

ML - Morris County Fair Housing  
v. Beenton Twp

6/6/79

Deposition of Alan Mallach - direct examination  
by Mr. Hansbury

p 44

ML 0008965

12-11-43  
COT

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,

Plaintiffs,

-vs-

BOONTON TOWNSHIP, CHATHAM  
TOWNSHIP, CHESTER TOWNSHIP,  
DENVER 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 TOWN-  
SHIP, MORRIS PLAINS BOROUGH,  
MOUNTAIN LAKES BOROUGH, MOUNT  
OLIVE TOWNSHIP, PARSIPPANY-TROY HILLS  
TOWNSHIP, PASSAIC TOWNSHIP,  
PEQUANNOCK TOWNSHIP, RANDOLPH TOWN-  
SHIP, RIVERDALE BOROUGH, ROCKAWAY  
TOWNSHIP, ROXBURY TOWNSHIP and  
WASHINGTON TOWNSHIP,

Defendants.

ML000896S

DEPOSITION OF  
ALAN MALLACH

B E F O R E:

GERARD J. RICHARDS, a Notary Public of the  
State of New Jersey, at the Morris Township Municipal

**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

Building, Morris Township, New Jersey, on Monday,

**HEM**  
1979, commencing at eleven o'clock in the  
afternoon.

**APPEARANCES:**

THE PUBLIC ADVOCATE  
BY: VERICE M. MASON, ESQ.,  
Attorneys for the Plaintiffs

MESSRS. HARPER & O'BRIEN  
BY: STEPHAN C. HANSBURY, ESQ.,  
Attorneys for Defendant Morris Plains Borough

**GERARD J. RICHARDS**  
Certified Shorthand Reporter

**KNARR - RICHARDS, ASSOCIATES**

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Witness

Direct

ALAN MALLACH

By: Mr. Hansbury

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E X H I B I T S

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D-2	Report of 1/30/79	13

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MS. MASON: I would first like to put on the record in the event that the common fund will not pay for the cost of Mr. Mallach's deposition today and the pro rata share of his travel expenses then the Municipality of Morris Plains will incur that cost and pay Mr. Mallach.

MR. HANSBURY: That's correct.

A L A N M A L L A C H , having been previously sworn is recalled and testified as follows:

DIRECT EXAMINATION BY MR. HANSBURY:

Q Mr. Mallach, my name is Stephan Hansbury, I'm an attorney with the law firm of Harper and O'Brien. We represent the Borough of Morris Plains. And it's the purpose of this deposition to discuss in general your views of Morris Plains in terms of the reports you have submitted.

If at any time you do not understand a question, please ask for a clarification. If at any time you feel you do not know an answer please indicate that you do not know.

I have not received a resume and I would like to get one.

A I will see that you get one.

Q In the absence of a resume can you

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1 briefly give me your academic history?

2 A My degree is a Bachelor of Sociology degree  
3 from Central College.

4 Q In what year?

5 A In 1966.

6 Q You are the president of Alan Mallach  
7 Associates, is that correct?

8 A That's correct.

9 Q What form of a business is that?

10 A It's a corporation.

11 Q Who are the shareholders of that  
12 corporation? A I am. I believe  
13 it's what's called a closed corporation.

14 Q You are the only stockholder?

15 A Yes.

16 Q How many employees are there in the  
17 corporation? A Besides myself  
18 who is a technical employee of the corporation there  
19 are three other experts.

20 Q Can you describe the areas of expertise  
21 of the three other individuals?

22 A Yes. The people are, one is a, what is known  
23 as ABD, Albeit dissertation for her Ph.D. in political  
24 science from Rutgers, she has a background in that area.  
25 She also has a strong working relationship with

1 community groups, community organizations, organiza-  
2 tional development, technical writing and editing.

3 The second person has a master's degree in  
4 planning and a degree in anthropology and her strengths  
5 are social research, social systems and impact  
6 analysis.

7 The third person has, is receiving a Ph.D. one  
8 of these days in, I guess it's public policy, and his  
9 strengths are more in economic analysis and survey  
10 research as well as computers.

11 Q Are you yourself licensed in any  
12 capacity in the State of New Jersey?

13 A No.

14 Q Do you belong to any professional  
15 associations? A No. Well, that's  
16 strictly speaking too. I am a member of the Urban  
17 Planning and Design Committee of the American Institute  
18 of Architects.

19 Q Are any members of your staff licensed  
20 in any capacity in the State of New Jersey?

21 A No.

22 Q Are they members of any professional  
23 associations that you are aware of?

24 A Not that I'm aware of. That's not a condition  
25 or an element to their employment.

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Q Generally what is the purpose of your organization?  
A The purpose of my organization is to provide, what I would characterize as high quality technical consulting services in such fields of expertise that we have. That includes principally the area of housing, but also goes beyond that in terms of economic research, impact assessment, social research, survey research and land use analysis.

Q You yourself have participated extensively as a witness in various types of litigation, is that correct?

A Yes.

Q How much of your time do you think is devoted towards the litigation process?

A Well, over the years, I would say a modest amount. Over the last few months it's been at least half.

Q Would those same percentages hold up for the rest of your individual employees?

A Oh, no. The bulk of the litigation related work is done by myself personally. They are involved to a much more limited degree.

Q What kinds of work would the rest of the group be involved in, just as a sample?

A Well, for example, at the moment one staff

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1 person has finished a study we are doing for the  
2 State of Maryland dealing with an impact mitigation  
3 plan for the future development of mining in western  
4 Maryland counties, coal mining principally. Another  
5 one is working on the issue of the effect of the  
6 closing of Ft. Dix would have on the local economy in  
7 south Jersey.

8 Q In both cases who contracted your  
9 organization? A Well, in the first  
10 case the contractor was the State of Maryland, the  
11 second was the State of New Jersey.

12 Q Are the majority of your clients public  
13 bodies? A I'd say about half.

14 Q Primarily states or also municipalities.  
15 A Primarily states although some municipalities  
16 and some regional agencies.

17 Q Within the State of New Jersey?

18 A Yes.

19 Q What municipalities do you recall in  
20 New Jersey having employed your services?

21 A Well, let's see. The City of Newark, the City  
22 of Trenton, the Township of Medford. Those are the  
23 only three that I recall. The Township of Washington  
24 in Gloucester County.

25 Q Generally what function did you perform

1 for each of the individual municipalities?

2 A Well, it varied. In the case of Newark we  
3 have been working with them on the question of  
4 litigation.

5 In the case of Trenton our first project was  
6 a community needs analysis and the development of a  
7 program for neighborhood preservation in one neighbor-  
8 hood. We are now working with them on a similar  
9 analysis for another neighborhood which is also  
10 co-sponsored by Mercer County. We have been negotia-  
11 ting with them on a study that should begin any day  
12 now which would have to do with working with them  
13 on coordinating the citizens input for a proposed  
14 visual arts center.

15 The case of Medford the work involved  
16 technical assistance, consultation to their township  
17 attorney and township planner as part of their plan-  
18 ning process, their master planning process.

19 The work with Washington Township had to do  
20 with physical planning and evaluating the impact of  
21 PUD developments taking place there.

22 Q In regard to Newark, can you identify  
23 the litigation? A Yes, I believe  
24 it's known as the City of Newark versus the Township  
25 of West Milford.

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Q This is the Newark watershed area?

A That's correct.

Q Mr. Mallach, when were you first consulted about the present litigation known as the Morris County Fair Housing Council litigation?

A I believe late in 1978, although I had discussions earlier during the course of 1978 with people in the Public Advocate's office on the general issue of such litigation.

Q Was that prior to the filing of the complaint or afterwards?

A Yes, I believe some prior thereto.

Q When did you first have occasion to review the ordinances of the Defendants?

A The ordinances -- starting roughly around the end of the year.

Q Was that again before or after the filing of the complaint?

A After.

Q Prior to the filing of the complaint then you had no occasion to review the ordinances of any of the Defendants?

A That's correct.

Q Do you recall when you first viewed the ordinance of the Borough of Morris Plains?

1 A I couldn't give you a date, but it was  
2 obviously some time, I would say it was certainly some  
3 time after the first of the year.

4 Q And generally in regard to this litiga-  
5 tion what role will you be serving?

6 A As I understand it my role will be two-fold.  
7 One will be to testify in what I believe has been  
8 called the maxi-trial on the issue of least cost  
9 housing and overzoning for least cost housing.  
10 And this is the substance, generally speaking, of the  
11 first part of my report.

12 Then I will be testifying in each of the  
13 individual or mini-trials on the features of the  
14 zoning ordinances and related matters. The effects  
15 in each of the individual municipalities.

16 Q You played no role then in selecting  
17 the Defendants, is that correct?

18 A I discussed certain aspects of selection with  
19 the staff of the Public Advocate.

20 Q What aspects would those have been?

21 A Well, I assisted them in obtaining certain,  
22 looking at I guess what one might call demographic  
23 or geographic information that might have a bearing.  
24 For example, I showed them information from the  
25 Department of Community Affairs study on vacant land

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availability in the municipalities and some of the census information on income distributions and the like.

Q Do you recall what year that DCA report was published? A The report was published in 1978.

Q Was it based on data accumulated during that year? A No, it was based on older data.

Q Do you recall how old that data might have been? A I don't recall specifically but I believe it was from 1970 or earlier before that period, early 1970 or the late 1960's.

Q So the amount of available land that formed the basis of that DCA report was formed in the year 1970 or prior to?

A Yes.

Q And the opportunity to develop that land in the last nine years has, of course, occurred?

A That's correct.

Q Have you had the occasion to review any of the ordinances of the municipalities in Morris County who are not named as Defendants?

A No, I have not.

Q Mr. Mallach, I ask you if you can

1 identify this report and maybe we can have it  
2 identified by the court reporter.

3 MS. MASON: Can we have this marked?

4 THE WITNESS: This is the part of my  
5 total report dealing with the zoning ordinance  
6 of the Borough of Morris Plains.

7 MR. HANSBURY: Could we have this  
8 marked?

9 (A report was received and marked D-1  
10 for identification.)

11 BY MR. HANSBURY:

12 Q D-1 is identified as a report provided  
13 by Alan Mallach dated April 6, 1979, consisting of  
14 a cover page and three pages within.

15 A The cover page here is a letter of transmittal  
16 which also refers to a Rockaway Township report that  
17 was simultaneously transmitted.

18 Q Mr. Mallach, can you tell me how this  
19 report was developed?

20 A This report was developed on the basis of an  
21 analysis of the zoning ordinance of the township,  
22 borough, rather.

23 Q Did you develop a theoretical construct  
24 in which these theoretical evaluations took place?

25 A Yes.

1 Q Can you describe generally what  
2 that construct was?

3 A The construct is that which is described in  
4 some detail in the overall report and in essence what  
5 that was was to identify first the different types of  
6 housing that would make up the sum total of least  
7 cost housing opportunities, i.e., one family houses,  
8 townhouses, garden apartments, et cetera; and secondly,  
9 for each of those housing types to identify a body  
10 of standards that would be consistent with the general  
11 formulation of the least cost feasibility in keeping  
12 with health and safety.

13 Q Was this same process applied to each  
14 of the Defendants ordinances?

15 A Yes.

16 Q Did the construct vary from municipality  
17 to municipality? A No.

18 Q So it was a theoretical construct not  
19 based on any particular municipality or its ordinances,  
20 when you developed it?

21 A Well, I would have to qualify that. It was not  
22 based on any single municipality. It was not  
23 theoretical as I would term that because it was very  
24 practical in terms of it being based on realistic  
25 user needs and requirements for the different housing

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types. But it did not vary by municipality.

Q By theoretical I meant in the sense that it wasn't devoted particularly to one individual municipality.

A I would term that generalized.

Q All right, fair enough. Do you know at what point in time the ordinance which you reviewed was adopted by the Borough?

A I don't recall that. I have the ordinance with me, I could check.

Q I ask you if that is a copy of the ordinance which you reviewed?

A This appears to be the same ordinance. There appear to be minor differences in the appearance of the pages but substantive they are both cited as Ordinance 1-79.

Q Adopted when?

A January of '79.

Q Now I ask you if you can identify this report?

A Yes. This is a report prepared by --

MS. MASON: Excuse me, could we have this marked?

(A report dated January 30, 1979, was received and marked D-2 for identification.)



1 Q Can you identify the exhibit which is  
2 now marked as D-2?

3 A D-2 is a report that I believe was prepared by  
4 staff of the office of the Public Advocate.

5 Q Did you participate in any manner in  
6 the development of this report?

7 A I may have to a limited degree but certainly not  
8 in detail.

9 Q Did you participate in any part of the  
10 fair share estimate noted as item 2 on this?

11 A No.

12 Q Are you familiar of your own knowledge  
13 as to the development of that number?

14 A Well, I believe that this number is taken from  
15 the Housing Allocation Report of the New Jersey  
16 Department of Community Affairs.

17 Q Was that the same DCA report to which  
18 you eluded prior? A That's correct.

19 Q That was developed on the basis of data  
20 prior to 1970? A That particular

21 item. The report, of course, used a variety of data.

22 Q Now I refer back to exhibit D-1 which  
23 you still have before you. D-1 is what, if you  
24 could, please? A D-1 is an analysis  
25 based on the conceptual framework, if you will, it's

1 just summarized the provisions of the Morris Plains  
2 zoning ordinance.

3 Q Within what context? What specifically  
4 are you saying by this report?

5 A This report first states which housing types  
6 are permitted, what standards they are permitted  
7 under and whether or not in any such case the outcome  
8 of the housing type and standard is what I would  
9 construe would be least cost.

10 Q On the page to which you are referring  
11 at the moment there are seven different items listed,  
12 is that correct? A That's correct.

13 Q Are you saying that each one of those  
14 is an element of least cost housing?

15 A That's correct.

16 Q And where you have noted that they are  
17 not provided by the Borough of Morris Plains, would  
18 you say that's an example of an exclusionary ordinance?

19 A I should qualify the previous answer in one  
20 regard. The first six are different housing types,  
21 they are elements of least cost housing. The second  
22 is a vehicle that is used as a way of providing  
23 housing and which may be a vehicle for least cost  
24 housing. It is not in itself a housing type.

25 Q In your opinion if all of the elements

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1 of the first six types which you referred to were  
2 present in an ordinance would it then be non-exclu-  
3 sionary? A If they were present  
4 in such a fashion that they could be built at least  
5 cost standards. For example, single family houses in  
6 themselves are not least cost, they would have to be  
7 permitted under a least cost standard.

8 Q So it would be your testimony within  
9 what you just said, the context of what you just said,  
10 if each of those six types were available an ordinance  
11 would be non-exclusionary?

12 A Were available under least cost standards.

13 Q Within the context of what you said.

14 A I should add to that that a further element  
15 that's not dealt with in this report but would have to  
16 be part of the evaluation or part of the remedy or  
17 what you will, would be to ascertain that the amount  
18 of land that was available for the development of  
19 the various least cost housing types was in reasonable  
20 proportion to the fair share of housing needs.

21 So if they all appeared in the ordinance but  
22 from a practical standpoint there was little or no  
23 vacant land for them then it would still be faulty  
24 in that regard.

25 Q Is your report known as D-1 all

1 inclusive? In other words does it include all the  
2 elements of the zoning ordinance which you find to be  
3 exclusionary? A To the best of my  
4 knowledge.

5 Q These are not examples but they are  
6 developed as a result of a full analysis?

7 A That is correct.

8 Q Mr. Mallach, in preparation for this  
9 deposition did you visit the Borough of Morris Plains?

10 A I did not make a deliberate visit, if you will,  
11 to Morris Plains. I have driven through it in  
12 passing but I did not specifically seek to visit the  
13 Borough.

14 Q Can I ask you to identify the map which  
15 you are looking at? A I believe this

16 may have been previously marked, I don't know.

17 This is a map of Morris County, it's the official  
18 Morris County Board of Chosen Freeholders road map.

19 MS. MASON: Would you care to see it?

20 MR. HANSBURY: No, I know what it is, I  
21 just wanted it noted in the record.

22 Q Do you know the approximate land size  
23 of the Borough of Morris Plains?

24 A Not offhand.

25 Q Do you know the population generally of

1 the Borough of Morris Plains?

2 A As of the 1970 census the population of Morris  
3 Plains was approximately 5,500 people.

4 Q May I ask you to identify from what  
5 you are reading? A This is a tabulation

6 of census data that appears as, I guess it would be  
7 considered an attachment to the expert report  
8 previously submitted by Mary Brooks.

9 Q So you have no independent knowledge  
10 of the population other than from this report?

11 A That's a census figure, that's a standard source  
12 for such a situation.

13 Q Do you know the general topography in  
14 the Borough of Morris Plains?

15 A In a very general way. I believe it's relatively  
16 rolling land I believe in the eastern part of the  
17 town and hilly towards the west.

18 Q Do you know if there are sewers available  
19 in the Borough of Morris Plains?

20 A No, I do not know.

21 Q Do you know what water supply there is?

22 A No.

23 Q Do you know what the general mix of  
24 commercial and residential is?

25 A I know there is commercial facilities, are

1 commercial facilities along Speedwell Avenue. I  
2 don't know about additional commercial areas. I know  
3 there is the very substantial Warner Lambert  
4 Pharmaceutical complex in, I guess it's the northern  
5 part of the town. Those are the major ones I noticed.

6 Q Can you describe generally the present  
7 housing stock? A Again, this is

8 based on a very general impression. I would say it's  
9 principally single family housing, fairly substantial  
10 ones on medium --

11 Q Could you define what you mean by  
12 fairly substantial?

13 A They tend to be, say, typically, two story  
14 houses rather than ranch houses. They are not, again  
15 this is an impression rather than any kind of statis-  
16 tical thing, I would not characterize them as being,  
17 say, on estates or large lots, I would guess typical  
18 of suburban lots, maybe half acre, quarter acre  
19 typically.

20 Q By suburban you mean suburban throughout  
21 the State of New Jersey?

22 A I was thinking in the context of the New York  
23 metropolitan area generally.

24 Q Do you know to your own knowledge how  
25 much vacant land there is in the Borough?

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A Not of my own knowledge, no.

Q Do you know based upon other reports how much vacant land there is?

A I said I reviewed the DCA report, I don't recall what the figure cited was offhand.

Q Again referring to D-1, you have indicated that the ordinances of the Borough in some ways reflect an exclusionary policy, is that correct?

A That's correct.

Q Do you know of your own knowledge whether there is sufficient land upon which to build some of the types of housing which you say are not presently zoned for?

A Again my recollection of the DCA report is that that figure indicated ample land being available for a variety of housing types.

Q And again was that figure the one that was based on 1970 and prior information?

A That's correct.

Q Do you recall testifying at a previous deposition about the Town of Dunellen?

A I believe so.

Q And within the context of developing versus developed communities?

A Something to that effect. It was a muddy

1 context as I recall.

2 Q Do you recall whether from your point  
3 of view you testified that Dunellen was a developed  
4 or developing community?

5 A I took exception and if memory serves me,  
6 counsel took exception as well to it, to that  
7 characterization. I certainly did not venture or  
8 did not want to venture an opinion on the legal issue  
9 of whether they were developing and I believe some-  
10 wheres around the same general time I commented that  
11 in my judgment my understanding of the legal defini-  
12 tion of the word was substantially different from what  
13 I would consider to be a common sense definition of  
14 the same term.

15 I forget exactly in what in that rather muddled  
16 context I might have characterized Dunellen as.

17 Q Perhaps I could ask you to read the  
18 underlined portion of your testimony, and for the  
19 record it is April 16, 1979, on page 65 and then  
20 again I think on page 66. Does that refresh your  
21 recollection? A Yes.

22 Q Now can you tell me again whether you  
23 considered at that time Dunellen to be a developed or  
24 developing community?

25 A At that time? You mean April 16th?



1 Q That's correct.

2 A What I said, and I can quote it because it's  
3 succinct enough is that there is a reasonable likeli-  
4 hood that Dunellen's fact pattern would have been  
5 close enough to that of Washington and Demarest for  
6 the same to apply.

7 Q And what factors went into your  
8 determination that the same factors apply?

9 A Very small size and very limited vacant land  
10 available.

11 Q Could you analogize Dunellen with the  
12 Borough of Morris Plains?

13 A I really don't have enough hard data here to  
14 make a good judgment on that question. I believe that  
15 Morris Plains is considerably larger than Dunellen.

16 Q Larger -- A In land  
17 area, and most probably in vacant land availability  
18 assuming, of course, that the deviation from the DCA  
19 data has not been too great.

20 Q Do you recall the percentage of vacant  
21 land available in Dunellen?

22 A It was virtually nill.

23 Q I believe your deposition spoke in terms  
24 of one or two percent.

25 A Yes, or less.

1 Q At what point in the scale of things  
2 would it no longer, would there then be sufficient  
3 developing land, three percent, four percent?

4 A That is something akin to the old business  
5 about angels opinions. In other words, my reading  
6 both Demarest and Washington were characterized by  
7 what you could say is an extreme fact pattern and  
8 these are the only cases where the Supreme Court had  
9 ruled.

10 Since, as I suggested, I'm not familiar with  
11 the solid common sense basis for the distinction for  
12 the hard and fast either-or distinction, I would not  
13 want to suggest where the difference would lie.

14 Q But I believe you would feel that two  
15 percent would be considered a developed community?

16 A Only because that seemed to be the percentage  
17 that was applicable, I believe it was in Washington  
18 Township, not because there was any logical basis  
19 from my own analysis and knowledge.

20 Q Are you familiar with the various cases,  
21 Mount Laurel, Demarest, Washington, et cetera?

22 A Generally speaking, yes.

23 Q Based on your knowledge of those cases,  
24 as a layman, of course, and based upon your discussion  
25 here and the factors going into the consideration of

1 developed versus developing communities, would you  
2 have your own opinion as to the status of Morris  
3 Plains? A I would believe, again  
4 based on this, the data that I reviewed, even though  
5 I don't remember specifically at the moment, that  
6 Morris Plains certainly has a reasonable likelihood  
7 of being considered a developing municipality.

8 Q And this data again is the DCA report?

9 A That's correct.

10 Q Which is 1970 or prior?

11 A That is correct.

12 MS. MASON: I would like it pointed out  
13 that Mr. Mallach is only giving his opinion as  
14 a layman.

15 MR. HANSBURY: I believe that was already  
16 in the question, as a layman.

17 BY MR. HANSBURY:

18 Q Is it your view, Mr. Mallach, that each  
19 municipality, each Defendant municipality must provide  
20 for low and moderate income housing?

21 A That's correct. That I believe I have not so  
22 much arrived at individually as I simply accept the  
23 premise of the Mount Laurel decision in that regard.

24 Q One more question, going back to Dunellen  
25 again. In developing your conversation with the

1 Public Advocate's office prior to filing suit, were  
2 you involved in any discussions as to which of the  
3 Defendants or prospective Defendants were developed  
4 or developing communities?

5 A I may have been.

6 Q Do you recall?

7 A I believe that I was, at least in a general way.

8 Q In a general way do you recall what you  
9 contributed to those kinds of discussions?

10 A Well, as I believe I mentioned, I went over the  
11 information on the vacant land from the DCA study.  
12 I don't recall what opinions I might have voiced then.

13 Q Would you feel that there are some  
14 municipalities which would be more appropriate to  
15 low and middle income housing than others within the  
16 context of this suit?

17 A It's a question of degree rather than either or.  
18 I think there are certainly municipalities where  
19 larger numbers of moderate or least cost housing would  
20 be more appropriate than in others but I don't believe  
21 it would be an either-or matter.

22 Q So your testimony would be that any one  
23 of the Defendants would be an appropriate location for  
24 low and moderate income housing?

25 A At least some, yes.

1 Q At least some of which?

2 A Low, I mean at least some low and moderate  
3 income housing.

4 Q Within each Defendant?

5 A Yes.

6 Q Do you recall testifying and again I  
7 refer to April 16th, page 32, the question was asked  
8 what you are saying is fair share means that you would  
9 put more of the least cost housing where it is more  
10 appropriate.

11 And I show you that statement and your response  
12 to that was yes. A Yes.

13 Q Could you amplify what you meant by that?

14 A Well, again that certain fair shares are  
15 proportionately larger in some municipalities, smaller  
16 in others. And now I should say I have made no  
17 specific fair share study for this litigation nor do  
18 I plan to. But talking in a theoretical fashion when  
19 doing a fair share analysis you would look at a variety  
20 of factors affecting municipalities and affecting  
21 their appropriateness.

22 One, for example, would be the amount of  
23 employment in the municipality.

24 A second would be the amount of vacant and  
25 developable land in a municipality.

1 Third would be some indicator of the wealth of  
2 the municipality, I mean exactly what indicator people  
3 might differ on but some indicator. Those three  
4 factors deal with appropriateness and are generally  
5 agreed upon I believe by almost everyone who does  
6 fair share analysis as being factors to take into  
7 consideration.

8 Now one can get obviously into more detail  
9 about such factors. One could, for example, look  
10 not only at the employment within the municipality,  
11 but the employment within the immediate vicinity of  
12 the municipality as well.

13 One could distinguish between and look at  
14 both, for example, wealth as measured in personal  
15 income, wealth as measured in the physical capability  
16 of the municipality to support additional growth,  
17 additional costs.

18 One could look at other location factors such  
19 as proximity to centers, I guess, theoretically one  
20 could look at some sort of a transportation analysis.

21 Q It's my understanding you have not  
22 participated in a fair share kind of development in  
23 this matter? A That's correct.

24 Q You, I think, were at one time a member  
25 of the Board of Adjustment of Pennington, is that

1 correct? A Yes.

2 Q Are you still?

3 A No, I no longer live in Pennington.

4 Q How long were you on that Board?

5 A Three years.

6 Q And in your profession you have  
7 participated in municipalities, either against them  
8 or with them in terms of developing zoning ordinances,  
9 is that correct?

10 A I have never actually developed a zoning  
11 ordinance for a municipality. I did, I advised on  
12 developing ordinances.

13 Q Have you participated in the process of  
14 it at least? A In the case of Medford  
15 that I referred to earlier, yes.

16 Q Approximately how many ordinances have  
17 you reviewed? A I'm not sure that  
18 I could say with precision, my guess would be  
19 somewheres between sixty and a hundred.

20 Q Do you feel you are somewhat familiar  
21 with motivations that go into development of zoning  
22 ordinances? A I believe so.

23 Q Would you have an opinion based upon  
24 your experience as to the motivation which might go  
25 into the development of an ordinance such as Morris

1 Plains? A Well, in essence Morris  
2 Plains zoning ordinance seeks to achieve the continua-  
3 ~~tion~~ <sup>tion</sup> of the type of housing development that I  
4 previously described; in other words, a community  
5 predominantly of single family detached houses on  
6 what might be characterized as medium-large lots and  
7 generally speaking of large size and with limited  
8 provision for a single multi-family housing type  
9 under conditions that would deviate as little as  
10 possible from the essentially single family character  
11 of the rest of the ordinance.

12 Q You have in a professional capacity  
13 provided what I guess you would call sociological  
14 and economic kinds of studies, is that correct?

15 A That's correct.

16 Q In the context of that experience would  
17 you analyze what impact such an ordinance would have  
18 on the Borough of Morris Plains?

19 A From a social standpoint it would be designed  
20 as to the greatest degree to maintain what one would  
21 call a homogenous population in a number of ways.  
22 That the population would be predominantly affluent  
23 by virtue of the costs entailed in building single  
24 family detached housing on large lots. It would be  
25 predominantly households in the child rearing ages



1 because very few households other than child rearing  
2 households would buy houses provided by the ordinance.  
3 ~~OTT~~ The townhouse zone, assuming there is land available  
4 in that zone, might provide limited space for a small  
5 number of also affluent but perhaps childless couples,  
6 quite possibly couples that had lived in a larger  
7 house in the Borough or similar community until their  
8 children had grown.

9 In other words, it would be limited to a very  
10 narrow part of the demographic spectrum, the affluent  
11 principally in the child rearing years. From an  
12 economic standpoint since this also deals with the  
13 residential aspects of the ordinance I couldn't speak  
14 to the overall economic effects of it.

15 The economic effects would be somewhat mixed.  
16 In other words, the ordinance is simultaneously  
17 pushing for physical advantage by insuring that the  
18 housing to be built would be expensive housing and  
19 thus would pay a great deal in property taxes. But  
20 at the same time it's counteracting that to a degree  
21 by virtue of the fact that this would be housing that  
22 would appeal principally to child rearing families  
23 who would have substantial public education costs.

24 So, in other words, it's not a purely fiscal  
25 ordinance, though on balance the fiscal effects are

1 likely to be positive. The townhouses, of course,  
2 are designed under provisions that would almost  
3 certainly assure fiscal advantage for the municipality  
4 from any townhouse development that took place.

5 Q Could you define what you mean by  
6 affluent?

7 A Well, I was using the term  
8 in a general sense. Without a much more exhaustive  
9 analysis I couldn't put a number on it. But typically  
10 we would be, if, say, for example, we are talking  
11 about houses selling for \$80,000 and up, the typical  
12 family that would buy such a house might have an  
13 income of at least in the thirty to forty thousand  
14 range and perhaps more. This would be then the top  
15 twenty-five percent or so of the households in the  
16 region.

17 Q This income is per household you are  
18 speaking of?

19 A Oh, yes, not per  
20 capita. That's just a very general idea, as I say I  
21 have not studied this specifically.

22 Q What age group would you consider to  
23 be a child bearing age group?

24 A Well, child rearing, of course, these days  
25 is being postponed and the typical child rearing  
couple is slightly older than they were five or ten  
years ago. Also in terms of the particular interest

1 in a detached single family house this is often post-  
2 poned until after the birth of the children, first  
3 ~~because~~ it does not appear as desirable until the  
4 children are slightly older, secondly very often the  
5 resources of the family are not adequate until a few  
6 more years of earning.

7 So the typical family would be, with the adult  
8 members, the husband and wife, most likely in their  
9 thirties, probably middle thirties, typically, with  
10 children on the verge or ready to be or in grammar  
11 school.

12 Q It would be your conclusion therefore  
13 that generally, at least, the ordinance would be  
14 either purposely or without purpose designed such that  
15 the population would be \$30,000 and higher and in  
16 their mid-thirties with children, is that what you  
17 are saying? A Yes.

18 Q Do you know if that's the case within  
19 the Borough of Morris Plains?

20 A No. In effect it may not necessarily be the  
21 case because if you look at the population of the  
22 Borough, of course, you are dealing principally with  
23 people who live in existing houses that have been  
24 built gradually over the past however many years so  
25 that would not necessarily be the same as a population

1 who would be likely to move into new housing

2 constructed under the ordinance.

3 Q Is it possible then that a town such as  
4 Morris Plains would have a mix of economic backgrounds?

5 A Well, we can see what we have in the way of  
6 statistics. There are some statistics in this report  
7 on income distribution, at least. Well, when we look  
8 at the town of Morris Plains we find that although  
9 there is a mix in the sense that there is at least  
10 one person, say, at all levels, that Morris Plains  
11 has an extremely small percentage of its population  
12 in the lower income brackets.

13 Q Could you identify what report you  
14 are reading from? A This is the expert  
15 report prepared by Mary Brooks and it's based on an  
16 attachment which again is U.S. Census data entitled  
17 The 1960 and 1970 Quintile Analysis.

18 It presents again from the U.S. Census the  
19 percentage of households in each municipality at  
20 various income levels.

21 Q Do you have an opinion as to what  
22 least cost housing would be within the Borough of  
23 Morris Plains in each of the six areas you have  
24 indicated in your report which is marked D-1?

25 A When you say what least cost housing would be,

1 what do you mean?

2 Q In terms of dollars.

3 A No.

4 Q Before when we were speaking about  
5 Dunellen and we talked about the percentage of  
6 available land, could you define what available land  
7 means? A Well, available land --

8 well, I should back up on that. Vacant land is,  
9 of course, is all land that is not developed.

10 Developable vacant land, it is a definable term  
11 although not practically so, is that land that is  
12 both vacant and susceptible to development by virtue  
13 of its physical character.

14 And people differ in many cases as to what  
15 should be excluded. Certainly land that's in park  
16 land or other dedicated open space is not available  
17 or vacant or developable. Land that is in floodways  
18 is not reasonably developable. Land that's, that has  
19 a slope that's too steep for affective development is  
20 not developable, although as I believe I have  
21 discussed there is considerable difference of opinion  
22 as to how steep steep is.

23 So developable vacant land would be the second  
24 category. Now theoretically anything in that might  
25 be available for development. In practice, of course,

1 some of it may not be which is, of course, why  
2 overzoning has been adopted as a principal by the  
3 courts for providing fair share.

4 In other words, the municipality as a general  
5 rule cannot judge whether a piece of land is available  
6 in the sense of whether the owner is willing to sell  
7 it and at what price and so on. So the municipality  
8 operates within the context of the developable vacant  
9 land and zones in such a way that even after a  
10 reasonable allowance has been made for such things  
11 as people being unwilling to sell and people being  
12 unwilling to charge reasonable prices there will  
13 still be adequate land available for development of  
14 least cost housing or whatever.

15 Q When you say floodways, how would you  
16 determine whether or not a certain part of a municipali-  
17 ty is within a floodway?

18 A This is mapped by the DEP and other people.

19 Q By the DEP are you saying --

20 A The DEP I believe by the Flood Insurance  
21 Program and I think it's the U.S. Department of  
22 Housing and Urban Development also does mapping.

23 Q Do you have an opinion of your own  
24 as to what slope would be too steep on which you  
25 could construct a dwelling?

1 MS. MASON: Do you mean in Morris  
2 Plains in particular?

3 MR. HANSBURY: I think just generally,  
4 I am assuming he doesn't know what slopes  
5 there are in Morris Plains.

6 THE WITNESS: That's correct.  
7 I think it is certainly possible to develop  
8 land with the slopes of at least twenty-five  
9 percent. There are certain substantial areas  
10 developed around Morris County at such slopes.

11 BY MR. HANSBURY:

12 Q Would you say twenty-five percent is  
13 the maximum slope?

14 A Again one can't be absolutely hard and fast  
15 about these things but I would say once you get above  
16 twenty-five percent serious questions are likely to  
17 arise.

18 Q As to what, what kinds of questions?

19 A As to whether the -- I should back up again.  
20 It is theoretically possible to prepare almost any  
21 site for development in a manner that will not do  
22 environmental harm and will produce some kind of  
23 development. Costs rise, of course, the more compli-  
24 cated the site preparation need to be. I guess the  
25 point would be over twenty-five percent you are

1 getting into questions where the potential complexities  
2 and costs and site preparation and everything really is  
3 likely to become excessive for most uses.

4 Clearly there still will be people who will  
5 build up \$250,000 houses cantilevered over cliffs  
6 or whatever but those are exceptions. Most uses would  
7 be relatively unfeasible.

8 Q Is it possible given a certain kind of  
9 site that perhaps fifteen percent might then be the  
10 maximum for that site?

11 A Well, it's possible but not because of the  
12 slope of fifteen percent, because of other factors.  
13 I mean you might have a slope where the combination  
14 of a whole series of factors would contribute to  
15 a conclusion that the site was not readily developable  
16 and one of those would be that, one of those factors  
17 would include a fact of fifteen percent slope.

18 Q What would the other factors be?

19 A Well, one of the factors would be certainly if  
20 you have a great deal of surface rock, literally what  
21 they call an escarpment which had the rock right at  
22 the surface which would in turn both create difficulties  
23 in site preparation and increase runoff relative to  
24 the land area, that would certainly be a factor.

25 Q Are there any others that might be



1 considered? A That's the one  
2 that comes to mind. Obviously there would be  
3 variations on that but the factors would be the  
4 specific problems with the site contributing to  
5 increasing the difficulty of site preparation and the  
6 specific features of the site increasing the runoff.

7 Q What would such features be?

8 A Well, rock is certainly the most significant  
9 one. The location of the site relative to other  
10 areas which were generating runoff, I mean drainage  
11 and runoff problems tend to have a certain cumulative  
12 effect which goes beyond the site itself, I mean you  
13 have to look at it in the context of the area.

14 Q Is slope relevant then only as a --

15 A That strikes me as a principal issue, erosion  
16 really is a drainage issue.

17 Q I believe in a prior deposition you  
18 stated that mid-rise or high-rise apartments would be  
19 proper for a municipality, is that correct?

20 A Yes.

21 Q Would you say that, I assume, for the  
22 Borough of Morris Plains?

23 A Yes.

24 Q How do you distinguish between high-rise  
25 and mid-rise? A It's a question of

1 relative height. The mid-rise is a unit that would be  
2 expected to have an elevator, would be at least four  
3 stories but probably no more than seven to nine  
4 stories, typically mid-rise building might be five  
5 or six stories.

6 A high-rise building would be something sub-  
7 stantially more than that, twelve, fifteen, twenty,  
8 twenty-five.

9 Q Would such factors as sewers and water,  
10 for instance, be a part, play a part in your decision  
11 as to whether such a development were suitable in  
12 a municipality?

13 A Well, as a general  
14 rule a mid-rise development like any other multi-family  
15 development would have to have some form of central  
16 sewerage treatment. As I believe I testified, however,  
17 that it is possible to provide these systems through  
18 site specific treatment in the absence of a public  
19 system. If there is a public system that's there and  
20 conveniently located then obviously it would be  
21 preferable to utilize that.

22 Q Would such site specific services be  
23 expensive?

24 A They are expensive, they  
25 are manageably expensive but they are expensive.

Q They would be included in the cost per  
unit, presumably? A That's correct.

1 Q Is it possible that such services  
2 might push a low cost unit into a medium cost unit?

3 A Well, the typical cost for such services is  
4 likely to be in the area of \$2,000 per unit at current  
5 costs. And this is a cost. But it's not necessarily  
6 a great cost relative to what the alternatives might  
7 be.

8 It's quite possible that the hook-ups or the  
9 construction of a line or what have you to tap into  
10 existing sewer systems might be close to that. The  
11 cost of septic systems in some locations for single  
12 family houses may be close to that.

13 So it is a part, providing sewage treatment  
14 is a part of the cost of any housing unit, the cost  
15 of providing an on-site central plant is not vastly  
16 in excess of other costs.

17 Q Would such things as available space in  
18 schools be a consideration?

19 A Not a significant one. The reason for that,  
20 and certainly I don't mean to sound calloused, is that  
21 the provision of schools and space for school children  
22 is acknowledged quite readily as the responsibility of  
23 the municipality, the school district, and in return  
24 for which they are given rather awesome taxing powers.  
25 So as a general rule, the municipality would be

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expected to monitor the nature and development that was taking place in the community and maintain an ongoing program of capital improvements, if necessary, expansion, rennovation, whatever, to make sure that the school facilities of the school district are adequate to the school enrollment present and projected.

Q Would the fiscal position of the local municipality be a consideration?

A Again it's not a question of either-or. Certainly that's a factor as I mentioned that could enter into a fair share analysis.

Q Do you know if that consideration exists in the Borough of Morris Plains?

A Fiscal constraints?

Q Yes. A No.

Q No, you don't know or no, it doesn't?

A No, I don't know.

MR. HANSBURY: No further questions.

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

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

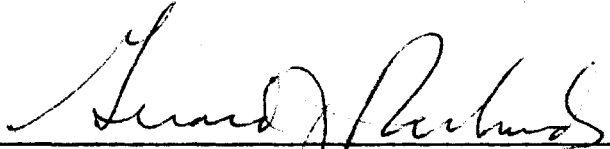
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MORRIS COUNTY FAIR HOUSING :  
COUNCIL, et al, :  
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Plaintiffs, :  
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-vs- :  
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BOONTON TOWNSHIP, CHATHAM :  
TOWNSHIP, CHESTER TOWNSHIP, :  
et al, :  
 :  
Defendants. :  
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CERTIFICATE

I, GERARD J. RICHARDS, 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 first duly sworn by me, at the place and on the date hereinbefore set forth.

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



\_\_\_\_\_  
A Notary Public of the State of New Jersey

Dated: 6/4/79

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