

ML - Morris County Fair Housing Council
v. Beacon Twp

5/17/79

Deposition of Alan Mallach - cross-examination
by Mr. Buzak

P-42

ML000891S

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,

ML000891S

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,

DEPOSITION
OF
ALAN MALLACH

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

CERTIFIED SHORTHAND REPORTERS
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1 Building, Morris Township, New Jersey, on Wednes-
2 day, April 25, 1979, commencing at 3:15 P.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. EDWARDS & GALLO,
8 For the Defendant Township of East Hanover
9 and

10 MESSRS. VILLORESI & BUZAK
11 For the Defendants Randolph, Kinnelon and
12 Washington Townships
13 BY: EDWARD J. BUZAK, ESQ.

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MARK SCHAFFER, C.S.R.

I N D E X T O W I T N E S S E S

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WITNESS
ALAN MALLACH
By Mr. Buzak

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

2 CROSS-EXAMINATION BY MR. BUZAK:

3 MR. BUCHSBAUM: We have gone on
4 record previously with respect to the
5 billing by Mr. Mallach in this case. It
6 has been agreed that he would be paid at
7 the rate of \$40 an hour for his time dur-
8 ing the deposition, plus each community
9 would pay a proportionate share of his
10 travel back and forth to Morris Township.
11 Do you agree with that?

12 MR. BUZAK: Yes, I do. And with
13 respect to the fact that we are for the
14 purposes of this deposition representing
15 four municipalities, I would ask that he
16 either divide up his time four ways in
17 terms of this deposition or give us one
18 bill so to speak and we will allocate the
19 time one-fourth each, whatever is easier
20 for him. It really does not matter.

21 MR. BUCHSBAUM: Which would you
22 prefer?

23 MR. BUZAK: It would probably be
24 easier for you to give us a number of
25 hours.

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THE WITNESS: Okay.

MR. BUZAK: And then we will just split that up among the four municipalities.

MR. BUCHSBAUM: Fine, thank you.

Q All right. Mr. Mallach, with respect to this case, you are aware that we represent Kinnelon, Randolph, Washington Township and for the purposes of the deposition, East Hanover.

And as a little background, what I am going to do is go through your report furnished by you to Mr. Bisgaier, review generally some of the statements and bases for the statements contained in there and as we get into the more specific details in your report to have you review the requirements of the various zoning ordinances in those four towns and comment on them. Okay?

MR. BUCHSBAUM: Mr. Buzak, I have no objection to the procedure, which is fine. I just want to make you aware that some of these issues have been dealt with in the Common Defense deposition.

MR. BUZAK: Okay. For the record, I did receive the first two days of depositions of Mr. Mallach. I reviewed

1 the first day a little bit more extensively
2 because I had a little bit more time. I
3 will try not to repeat those questions.

4 MR. BUCHSBAUM: Fine. I would not
5 want to have it necessary to apply for a
6 protective order if 15 towns are asking
7 the same questions after there was a
8 Common Defense deposition that was supposed
9 to take care of that problem. If it did
10 happen, we would start considering that.

11 Q Okay. Let's begin with the report.

12 Mr. Mallach, I assume that you have a copy of
13 your report that was furnished entitled Least
14 Cost Housing in Zoning Ordinance Provisions Pre-
15 pared on Behalf of the Southern Burlington
16 N.A.A.C.P., et al versus Boonton, et al, dated
17 March 12, 1979. I want to begin my questioning
18 right at your introductory page.

19 You refer in the first full paragraph
20 there, the first full paragraph, you refer to the
21 first part of this report presenting minimum
22 standards for least cost housing in the context
23 of Mount Laurel and Madison. What I would like
24 you to do is to define as best you can the term
25 least cost housing.

1 A Okay. To my mind, least cost housing as
2 the term was used in Madison simply means the
3 least expensive or least costly housing that can
4 be constructed with reasonable standards of health
5 and safety and which includes within it a variety
6 of separate housing types, including both single
7 and multi-family types, and also would include
8 implicitly housing built under subsidy programs
9 for low and moderate income households.

10 Q Okay. Regarding the mix of housing,
11 is that essential in terms of producing least cost
12 housing?

13 A Yes, because each of
14 the different types of housing address a somewhat
15 different housing need. So in terms of meeting
16 the universal need that least cost housing
17 addresses, each of the different types plays its
18 part.

19 Q So your standards, and I do not
20 want to get into them fully at this time, but
21 your standards then would involve not only multiple-
22 family dwellings, be it owner-occupied or renter-
23 occupied, but also single-family dwellings, semi-
24 detached single-family or duplex dwellings and
25 the like. Is that correct?

A That's correct.

1 Q You also refer to the term govern-
2 ment subsidy in your definition of least cost
3 housing. And I think you said that it involves
4 housing which is or contains the minimum floor
5 area and minimum safety and health requirements
6 with an adequate mix which can be built I think
7 you said either privately or there was a subsidy
8 program. Is that correct?

9 A That's correct.

10 Q Now, how does the subsidy program
11 enter into the technical aspects of least cost
12 housing? A In the context of this
13 report and these standards, it really does not.
14 The assumption is that if one provides zoning for
15 least cost housing according to the various
16 technical standards, then to the degree that
17 there are subsidy funds available, people apply-
18 ing to build under them and so forth, then that
19 will be dealt with separately. So it's not
20 really part of the report as such.

21 Q Okay. But in terms of the fact that
22 if a dwelling unit, and I take it in the abstract,
23 costs \$40,000 to construct, including all the
24 amenities and the roads and the trees and whatever,
25 and in the context of that hypothetical that is

1 least cost housing units under the standards that
2 you have developed in your memorandum, that if
3 government subsidies are available to build it,
4 the actual cost of that structure in terms of the
5 private sector, let's say, would be \$30,000 a year
6 instead of \$25,000? Is that the proper picture
7 that I am supposed to be looking at?

8 A It may be a minor distinction. Typically
9 the subsidy programs apply the carrying costs of
10 the unit to the tenant rather than the actual
11 construction. So let's say you build that hypo-
12 theoretical \$40,000-unit and it qualifies for a sub-
13 sidy program so that a tenant who would not
14 ordinarily be able to buy a \$40,000-unit can move
15 into that house. Then the subsidy program, for
16 example, under one government program would pick
17 up part of the interest on the mortgage so that
18 the person could afford it.

19 So it doesn't actually affect the cost of
20 the unit. It comes in in terms of subsidizing
21 the ongoing costs to the buyer or tenant.

22 Q Okay. That is an interesting dis-
23 tinction. In terms of the need for least cost
24 housing, is it not true that the cases you have
25 cited, Mount Laurel and Madison, which I am sure

1 you have read many more times than I have, were
2 dealing with providing housing opportunities for
3 low and moderate income people? Is that correct?

4 A That's certainly the case in the Mount
5 Laurel decision. The Madison decision I believe
6 somewhat broadened it. I believe if you recall
7 there's a quotation that Justice Conford cites
8 with approval at one point from the Public Advo-
9 cate's amicus brief that deals with meeting the
10 housing needs of, quote, "low income", moderate
11 subsidized or moderate income people who need
12 subsidies to be decently housed in what they call-
13 ed I think moderate, conventional households.

14 In other words, those families who are
15 perhaps more affluent than those for whom the
16 subsidy programs apply, but are nonetheless
17 evidently ruled out of the new market by virtue
18 of zoning restrictions and the like. So the
19 reach of the Madison decision in that regard I
20 think is wider than that of Mount Laurel.

21 Q In terms of providing this least
22 cost housing, and let's assume that you are correct
23 in the broadening effect of the Madison case in
24 terms of the population to whom the directives
25 were made, do you know of any, let's say, price

1 per foot for the housing, the various mix, and if
2 you want to limit it to townhouse units as what
3 you consider to be a proper density and proper
4 size or whatever and single-family dwellings,
5 whatever, do you have a number in mind?

6 A For the finished cost of the units?

7 Q That's right.

8 A No.

9 Q Okay. What I am trying to get at,
10 Mr. Mallach, and this has troubled me throughout
11 this case so far and from reading the decisions,
12 is that zoning in and of itself not only does not
13 build housing, of course, but in terms of the
14 effect on construction costs, is minimal. That is
15 my theory. Okay?

16 And what I want to know from your report
17 and from your experience and your expertise,
18 either in a percentage way or some way, what
19 effect does it have in dollars? Are we talking
20 about a significant amount of dollars or percent-
21 ages that would pragmatically affect the housing
22 market and provide housing opportunities for low,
23 moderate and maybe even middle income persons?

24 A Well, I may disappoint you in terms of the
25 rather limited number of numbers that I can give

1 you. But in general outline, the point is in my
2 judgment that zoning does make a very considerable
3 difference. And I think this is, for example,
4 most readily apparent in terms of minimum floor
5 area requirements.

6 If, for example, a municipality requires,
7 say, 1500 square feet floor area and a perfectly
8 adequate, say, three-bedroom house can be con-
9 structed containing, say, between 900 and a
10 thousand square feet floor area, then each of
11 those extra 500 to 600 square feet adds money to
12 the cost. Although admittedly, secondhand, I
13 gather at the moment that construction costs, I
14 don't mean total finished costs, but just the
15 brick and mortar part for no-frills housing in
16 the Morris County area is going for between
17 \$25 and \$30 a square foot. So that these are
18 indeed very massive costs.

19 Other costs may be quite substantial.
20 Land costs, in this case it will obviously vary
21 from community to community because land costs do
22 vary on a finer grain than construction costs.

23 But increasing density, increasing the
24 number of units that can be put on a given piece
25 of land does reduce the unit cost, land cost in

1 the--for the house or apartment. Density stan-
2 dards, frontages, either explicit frontage
3 requirements or implicit frontage requirements
4 that grow out of density and other kinds of
5 standards, creates significant costs by virtue of
6 the fact that most infrastructure costs are
7 dependent on the number of front feet that have
8 to be served with roads, curbs, gutters, sidewalks,
9 sewer and water pipes and the like. So that
10 these are clearly very major things. Other areas,
11 other specific features in themselves may have
12 smaller dollar impacts, but, of course, the
13 cumulative effect would still be very great.

14 Q Okay. If we use your \$25 to \$30
15 a square foot for the bricks and mortar as you
16 termed it and we take the thousand square feet
17 that you mentioned in terms of single-family
18 dwelling, we are talking about \$30,000 for the
19 dwelling unit? A \$25' to \$30',

20 yes.

21 Q Okay. And to that you add the land
22 cost and the improvement cost. Do you have any
23 idea in terms of, let's say, road improvements?
24 And when I say road improvements, I mean the
25 entire, as you would term it, infrastructure of

1 the road including sanitary sewer lines, water
2 lines, storm sewer lines, the road itself, the
3 curbing, the sidewalks, that entire amount?
4 Do you have a price per foot for--

5 A I think--

6 MR. BUCHSBAUM: Are we talking
7 about single-family homes now? I just
8 want to make sure.

9 MR. BUZAK: Yes, yes, for the
10 purposes of this question, let's keep it
11 at a single-family home.

12 A It varies a great deal depending on the
13 standards that you are constructing to. Now, for
14 example, obviously the width of the road and the
15 standard of the road make a great deal of differ-
16 ence. The road itself I mean in this case and
17 things like whether sidewalks are required on
18 both sides or one side. So--

19 Q Okay. Well--

20 A In any event, assuming more or less
21 typical subdivision standards, though, the total
22 cost per front foot of the package could run any-
23 thing from about 60 to, oh, maybe 80 or \$90 a
24 front foot. This is very rough because I have not
25 reviewed the current costs in Morris County in

1 preparation for this. That would be reduced some-
2 what in terms of what an individual house would
3 bear depending on whether the subdivision was
4 laid out so that each road had a unit on either
5 side of it sharing many of the costs.

6 Q Okay. And I recognize, Mr. Mallach,
7 that some of the questions that I am giving you
8 are difficult in terms of not giving a sufficient
9 basis to make your decision in terms of the width
10 of the road, the standards of the road, the size
11 of the lines, the type of lines. I recognize
12 that. And I appreciate why you cannot give me a
13 solid number and the 60 to \$90 a square foot is
14 adequate or is an adequate answer to that question.

15 In terms of incomes, do you have a number
16 for low income people or range of income for low,
17 moderate and middle?

18 A Again it would be approximate. There is a
19 set of standards that are used widely that are
20 used for government programs and in my judgment
21 have reasonable applicability. This is for a
22 family of four the low income category would be
23 considered people earning 50 percent or less of
24 the median income in a given area. The moderate
25 income category would be referred to as people

1 earning over 50, but 80 percent or less.

2 Now, these are the two types for whom
3 subsidy programs are applicable. The moderate
4 convention, if you will, or middle--The next
5 group that is nonetheless relevant, although
6 above the subsidy group, is often defined as
7 earning for a typical family of four between 80
8 and 120 percent of the median income.

9 Q Do you know the median income of
10 Morris County? A Not precisely,
11 I believe it would be somewhere in the area of
12 22 to \$23,000.

13 MR. BUCHSBAUM: Just trying to be
14 helpful here, the median income here used
15 at the federal standard is published and
16 I think appended to some of our deposi-
17 tion answers.

18 MR. BUZAK: I think you did. And I
19 seem to think it was for--

20 MR. BUCHSBAUM: It was for the
21 Newark metropolitan area, which would be
22 in the nature of 17 to \$18,000 for a family
23 of four.

24 MR. BUZAK: I seem to remember
25 Morris County being 13 or 14 or \$15,000.

1 THE WITNESS: Not today. That
2 would be a 1970 census figure which has
3 increased significantly, admittedly
4 principally because of inflation. But it
5 would be about 13 to 14 in 1970 dollars
6 and that would translate into something in
7 the low 20's, say around 22 I guess today.

8 Q Now, therefore, in terms of low
9 income persons, you are talking about people who
10 are earning, using the 22,000 as a standard,
11 approximately \$11,000 or less?

12 A Roughly, yeah. This would be--Well, the
13 way this would work would be for a typical family
14 of four, it would be in that range. For a larger
15 family, it would be more or a smaller family, or
16 single individual, it would be less.

17 Q I want to relate that to housing
18 since that is your field of expertise. The
19 typical standard in terms of the amount of annual
20 income that could be used or should be used for
21 housing needs used to be 25 percent. Over the
22 last few years, that has increased to sometimes
23 over 50 percent. Now, have you done any studies
24 or analyses or do you have access to any studies
25 or analyses which would give us the number, the

1 dollar number, which low income families of four
2 would have for housing needs, available for hous-
3 ing needs? A It varies very widely.
4 I mean the figure of 25 percent of gross income
5 spent on shelter is in my judgment still a
6 reasonable goal, even though it's apparent that
7 large numbers of families do spend more.

8 I think people would agree that 50 percent
9 is clearly a hardship level. But the federal
10 government in their Section 8 Program, which is
11 their principal subsidy program for low income
12 families, as well as in their Public Housing
13 Program provide that no family in those units
14 must pay more than 25 percent of their income for
15 rent. So this is certainly established as their
16 goal and a reasonable goal generally.

17 In practice, a very large part of the lower
18 income population does pay much more than 25 per-
19 cent of their income for rent, a far larger part
20 than more affluent people do. But I believe that
21 a goal of 25 percent, perhaps as much as a third,
22 but not more than that, is reasonable.

23 Q Now, you were talking about rental.
24 How about in terms of ownership, purchasing?

25 A Well, monthly--

1 Q Monthly housing costs?

2 A Annual housing cost.

3 Q Okay. Regardless of whether it is
4 rental or ownership.

5 A That's correct, though in practice with
6 ownership, the housing costs should be the adjust-
7 ed cost after the tax savings. But those, of
8 course, are not significant for a low income
9 family anyway.

10 Q Which is what I want to get to.
11 Using the figure of between 25 and \$30,000 for a
12 single-family unit, least cost housing of a
13 thousand square feet, and adding to that a cost
14 which we have not come up with yet for the other
15 improvements, can a person of that means afford
16 this type of housing?

17 A A person--A family with children with a
18 gross income of \$11,000 or less?

19 Q That is right.

20 A No.

21 Q Would the next level of people,
22 which I assume is somewhere between \$11,000 and
23 about \$16,000 or \$17,000?

24 A Somewheres between 17 and 18, say.

25 Q Okay. Eleven to 18,000, would they

1 with townhouses, what is the cost of a unit? I
2 think you indicated that 1200 square feet, if I
3 am not mistaken, was the number, the number of
4 square feet in what you found an acceptable town-
5 house?

6 A No, no, the point of
7 the 1200-square-foot figure was to use a hypothe-
8 tical number that would be large enough to account
9 for most eventualities for the purposes of working
10 from that to doing the space requirements. I
11 would not consider that that would be considered
12 a minimum.

13 Q Okay. What would you suggest would
14 be a minimum for, using the same standard, a three-
15 bedroom townhouse?

16 A About the same as with a detached house.

17 Q So about 900 or a thousand?

18 A That's correct.

19 Q And in terms of cost for the bricks
20 and mortar, do you have any knowledge of the
21 average per foot cost?

22 A The construction cost would be slightly,
23 but not significantly less than with a detached
24 single-family house.

25 Q Okay. In terms of improvements,
road improvements, let's stick with road

1 be able to afford it?

2 A The people around the top of the range
3 possibly could.

4 Q So are you saying then the housing
5 that you are advocating in terms of least cost
6 housing will not be available to low income
7 persons as we have defined them and will be
8 available to the upper level of the moderate
9 income people, that is, those in the 17 or \$18,000-
10 range?

11 A In terms of a direct
12 purchase, yes.

13 Q Well, is there a difference in
14 rental? I thought we had established earlier
15 that we are talking about the same ratio so to
16 speak?

17 A Well, I guess the
18 difference would be that you are talking about a
19 rental unit, for example, if it's a garden apart-
20 ment, it would be possible to construct that unit
21 for less than--and thus rent it for less than a
22 detached house.

23 Q Okay. And I suppose we ought to
24 get into that. In terms of an attached unit,
25 ownership unit, which would be a townhouse or I
guess a condominium, but for our purposes a town-
house because your report dealt to a great extent

1 improvements, using the infrastructure theory,
2 are we still in the same category, between 60 and
3 90? A Yes, except that the number

4 of feet involved per unit is quite substantially
5 reduced. For example, with a detached single-
6 family house, even under least cost standards,
7 your frontage could be 50 feet, perhaps 40 feet,
8 but it's unlikely that it would be less. With a
9 townhouse, your frontage could be perhaps 16 or
10 18 feet per unit. Again, with this, you would
11 have to trade off some additional site improve-
12 ments in terms of the provision of common parking
13 areas, but the savings would still be substantial.

14 Q And I assume then also in regard to
15 the cost of land on a per unit basis, it would
16 be reduced? A Yes.

17 Q On the other hand, is it not true
18 that a piece of property zoned for townhouses,
19 for example, given, let's say, ten acres, okay,
20 is going to be more expensive than the same ten
21 acres zoned for one-acre single-family dwellings?

22 A Yes, more expensive per acre, but less
23 expensive per unit. It's a very important dis-
24 tinction.

25 The cost per acre goes up. If you drew a

1 curve or a line showing cost per acre, it would
2 show a rise. But if you superimposed a curve show-
3 ing the increased density on it, that would show
4 a much steeper rise.

5 So, in other words, let's say hypothetically
6 an acre that you could build a single house on
7 might cost \$10,000. \$10,000 is both the acre and
8 the unit cost. If you could build two houses on
9 it, it may go up to 15.

10 Now, the unit cost would have been \$7500 a
11 unit with townhouses typically. And again this
12 varies from one municipality to the next. And
13 this is based on general rather than municipality-
14 specific information. Typically, townhouse land
15 costs tend to run again, depending on the permit-
16 ted density, anything from, say, perhaps \$30,000
17 an acre. If you can build them at five to the
18 acre, you might have it at \$6,000 a unit, up to
19 somewheres between 40 to \$45,000 an acre if you
20 could build ten or more to the acre, at which
21 point your per unit land costs would work them-
22 selves down to, say, around \$4,000.

23 Q Now, in terms of land in Morris
24 County presently zoned for multi-family or town-
25 houses, do you have any knowledge of the cost of

1 that per acre? A There is so
2 little land zoned for multi-family use in Morris
3 County, certainly in the municipalities that are
4 the subject of this litigation, and of them so
5 little of it is vacant and more or less readily
6 buildable, so that the land prices would not
7 necessarily reflect the general pattern.

8 Q How about in terms of single-family
9 areas or areas zoned for single-family in cost
10 per acre? A I don't have any
11 current figures for Morris County. I do suspect,
12 however, that within the county or among the
13 defendant municipalities it's probably an enor-
14 mous variation. But I don't have any numbers to
15 give you.

16 Q In fact, do you have any idea of
17 the actual cost per unit of a townhouse in any of
18 the towns that we represent, let's say, Randolph
19 Township, to take the example, where they do have
20 townhouse zoning there?

21 A You mean how much it would cost to build
22 townhouses under that ordinance or something to
23 that effect?

24 Q That is right.

25 A No, I don't.

1 Q All right. And I assume that holds
2 true for any of the other towns, at least the
3 towns that we represent?

4 A Correct, yes.

5 Q Mr. Mallach, perhaps we are going
6 off somewhat in the deposition in terms of ques-
7 tion and answer, but my point is that the housing
8 that is being advocated, although constituting
9 least cost housing under the standards you set
10 forth in your report, costs so much that it is
11 barely affordable. In fact, it is not affordable
12 by low income persons and it is barely affordable
13 by moderate income people. And yet the theory
14 continues that the housing is being provided for
15 low and moderate income people.

16 A Not quite.

17 MR. BUCHSBAUM: Is that a question?

18 MR. BUZAK: That is where I am going
19 in terms of the questioning, to try to
20 get numbers and try to come up with a cost
21 per unit of a townhouse or a cost per unit
22 for a single-family dwelling or whatever.

23 MR. BUCHSBAUM: There is one thing
24 I wanted to make clear. I am not 100
25 percent sure of this, but I believe we will

1 be having an expert with specific refer-
2 ence to housing costs.

3 MR. BUZAK: I hope he will read
4 Mr. Mallach's report so we can try to
5 coordinate his prices with Mr. Mallach's
6 theory. And that is what I am trying to
7 get at. Okay.

8 MR. BUCHSBAUM: I am just saying
9 that to maybe help you get along in your
10 questioning here.

11 MR. BUZAK: That would be fine. I
12 certainly would hope that.

13 A All right. With regard to the general
14 premise, I am assuming that the question is given
15 thus: Do you agree with that statement?

16 Q Yes. A And my answer
17 is not entirely or yes and no. I think it is
18 clear that housing without subsidy cannot be
19 constructed so that low income families and a
20 substantial part of what we have dubbed the
21 moderate income subsidized families can afford
22 them directly. However, the thrust of least cost
23 housing and the theory underlying it does go con-
24 siderably beyond that in a number of ways.

25 First, that there is a substantial

1 population, including those people who are in the
2 upper shall we say one-third of the moderate in-
3 come subsidized group as well as the entire popula-
4 tion characterized as middle income, who are
5 effectively dealt out of the new home market by
6 current practices and who could be better housed
7 by least cost housing even without subsidies.

8 The second point is that over and above
9 the direct benefits for this share of the popula-
10 tion in terms of being able to directly move into
11 new housing that would be created through zoning
12 for least cost, you have a second theory which
13 was enunciated at some length in the Court
14 decision which is filtering. And the key thing
15 about filtering is--And there is pretty good
16 agreement among the sources--is two things:
17 First, that filtering does exist; but, second,
18 that filtering is an inefficient--or rather than
19 it's inefficient, it has certain built-in
20 inefficiencies, the result of which is the more
21 chains in a filtering step, the worse it works.

22 Q All right. Can you, for the
23 record, define what you mean by filtering?

24 A Okay. Filtering is a market concept which,
25 in a nutshell, holds that as new housing is built,

1 people who have existing units move into that new
2 housing, opening up existing units for people who
3 generally cannot afford the new housing, but can
4 afford the units that are being opened up and so
5 on and so forth down the chain.

6 Now, in theory, you could hypothesize a
7 whole chain whereby in the long run everybody who
8 moves into a new unit or every existing household
9 that moves into a new unit opens up something and
10 that sooner or later a low income family benefits
11 at the end of the chain. From a practical stand-
12 point, it doesn't work that way.

13 The further away the new unit is from the
14 low income family, the less likely the low income
15 family is likely to benefit because the more like-
16 ly either the chain is going to be broken some-
17 wheres along the line, or if you have a lengthy
18 chain by the time the low income family benefits
19 at the very end, the unit that he moves into is
20 hardly worth having.

21 So with least cost housing, it is one of
22 the principles. The filtering goal of least cost
23 housing is that a least cost unit will translate
24 into a used unit of good quality being available
25 for a lower income family, much more efficiently

1 than if the new unit were an expensive unit.

2 Q Okay. I understand that.

3 A And that is a very important part of the
4 theory.

5 Q Okay. I understand that. I under-
6 stand what you are saying. However, if we start
7 off with a cost of, and let's take the single-
8 family units that we used, which would come out to
9 between 25 and \$30,000 for the bricks and mortar
10 and somewhat above that in terms of improvements,
11 and given the appreciation that real estate has
12 realized throughout the years and most recently,
13 does not that break down the theory of filtering
14 whereby one who buys this \$30,000-unit, let's say,
15 or \$35,000-unit today who might be upper, moderate
16 income will sell it not for 35, but will sell it
17 for 45 and, in effect, not open up the market to
18 someone below him, but someone who was above him
19 when he bought it?

20 A Not necessarily because the filtering works
21 at the beginning rather than at the end or the
22 filtering that the Court is concerned with. And
23 the example would be, let's say, you have this
24 35 or \$40,000-house. And the person who moves
25 into it, let's say hypothetically, leaves a house

1 let's say somewhere in an inner suburb in Essex
2 County that is then sold at \$29,000 to a less
3 affluent person; or alternatively given the fact
4 that there tends to be a fair number of apartments
5 that rent in many cases in garden apartment
6 developments and in other cases in older buildings,
7 basically sound apartments that rent for consider-
8 ably less than new ones coming on the market, say
9 still in the high 200's range, that such a person,
10 a working class family that's lived in an apart-
11 ment might buy one of these houses and free up
12 that apartment for somebody less affluent. So
13 the theory is that it works at that point of the
14 chain rather than at the resale point.

15 Q But the housing that is being
16 bought, this \$30,000-unit or \$35,000-unit by the
17 person who is leaving his \$29,000-unit immediately
18 gets into the chain and, therefore, when that
19 person who has now bought his \$35,000-unit leaves,
20 he is not leaving a \$29,000-unit anymore, he is
21 leaving a 35, 40 or \$45,000-unit. So what you are
22 saying is that the filtering process happens once?

23 A No, it continues. It keeps happening. It
24 is best the first time. The lower the unit, the
25 better it works.

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Filtering continues to happen all the time to some degree. The point is it works best when the purchase is lowest. The further--

Q Well, the person who is selling the unit is selling it at a low price?

A At the lowest price, yes.

Q That is when it works?

A Right, it works best, but it continues to work to some degree as you go along.

Q You mentioned perhaps the person not only owning the \$29,000-house, but renting a unit. And you mentioned that some of the units that are good stock rental units are being rented at a low rent and will become available for persons of low and moderate income.

First of all, do you have any studies or empirical data or documents of others which indicates either the median rents for a unit in let's take either Morris County or what you have defined, I do not mean you individually, but which the plaintiffs have defined, as the region?

A No.

Q Is it not essential to the theory that you raise that there are units of the price and of the condition that you mention in your

1 theory in either Morris County or the region?

2 MR. BUCHSBAUM: Before the witness
3 answers, maybe I can clarify something.
4 The Supreme Court has adopted this theory
5 as an operative fact in favor of least
6 cost housing, so to some extent the theories
7 are given. Mr. Mallach can say what he
8 wants about it, but it is the law of the
9 State.

10 MR. BUZAK: Well, I do not agree
11 with that. I think that the Supreme Court
12 mentioned filtering in Madison. I think
13 they talked about it. I think that the
14 theory exists.

15 My problem is that in practicalities,
16 I am not sure it exists. And that is why
17 I am trying to question Mr. Mallach on it,
18 because we have used that theory of filter-
19 ing. It has been used by the Supreme
20 Court. It has been used by Mr. Mallach.
21 And it is the general catch-all kind of
22 answer.

23 And I do not mean to denigrate your
24 answer of how do we supply the low and
25 moderate income people when the cost of

1 housing is so high, no matter what you do,
2 no matter whether you have a high density
3 and very few improvements. The answer has
4 always been filtering. And what I am
5 trying to get at, and again I am digressing
6 from question and answer here to try to
7 create a dialogue, what I am getting at is
8 that I do not think it works. I think that
9 the apartment units that are available,
10 that are good, good housing stock, are not
11 cheap or inexpensive unless there is a rent
12 leveling ordinance or a rent control ordi-
13 nance in effect. Other than that, given
14 the market factors, those units are renting
15 at a substantial rent.

16 Q Okay. So you gave me the theory
17 that the apartment dweller leaves and buys the
18 house and opens up the apartment. And I said what
19 is the rent of the apartment? And you said, well,
20 I know of good housing stock that is being leased
21 at a low rent or a rent which low income people
22 could afford. And--

23 MR. BUCHSBAUM: Okay. Well, as you
24 know, we have reserved our right to object.
25 And we are not stopping this line of

1 questioning here. I am just putting you
2 on some extra notice with respect to this
3 specific line.

4 We are all free to disagree with
5 the Supreme Court. And I certainly do not
6 agree with all the pronouncements, but
7 your line of questioning may run into that.
8 And--

9 MR. BUZAK: Let me repeat the ques-
10 tion. And perhaps I am falling into the
11 trap that I do not want to fall into very
12 early in the game here or late depending
13 on how you look at it.

14 Q And that is, do you have any data
15 regarding rental costs of what you consider good
16 housing stock? A I have no
17 current data.

18 (A discussion is held off the record.)

19 Q In addition to that, in addition to
20 the rental situation, when you get back to the
21 housing situation, that is owner-occupied housing,
22 are you aware of any studies or data available
23 showing housing stock, and let's take single-
24 family owned dwellings, which is available in the
25

1 County of Morris or the region which would sell at
2 a price that could be afforded by low or moderate
3 income people? A Well, there is

4 extensive data not on the stock as a whole but on
5 sales transactions on an annual basis. And there
6 is housing that can be bought by at least a sub-
7 stantial part of the additional moderate income
8 population, perhaps some of the low income popula-
9 tion. It tends to be located in core cities and
10 some inner suburbs. I doubt if there is much if
11 any in Morris County, but in parts of Essex,
12 Hudson, Union, perhaps in a few of the southern
13 Bergen municipalities.

14 Q You mentioned the data available.
15 Have you looked at that data?

16 A Yes.

17 Q And what is it? Where is it derived
18 from? A The data that I refer to on

19 sales is based on the annual tabulation and com-
20 pilation of usable sales as they're called by
21 municipality by the New Jersey Division on Taxa-
22 tion.

23 Q And does that report indicate solely
24 the price paid for the unit?

25 A That's correct.

1 Q It does not indicate the condition
2 of that dwelling? A That's also
3 correct.

4 Q So, therefore, you cannot really
5 draw the conclusion that housing stock of good
6 quality is available based on that data?

7 A It's not certain. Now, this is a--Rather
8 the northeast New Jersey area generally is a
9 difficult area in many ways by virtue of the
10 extremely high cost of new housing that has been
11 available and the extremely limited market for
12 which that new housing is accessible. So that
13 you get into a situation where housing in the
14 moderate price range, certainly good housing, in
15 the moderate price range, is affected by scarcity
16 factors and is likely to be bid up, which ironic-
17 ally enough is one of the major reasons for pro-
18 viding least cost housing. So that the general
19 workings of the housing market in the area can be
20 restored to some kind of reasonable balance.

21 Q But why do you say that it will?
22 It seems to me that it is just as likely that the
23 unit, the least cost unit being built today, when
24 sold, will not be even close to the price that it
25 has been paid for.

1 A Not ad infinitum. This is--

2 Q Well--

3 A This is a consideration because least cost
4 production, least cost demand, interacts with the
5 demand and the production for more expensive
6 housing. This goes, in fact, to some of the
7 issues having to do with overzoning. In other
8 words, if today there were tracts zoned all over
9 Morris County or all over the region for, say, a
10 few hundred least cost units, it's unlikely that
11 most of the units built in that land would be in-
12 deed least cost. It stands to reason that if you
13 have equally strong demand for expensive housing
14 and inexpensive housing, a developer is likely as
15 often as not to build more expensive housing.
16 And, indeed, even if the zoning ordinance provi-
17 sions are extremely modest and would permit least
18 cost housing, he may choose voluntarily to choose
19 larger, more lavish units in order to command a
20 higher price and a higher profit margin and so
21 forth. So that the least cost market is not like-
22 ly to be effectively addressed in large numbers
23 unless the more expensive housing market is also
24 being addressed more efficiently than it appears
25 to be today.

1 Q Are you saying that there should be
2 more higher cost housing available to stop the
3 trend or the inflation trend, the appreciation
4 rate of those units?

5 A Effectively, yes.

6 Q Okay. You also mentioned or under-
7 lying your answer was the fact that this apprecia-
8 tion is not going to continue ad infinitum. I
9 will ask you the obvious question. How do you know?

10 A Okay. I've lost my thread here.

11 (A discussion is held off the
12 record.)

13 A I don't know this. I mean that it will
14 end. I can't certainly put a time on it. But
15 the level of appreciation is to a large degree a
16 function of scarcity, imposed scarcity partly
17 because of land use restrictions, partly for a
18 variety of other reasons. As long as the imposed
19 scarcity continues and housing demand also con-
20 tinues at high levels, which is the case at the
21 present, the pressures will continue to push
22 prices up and inflation will add to that. If,
23 however, either of those significantly is mitigat-
24 ed, then there's a reasonable likelihood that the
25 pressure will slacken.

1 Now, certainly production of large numbers
2 of least cost or reasonably near to least cost or
3 what-have-you housing in significantly large num-
4 bers than is presently the case could relieve
5 some of this pressure. Equally, any change in the
6 rate or level of household formation would relieve
7 this pressure. So if either of those happen, then
8 you could see some change.

9 Q Okay. You mentioned that the
10 scarcity is a significant reason for the tremen-
11 dous appreciation in the high cost of housing
12 today. And you also said that such scarcity was
13 caused in part by zoning and then other factors
14 in addition to that. Can you give me any number
15 in terms of percentage or concept of how much of
16 it is caused by zoning? Is it one percent of the
17 total problem? Is it 50 percent of the total
18 problem? A I could not possibly

19 guess. It's not the kind of thing I think that
20 lends itself to that kind of numerical analysis.

21 Q Okay. And I do not disagree with
22 you at all. But my point is that is not the
23 housing problem created and continued in exist-
24 ence by factors other than zoning and, in fact,
25 significantly by factors other than zoning?

1 A I guess in some ways the difference is a
2 difference of degree. Clearly zoning plays a
3 part. And I--

4 Q There is no question about that?

5 A I guess the difference is how large a part.

6 Q That's right.

7 A And I believe even though again I can't
8 put a number on it, that it is a large part. But
9 it is not amenable to precise mathematics.

10 Q Go ahead.

11 A Just to clarify a previous answer, the
12 dollar figures of income ranges we are referring
13 to were based on 50 and 80 percent respectively
14 of the estimated Morris County median income and
15 in other aspects of the proofs as well as dealing
16 with the various housing programs a median income
17 figure is used for the entire region which tends
18 to be a lower figure than that for Morris County
19 by itself.

20 Q Okay. And in terms of our discus-
21 sion then, would it result in a lower, even lower,
22 income level for what is considered low income
23 persons or moderate income persons?

24 A That's correct.

25 MR. BUCHSBAUM: The regional figure

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would do that?

MR. BUZAK: That is right.

THE WITNESS: Yes, yes, right.

Q If perhaps a person around the moderate range could afford a house 30 to \$35,000 or we are talking about \$17,000, certainly the moderate range when we are talking about 13 or \$14,000 would not be able to purchase that unit?

A That's correct. I don't know where the exact numbers would be, but certainly you are right in principle.

(The witness is excused.)

* * *

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 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.

Mark Schaffer
A Notary Public of the State of New Jersey

Dated: 5/17/79

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

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