

ML - Morris County Fair Housing Council
v. Benton Twp

5/16/79

Deposition of Alan Mallach - Direct
examination by Ms. Wilkinson

P 42

ML000889S

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,

ML000889S

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

OFFICES IN MORRISTOWN & NEWTON

10 PARK SQUARE
MORRISTOWN, N.J. 07960
539-7150

Box 241, R.D. 5
NEWTON, N.J. 07860
383-2866

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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.**

**MESSRS. MC CARTER & ENGLISH
BY: CLAUDIA B. WILKINSON, ATT'Y.
Attorneys for the Defendant Chester Township.**

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

I N D E X

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WITNESS

DIRECT

ALAN MALLACH

By Miss Wilkinson

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

MISS MASON: Before we begin, I would like to put on the record that Chester Township is willing to pay Mr. Mallach's expenses for the depositions today and the prorata share of the travel expenses.

MISS WILKINSON: There is no problem with that.

DIRECT EXAMINATION BY MISS WILKINSON:

Q Mr. Mallach, I'm Claudia Wilkinson and I represent Chester Township in this matter. In view of the fact that you have been deposed for the past month and a half, I won't go into other preliminaries.

A Thank you.

Q What I'm concerned about at this point is finding out what you know and what your opinions are to Chester Township in particular.

I understand that you visited Chester Township.

A That's correct.

Q And you testified earlier that you consider field work to be necessary in order to examine the area that is zoned multi-family or other high density zoning and to familiarize yourself in the characteristics of the municipality just from looking

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1 at it. Is that correct? A Yes.

2 Q Are there any other purposes or useful-
3 ness to field work? A Well, field
4 work generally has a variety of uses in planning, but
5 in terms of the specific issues in this case or in
6 terms of my role in this case as its been defined, so
7 far that's the principal thrust of it.

8 Q Could you tell me please what areas in
9 Chester Township you specifically visited?

10 A Okay. During my visit in Chester Township I
11 drove through what amounts to a large part of the
12 Township east to west on County Road 513, State Road
13 24, County Road 510.

14 Q 24 did you say?

15 A Yes, and more specifically besides that, I
16 looked at the site that's been zoned, I believe it's
17 AT which is located on Route 206 immediately south of
18 the Borough of Chester.

19 Q Did you make any stops?

20 A We stopped at the site, the AT zone that is.

21 Q Did you get out and walk around?

22 A A little. It was raining.

23 Q What were your impressions about that
24 site? A My impression is it's a

25 difficult site to evaluate. It contains a good deal

1 of fairly substantial slopes.

2 Q By substantial, can you give me a

3 percentage of that? A I would believe,

4 and this is not measured, this is just eyeballing, in

5 the area of 15 to 20 percent and contains some existing

6 uses, a couple of houses. There is a small road off

7 206 going into the interior of the site that contains

8 at least one, and I can't recall whether there were

9 more houses.

10 Q Would you consider the site to be
11 appropriate for multi-family and high density zoning?

12 A I believe it may be. I believe parts of it

13 appear to be difficult to develop for that purpose,

14 but parts of it are probably suitable.

15 Q Which parts would be difficult?

16 A The slope areas and, of course, by definition

17 any land that requires the clearance of a structure

18 if it's going to be developed, is for that particular

19 reason more difficult.

20 Q Just because of having to clear the

21 house? A Well, two things. First,

22 the presence of the house is likely to increase the

23 cost of the land and then, of course, you have the

24 cost of clearing the house over and above that.

25 Q Well, whether the house increases the

1 cost depends upon the nature of the house, right?

2 A Well, usually it will increase the cost. It's
3 usually the nature of the house that will determine
4 the degree to which it does so.

5 Q Are you suggesting that you shouldn't
6 zone land for least cost housing that has a house on
7 it?

8 A If there is alternative land
9 that does not, yes. If for some reason the land that
10 would clearly be most desirable for the purpose also
11 has a house on it and if the presence of that house
12 did not seriously affect the rest of the site, I'm not
13 saying it's an absolute bar. I'm saying other things
being equal, it would be better not to.

14 Q Were there any other characteristics of
15 that particular site that would affect its appropriate-
16 ness?

17 A Well, it has access to
18 Route 206 which is certainly a positive feature and
19 to the degree that such is available within the Township
20 which is reasonably accessible to the shopping center
in the Borough, which is also a positive feature.

21 Q Is there anything else?

22 A Not as far as I can remember, no.

23 Q So the only real drawback is the slope?

24 A And the house.

25 Q Okay. Now, the other purpose of your

1 visit as I understand it was to get some feeling for
2 the nature of the municipality?

3 A That's correct.

4 Q Can you give me what your impressions
5 were? A Yes. Chester is very

6 similar, I think I described one of the adjacent towns
7 in an earlier deposition, as being exurban.

8 Q Exurban? A Exurban, a
9 single word.

10 Q I'm afraid I'm not familiar with that.
11 Do you mean rural? A No.

12 Q But you don't mean suburban?

13 A It's a particular type of suburban that I think
14 the term was invented by a kind of pop sociologist
15 during the '50's, early '60's. He was talking about
16 areas of Upper Fairfield County and Northwest Chester.
17 He was talking of a particular type of outer suburban
18 ring community where the nature of the development
19 tends to be quite scattered and quite grand.

20 Q What is it that would distinguish it

21 from being suburban? A It's a sub-

22 set of suburban. It's within the overall suburban

23 definition, but I guess the characteristics are first

24 that it certainly is affluent, characterized by large

25 houses on large lots, more than the average, if you

1 will; and secondly, that the development is more
2 scattered with still substantially more vacant land
3 than, I won't say most suburbs, but perhaps the
4 typical suburb, if you will.

5 Q And how is it different from being rural?

6 A Well, because the development is not oriented
7 so much toward say agriculture or agriculture related
8 services, I would, if I had to characterize the typical
9 Chester Township house, again from my admittedly
10 limited observations, it would be a large quite new
11 house set back a few hundred feet from the road,
12 perhaps up on a rise a little bit from the road that
13 might have certainly two, three, 4,000 square feet
14 floor area and probably sells for six figures and this
15 is certainly not rural settlement.

16 Q Okay. What would you consider to be a
17 new house? A Well, certainly post

18 World War II in this case. I noticed again, certainly
19 the numbers are not large, but given it is a relatively
20 lightly settled area, it's visible in Chester. You
21 see quite a number of individual houses that are
22 either under construction or clearly newly constructed
23 in terms of the general newness of the unit, the
24 landscaping and what have you. Again, not in terms of
25 large subdivisions of new houses, but one here, one

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there, one there say clearly being constructed now or constructed within the last three or four years.

Q What would be a considerable number in Chester Township, would it be 100?

A I doubt if it would be 100. It could be perhaps a couple dozen. I didn't make any effort to count. These are observations rather than formal analysis.

Q Okay. Earlier you went through the specific attributes of a municipality which should be included in a master plan.

Did you review Chester Township's Master Plan at all? A Yes, although not in detail.

Q Do you have any observations or opinions about that master plan? A Not really. Not having reviewed it for today, I really have no very specific thoughts on that master plan.

Q Okay. The master plan and the zoning ordinance are related? A Yes.

Q In your review of the zoning ordinance, did you consider the existing land use in Chester Township? A Not explicitly. I'm aware of it in a general way, but it was not a specific part of the analysis.

Q And that would be the land as you described

1 earlier today? A That's correct.

2 Q Okay. Did you particularly take into
3 account the vacant land that was available in Chester
4 Township? A Well, I noted the

5 vacant land based on both the information in the DCA
6 Report, and if memory serves, the information in the
7 master plan.

8 Q Did you take any inventory of that land
9 to determine any physical characteristics of it which
10 would affect its potential for development?

11 A No.

12 Q What about the character and quality of
13 the existing housing? A Again,
14 without having done a formal inventory, I would say
15 the great majority of the houses I saw were certainly
16 sound.

17 Q Did you particularly consider any
18 aesthetic or historical features in Chester Township?

19 A Well, no specific historical features. I have
20 in mind what one might call the general awareness of
21 the aesthetic characteristics of the Township.

22 Q What would you say that is?

23 A Well, it's a nice Township.

24 Q What makes it a nice Township, Mr.

25 Mallach? A It's not an area which has

1 very dramatic, if you will, natural features. It's
2 predominantly rolling country, intermittently wooded,
3 very nice wooded areas, some areas with more scattered
4 stands of trees, some farming, though it did not strike
5 me as being a dominantly farmed area.

6 Q That's about it? A Yes.

7 Q Okay. Did you have available to you or
8 within your knowledge any particular environmental
9 information in particular relating to soil and water
10 conditions? A Well, there is
11 material in the master plan which I had available to
12 me.

13 Q Did you consider it?

14 A Not explicitly.

15 Q What about traffic data?

16 A Again, I did not study that specifically. I sus-
17 pect there is information on that too in the master
18 plan.

19 Q Okay. Did you take into account the
20 existence or non-existence of infrastructure?

21 A No.

22 Q Okay. Let's turn to some other areas.

23 With regard to mid rise apartment buildings

24 which I know you said that every township should

25 provide for, is that because mid rise apartment

1 buildings have certain economies of scale or other
2 relationships to least cost?

3 A I would say more the latter.

4 Q How are they related to providing least
5 cost housing? A In essence, mid rise

6 represents one of two approaches to providing senior
7 citizens housing. Since it is currently policy to
8 provide senior citizen housing in a manner that the
9 residents don't have to climb steps, that really
10 limits it to two types of housing. One is single
11 story that are sometimes called cottage type housing
12 similar to, for example, Leisure Village down in south
13 Jersey or mid rise elevator structures. It would be
14 theoretically possible to build a two story elevator
15 building, but that would be fairly inefficient. Both
16 of these two options. Mid rise has some distinct
17 advantage over the one story option. For one thing,
18 the ground coverage and that's the ability to respect
19 the environment of the site, is significantly greater.
20 Secondly, you get into a very serious problem with one
21 story developments above a certain minimum size,
22 mainly the distance that becomes involved in getting
23 from the dwelling unit to the community facilities,
24 which community facilities are recreation and so forth,
25 so generally speaking the mid rise represents ^{is a} much

1 more efficient way of building for senior citizens
2 than one story housing. I wouldn't say necessarily
3 ~~these~~ economies of scale in the informal construction
4 cost sense, but in the more general sense.

5 Q You consider mid rise necessary only for
6 senior citizen housing? A That's
7 correct. One might add the handicapped in there as
8 well. You have the same problem with stairs.

9 Q Okay. I want to ask you a couple specific
10 questions about Chester's ordinance and the setbacks.
11 The Chester ordinance in the small lot provisions of
12 the AT zone provides for side, setbacks of ten feet.
13 Is that what you would consider to meet least cost
14 criteria? A I believe so.

15 Q It also provides for rear setback of 20
16 feet. Is that within least cost?

17 A Yes.

18 Q And for front setback of 30 feet. Is
19 that within least cost? A None of
20 ~~these~~ interfere with the basic objective of being able
21 ~~to put~~ a modest unit on a 50 by 100 lot, although from
22 a practical standpoint, 30 feet is more than is required.
23 25 feet would be adequate.

24 Q Okay. Would you say that it is unreason-
25 able to have a minimum tract size requirement of 25

1 acres? A Yes.

2 Q Why is that?

3 A Because minimum tract sizes bear no relation-
4 ship to health and safety and simply reduce the degree
5 to an area which is suitably zoned can be developed
6 efficiently.

7 Q In the context of least cost, though,
8 isn't it possible that a certain minimum tract size
9 would be necessary either to allow for clustering and
10 the reduction of cost or for some economy of scale in
11 construction costs? A No.

12 Q Why is that?

13 A Well, we will take each of the points separately.
14 Clustering is not really effective by minimum tract
15 size. If you have to be able to do a certain amount
16 of things with the site in terms of putting the
17 buildings on them and provide parking, if you can do
18 that on three acres or one acre, whatever, that's all
19 you need. All you are saying by providing minimum
20 tract size is you can do those on part of the site and
21 not build on the rest, but if you can build all the
22 units on part of the site, that's all you need in the
23 first place. I'm not sure that's entirely clear, but
24 let it be for the moment.

25 The second point is in terms of the economy of

1 scale is that economies of scale tend not to start
2 until you are getting involved in much larger scale
3 developments than 25 acres. The construction costs
4 ~~say of~~ a 10 unit apartment building and a hundred units
5 made up of identical structures similar to that is not
6 likely to vary more than nominally.

7 Q You said before even one dollar is
8 violative of least cost if it causes an increase in
9 cost.

10 A Well, that's true, but I
11 guess the point is first in this case you have no
12 particular evidence that the economies of scale are
13 actually working, and the second point is, of course,
14 in order to achieve what are at best the possibilities
15 of economies of scale, you are imposing a provision
16 which is otherwise restrictive, so in the balancing
17 process, in my judgment it would be the 25 acre
18 minimum that loses.

19 Q From a practical standpoint in a situa-
20 tion where the Township such as Chester, where there
21 is no available sewerage service, is it going to work
22 out any way that any developer, in order to develop
23 high density housing is going to want a certain tract
24 size and therefore number of units to support a
25 system?

A The first one, if you
follow me.

1 Q You mean the first developer would have
2 to have enough to support his plan and the smaller
3 developers could hook up into his system?

4 A That's quite possible.

5 Q Would you say it would be reasonable to
6 require the first developer to put in a large enough
7 system to support the rest of the multi-family zoning?

8 A Well, again, this gets to a question that is
9 not practical as much philosophical. If you can make
10 a convincing argument that any sane developer would
11 do this without it being required in the ordinance,
12 then it shouldn't be in the ordinance.

13 Q But as a practical matter would any
14 sane developer spend more money than he has to to
15 build a sewerage treatment plant larger than what he
16 needs to service his development?

17 A Oh, absolutely. If he thought and had halfway
18 reason to believe that excessive capacity would
19 subsequently be sold to future developments and at a
20 reasonable return, then it would be a very logical
21 thing for him to do so.

22 Q So that would work in a situation where
23 the developer was not considering dedicating the
24 treatment plant in order that the municipality would
25 maintain it and operate it?

1 A Well, that again would depend on how the
2 municipality wanted to handle it. Most developers
3 in a situation like that where a municipality is
4 going to be required, will usually lean over backwards
5 to follow whatever direction the municipality gives
6 them. In other words, if the municipality tells them
7 that they want to be dedicated over to the MUA or the
8 township committee in the absence of MUA, they will
9 be happy to oblige. If the municipality says we want
10 you to run, they will run it. Usually the developer
11 almost invariably looks to the municipality for
12 guidance. The same would be true in terms of the
13 question of sizing.

14 Q Just to make it clear, you do not think
15 it would be reasonable then to explicitly require
16 the first developer, if he's going to put in a sewerage
17 plant, to build one large enough to be able to serve
18 the rest of the, at least adjacent area which is zoned
19 for high density development?

20 A Well, actually to put it at his expense, no.
21 On the other hand, you could work out something whereby
22 the municipality and the developer would share in using
23 a prorata formula as provided by the Municipal Land Use
24 Law, so that everybody would come out even in the end.

25 Q And that would be reasonable?

1 A I think so.

2 Q Okay. Do you consider it reasonable
3 for a township to have in its zoning ordinance a
4 requirement that 15 percent of the area be reserved
5 in open space? A For multi-family

6 housing, yes.

7 Q Do you consider 35 foot height limitations
8 to be reasonable? A No.

9 Q Is that only because it precludes mid
10 rise apartment buildings? A Well,
11 that's part of it. It also would preclude three story
12 townhouses and garden apartments.

13 Q And you consider that unreasonable?

14 A That's correct.

15 Q Have you done any calculations as to
16 what maximum densities are possible under the Chester
17 Township Zoning Ordinance?

18 Are you referring to your report which you
19 provided to us? A Yes. I don't
20 think it was actually done.

21 Q Do you have any opinion as to what that
22 maximum density would be? A Well,
23 with regard to the single family units, since --

24 Q In the AT zone?

25 A In the AT zone. If memory serves, the individual

1 lots are 5,000 square feet and if you add to it some
2 modest amount for roads and the like and for your
3 15 percent open space, you will come out with some-
4 thing in the order of, I guess slightly under six
5 units to the acre.

6 Q What density for garden apartments
7 would be possible under this ordinance?

8 A Bear with me for one minute. It's hard to tell
9 precisely. This may be my fault for not having noted
10 some of the relevant information here and then again
11 it may be ambiguity of the ordinance. The question
12 is the nature of the setback requirements, exactly
13 how the setback requirements are to be construed in
14 the ordinance, whether each building, each structure
15 has the same setback requirements or whether it's a
16 single setback requirement for the entire development
17 and whether the parking can be located as would appear
18 to be the case within the setback requirements. Again,
19 it's ambiguity. Depending on these factors, the
20 density would probably not exceed, for garden apart-
21 ments, seven to the acre and would be as low as, in
22 the area of four to five. I believe it may be appro-
23 priate to do a more specific analysis of this and send
24 you some kind of a supplementary report based on more
25 exact calculations.

1 Q I would appreciate it because I'm some-
2 what surprised that a garden apartment dwelling with
3 ~~some~~ 10 units on it would fit on an acre.

4 A ~~CO~~ The building itself, of course, sits on sub-
5 stantially less than an acre, but the question is, of
6 course, the width or the depth of the various yard
7 requirements that each building or structure has to
8 have.

9 Q I would appreciate to know how you worked
10 it out. A Okay.

11 Q And the same is also true of the town-
12 houses? A Yes. This will be forwarded
13 to you expeditiously.

14 Q I appreciate it.
15 I understand or I assume rather that you would
16 consider minimum width requirements of 300 feet to be
17 unreasonable. A That's correct.

18 Q And that's for the same reasons that
19 you considered minimum tract size would be unreasonable?

20 A Yes, except in that case even the justification
21 of sorts provided by sewerage does not exist.

22 Q And is the same true of the minimum depth
23 requirements of 500 feet? A That's
24 correct.

25 Q Do you consider it reasonable to provide

1 for a maximum coverage of the tract area to be 20
2 percent? A Assuming that refers to
3 buildings as distinct from all impervious surfaces.

4 Q Meaning roads and parking lots?

5 A That's correct. It's not unreasonable.

6 Q If it were to include all impervious
7 surfaces, that would be unreasonable?

8 A It would be low.

9 Q Do you know whether it does include all
10 impervious surfaces? A I believe it
11 does not.

12 Q Do you consider it unreasonable to
13 provide that there should be a minimum distance between
14 buildings of 50 feet? A I believe
15 that's an excessive distance.

16 Q What would be reasonable?

17 A Well, I believe it would be a function of the
18 site lines and also, more than anything else, the
19 nature and design of the buildings. I think depending
20 on the design, it could be in some cases virtually
21 minimal, perhaps 10 feet. Probably in no case need it
22 be more than 30 feet.

23 Q Do you think it would be impossible to
24 provide for a minimum distance between buildings
25 without having a particular site plan in mind?

1 A Not really.

2 Q What purposes are served by having a
3 distance between buildings?

4 A Essentially the purpose or the two possible
5 purposes that can be served, one, of course, is
6 providing minimum levels of visual privacy in terms
7 of window relationships or fancy finishtration; and
8 secondly, would be making sure that there was adequate
9 light and air in the event there were certain window
10 relationships between the buildings or facing one
11 another.

12 Q And that's it?

13 A That's what comes to mind.

14 Q Okay. Do you think it is unreasonable
15 to provide that there be a minimum distance between
16 buildings and driveways of 30 feet?

17 A Yes.

18 Q Why is that? A Because
19 the reasons that might dictate minimum distance
20 between one building and the next could not apply to
21 driveways. A driveway can be located very close to
22 a building without affecting the light or air of a
23 building. One may want to have some distance between
24 the building and the driveway and depending on the
25 number of windows, the use adjacent to it, how heavily

1 the driveways can be used and so forth, but 30 feet is
2 considerable in any case and by creating these distances,
3 of course one just simply increases costs in terms of
4 reducing density and terms of increasing infrastructures.

5 Q What distance do you think would be
6 reasonable? A Well, I'm hesitant
7 to give a hard and fast number like that, but I would
8 think 10 feet would probably serve for most purposes.

9 Q Is it reasonable to have a setback for
10 townhouses and garden apartments of 100 feet in front
11 of those buildings? A No.

12 Q Why is that?
13 A Because again there is no reason with which I'm
14 familiar to justify such a thing from a health and
15 safety standpoint and significantly it increases costs
16 by increasing the element of the infrastructure
17 extension to the buildings.

18 Q What distance do you think would be
19 reasonable? A Certainly no more
20 than 25 feet. As I've mentioned earlier comments
21 under many circumstances it's quite reasonable to
22 bring townhouses right up to the sidewalk, zero
23 setback is the word.

24 Q Would it be reasonable to have a larger
25 setback where the buildings front on a very busy road

1 such as 206? A Possibly. Certainly
2 you wouldn't necessarily want it up to the sidewalk.
3 Of course, there is no sidewalk there, so that's
4 academic, but you might want more than 25 feet.

5 Q This is because it would reduce noise
6 levels as well as some danger levels to people in the
7 front yards? A That's correct.

8 Q Do you have any opinion as to what would
9 be reasonable for a setback from a road such as 206?

10 A Perhaps 50 feet. It could also depend on the
11 angle or the height of the development relative to the
12 level that 206 is at, but 50 feet might be --

13 Q Would the setback be less or would it be
14 greater if the development were higher than 206? I'm
15 interested to find out which way it works. If it gets
16 larger if you are on a hill or if it gets larger if
17 you are in a valley. A I think it
18 would get larger if it deviates from the level. I'm
19 sorry, less if it deviates from the level.

20 Q Either way? A Yes.

21 Q Why is this?

22 A Well, because you are getting some distance
23 affects from the fact that you are at a different
24 level, so that horizontal distance might not have to
25 be as great.

1 Q Do you think it's unreasonable to
2 provide for a 75 foot setback on the site for garden
3 apartments and townhouses? A Yes.

4 Q Why is that? A Again,
5 for the same reasons. In essence, it serves no health
6 and safety purposes with which I'm familiar and simply
7 adds costs.

8 Q What would be reasonable?

9 A Well, I went through this sort of thing in gory
10 detail I think with the Common Defense and the point
11 I was trying to make is that there was no hard and
12 fast reasonable figure that it would depend again on
13 the topography, the nature of the plantings of the
14 area, the adjacent uses and the like that it can be
15 anything from perhaps five or 10 ten feet at a
16 minimum up to probably no more than 25 or 30 feet.

17 Q And I suppose the same would be true
18 for 75 foot rear setback? A That's
19 correct.

20 Q Okay. Do you think it is unreasonable
21 to provide the townhouse cluster to contain no more
22 than four dwelling units?

23 A That's correct.

24 Q Why is that? A For the
25 same reasons. You are doing something, creating a

1 minimum requirement that again has no relation to
2 health and safety and increases cost because it reduces
3 the efficiency of construction, it generates more wall
4 area per unit and it requires greater extensions.

5 Q Is there any number that would be
6 reasonable? A From a purely logical
7 standpoint there is no number. You could argue say
8 that there is a point, I'm not sure where it would be,
9 but there is a point where the result except for very
10 unusual circumstances is somewhat silly. I mean,
11 obviously the townhouse development 1,000 yards long
12 is a silly thing, but given that there is an extreme
13 that is untenable, I do not know of any specific point
14 that you could say up to this point is reasonable,
15 beyond this point is not.

16 Q Do you think it's unreasonable to
17 provide that a garden apartment building have no more
18 than 10 dwelling units? A Yes, for
19 the same reason.

20 Q Okay. I suppose there is no reason to
21 go through the same things.

22 Is it unreasonable to provide that townhouses
23 and garden apartment buildings be no more than 80 feet
24 long? A That's correct, same reason.

25 Q Is it unreasonable to provide it be no

1 less than 80 feet long? A No.

2 Q Why is that?

3 A Because again that would be something best left
4 to the discretion and judgment of the developer. If
5 a developer, for example, one quite reasonable possi-
6 bility in developing a site would be to have buildings
7 of different lengths to reflect the variety of the
8 topography, terrain or whatever so that the development
9 might have one building that would be 150 feet long
10 and another one 60 feet long, so on and so forth.

11 Q Shouldn't there be some minimum require-
12 ment to provide that these buildings be of sufficient
13 size to accommodate the occupants?

14 A Well, I think if the individual dwelling units
15 are, what are at issue there, certainly the dwelling
16 units within the buildings must be of sufficient size
17 to accommodate the occupants. The size of the building
18 is a function then of the number of dwelling units the
19 builder wants to put in it.

20 Q Okay. Do you find it unreasonable to
21 require that the developer provide central sewerage
22 and water systems? A Not in itself,

23 no.

24 Q Is that because such systems are generally
25 considered to be necessary for high density development?

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A That's correct.

Q Do you find it unreasonable that these systems, the installation and design of them are subject to local as well as State approval?

A Yes.

Q Why is that? A Because from my experience and knowledge of this subject, which I readily admit to as being more generalized than technical, the State standards are generally considered quite adequate and by imposing local standards, the opportunity of arbitrarily high or unreasonable action is created.

Q If the local standards are indeed not arbitrary or unreasonably stringent, then you would have no objection to them?

A Well, it would be my understanding in that case that they would be simply duplicate of State standards.

Q Then you believe the State standards are exhaustive? A They are stringent

in my understanding as previously qualified as is necessary for protection of health and safety and the potability of New Jersey's waters.

Q If, indeed, there is actually an inner action between the State standards and local standards, would the State, intending for the local governments

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1 to provide certain standards, then the State standards
2 are not adequate by themselves?

3 A If it were the case. That might be the case.

4 Q I wanted to ask you a couple of ques-
5 tions about development phasing.

6 Do you find it unreasonable from a least cost
7 standard that the zoning ordinance should provide the
8 initial approval be granted for no more than 150
9 dwelling units? A That's correct.

10 Q And why is that?

11 A Well, at one level with housing getting more
12 expensive all the time to the degree that a municipi-
13 pality makes the development be deferred, it is
14 contributing to making the housing more expensive.
15 Similarly, if a developer did want to achieve the
16 economies of scale on a serious level that we discussed
17 earlier, the developer should have the opportunity to
18 construct more than 150 units certainly.

19 Q Would it be reasonable to provide that
20 approval be given for 150 dwelling units with the
21 understanding or any other written approval for what-
22 ever balance of units that the developer intends to
23 provide with only the contingency that if for some
24 reason the developer has not complied with the
25 building codes perhaps or met certain quality standards

1 in his building, that that approval for the balance
2 will be rescinded? A It's my under-
3 standing that approvals, if the developer fails to
4 meet such things as building standards and what have
5 you, the approval can be rescinded on that basis
6 without it having to be part of a phasing process.

7 Q Wouldn't that be true only as to the
8 units that have already been built?

9 A I'm not sure about that. We will leave that an
10 open question.

11 Q Okay. Do you consider it unreasonable
12 to provide in this phasing that there will be approval
13 of no more than 100 additional units and that that
14 approval will be given only after at least 75 percent
15 of the initial dwelling units have been sold or rented?

16 A That's correct.

17 Q And why is that?

18 A Well, the judgment as to whether units will
19 find buyers or renters as the case may be is
20 essentially a matter of a developer and this seems to
21 be one of the few remaining entrepreneurial opportunities
22 that seem to exist, to risk one's own mind, time and
23 energy, and if a developer is going to commit himself
24 to build an X number of units according to the
25 standards that the municipality has enacted, it is

1 the developer, as to how much he believes he can sell
2 or rent. In this provision, it is just a matter of
3 no more or less, a slowing down of the production of
4 units in the AT zone. It bears no relationship to
5 health and safety and, in fact, is inimical to getting
6 developers involved and obtaining economies of scale.

7 Q Would it be reasonable for a township
8 that wants to, I don't want to say limit its growth,
9 but control its growth so that services and all the
10 rest of the necessary municipal functions can grow
11 with the population, I'm talking about just a
12 controlled pattern of growth within a reasonably short
13 period of time, would it be reasonable for the town-
14 ship to zone for what it considers to be its fair
15 share now with a certain measure of overzoning and
16 then designate certain other lands to be available
17 for high density zoning when the need arises. Is that
18 a legitimate way to phase that development?

19 A There are an awful lot of questions that would
20 have to be answered. Certainly there is a respectable
21 body of opinion in planning that holds that phasing
22 development is a legitimate aspect of land use
23 regulation. I think there is also within that a
24 fairly strong consensus that to do so requires a
25 commitment on the part of the municipality to extend

1 its infrastructure or alternatively as was the case in
2 the Ramapo decision, to allow developers who own other-
3 wise suitable land to accelerate phasing by themselves,
4 providing infrastructure since the intent, as I under-
5 stand it of the present zoning ordinance, is that the
6 developer provides the infrastructure in any case,
7 it's not clear what justifiable basis Chester Township
8 would have to adopt a phasing approach.

9 Q So the only reason you can see as a
10 justification for phasing would be infrastructure,
11 meaning really basically sewerage and water?

12 A Sewerage, water, roads, schools and the like.
13 I think again in the Ramapo decision placed a lot of
14 stress on the fact that the township had a fairly
15 detailed capital improvement program that provided
16 for significant growth. Another factor, I think
17 which is also central to the idea of phasing, is that
18 the phasing not limit, certainly not seriously limit
19 the amount of housing over to what is called for in
20 terms of market and demand, but I think the idea of
21 tying it in with a capital program with the orderly
22 extension of infrastructure with a commitment by the
23 municipality to provide that infrastructure and make
24 the development possible is essential as a planning
25 tool.

1 Q And to justify phasing, it would be
2 necessary that the township be committed to providing
3 all types of infrastructure? A Yes.

4 Q Okay. A Are you just
5 about through?

6 Q Just about. I have one more question
7 about your report.

8 There is one section entitled Mapping and I
9 understand from previous Common Defense depositions
10 that that is where you recorded your observations
11 from your field work. Is that correct?

12 A As a general case. As you know from my previous
13 comments, the comments here does not reflect my
14 observations. I think this was based on the ordinance.
15 You now have my verbal comments on that point.

16 Q Now, in this area entitled Mapping, it
17 really refers to the AT zone?

18 A That's correct.

19 Q As containing 150 acres and that there
20 apparently 10,000 to 11,000 vacant or agricultural
21 acres in the Township? A That's
22 correct. I believe that came from the master plan.

23 Q Okay. That's what I wanted to know.
24 I find that a bit confusing at times. You didn't
25 differentiate between vacant land and agricultural

1 land? A From a development standpoint
2 or development potential standpoint they cannot be
3 differentiated. Whether that's right or good is
4 obviously a matter of disagreement.

5 Q In the R-5 zone, the zoning ordinance
6 provides that will be a second dwelling unit allowed
7 of less than 100 square feet.

8 A 1,000 square feet.

9 Q Excuse me, 1,000 square feet. That is
10 connected to an accessory use structure and the lot is
11 greater than 10 acres. Is it possible that such a
12 second dwelling unit could be a least cluster unit?

13 A You are not serious?

14 Q I am serious.

15 A The clear purpose of that language and the fact
16 that the unit would be connected to or is part of a
17 use structure is to provide housing for stable boys
18 over stables, chauffeurs or maids over garages and the
19 like on the property of a large house on an estate.

20 Q Are you suggesting that those people are
21 not perhaps poor low and moderate income people who
22 indeed need housing?

23 A Some of them
24 may very well need housing, but this is an extremely
25 specialized form of housing and is really somewhat
separate, quite separate from the overall housing

1 need that is at issue in terms of the concept of fair
2 share, as I understand it. I mean, I think if you
3 wanted to be generous, one could say that a small
4 number of least cost units could be made possible
5 thereby from a practical standpoint that would hardly
6 be relevant because it is in the nature of these units
7 that they are provided as part of terms of employment
8 or subject to the pleasure of an employer or other
9 arrangement and are not really part of the commercial
10 market of housing stock.

11 Q But that's really an assumption on your
12 part, but not as a particular knowledge of the units
13 currently available in Chester?

14 A That's correct.

15 Q Where two family housing is provided,
16 the zoning ordinance sets forth that the second unit
17 shall not exceed one third of the total floor area of
18 the building. Is that a provision that you find
19 unreasonable?

20 A It's a provision
21 that I find pointless. I cannot understand the purpose
22 of that ordinance provision except with regard to the
23 possibility that the provision may seek to dictate in
24 round about terms that such units be constructed in
25 the fashion that one would be unoccupied and the
second one would be, rather than two separate owner

1 occupied units. That is speculation.

2 Q Would you find it unreasonable to require
3 that one of the units be owner occupied?

4 A Yes.

5 Q That's from a least cost basis?

6 A No, that is from a, again from a least cost
7 standpoint. These kinds of provisions have no explicit
8 connection pro or con with least cost housing. They
9 strike me as having no apparent basis for them, but I
10 may be mistaken.

11 Q And I take it you have no idea as to how
12 many two family houses are currently in use in Chester?

13 A I may have that -- I don't know if the informa-
14 tion is in the information that I have here and
15 specifies that.

16 Q I understand that you have that data
17 available in some sort of census form and will provide
18 it. Is that correct? A The number of
19 two family units in Chester?

20 Q Yes. A Yes.

21 Q Do you have data as to the number of
22 other types of units in Chester?

23 A Yes.

24 Q Would you provide that also?

25 A I can give you one statistic that I have here.

1 In 1970 there were a total of 17 units in Chester
2 Township in structures of three or more units and
3 there has been no increase in that total between 1970
4 and 1977. In other words, no permits have been issued
5 for additional three or more unit structures.

6 Q Did you determine that no permits had
7 been issued? A Well, the data is
8 from the Department of Labor and Industry. They
9 compile all of this and publish it annually.

10 Q Would the objection that you had to a
11 second dwelling unit on a lot of more than 10 acres
12 also apply to apartments over stores?

13 A Not in the same sense. Apartments over stores
14 could conceivably be an increment to the normal, if
15 you will, housing stock.

16 Q Do you find it unreasonable that these
17 apartments are limited to the lesser of one third of
18 the building area or 800 square feet?

19 A Well, it's a provision that tends to reduce
20 the opportunity for additional units. In other words,
21 what it is saying in essence is that one can have an
22 apartment over a store, an apartment, not two, but one,
23 but it must clearly be secondary to the commercial use
24 rather than taking up as much or more space.

25 Q And you see no justification for that?

1 A I can't think of any.

2 Q From a least cost basis, do you think it
3 is necessary that a township provide for planned unit
4 developments? A No.

5 Q You testified briefly in the Maxi trial
6 deposition about mobile homes.

7 A That's correct.

8 Q Could you just give me your definition
9 of a mobile home? A A mobile home is
10 a unit constructed in a factory to which temporary
11 wheels and a hitch are attached to enable it to be
12 carried to a site behind a car or truck where it is
13 then generally assembled on a slab or pad, either on
14 an individual building lot or a mobile home park.

15 Q At the time there seemed to be some
16 confusion between trailer and mobile home. Do you
17 differentiate between those terms?

18 A I personally do, but my differentiation might
19 be kind of subjective rather than --

20 Q What do you consider to be a trailer?

21 A I think of a trailer as being a distinctly
22 smaller unit that is more readily usable for temporary
23 or traveling accommodations as well as or instead of
24 permanent accommodations and that a mobile home is for
25 practical purposes basically a permanent type that one

1 tends to take off the wheels when it reaches the site
2 and intends to stay there for a great length of time.
3 With a trailer, this is not as necessarily the case.

4 Q Is there a cost difference between
5 trailers and mobile homes in your definition?

6 A Trailers being generally smaller, generally
7 less expensive.

8 Q Do you think it's necessary from a least
9 cost standpoint that a township permit trailers?

10 A Using my distinction, I believe that mobile
11 homes are more appropriate because that is, in my mind
12 the type and size of structure that is suitable for
13 permanent year round accommodations. Now, I think
14 many ordinances use the term trailer and mobile home
15 apparently interchangeably, sometimes explicitly so,
16 but that would be my impression.

17 Q When you say smaller, are you talking
18 about an eight foot wide unit or ten foot wide unit or
19 just the smallest they make in trailers?

20 A Well, I hadn't really put specific numbers in
21 mind, as well as in width and length. The one
22 distinction is that a trailer is small enough to be
23 readily maneuverable when pulled by a vehicle, while
24 a mobile home, although it's obviously designed to be
25 pulled by a vehicle, is not the sort of thing you

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would want to have dragging behind you on a vacation.

Q Are you familiar with the American Public Health Association minimum square footage requirements?

A I have looked at them. I'm not currently very familiar with them.

Q Do you have any opinion about that?

A I would have to refresh my memory of them. I haven't looked at them in quite some time.

Q Do you have any other information or opinions or any other knowledge of Chester Township?

A Nothing of any moment that comes to mind.

MISS WILKINSON: Thank you very much.

* * *

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.

HE

Victor Selvaggi, Jr.

A Notary Public of the State of New Jersey

Dated: 5/16/79

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