

ML - Morris County Fair Housing Council
v. Beenton Twp

5/17/79

Deposition of Alan Mallach - Cross-Examination
by Mr. Murphy.

P 22

ML0008905

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,

ML000890S

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 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 TOWNSHIP,
ROXBURY TOWNSHIP and WASHINGTON TOWNSHIP,:

Defendants.

Morris Township, New Jersey
Wednesday, April 25, 1979

B E F O R E:

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

KNARR - RICHARDS, ASSOCIATES

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1 Building, Morris Township, New Jersey, on Wednesday,
2 April 25, 1979, commencing at 11:45 A.M.

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

4 THE PUBLIC ADVOCATE
5 BY: PETER A. BUCHSBAUM, ESQ.
6 For the Plaintiffs.

7 MESSRS. MURPHY & KURNOS
8 BY: JOEL A. MURPHY, ESQ.,
9 For the Defendant Borough of Florham Park

10 MARK SCHAFFER, C.S.R.
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I N D E X T O W I T N E S S E SWITNESSCROSSALAN MALLACH

By Mr. Murphy

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

2 CROSS-EXAMINATION BY MR. MURPHY:

3 Q Mr. Mallach, my name is Joel
4 Murphy. I represent the Borough of Florham Park.

5 As you know, I was here when Mr. Clapp
6 was deposing you on behalf of Harding Township.
7 And I will try not to be repetitious of the things
8 that he asked you, although I will get a copy of
9 that transcript, as I heard your testimony.

10 MR. BUCHSBAUM: Mr. Murphy, before
11 you begin your questions, just to put this
12 on the record, as we have done with other
13 counsel, there is a memorandum that has
14 gone out from our office to all counsel
15 stating that during these depositions,
16 counsel for the defendants would agree to
17 pay Mr. Mallach at the rate of \$40 an hour
18 for his time at the deposition, plus pro-
19 portionately for his travel time to and
20 from Morris Township. I take it you agree
21 to that statement?

22 MR. MURPHY: I agree.

23 (A discussion is held off the
24 record.)

25 Q Mr. Mallach, you prepared a report

1 for the purposes of your testimony involving
2 Florham Park. Is that correct?

3 A Yes.

4 Q And you have determined a number
5 for least cost housing to be built in Florham
6 Park. Is that correct?

7 A No, I have not.

8 Q Have you made any conclusions for
9 the purposes of your testimony involving the
10 Borough of Florham Park?

11 A I have made conclusions and findings
12 regarding the ordinance of the Borough and regard-
13 ing the sites that are zoned under multi-family
14 use under that ordinance. Otherwise, I have not
15 made any conclusions.

16 Q Have you made a physical survey of
17 the Borough of Florham Park?

18 A I have visited, made a field visit to
19 Florham Park. It would not be a complete survey
20 of the borough, but it was a visit.

21 Q When can you make such a visit?

22 A April 4th.

23 Q Of this year?

24 A Yes.

25 Q And that was the same day that you

1 visited other municipalities in Morris County.

2 Is that correct? A That's correct.

3 Q And do you recall how much time you
4 spent in the Borough of Florham Park?

5 A I would say half an hour to an hour.

6 Q And during that period of time,
7 were you simply riding around the borough in an
8 automobile? A In part; we also
9 stopped at one point to look more closely at an
10 area.

11 Q What area is that?

12 A This is an area that was zoned MF-2 and
13 is now under construction for what I believe is
14 known as the Hearthwood Village development.

15 Q Why did you spend time at that
16 location? A Part of the interest
17 or the purpose of the visit was to look at two
18 sites, one an MF-1 site and the other, the MF-2
19 site. The MF-1 site was readily visible from the
20 car, so there was no need to stop. The MF-2 site
21 was not readily visible, so we took some time
22 finding it, and then after we noted the construc-
23 tion activity, to find out what the activity was.

24 Q Who made this on-site inspection
25 with you? A Mr. Bisgaier and

1 Miss Brooks.

2 Q So the three of you were in Florham
3 Park at the same time? No one else from the
4 Public Advocate's Office was there?

5 A Not on that trip. I don't know. Other
6 times there might have been.

7 Q All right. Did you travel all the
8 roads in the Borough of Florham Park?

9 A Oh, I don't think so, no.

10 Q Did you personally visit or consi-
11 der all of the different types of housing in the
12 Borough of Florham Park?

13 A We certainly had no intention of doing so,
14 so if we did, it would have been inadvertent.

15 Q Do you know or did you make an
16 observation as to the different types of housing
17 available in the Borough of Florham Park?

18 A As I say, we made no effort to do a com-
19 prehensive or a complete survey of the borough.
20 I observed those housing units that were visible
21 along our route.

22 Q Did you seek out or are you aware
23 of any least cost housing in the Borough of
24 Florham Park?

A I'm not aware
25 of any least cost housing in the Borough of

1 Florham Park.

2 Q Do you know what the smallest lot
3 size is in the Borough of Florham Park?

4 A I know what the smallest conforming lot
5 size is, which is 15,000 square feet. As in any
6 municipality, there's a possibility that there
7 are nonconforming lots.

8 Q But you did not make any study to
9 see if there were any numbers of houses on lots
10 of less than 15,000 square feet?

11 A That's correct.

12 Q Did you personally view any areas
13 where there are existing environmental constraints
14 to least cost housing in the Borough of Florham
15 Park?

16 A I did not note any. It's
17 quite possible there are, but I did not specific-
18 ally--Well, I'll qualify that. Along Columbia--
19 I believe it's--Let me make sure. I have this
20 right here.

21 --Columbia Turnpike in the western part of
22 the Borough I think just before you come into
23 Morris Township, there is what appears to be
24 swamp land or marsh land. Other than that, I
25 didn't notice anything.

Q Did you make a physical or a

1 personal observation of the Passaic River area in
2 the Borough of Florham Park?

3 A No.

4 Q Did you study any maps which would
5 designate floodplain or flood hazard areas in the
6 Borough of Florham Park?

7 A No.

8 Q Did you make any determinations as
9 to the available acreage for development in the
10 Borough of Florham Park?

11 A No, I made no separate study. I relied on
12 the D.C.A. study in that regard.

13 Q Did you make any study concerning
14 the availability of utilities in the Borough of
15 Florham Park?

A No.

16 Q Did you make any studies or do you
17 have any knowledge concerning the availability of
18 public transportation in the Borough of Florham
19 Park?

A Let me refer to this document.
20 According to the Morris County Planning Board map
21 there is a bus route that serves Florham Park in
22 part. This is along Columbia Turnpike.

23 Q Now, you have studied the zoning
24 ordinance or considered the zoning ordinance of
25 Florham Park. Is that correct?

1 A Yes.

2 Q The zoning ordinance of the Borough
3 of Florham Park, have you formed any opinions
4 concerning its reasonableness?

5 A Yes, I have.

6 Q And can you tell me what those
7 opinions are?

8 A The zoning
9 ordinance of Florham Park as it presently exists
10 does not make any provision for least cost housing.

11 Q And are there any other problems
12 with regard to the zoning ordinance of Florham
13 Park from your point of view?

14 MR. BUCHSBAUM: Do you mean problems
15 relative to Mount Laurel compliance or just--

16 MR. MURPHY: If he can answer it.

17 A I've only reviewed the ordinance in the
18 context of its relationship to the standards set
19 down in Mount Laurel and Madison Township. In
20 other words, say hypothetically the Florham Park
21 ordinance conforms to all the procedural standards
22 of the Municipal Land Use Law or the like has
23 been beyond the scope of my study.

24 Q Within the scope of your study, do
25 you have any opinions concerning the zoning
ordinance of Florham Park other than the fact

1 that it does not provide for least cost housing?

2 A Well, clearly within that point, I have a
3 lot more specific observations within the overall
4 scope of its failure to provide for least cost
5 housing. But all of my opinions of the ordinance
6 are within that context.

7 Q Did you make a study or are you
8 aware of the types of commerce that exist in the
9 Borough of Florham Park?

10 A I have not done a specific study, but I'm
11 aware generally that there is shopping along
12 Columbia Turnpike, in particular in the general
13 vicinity of what I believe is Ridgedale Avenue.
14 I'm not familiar with what additional commercial
15 facilities there might be.

16 Q Do you have any specific knowledge
17 as to what land is available in Florham Park for
18 least cost housing?

19 A As I stated, with the exception of the
20 general figures from the D.C.A. report, I have no
21 specific knowledge on land availability in the
22 borough.

23 Q Did you form an opinion as to whether
24 Florham Park is or is not a developing community?

25 A Again with the same caveat that has been

1 expressed wherein terms of its being a legal
2 matter and so on, on the basis of my interpreta-
3 tion of the relevant standards I have formed an
4 opinion that it is a developing municipality.

5 Q Within the range of that qualified
6 statement, if you will, can you tell us your
7 understanding of when a community is developing
8 and when a community is developed?

9 A I think the only cases that the Supreme
10 Court has handed down that provided a basis for
11 drawing that distinction are those known as the
12 Washington and Demarest cases. And I believe that
13 on the basis of those cases, the concept of what
14 is developed, leaving aside the obvious exclusions
15 such as core cities such as Newark and East Orange
16 or Trenton, but among suburban communities what is
17 developed is those which fit within the fact
18 pattern of communities such as Demarest and
19 Washington, in other words, communities that are
20 both very small, two, three square miles or less
21 in area, and communities which have a negligible
22 amount of vacant land available for development.
23 In the case of both of those, I believe the total
24 acreage that might be construed as available for
25 development in either of those towns was in the

1 order of 100, 130 acres in scattered bits and
2 pieces.

3 MR. BUCHSBAUM: Mr. Murphy, I be-
4 lieve you were present when Mr. Clapp ask-
5 ed these questions and I voiced our objec-
6 tion to them on the grounds that they were
7 essentially legal rather than factual
8 matters. We have, as you know, reserved
9 our right to object at trial. And the wit-
10 ness can answer to these if he can, but
11 they are essentially legal questions. At
12 least as you phrased it, the last one
13 certainly was.

14 Q You are going to testify in the
15 Public Advocate's case in this litigation. Is
16 that correct? A Yes.

17 Q Are you going to testify at both
18 the maxi-trial and the mini-trials?

19 A I believe so.

20 Q And in the maxi-trial, is it your
21 intention to be specific with the various
22 municipalities or is your testimony going to be
23 more general? A In the maxi-
24 trial?

25 Q Maxi-trial.

1 A It is going to be more general as I
2 understand it at this point.

3 Q And in the mini-trial, and I am
4 speaking now specifically about the Borough of
5 Florham Park, you are going to testify as a hous-
6 ing expert. Is that correct?

7 A As a housing and planning expert.

8 Q And as such, you are going to
9 present certain conclusions with regard to the
10 Borough of Florham Park and the zoning ordinance.
11 Is that correct? A That's correct.

12 Q All right. Can you tell me what
13 those conclusions are going to be?

14 A Well, the central conclusion from which
15 all others flow is that the zoning ordinance of
16 the Borough of Florham Park makes no provision
17 for least cost housing.

18 Q All right. What else?

19 A And then I expect to explain why none of
20 the zones in the borough provide for housing that
21 can be construed as least cost.

22 Q All right. What else will consti-
23 tute your testimony?

24 A And I assume at that point, I would testify
25 on the availability planned for any form of

1 multi-family or higher density use in the borough.

2 Q All right. Now, have you made any
3 studies to date that would permit you to so
4 testify?

5 A I should perhaps
6 explain. My answer is not clear. I'm not speak-
7 ing to the existence of available land that is not
8 presently zoned for that purpose, but that could
9 be rezoned. I've done no studies on that. And I
10 do not know whether I would be likely to, I rather
11 doubt it, testify on that point. The point I was
12 saying was about the availability of land already
13 so zoned in the borough.

14 Q You are going to have to clarify
15 that.

16 A Okay.

17 Q Because I am missing your statement.
18 You are testifying or you are telling me now that
19 you are going to testify in the mini-trial concern-
20 ing the nonexistence of zoning provisions for
21 least cost housing? And then you are going to
22 testify that there is land available in the
23 Borough of Florham Park to effectuate least cost
24 housing?

25 A No, no, sorry. What I
said is that I would testify with regard to the
present ordinance and the land--or rather the
present zoning map and the land that is zoned

1 under that ordinance for higher density or multi-
2 family uses. Although in the case of Florham
3 Park, those uses are not least cost.

4 Q Are you taking into consideration
5 whether the land as zoned is developed or has been
6 committed to development?

7 A Yes.

8 Q But you have not done that to date?

9 A Well, as I may have mentioned, there are
10 two sites that are zoned under the present
11 ordinance for multi-family housing. One of them
12 I have established is committed for development
13 and is indeed in the early phases of construction.
14 And the second, I have not yet established that,
15 whether that is or is not the case. The second
16 is certainly in a use of a sort at present.

17 Q You have not to date, I take it,
18 made any study as to large land areas available
19 in the Borough of Florham Park for least cost
20 housing development?

21 A That's correct.

22 Q Is that knowledge critical to your
23 testimony in the mini-trial?

24 A Not necessarily.

25 Q If it were brought out that there

1 is not land available for least cost housing,
2 wouldn't this abrogate the need for you to testify
3 in this trial vis-a-vis Florham Park?

4 MR. BUCHSBAUM: I am a little
5 puzzled because he already testified that
6 there was land at one site, some land there.

7 MR. MURPHY: Let's see if he can
8 answer the question.

9 A Well, I think my concern is that the zoning
10 ordinance as it stands is patently exclusionary
11 and that I have no data in terms of the vacant
12 land other than, of course, the D.C.A. data, which
13 suggests that the land is available. Now, if
14 Florham Park--I'm sort of talking hypothetically.
15 If Florham Park felt that it could demonstrate
16 that there was no vacant land available for
17 development in the township and this is vacant
18 land suitable for development and, of course, the
19 issue of whether that development is least cost
20 or not is really immaterial, vacant land that is
21 reasonably suitable for residential development,
22 let's say, and it could make such a case and there-
23 by arguing that it was not a developing munici-
24 pality, I would think it could either try to
25 convince the plaintiffs' attorneys of that fact

1 or make such a presentation to the Court.

2 In either event, it doesn't directly affect
3 my preparation or my testimony. If the plaintiffs'
4 attorneys at some point direct me to forget about
5 Florham Park and destroy my papers, so be it.

6 Q Well, am I correct then that you do
7 not have any intentions of making any more studies
8 concerning the lands that are available for
9 development in the Borough of Florham Park?

10 A At present, that's the case.

11 Q Are you going to make a recommenda-
12 tion as to numbers of least cost housing units
13 that you feel would be desirable for the Borough
14 of Florham Park? A No.

15 Q You indicated to Mr. Clapp earlier
16 in his deposition that in this case you have no
17 formula which you are following with regard to
18 housing units. Is that correct?

19 A That's correct.

20 Q You remember saying that?

21 A Yes.

22 Q All right. Could you tell me what
23 you meant by that?

24 A Well, very simply that I have not been
25 asked to, nor do I plan to do any analyses which

1 would involve constructing some kind of alloca-
2 tion formula to arrive at fair shares of least
3 cost housing for defendant municipalities.

4 Q Is anyone in this case going to do
5 that? A Miss Brooks is going to

6 testify on the fair share issue and is evaluating
7 the D.C.A. fair share plan. As to whether she
8 is developing her own numbers is something I
9 really don't know. I think you'll have an oppor-
10 tunity to depose her next week.

11 Q I am sure we will.

12 Have you had any discussion with her con-
13 cerning the fair share numbers as they apply to
14 the various municipalities?

15 A No.

16 Q Have you made any study of your own
17 or given any consideration to the D.C.A. projec-
18 tion for the Borough of Florham Park?

19 A No.

20 Q Is it your recommendation in your
21 evaluation of the zoning ordinance of the Borough
22 of Florham Park to provide for overzoning in the
23 Borough of Florham Park?

24 A Yes.

25 Q And are the numbers three to five

1 times the same for the Borough of Florham Park as
2 you indicated earlier for the Township of Harding?

3 A Yes, well, I specified that those were
4 general numbers based on the overall regional
5 dynamics, if you will, but that certainly if and
6 when Florham Park sits down to revise its zoning
7 ordinance towards compliance with Mount Laurel
8 and Madison, then a specific study of factors that
9 might affect Florham Park would probably be
10 appropriate. But that three to five times was a
11 reasonable ballpark figure at this point.

12 Q Is it accurate to state that your
13 projection of overzoning for the Borough of
14 Florham Park is a general projection at least in
15 concept and that you are not going into any in-
16 depth study as to what overzoning really means
17 for the Borough of Florham Park?

18 A That's correct.

19 Q You have made no study, I take it,
20 of the job market in the Borough of Florham Park.

21 Is that correct?

A That's correct.

22 Q Have you made any studies or do you
23 have any conclusions with regard to the region
24 that the Borough of Florham Park is located in?

25 A I have an opinion on that matter, but this

1 is not necessarily within the scope of my
2 testimony.

3 Q When you say it is not necessarily
4 within the scope, that means that you are not
5 going to testify with regard to region vis-a-vis
6 housing needs in the Borough of Florham Park?

7 A That's right. That's my understanding at
8 present.

9 Q Is it accurate to say that your
10 testimony in the mini-trial with regard to Flor-
11 ham Park will specifically concern itself or be
12 limited to the opinions or conclusions that the
13 zoning ordinance of the Borough of Florham Park
14 is exclusionary with regard to least cost housing?

15 A As well as the point I mentioned regarding
16 the sites or the zoning of certain parcels, which
17 is actually part of the zoning ordinance.

18 MR. MURPHY: I have no further
19 questions.

20 MR. BUCHSBAUM: I have nothing.
21 (The witness is excused.)

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

MORRIS COUNTY FAIR HOUSING :
COUNCIL, 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 attor-
ney 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 inter-
ested in the action.


A Notary Public of the State of New Jersey

Dated: 5/17/79