERG, FIKORA
& MONGELLO
BY: DANIEL S. BERNSTEIN, ESQ.,
Attorneys for the Defendants Chatham Township
and Mendham Township.



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

2 DIRECT EXAMINATION BY MR. BERNSTEIN:



3 MR. BERNSTEIN: Daniel S. Bernstein,
4 appearing on behalf of Chatham Township and
5 Mendham Township.

6 Q Mr. Mallach, you have made individual
7 studies for Chatham Township and Mendham Township;
8 correct? A Yes.

9 Q What I would like you to do, Mr. Mallach,
10 is to list for me first with regard to Chatham Township
11 all the provisions of the zoning ordinance and other
12 ordinances that you found to be exclusionary. I would
13 like you to give me everything that Chatham Township
14 will be faced with from you in the mini-trial.

15 A I certainly can't tell you every provision in
16 the Township ordinance that I find exclusionary because
17 I have not analysed it from that standpoint. I have
18 analysed--

19 Q Well, let me paraphrase it then,
20 Mr. Mallach. I am interested in everything that you
21 have found that is improper with regard to the municipal
22 ordinances. I realize there may be things that you
23 have missed, but I want a complete list of what you
24 have found and a complete list of what I can expect at
25 the mini-trial from Alan Mallach.

1 A The nature of the analysis has been to look at
2 each of the different housing types through which
3 [REDACTED] t cost housing may be provided and to look at what
4 [REDACTED] provided in the Township ordinance relative to that.

5 So perhaps if I proceed in that fashion that will-

6 Q Before you go forward, is it your testimony
7 today that Chatham Township should provide each of the
8 seven types of housing units which are described on
9 the sheet titled Chatham Township?

10 A With the exception of Number 7, there is no
11 need to provide planned unit or planned residential
12 developments as a vehicle for least cost.

13 Q But you are saying that Chatham Township
14 has an obligation of providing Items 1 through 6?

15 A That's right.

16 Q Now, with regard to Item 1, small lot
17 single-family detached homes, you indicate that the
18 smallest lots in Chatham Township are 10,000 square
19 foot lots with 75 square foot of frontage?

20 A That's correct.

21 Q You do not regard these as least cost
22 one-family homesites? A No, sir.

23 Q What is the biggest one-family homesite
24 that you would regard as least cost?

25 A Five thousand and one square feet.

1 Q And the largest front footage or lot
2 width? A Fifty-one square feet.

3 Q Anything above that is not least cost
4 housing?

5 A Mr. Bernstein, the--

6 Q Wait. Wait. For Chatham Township no
7 speeches. Anything above 51 foot of frontage you do
8 not consider least cost housing?

9 A There is no hard and fast mathematical rule. I
10 have presented to you as part of your questioning for
11 the Common Defense the standards that I am proposing
12 and so on. There should be no question that 10,000
13 square feet is vastly in excess of least cost standards
14 as has been made clear by the Court in Mt. Laurel and
15 Madison, as well as in my report.

16 Q How about the 75 foot frontage? Is that
17 a least cost provision or is that far in excess of what
18 is required?

19 A Since as my report makes clear it is adequate
20 to provide a 50 foot frontage thereby achieving every-
21 thing that the frontage of a single-family house lot
22 needs to provide, a 75 foot frontage is clearly in
23 excess of least cost standards.

24 Q Now, with regard to Item No. 2, you talk
25 about quadraplexes, which are provided for in the

1 Chatham Township ordinances. Is that correct?

2 A Yes.

3 Q And on the fourth page you analysed
4 quadrplexes. Is that correct?

5 A That's correct.

6 Q With regard to Item No. 3, townhouses,
7 you admit that Chatham Township provides townhouses,
8 but object to their standards; correct?

9 A That's correct.

10 Q The same with garden apartments?

11 A That's correct.

12 Q You would chastise Chatham Township for
13 not having mid-rise apartments?

14 A I note they are not permitted. And this is a
15 type of least cost housing.

16 Q So you would criticise the ordinance for
17 not providing these types of housing?

18 A That's correct.

19 Q And you feel that Chatham Township should
20 also provide mobile homes?

21 A That's correct.

22 Q By the way, do you know if mobile homes
23 are permitted in the Uniform Construction Code?

24 A Yes.

25 Q And there are specific standards for them?

1 A That's correct.

2 Q Do you know whether mobile homes are
3 prohibited in the Chatham Township ordinance?

4 No, as I believe I mentioned here, the ordinance
5 that was provided the plaintiffs did not include the
6 definitions that are used for the purpose of land use
7 regulation in the Township. And as I note, in many
8 municipalities the prohibition on mobile homes is found
9 in the definition section rather than in the sections
10 governing the standards of the zone. So in the absence
11 of that material it's impossible to determine whether
12 they're permitted or not.

13 Q What didn't you get from Chatham Township?

14 A The definitions that apply to the zoning ordinance
15 are not in the zoning ordinance that was submitted.
16 They are in another part of the land development
17 ordinance that was not submitted and they're incorporated
18 by reference into the zoning ordinance.

19 Q So that if there were no specific
20 prohibition on mobile homes, you would delete Item 5;
21 correct?

22 A Well, I would have to reconsider it.

23 Q Well, if an ordinance did not prohibit
24 mobile homes and permitted one-family homes, then as a
25 housing consultant wouldn't you then state that since

1 mobile homes are one-family homes, since they meet the
2 terms in the State Building Code, ergo they would be
3 permitted?

REDACTED

4 On the lots that would be otherwise permitted
5 in the residential zones, yes.

6 Q Now, with regard to the second page,
7 does that tell me anything with regard to the areas
8 in which you claim that Chatham Township is exclusionary
9 or does that just give dimensions?

10 A This gives dimensions.

11 Q This is a neutral statement, that you
12 could not look at this and tell whether or not the
13 ordinance is exclusionary?

REDACTED

14 A Well, there are certain things that one can say
15 about it that would indicate that it was exclusionary.
16 It is as such a neutral statement of the ordinance.

17 However, if one looks at this and looks at it
18 in the context of my least cost memo, then it's clear
19 that certain things of this are exclusionary. It shows,
20 for example, that there are no areas in the Township
21 in which 5,000 lot single-family houses could be
22 constructed.

23 Q Wait, if you could stop there. So you
24 would say based on that that every one-family residential
25 zone was unreasonable because not a single one of them

1 provided for 5,000 square foot lots; correct?

2 A No, I would say the zoning of the municipality
3 generally is unreasonable for that among other
4 reasons. That does not mean, of course, that in order
5 to make the ordinance consistent with Mt. Laurel and
6 Madison standards it is necessary to delete the other
7 zones in their entirety.

8 Q Well, let me ask you this: Are you saying
9 now that any of the residential zones in and of itself
10 is unreasonable, exclusionary or not consistent with
11 least cost housing?

12 A We are talking about a number of different
13 things here. The zoning ordinance is exclusionary.

14 Q On an overall basis?

15 A On an overall basis.

16 Q I understand that.

17 A One of its features is that it lacks small lot
18 zoning. The large lot zones are likely to be unreasonable
19 in the sense that I have used the term consistently
20 throughout these depositions. However, they in them-
21 selves are not necessarily part of being exclusionary
22 as I understand the Madison and Mt. Laurel cases.

23 Q You are not attacking any specific one-
24 family residential zones, but rather absences that you
25 have found in all one-family residence zones?

1 A That's correct.

2 Q So that at the trial you will not point
3 to a specific zone and say this zone I have found to
4 be unreasonable when talking about the one-family
5 residential zones?

6 A It's a matter of context.

7 Q You are looking at the overall ordinance
8 as being unreasonable, but not each specific one-family
9 residential zone? Let me be more specific, Mr. Mallach.

10 A It's a fine line.

11 Q It is important for this case and for my
12 client. Can you tell us that the R-1 zone is unreasonable
13 as it is situated in the Township of Chatham and given
14 the potential environmental problems with the R-1 zone?
15 Can you tell us today or at trial that that zone is
16 unreasonable?

17 A In--I think there are two layers of things here.
18 In an ordinance where ample provision was made for
19 least cost uses and so on, the presence of an R-1 zone
20 a la Chatham, although perhaps unreasonable in my
21 judgment, would not be evidence of an exclusionary
22 ordinance as I understand the--And this is in some ways
23 a distinction between a legal and the technical or
24 planning definition.

25 Q Would it be a fair statement that you

1 would criticize the Chatham Township ordinance for
2 failing to provide 5,000 square foot lots in sufficient

3 [REDACTED] quantities? A That's correct.

4 Q But you would not criticize the specific
5 one-family residential zones in Chatham Township if
6 there was sufficient 5,000 square foot lots in other
7 areas? A I could live with them.

8 Q And you really cannot tell us where each
9 of the zones is located in Chatham Township; can you?

10 A Only in general terms. Well, I should qualify
11 that.

12 Q With regard to the one-family residences,
13 I am talking about now.

14 A Only in general terms.

15 Q You cannot tell us today whether or not
16 there are environmental constraints attached to any of
17 the one-family residential zones?

18 A That's correct.

19 Q And, in fact, that was not your job?

20 A That's correct.

21 Q Now, with regard to the townhouse zone,
22 the R-2A zone, you would be critical of that zone I
23 assume? A Yes.

24 Q Tell me the areas in which you feel that
25 the R-2A zone is exclusionary?

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1 A The R-2A zone is exclusionary in terms of the
2 standards of the ordinance--

3 Q If you can give me the standards that you
4 feel are exclusionary?

5 A First, that a larger tract is required.

6 Q That is 25 acres?

7 A Or ten acres in the R-3D. With that difference
8 they're the same provisions.

9 Q You feel that both dimensions are unrea-
10 sonable? A Yes.

11 Q Do you know if the fact that there are
12 those dimensions in the ordinance results in any fewer
13 maximum number of townhouses being built when you look
14 at the zone map and look at the parcels?

15 A I haven't looked at both of the parcels. I have
16 only looked at one of the parcels. And I have no
17 idea whether that will affect the number of units being
18 built. Since the units are not least cost, in any event,
19 it's just part of the overall picture.

20 Q Let me give you a hypothetical. Let's
21 assume that there's one parcel in the R-2A zone of
22 25 acres, in the R-3B zone of 10 acres. Then would it
23 make any difference if there were minimum lot sizes
24 established from a least cost standpoint?

25 A It certainly could. Again the specific

1 circumstances would vary, but it certainly creates
2 a possibility of so doing.

3 [REDACTED] Suppose, for example, the owner of the 25-acre
4 [REDACTED] parcel was not interested in selling the entire parcel,
5 but was interested in retaining three acres on which
6 he proposed to built an extensive house with the
7 proceeds of the sale of the first 22. This may seem
8 silly, but the point is we are talking here in terms of
9 opportunity and this provision clearly reduces
10 opportunity.

11 Q You are serious when you say that if
12 there were single 25-acre parcels in the R-2A zone and
13 the zoning requirement required 25 acres for townhouse
14 development, that that would in your opinion be an
15 exclusionary provision? A Yes.

16 Q Thank you. The next area in which you
17 find the townhouse provisions to be exclusionary?

18 A The maximum densities permitted of six units
19 to the acre.

20 Q I believe it was your testimony that ten
21 units to the acre was the minimum that you found to be
22 acceptable? A That's correct.

23 Q Did you, sir, look at the environmental
24 constraints on these parcels in order to determine if
25 there was a reason for the density that was proposed?

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A No.

Q The third area in which you found the townhouse provisions to be exclusionary?

A The floor area requirements which are the same as those in the quadraplex units and are 900 square feet for a one-bedroom unit, 1150 square feet for a two-bedroom unit and 200 additional square feet for every additional bedroom.

Q You do not know what the market is for townhouses in Chatham Township; do you?

A I have a reasonable idea.

Q How do you have a reasonable idea of the market for townhouses in Chatham Township?

A Because the market for townhouses in Chatham Township is basically a function of the market for townhouses in the more affluent parts of the north-eastern New Jersey metropolitan area, which I am generally familiar with, their demographic trends, housing trends and the like.

Q Now, with regard to townhouses and their demand in Chatham Township, wouldn't you expect that any developer coming into Chatham Township would build more expensive units rather than least cost units?

A If there was a scarcity by virtue of only small areas being zoned for townhouses of land in Chatham

1 Township and only a small number of townhouses could
2 be built in Chatham Township, then the developer would
3 probably build more expensive units rather than least
4 cost units. This is, of course, part of the reason
5 why overzoning is so important.

6 Q Well, do you know the kind of housing
7 stock Chatham Township has at the present time?

8 A In general terms.

9 Q And they are?

10 A Largely single-family houses.

11 Q What sort of price range are we talking
12 about with the homes?

13 A High.

14 Q High. Wouldn't you expect that where
15 you have high priced homes, that you would also have
16 high priced townhouses?

17 A Again as long as there's a scarcity. Again
18 the point is if there were enough land so that
19 developers could respond both to the more expensive
20 housing demand and the more modest housing demand and
21 if there were provisions which made it possible, for
22 example, to build subsidized housing, one would get,
23 one hopes, some of all of those housing types.

24 Q You are assuming again that the over-
25 zoning would lead to low cost units?

1 A That's correct.

2 Q Without any empirical data as to when
it occurred? A Yes.

3 Q Have you visited the existing multi-family
4 units in Chatham Township?

5 A I don't know whether I visited all of them. I
6 visited some.

7 Q Did you look at the units?

8 A The individual dwelling units?

9 Q Yes, sir.

10 A No, I did not go inside the units, ~~the apartments.~~

11 Q Do you know what the zoning was when they
12 were constructed? A No.

13 Q Have you talked to any brokers from
14 Chatham Township? A No.

15 Q Any brokers who deal in Chatham Township?

16 A No.

17 Q Any developers or builders of any sort
18 having any connection with Chatham Township?

19 A Nope.

20 Q Have you talked to anyone with regard to
21 Chatham Township? A No.

22 Q So that you really do not know what the
23 demand is other than a generalized viewpoint as to what
24 you perceive the demand to be for all affluent suburban
25

1 communities in this area?

2 A That's correct.

3 Q We have talked about three areas in which

4 you feel, Mr. Mallach, that Chatham Township townhouse

5 regulations are improper. Are there any other townhouse

6 provisions that you find to be improper?

7 A Yes.

8 Q Tell me.

9 A The townhouse provisions include a requirement
10 for zig zag and a maximum of eight units per structure.

11 They provide for a maximum of two-story height and
12 require that 40 percent of the tract be dedicated for
13 open space.

14 Q You find all of these provisions to be
15 inimitable to least cost housing?

16 A That's correct.

17 Q But you cannot give us any figures as
18 to how any of these provisions would increase cost with
19 the exception of the minimum square foot figures?

20 A That's also correct.

21 Q Any other areas where you find the town-
22 house requirements to be unreasonable?

23 A No.

24 Q With regard to quadraplexes?

25 (A discussion is held off the record.)

1 Q Mr. Mallach, could you explain to us
2 areas in which you find the quadraplex zoning to be
3 unreasonable?

4 A Some of these such as the floor area requirements
5 and the open space dedication requirement are the same
6 as the townhouse standards.

7 Q Where it is the same you find it
8 unreasonable? A Yes.

9 Q And the other requirements?

10 A In addition a minimum tract of five acres is
11 required and a maximum density of four units to the
12 acre is imposed.

13 Q You would have what size for your minimum
14 tract?

15 A Well, having defined the minimum acreage or
16 minimum lot size for single such buildings, that would
17 seem reasonable to have as a minimum tract. In other
18 words, there is no--nothing about quadraplex units as
19 such that requires that two or four of them be built
20 simultaneously. One can be built by itself on an
21 appropriately sized lot.

22 Q And what would the appropriate sized lot
23 be for quadraplexes in your opinion?

24 A The appropriate sized lot, I haven't studied this
25 in detail, but it would probably be somewhere in the

1 area of 15,000 square feet.

2 Q Well, if a duplex required 8,000 square
3 ~~feet~~, couldn't we at least get double for quadraplexes?

4 No, the duplex required 8,000 relative to a
5 unit of 5,000 square feet because you basically
6 eliminated one of the side setbacks. When you are talking
7 about quadraplexes you eliminated a number of setbacks,
8 so the land use is diminished appropriately. In fact,
9 I would suggest that 15,000 would be on the high side.

10 Q After reconsidering what would be
11 reasonable, do you think 10,000 square feet might be
12 reasonable for quadraplexes?

13 A As I said, I hadn't analyzed that in detail.

14 Q You would settle for 15,000 square feet
15 today? A For the moment.

16 Q For the moment. In regard to garden
17 apartments, tell me what you feel was unreasonable
18 about the ordinance?

19 A The provisions governing garden apartments
20 include a maximum density of 12 units to the acre, a
21 ~~minimum~~ ten acre tract, a zig zag requirement, a
22 maximum of 12 units to the structure, a ban on efficiency
23 units.

24 Q Ban?

25 A A ban.

1 Q Oh, a ban on efficiency units. Is that
2 wrong?

3 A I would think that efficiency units were a
4 housing type.

5 Q I thought you wanted more bedrooms?

6 A You don't want more or fewer bedrooms. What you
7 want is the number of bedrooms that are responsive to
8 housing need and demand, which by definition the housing
9 ordinance cannot specify in advance.

10 Q Didn't you tell me you did not like the
11 90/20 because it precluded construction of two and
12 three-bedroom units?

13 A Precisely, one should no more preclude the
14 construction of efficiencies than three or four-bedroom
15 units by imposing floor area requirements which are
16 in excess of least cost standards. The 40 percent open
17 space dedication requirement is similar to the other
18 zones.

19 Q When you say open space dedication you
20 are referring to what?

21 A Well, I forget the exact wording of the ordinance.
22 This means that at least 40 percent of the tract must
23 be set aside as open space. Whether this involved
24 dedication to the township or maintenance by an
25 association I don't recall.

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(A discussion is held off the record.)

Q Anything else with regard to garden apartments were you find Chatham Township to be exclusionary?

A I believe the storage requirement of an additional room of 80 square feet may be excessive.

Q Is that an additional room or an area of 80 square feet?

A No, it specifies an additional room.

Q Would 80 square feet if it wasn't an additional room be reasonable?

A I believe that--As I said before, I have not done a specific study to identify an exact area for storage. But, in essence, what we are talking about in terms of storage as being the basic necessity is what amounts to I would guess a glorified walk-in closet. So that my estimate would be that something in the order of 40 square feet, 40 or 50 square feet would be--

Q That is the maximum?

A The maximum that would be needed.

Q Even for a two-bedroom apartment where you have middle aged people who may have accumulated a lifetime of junk?

A I think you may want to provide that the standard would vary relative to the bedroom number and size.

1 Q So you would have no objection to that?

2 A As long as it was modest and did clearly vary
3 the bedrooms. In other words, one can't justify a
4 standard as too high by saying we set it too high on the
5 off chance that the development will be built with
6 large units. In other words, if that is going to be
7 the argument, then the ordinance has to explicitly
8 reflect that variation which, of course, this one does
9 not.

10 Q Now, with regard to the zoning ordinance,
11 sir, is there anything else that you can tell us that
12 is exclusionary?

13 A On the ordinance provision dealing with apartments?

14 Q Yes. A No, sir.

15 Q Any other zoning provisions that I have
16 not touched on for Chatham?

17 A I don't believe so.

18 Q Now, is it a fair statement that each of
19 these provisions that you feel is exclusionary you
20 garnered from reviewing the ordinance itself?

21 A That's correct.

22 Q You do not know whether or not some of
23 these provisions are reasonable given Chatham's context?

24 A Well, if a provision is not least cost, it's not
25 least cost. And I cannot imagine what specific context

1 you could be referring to that--

2 Q You mean given the fact that they are what
3 they are, regardless of any empirical data, they must
4 be exclusionary and ergo unreasonable?

5 A I'm saying I cannot imagine what you would mean
6 by the term the Chatham context that would make them
7 anything other than exclusionary and unreasonable.

8 Q You are saying in any town if they had
9 these standards, they would be unreasonable?

10 A That's correct.

11 Q Now, I have a report from you dated
12 April 6, 1979 regarding Chatham Township. Do you have
13 a copy of that report?

14 A That's headed Site Review?

15 Q Yes, sir.

16 A Yes, I have a copy.

17 Q These are your notes on your visitation
18 to Chatham Township? A That's correct.

19 Q Now, did you examine the Chatham Hill
20 Apartments that you referred to?

21 A I did not examine them in detail. I did not
22 go in and look at individual apartments.

23 Q Did you drive in the roadways in the
24 development? A Yes.

25 Q Can you tell us what the density is per

1 acre?

2 A That I wouldn't be able to tell.

3 Q Could you tell us what the split is with
4 bedrooms? A No.

5 Q The rental range?

6 A No.

7 Q Could you tell us whether or not they
8 have the zig zag? A I don't recall.

9 Q Do you know whether or not they were
10 approved by way of variance, site plan, prior non-conformin
11 use or what? A That I don't know.

12 Q So can you tell us if there are any
13 environmental constraints with regard to the Chatham
14 Hill Apartment site?

15 A None readily visible.

16 Q Can you tell us anything about the
17 Chatham Hill Apartments other than the fact that you
18 have seen them on one occasion?

19 A No, I can tell you that the site that appears
20 in the zoning map that appears for the garden apartments
21 that that represents is not available for development
22 of least cost housing or towards meeting of the fair
23 share.

24 Q It is built up?

25 A Precisely.

1 Q Now, does Chatham Township get any credit
2 in your book for having some apartments or do you say
3 to Chatham Township you get zero credit for the Chatham
4 Hill Apartments?

5 A I don't see how Chatham Township could be
6 expected--could expect to get credit in that sense.

7 Q Tell me why it cannot get credit? It is
8 an existing garden apartment unit. It provides a need
9 for housing at a not unreasonable density. Why doesn't
10 it get credit?

11 A Because the inference of credit first would be
12 a number of things. First, that somehow this was not--
13 apartments are not something that are a matter of
14 common need, but rather a matter of a special favor by
15 the Township. Secondly, it assumes that this is indeed
16 least cost housing, which I have no information of one
17 way or another. And third, it ignores a fact that even
18 though we have here a garden apartment development,
19 the fact remains that Chatham Township is still as you
20 acknowledge an affluent community dominated by single-
21 family homes.

22 Q You do not know the provisions in the
23 ordinance that were in effect when the Chatham Hill
24 Apartments were approved; do you?

25 A That's correct.

1 Q They could have been least cost provisions;
2 couldn't they? A Yes.

3 Q And it could be that an evil developer
4 ded to make more affluent apartments in order to
5 maximize profits. Isn't that true?

6 A I don't think that's necessarily evil.

7 Q Isn't my hypothetical something that could
8 have occurred?

9 A I don't know that the developer was necessarily
10 evil.

11 Q Okay. Striking the word evil.

12 A Yes.

13 Q Is it altogether possible that the zoning
14 for the Chatham Hill Apartment site was a reasonable
15 zone and the developer chose to make more expensive
16 units to maximize profits?

17 A It is possible.

18 Q Given that set of facts, wouldn't you
19 give Chatham Township credit for having zoned land for
20 garden apartments in concert with least cost housing
21 or did they lose credit because a more affluent project
22 was constructed?

23 A It's not a matter of either giving credit or
24 losing credit. The concept of credit in this setting
25 seems irrelevant.

1 Q You mean it is not relevant that Chatham
2 Township has existing apartments?

3 A That's correct, as long as they are not patently
4 a dominant part of the community or patently providing
5 low and moderate income housing opportunities.

6 Q You are saying that only low income or
7 moderate income apartments give credit, that middle
8 income apartments as you see it give no credit?

9 A To me the issue of credit is really irrelevant.

10 Q You are only looking at vacant land?

11 A We are only looking at a litigation over zoning
12 ordinance that exists now of a community that is today
13 an affluent community dominated by single-family housing
14 that under Mt. Laurel and Madison as I understand them
15 has to provide now its fair share of present and
16 prospective housing need.

17 Q So that you are totally unconcerned with
18 existing housing stock in Chatham Township?

19 A I'm not concerned with the details. I'm concerned
20 with the general character of that stock and that
21 population.

22 Q Why would you be concerned even with the
23 general character if you are only concerned with vacant
24 land? What difference would it make what was existing
25 in the community at the present time?

1 A For the purposes of the zoning analysis my only
2 concern is with vacant land.

3 Q Well, you really have not made any other
4 analysis other than the HUD analysis which does not
5 directly apply to Chatham Township or with regard to
6 your proposing an overzoning for least cost housing
7 which also was not specifically directed to Chatham.
8 So what difference would it really make if Chatham
9 Township had 10,000 units of low income subsidized
10 apartments today to your analysis of the zoning
11 ordinance?

12 A It would not affect the analysis per se. It
13 would affect my judgment as to the appropriateness
14 of conducting such an analysis.

15 Q But you do not know how much low-income
16 housing is in any of our towns; do you in a specific
17 way?

18 A In the sense of low-income subsidized housing?

19 Q No, low-income housing, unsubsidized.

20 A I'm not sure what you mean by low-income housing
21 unsubsidized.

22 Q Do you know how much least cost housing
23 there is in any of our municipalities? Can you give
24 us a number? Can you give us a range?

25 A But what do you mean by least cost housing in

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terms--

Q To me the term is irrelevant, but since you are the plaintiffs' witness and you brought it up--

A Well, actually I didn't bring up the term. Justice Conford brought up the term. But I use it very much in the context of analyzing a zoning ordinance and analyzing prospective development opportunities.

If I were to look at a community's existing housing stock, the term is not in my judgment applicable. One could construe some meaning by which it could be, but I can't really deal with that.

(A discussion is held off the record.)

Q You do not know the composition of the housing stock in any of the defendant municipalities?

A Not in detail.

Q And it was--

A In general outline.

Q And it really was irrelevant as far as your entire analysis was concerned?

A A detailed analysis would have been, yes.

Q In fact, even a generalized knowledge does not affect any of your studies; does it?

A That's correct.

Q And it would not matter as an example in your analysis of Chatham Township whether or not it had

1 existing apartment units? The need as you see it to
2 amend the ordinance would be the same?

3 A That's correct. And that is the clear inference
4 from Madison and Mt. Laurel.

5 Q Which is?

6 A That Madison Township, for example, was a
7 community in which there were large numbers of existing
8 apartments, far greater as a proportion of housing stock
9 than in Chatham.

10 Q And the Court found that despite the
11 existence of a significant number of garden apartments,
12 Madison Township still had to zone the vacant acreage;
13 correct? A Yes.

14 Q Without taking into account what the town
15 had done in the past?

16 A That's correct.

17 Q And that is your thesis today?

18 A Certainly.

19 Q So that if a town wanted to be exclusionary,
20 it would be in a better position if it never allowed
21 any multi-family housing until the present lawsuit
22 rather than a town that was diligent and attempted to
23 allow some apartments to be constructed within its
24 borders? A That's speculative.

25 Q All that you have done with regard to your

1 fieldwork for Chatham Township is visit two sites that
2 are zoned for multi-family development; correct?



That's correct.

4 Q You do not know how the town picked these
5 two sites? A I do not.

6 Q You do not know if the developers
7 approached the town; do you?

8 A That's correct.

9 Q Did you read the Master Plan?

10 A No.

11 Q Did you read the prior zoning ordinance?

12 A No.

13 Q All that you did was go out and check these
14 two sites; correct? A Yes.

15 Q Do you know if there are any better sites
16 in town for multi-family housing?

17 A Not at this point.

18 Q Are you planning on making other trips
19 to Chatham Township?

20 A I may. As I noted here, I have not yet looked
21 at the R-2A site.

22 Q Other than checking the R-2A site, would
23 it be fair to say that your study was completed with
24 respect to Chatham Township?

25 A I hope to be able to amplify my analysis to some

1 degree, but not to undertaking any new areas of analysis.

2 Q Now, with regard to your analysis of
3 [REDACTED] cost housing, are you suggesting any increases
4 in the existing apartment or townhouse zones, and are
5 you suggesting the size of a 5,000 square foot residential
6 zone?

7 A I have not done such an analysis.

8 Q All that you have done specifically
9 with regard to Chatham Township is to criticize the
10 existing ordinance; correct?

11 A Yes.

12 Q And you cannot tell us that the proposed
13 sites are not the most appropriate sites for apartments,
14 can you, or townhouses?

15 A It seems unlikely that at least one of them is.

16 Q But you do not know of any more likely
17 sites; do you?

18 A Not at this time, no.

19 Q You found environmental and other
20 constraints on both sites, I assume?

21 A No, I found constraints, serious constraints
22 only as it stands on the R-3C site, which is the one in
23 which garden apartments are permitted.

24 Q But again you cannot tell us a more
25 suitable site? A Not at this time.

1 Q Now, your fieldwork consisted exclusively
2 of checking the existing garden apartment site and the
3 proposed multi-family sites?

4 A And then--That's correct.

5 Q Anything else that you did with regard to
6 your fieldwork?

7 A Not as fieldwork.

8 Q Anything else you did especially with
9 regard to Chatham Township?

10 A After returning from my field visit, I confirmed
11 my observations with reference to the soil through
12 reference to the soil conservation data on the Township.

13 Q With regard to what?

14 A What is known as the Morris County Soil Survey.

15 Q Well, that is not listed anywhere in your
16 reports, I don't believe.

17 A That's correct. This was for my own--to confirm
18 the validity of the observation that I made in the
19 field.

20 (A discussion is held off the record.)

21 Q What did you find out from the soil
22 conservation people, Mr. Mallach?

23 A That the R-3C site is indeed an extremely
24 difficult one where approximately one-third of the site
25 has a slope of approximately 15 percent. One-third of

1 the site has elaborate earth workings, perhaps of a
2 one-time-worked quarry. And the remaining one-third
3 the site is largely under water. Other than that
4 is fine.

5 Q And who did you talk with at the Soil
6 Conservation Service?

7 A I did not talk to an individual. This is
8 material that is available in written form.

9 Q And can you tell me the name of the source
10 book?

11 A I have it here, in fact, if you are

12 Q Oh, good.

13 A Soil Survey of Morris County, New Jersey.

14 Q And this listed individual sites?

15 A This, yes, this is very site specific.

16 Q That is all that you did with regard to
17 Chatham Township? A That's correct.

18 (A discussion is held off the record.)

19 (The witness is excused.)

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

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

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MORRIS COUNTY FAIR HOUSING:
SEL, et al,

Plaintiffs,

-vs-

CERTIFICATE

BOONTON TOWNSHIP, et al,

Defendants.

I, MARK SCHAFFER, a Certified Shorthand Reporter
and Notary Public of the State of New Jersey, certify
the foregoing to be a true and accurate transcript of
the deposition of ALAN MALLACH, who was first duly
sworn by me, at the place and on the date hereinbefore
set forth.

I further certify that I am neither attorney nor
counsel for, nor related to or employed by, any of
the parties to the action in which this deposition was
taken, and further that I am not a relative or an
employee of any attorney or counsel employed in this
case, nor am I financially interested in the action.


A Notary Public of the State of New Jersey

Dated: 5/15/79

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