

ML - Morris County Fair Housing Council

6/15/79

v. Beerten Twp

Deposition of Aler Mallach - direct
examination by Mr. Johnston

P33

ML 0009025

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,

ML000902S

DEPOSITION OF:
ALAN MALLACH.

Plaintiffs,

-vs-

BOONTON TOWNSHIP, CHATHAM TOWNSHIP,
CHESTER TOWNSHIP, DENVILLE TOWNSHIP,
EAST HANOVER TOWNSHIP, FLORHAM PARK
BOROUGH, HANOVER TOWNSHIP, HARDING
TOWNSHIP, JEFFERSON TOWNSHIP, KINNELON
BOROUGH, LINCOLN PARK BOROUGH, MADISON
BOROUGH, MENDHAM BOROUGH, MENDHAM TOWN-
SHIP, MONTVILLE TOWNSHIP, MORRIS TOWN-
SHIP, MORRIS PLAINS BOROUGH, MOUNTAIN
LAKES BOROUGH, MOUNT OLIVE TOWNSHIP,
PARSIPPANY-TROY HILLS TOWNSHIP,
PASSAIC TOWNSHIP, PEQUANNOCK TOWNSHIP,
RANDOLPH TOWNSHIP, RIVERDALE BOROUGH,
ROCKAWAY TOWNSHIP, ROXBURY TOWNSHIP
and WASHINGTON TOWNSHIP,

Defendants.

B E F O R E:

VICTOR SELVAGGI, JR., a Notary Public
and Certified Shorthand Reporter of the State of New
Jersey, at the MORRIS TOWNSHIP MUNICIPAL BUILDING,
Convent Station, New Jersey, on Wednesday, May 30,
1979, commencing at 1 p.m.

KNARR - RICHARDS, ASSOCIATES

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

THE PUBLIC ADVOCATE
BY: VERICE M. MASON, ATT'Y.
Attorneys for the Plaintiffs.

MESSRS. DILLON, BITAR & LUTHER
BY: BARRY M. JOHNSTON, ESQ.
Attorneys for the Defendant Mountain
Lakes Borough and Mendham Borough.

VICTOR SELVAGGI, JR.
Certified Shorthand Reporter

I N D E X

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WITNESS

DIRECT

ALAN MALLACH

By Mr. Johnston

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CONFIDENTIAL

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

OK
FILE

MR. JOHNSTON: For the record, my name is Barry Johnston and I'm an attorney with the firm of Dillon, Bitar & Luther and I'm the borough attorney for the Boroughs of Mendham and Mountain Lakes. This is a scheduled deposition of Alan Mallach on behalf of these two municipalities in the matter of Morris County Fair Housing Council and others against the Township of Boonton and others.

Would you like to identify yourself?

MISS MASON: I'm Verice Mason, an attorney with the office of the Public Advocate.

MR. JOHNSTON: At Miss Mason's request, I'm going to put a statement on the record regarding payment of Mr. Mallach's fee and expenses for these depositions. We understand that Mr. Mallach charges \$40 an hour for his time and the Boroughs of Mountain Lakes and Mendham will pay their respective shares of his time actually spent in this deposition, plus the pro rata share with the other municipalities who depose him today of his transportation expenses, which I believe is to and from Philadelphia.

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THE WITNESS: That's correct.

MISS MASON: Thank you.

MR. JOHNSTON: Off the record.

(There is a discussion off the record.)

DIRECT EXAMINATION BY MR. JOHNSTON:

Q Okay. I think we can dispense with the recitation of the groundrules for the depositions. You have probably attended more than I have and certainly they have been recited enough in this proceeding so that we will just go ahead with the questions.

Would you, first of all, please state your name for the record? A Alan Mallach.

Q Okay. Now, Mr. Mallach, what is your area of expertise as relates to this lawsuit?

A As it relates to this lawsuit it would be housing, zoning and planning.

Q Okay. Are you able to say which of these areas your testimony will be concentrated in?

A Well, it's hard to have a hard and fast line. All three of them are relevant and essentially what the testimony is going to be on is the application of, I would guess housing standards and planning principals to zoning ordinances.

Q Okay. Now, I would like to first of all

1 make sure that I understand what your position is on
2 the subject of least cost housing. I would like to
3 state it based on what I've seen in your prior deposi-
4 tions and you correct me if I misstate it. I believe
5 it's your position that anything contained in a zoning
6 ordinance or other land use ordinances which requires
7 any unnecessary expenditure of money for housing
8 defeats the concept of least cost housing. Is that
9 accurately stated? A That's correct,
10 unnecessary relative to the health and safety of the
11 occupants.

12 Q Okay. We will get to that in a minute.

13 Would you say also then correlatory to that
14 any ordinance which does require such an element,
15 that is, an element requiring unnecessary expenditure
16 is to that extent an exclusionary ordinance?

17 A I think I would have to qualify that.

18 Q Okay. A I think that,
19 as I understand the cases, that so long as a municipi-
20 -ality has provided amply for least cost housing,
21 there may be other areas of the municipality where
22 other objectives in the municipality perhaps could
23 be served.

24 For example, I believe I referred to the PUD
25 approach, something which concerns legitimate, but may

1 not be least cost housing, so you would have to take
2 the ordinance in the context as it were.

3 Q Are you saying then if a municipality
4 in one or more of its sections provided the number of
5 units of least cost housing that the DCA report has
6 recommended, that the rest of the ordinance could then
7 contain these elements of unnecessary expenditure
8 without the whole ordinance being exclusionary? Do
9 you understand the question? A I do

10 understand the question. It's not as easy as it may
11 seem. I won't speak to the DCA report. I'm not
12 really involved in the fair share calculations on
13 this case and I have mixed feelings about that report
14 as a whole. I think, assuming what arrived at a
15 reasonable fair share goal and the zoning ordinance
16 provided for that with a responsibility measure of
17 overzoning, and that's a very important consideration,
18 that there then could be other zones elsewhere in that
19 municipality that might be other than least cost.

20 Q Do you have an overzoning factor in mind
21 you would consider ample? A Well, I've

22 suggested in my report that one can't construct a
23 precise overzoning factor without a very location
24 specific analysis. My estimate would be that in most
25 municipalities a reasonable level of overzoning would

1 be somewhere between three and five times.

2 Q Once again in an attempt to relate
3 least cost housing to exclusionary zoning ordinances,
4 would you say that if in every zone in a particular
5 municipality there were at least one requirement of
6 unnecessary expenditure, as you see it then the
7 ordinance would be exclusionary?

8 A Yes.

9 Q Okay. Now, what do you consider
10 necessary or unnecessary expenses, however you feel
11 easiest to answer the question? You can address it
12 in terms of necessary or unnecessary.

13 A Well, I think you have to take a few steps back.
14 What I've tried to do in my report is to define for
15 each of the various housing types that make up least
16 cost housing what modest standards would be where
17 there is certainly no question that the product would
18 be -- would meet all of the health and safety standards
19 of which I'm familiar, and in that context an unneces-
20 sary expense would be one required by standards in
21 excess of those modest standards. That could be
22 greater frontages, greater setbacks, larger floor
23 areas in dwelling units and the like.

24 Q Okay. Now, these standards that you
25 speak of, these are the ones that you discussed in

1 your general deposition with Mr. --

2 A That's correct.

3 Q -- Bernstein. Are these standards which
4 were developed by you or is there some other touch
5 stone that you have referred to?

6 A There was no single source focusing on this
7 issue, so that the standards, as they appeared here,
8 were developed by me. They were developed by me in
9 the context of existing standards and literature.

10 Q To the extent that you referred to
11 standards and existing literature, have you at any
12 time either in depositions or in the reports that you
13 produced identified what those sources are?

14 A I believe, yes.

15 Q Can you tell me where that's contained?

16 A I think it's in the Common Defense depositions,
17 Mr. Bernstein's depositions and I believe I went over
18 them once or twice more in some of the individual
19 municipal depositions.

20 Q Okay. Do you think you have given what
21 you consider a definitive bibliography on that? Would
22 you like to be tied down to that?

23 A I referred to the sources that I had relied on
24 or used most significantly. Certainly if I were
25 seeking to construct a research bibliography, as it

1 were on the issue, I would go beyond that and probably
2 do additional research.

3 Q Okay. Now, do some of these standards
4 as you have recited them involve the judgment call on
5 your part or are they all listed intact from various

6 -- A There are those that involve
7 judgment call.

8 Q Would you be able to say what they are?
9 Can you say which ones have your element of judgment
10 in them? A I believe most of them

11 involve some measure of judgment on my part. I would
12 say the ones that come closest to not having a judgment
13 basis would be the floor area requirements, but even
14 there there is a judgment element since I believe I
15 noted in the text the HUD standards on which these
16 were based do not deal with dwelling units as such,
17 but with the components that make up dwelling units.
18 So there was an element of judgment applied to
19 translating them.

20 Q Do you think HUD standards contain
21 ~~any~~ in unnecessary expenses?

22 A Not as a general rule. Not in terms of these
23 types of unit size, floor area density and such.

24 Q Do you think in any other areas they do,
25 getting away from floor area ratio?

1 A Well, when you get into the actual construction
2 of the units, you get into factors such as what is
3 known as Davis Bacon, which is the prevailing wage
4 requirement for construction. This is clearly a cost
5 generating factor. There are undoubtedly others
6 dealing specifically with construction standards.

7 Q How about the New Jersey Housing Finance
8 Agency standards, do you think that they are unneces-
9 sarily high? A Yes.

10 Q In what areas?

11 A Well, in many of the construction or technical
12 areas similar to that which I just cited with regard
13 to HUD, they are. In addition, they are significantly
14 higher than HUD standards with regard to minimum floor
15 area.

16 Q Are you familiar with the New Jersey
17 Uniform Construction Code and the industry code which
18 has just adopted a substitutive handbook for building
19 requirements? A Only in a very
20 general degree.

21 Q The B.O.C.A. 78 code I believe it is now.

22 A Yes.

23 Q Are you familiar enough with it to offer
24 an opinion as to whether it contains unnecessarily
25 high standards? A I really wouldn't

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venture to say.

3 GK

Q Supposing, just hypothetically, you were to review the code and you did, in your opinion what do you think the municipalities should do about it in their ordinances?

A Well, the B.O.C.A.

code?

Q Yes, or any of the other requirements of the uniform construction code that are over and above the B.O.C.A. code.

A I don't think

the municipalities are in much of a position to do anything about it or not. It is a uniform statewide requirement.

Q Okay. Did I hear you correctly, then in your opinion for purposes of the least cost housing definition, what is an unnecessary expense is determined solely by reference to health and safety standards. Is that correct?

A That is the language of the Madison decision.

Q I want to know what you think about it. The reason I'm asking that question, in reviewing the depositions conducted by Mr. Bernstein I got confused at one point. I thought at one point you made some reference to the possibility of having some aesthetic standard or some standard having to do with environmental considerations which were not necessarily

1 demonstratively related to health and safety and
2 maybe not. Maybe you intended to say they should be
3 given consideration. Would you tell me now whether
4 you think any considerations other than health and
5 safety are admissible to determine what is an unnec-
6 essary expense? A I think again I would
7 have to back up a little bit. My understanding of the
8 term least cost is or has been, at least since January
9 of 1977, a term of art as defined by the Madison
10 decision and it deals with health and safety standards
11 and an interpretation of what that decision means has
12 to focus in that regard. Now, it's quite clear that
13 the land use law as well as other general statements
14 of planning practice, if you will, provide for other
15 things beyond that that go into the overall planning
16 picture so that when one is doing planning for a
17 community, I believe a great deal of Mr. Bernstein's
18 questions focused on a larger planning context, then
19 there are other factors that you take into considera-
20 tion. The aesthetic area is a particular complicated
21 one. I believe the gist of my testimony was first
22 that in my judgment those provisions of zoning
23 ordinances that purported to be aesthetically grounded
24 did not, indeed, serve legitimate aesthetic purposes
25 and so they could not be justified on those grounds as

1 a basis for deviating from least cost standards and
2 that I couldn't think offhand of an ordinance provision
3 that would be a sound way of treating aesthetics.

4 Q Who do you think ideally should decide
5 whether any requirement is necessary for health and
6 safety? A That I really don't know.

7 I doubt if there is anybody one can point to as the
8 ideal determinant on that.

9 Q Well, do you think that the authors of
10 the sources that you used in constructing your standards
11 are necessarily better qualified to do this than the
12 officials in the various municipalities?

13 A Yes.

14 Q Okay. By virtue of what?

15 A By virtue of two factors. The authors of the
16 sources, particularly the HUD minimum property
17 standards and the HUD manual of accepted practices
18 are developing standards criteria on the basis of a
19 great deal of specific experience with housing
20 developments, the construction of housing, the planning
21 of housing, the review of housing proposals and this
22 sort over a long period.

23 Secondly, that these are agencies or individuals
24 or organizations that are not trying to balance or
25 juggle, if you will, housing considerations against a

1 variety of other considerations which historically
2 the housing needs of how moderate income people have
3 generally lost. In other words, a local official by
4 definition, however competent, is not in a position
5 often to step back and look at housing criteria as
6 such.

7 Q Do you then disagree with the often
8 stated judicial principle that local officials, because
9 they are more familiar with their community presumably,
10 rebuttal presumption, are in a better position to judge
11 those things in their community than are other author-
12 ities? A Not as a general principle.

13 I think justice has been the case with enumerable
14 legislative enactments. Those local decisions must be
15 placed in a larger context. Even in the area of land
16 use regulations, the State has seen fit to adopt a
17 land use law providing in considerable detail how
18 municipalities should go about conducting their matters
19 and after all, there are few areas where home rule is
20 more highly regarded than in the land use area.

21 Q By whom? A Well, by the
22 home rulers certainly. By the average local official
23 or by the citizens of a typical municipality.

24 Q Well, that would make an interesting
25 argument outside of this deposition. I could think

1 of a lot of other aspects of home rule, but that's
2 not relevant here.

3 Let me ask you this: One of the reasons that
4 the sources that you have cited seem more qualified
5 at set standards is that their standards are based on
6 considerable quantities of specific experience. Do
7 you know that for a fact or are you taking that as an
8 article of faith because it has the HUD brand on it?

9 In other words, do you know who actually wrote
10 these standards and what that author's experience is
11 in building and housing? A Well, I
12 do not know the name of the individual and, in fact,
13 as I understand it, it's not a single individual, but
14 quite a number of them at HUD involved in their
15 standard setting.

16 Q I would assume that would be the case.

17 A As I understand their process, and I've followed
18 this, although not closely, the HUD manuals are main-
19 tained and updated and changed on an ongoing basis.

20 In fact, what these are are looseleaf manuals where
21 they regularly send us supplements, modifications,
22 amendments and so forth based on, as I understand it,
23 experience in monitoring.

24 Q What is the ultimate source, the people
25 sitting there writing the regulations? Is it your

1 idea that they have individually themselves had
2 experience with building construction or do you think
3 they solicit information from other people in order
4 to write their standards?

5 A That I would not know.

6 Q Okay. So that for all you know the
7 ultimate source of material could be anybody?

8 A Well, I believe it's principally internal.
9 In other words, whether it's the individuals who are
10 actually writing the standards who are dealing with
11 the nuts and bolts or whether they communicate with
12 other HUD people who are more on the nuts and bolts
13 side, I'm not sure. It's my understanding that it's
14 based on HUD staff work, one way or another, rather
15 than going significantly outside the agency.

16 Q But you are not sure?

17 A No, I'm not certain.

18 Q Can you tell me how you formed that
19 opinion? Opinion is the wrong word. The belief that
20 you think that it's internally generated.

21 Q That I couldn't say. I may have read
22 something to that effect in the introductory material
23 on the standards or something to that effect. I'm
24 really not certain.

25 Q Have you ever seen a HUD organization

1 chart or table of organization which would lead you
2 to believe that they have these experts in their
3 employ directly? A What kind of experts?

4 Q The ones that are generating, the ones
5 that have had specific experience in building
6 construction and generating the standards?

7 A Yes.

8 Q You have seen organization charts or
9 tables of organization which would lead you to believe
10 that they have experts in their employ?

11 A Yes.

12 Q Okay. Would you be able to identify
13 any source where you have seen this?

14 A The organization charts. We subscribe to a
15 service entitled the Housing Development Reporter
16 which provides regularly updated information about all
17 housing statutes, regulations and organizational
18 matters including such things as HUD organization charts,
19 offices, phone numbers and the like.

20 Q Who publishes this? Is it a government
21 publication? A No, it's published by

22 the Bureau of National Affairs. I think it's the same
23 outfit that publishes Law Week. It's a similar kind
24 of service.

25 Q It's in that material by virtue of seeing

1 I suppose kinds of job titles that they have that you
2 have -- A Yes.

3 Q -- based this assumption. As to the
4 other reason that you would prefer your sources over
5 the local sources, I think you said using HUD as an
6 example, they weren't trying to juggle housing
7 against other considerations. Is it your conception
8 that as a government department they put their head
9 down, so to speak and apply their own craft without
10 regard to other mandate functions of other departments
11 of the government? A Well, not in the
12 entire governmental function. Clearly HUD and its
13 functions relate to other governmental functions, but
14 at a technical level I believe they develop regulations
15 and standards that are essentially housing specific.

16 Q Is there, to your knowledge, any agency
17 of the government or overseer or liaison or any such
18 animal that tries to do any balancing at that level?

19 For example, supposing the EPA were to look at
20 some HUD standards and say that they felt they were
21 environmentally unsound in some aspects, is there any
22 interplay between these agencies of which you are aware?

23 A Well, there is certainly a great deal of inner
24 action at the working level and there are a number of
25 agencies where if it becomes a major issue, there is

1 some balancing. These would include for starters,
2 the office of Management and Budget and Council on
3 Environmental Quality and in some cases the Office of
4 the Domestic Adviser, to the president Mr. Eisenstadt.

5 Q Are there any other reasons that you
6 think the sources that you have cited in compiling your
7 standards are better than local sources?

8 A Well, the two reasons I've cited I think
9 encompass most everything. I think to summarize it,
10 to the best of my knowledge I know of no circumstance
11 where local sources have systematically sat down to
12 construct a body of coherent standards consistent with
13 the Madison court mandate. So in some ways the ques-
14 tion is academic.

15 Q Supposing they were to bring their
16 efforts to bear on that, do you think that there are
17 any other reasons other than the ones you mentioned
18 why they would not be capable of doing that, as for
19 example HUD? A No.

20 Q Do you think there is any reason to
21 expect they might be more capable by virtue of
22 knowing what they have to work with in a particular
23 community? A No.

24 Q Supposing now that we have such sources
25 as the local sanitarian or the local construction code

1 official and fire safety director people who are
 2 directly concerned with the local health and safety
 3 standards, you don't think that their familiarity
 4 with the individual municipality would give them an
 5 edge in constructing what is necessary standards in
 6 their community? A That's correct.

7 Q You don't think it would give them that,
 8 right? A That's correct.

9 Q Okay. Is that because you don't think
 10 there is any room for flexibility in the standards
 11 based on local considerations or because you would
 12 think that they would be just incapable of thinking about
 13 that?

14 You said their knowledge in a local community
 15 wouldn't give them an edge in determining what the
 16 standards ought to be. Is that because you think
 17 they would be incapable or because you think that it
 18 doesn't make any sense to think about flexible standards
 19 from one community to another?

20 A I think basically the latter. The individuals
 21 may be capable, but essentially the local knowledge
 22 of which you speak is not germane.

23 Q You think it's irrelevant to the
 24 determination of housing standards?

25 A That's correct.

1 Q Okay. Now, at this point we are going
2 to feel our way a little bit as to how we structure
3 these questions.

4 Let me ask you this: In preparation for this
5 lawsuit, did you read the Land Use Ordinance of the
6 Borough of Mendham? A Yes.

7 Q Okay. When? My reason for asking the
8 question is to see whether it's a current version or
9 some other. A Okay. I have, as
10 probably indicated in my report, some uncertainty
11 about that point. As a matter of fact, I brought a
12 number of documents with me.

13 Q May I see them?

14 A Yes. This is the ordinance I initially analyzed.
15 I then, toward the end of the period at which I was
16 working on my report, I received from the Public
17 Advocate which received in Answers to Interrogatories
18 the following document accompanied by a map entitled
19 Proposed Zoning.

20 Q Is there a date on that map?

21 A It says revised June, 1975. There is also
22 another map entitled Borough of Mendham Zoning Map
23 which does not appear to be dated.

24 Q Okay.

25 MISS MASON: Yes, it is.

1 THE WITNESS: December 18, 1978.

2 Q Okay. You did review that then?

3 A Yes.

4 Q It will be sufficient if we can just get
5 your answer to this question. Did you review as to
6 both the Borough of Mendham and Mountain Lakes the
7 material that the Advocate gave you which we supplied
8 in response to their Interrogatories?

9 A To the best of my knowledge, yes.

10 Q Okay. Can you show me the document
11 that you reviewed for Mountain Lakes? May I just go
12 through it.

13 Are you sure you didn't review any other docu-
14 ment from Mountain Lakes? That's the one that was
15 sent to the Advocate. A This is not
16 the zoning ordinance. This is the land use element
17 of the master plan that I received for background
18 purposes.

19 Q Let me mark this document that I brought
20 with me just for identification and I'll ask you
21 whether you recall having seen it. Let's mark this
22 ML-1 indicating Mountain Lakes. Would you just look
23 at this and see whether --

24 A Could I have the document back?

25 Q Those are not the same document?

1 A These are not the same document. They are
2 similar, but not the same.

3 Q The one I marked ML-1 is the one I
4 provided the Advocate in response to Interrogatories.
5 Apparently you haven't seen that one yet.

6 A That's correct.

7 Q Well, we can work around that fact anyway.

8 MISS MASON: Off the record.

9 (There is a discussion off the record.)

10 Q In preparation for this lawsuit did you
11 visit either of those communities, Mendham Borough or
12 Mountain Lakes Borough? A I did not
13 visit Mountain Lakes Borough. I did visit briefly
14 Mendham Borough.

15 Q Okay. Have you ever been to Mountain
16 Lakes that you can recall? A Not to my
17 recollection.

18 Q Have you ever seen it from the air?

19 A No.

20 Q Okay. Do you know where it is with
21 respect to the County? A Yes.

22 Q Without looking at the map?

23 A I do not without looking at the map.

24 Q Okay. With respect to your visit to
25 the Borough of Mendham, would you tell me as nearly as

1 you can when and who with and how long and describe it?

2 A It was really just a matter of passing through.
3 This would have been back in March I believe with Carl
4 Bisgaier. I believe it was just a matter of driving
5 down the main street.

6 Q What was the purpose of the trip, do you
7 know? A Well, this was a trip to do

8 two things. The trip overall was to get a general
9 feel for a number of the different towns in the County
10 with which I was not very familiar and in certain cases
11 to look at specific sites that had been identified on
12 the basis of my initial analysis of the zoning ordi-
13 nance.

14 Q Did you do any site specific inspection
15 in Mendham that you can recall?

16 A No.

17 Q You drove through the town on what,
18 Route 24? A That's correct.

19 Q And you didn't make any side trips to
20 any other areas in the Borough?

21 A No.

22 Q Okay. Now, in your previous depositions
23 you identified a number of factors which I think you
24 referred to as exclusionary zoning tools. Just real
25 quickly I'll run over the list of them that I have.

1 You spoke of minimum square foot requirements,
2 **low density** requirements, zig zag architectural
3 **requirements**, maximum number of apartment units,
4 **height** restrictions, storage requirements, minimum
5 setback, minimum parking spaces per unit and over-
6 zoning for industry.

7 Are you prepared to identify the presence of
8 those elements in the Mendham Zoning Ordinance and the
9 Mountain Lakes Zoning Ordinance?

10 In other words, if I were to say to you where
11 in the Mountain Lakes Zoning Ordinance do you find the
12 minimum square footage requirement, would you be able
13 to cite sections where these objectionable requirements
14 exist? A Not necessarily. What I've
15 done in my reports is to present for each of the
16 townships which provisions based on my analysis I
17 consider significant with regard to each municipality.

18 Q I'm going to show you a document that I
19 **have** which I'll mark ML-2 and ask you whether this is
20 **the** document you referred to from the point of view of
21 **Mountain Lakes?** A That's correct.

22 Q Okay. This is with your report dated
23 March 12, 1979? A That's correct.

24 Q Okay. Is it fair to say then that beyond
25 that you haven't done any further section by section

1 analyses of the zoning ordinances of Mendham and
2 Mountain Lakes in order to identify the presence of
3 exclusionary tools? A That's correct.

4 Q So that ML-2 and its companion piece
5 for the Borough of Mendham are your product in that
6 area, at least to date. Is that correct?

7 A That's correct.

8 Q Okay. I assume it's also true then
9 that you would not be prepared to say what the zoning
10 ordinances of Mountain Lakes and Mendham should
11 contain or specifically how they should be changed
12 in order to meet your objectives. Is that a fair
13 statement? A No.

14 Q You could tell us?

15 A They could be changed by inclusion of least
16 cost housing provisions similar to or comparable to
17 those described in the general report accompanying
18 the two municipal reports.

19 Q Okay. You are not prepared to go beyond
20 that report? A That's correct.

21 Q With specificity. Is that right?

22 A That's correct.

23 Q Okay. Do you plan, if you know, we may
24 get into attorney's work product here. It's a hard
25 thing to put your finger on since the Advocate is also

1 the party plaintiff, do you know whether you are going
2 to be called upon by the Advocate or have you been
3 called upon by any of the defendants by way of discovery
4 to do such a further analysis?

5 A Could you clarify?

6 Q Yes. You said so far the extent of your
7 analysis of individual zoning ordinances has been
8 embodied in the material with your March 22, 1979
9 report. A Yes.

10 Q Has anybody asked you to go beyond that
11 to be more specific? A No.

12 Q With respect to any municipality?

13 A No.

14 Q Do you anticipate that you are going to
15 be asked to do that in this lawsuit by the plaintiffs?

16 A I would doubt it very much.

17 Q Okay. Have you done any analysis of
18 what I can generally refer to as environmental
19 ordinances? We can be more specific if you want, in
20 these two Boroughs to determine whether you think they
21 are overstrict in environmental requirements?

22 A No.

23 Q In addition to the exclusionary zoning
24 tools I've listed and I'll run over them again, I'm
25 going to ask you whether I left any out in relation

OK
ABLE

1 to your professional thinking whether you think there
2 are any other exclusionary tools beyond these that
3 show up in the Mendham or Mountain Lakes ordinances.
4 I think I got them all from your prior depositions.

5 They come out as minimum square footage requirements,
6 maximum density requirements, zig zag requirements,
7 maximum number of units, requirements for apartments,
8 height restrictions, storage space requirements,
9 minimum setback requirements. I assume we can include
10 on all sides, not really frontage, number of parking
11 spaces per unit and overzoning for industry.

12 A I think there may be others. I would note,
13 for example, certainly one exclusionary tool is a
14 simple exclusion of a use.

15 Q Okay. Any others?

16 A Another would be the, I don't know if that is
17 included in frontage, excessive frontage requirements.

18 Q Just generally lot dimensional require-

19 A General dimensional require-

20 Did that include minimum tract area requirements?

21 Q If it doesn't, let's include it.

22 A And bedroom requirements, bedroom ceilings of
23 different sorts. I think that may have been in there.

24 Q Do you mean height?

25 A No, requirements, for example, that units not

1 contain more than say 80 percent one bedroom and 20
2 percent two bedrooms.

3 Q Ceiling in that regard, I'm sorry.

4 A Yes. Also the requirements in single family
5 zones analogous to the zig zag, if you will, in multi-
6 family which is the no look alike standard.

7 Q Do you think they are necessarily cost
8 generating? A Yes.

9 Q How would that work?

10 A Well, the zig zag requirement is necessarily
11 cost generating.

12 Q I can see that. Talking about single
13 family units, why is that cost generating?

14 A No look alike is cost generated in the zone
15 or otherwise very modest. In other words, if you
16 are going to build an expensive subdivision, very
17 large houses on large lots, then it's not cost
18 generating because you are building what are likely
19 to be complex houses of the variety of futures in
20 any case. If you are trying to build inexpensive
21 houses on small lots, simple ranch houses, fulfill
22 an elaborate no look alike provision which requires
23 a number of different models or number of different
24 ways in which each unit varies from the next, one would
25 be cost generating because it significantly increases

1 the number of different housing types that have to be
2 built, makes the construction less efficient, increases
3 the complexity of even individual dwelling units and
4 generally speaking works as a very strong disincentive
5 against building inexpensive simple straight forward
6 housing.

7 Q You are assuming I take it that the same
8 contractor is building all the houses when you say
9 that efficiencies of construction?

10 A That's correct.

11 Q Okay. Supposing a contractor had three
12 or four different sets of plans that he was already
13 familiar in working with. If you required that many
14 different types of houses, do you think it would still
15 be less cost efficient to have several crews working?

16 A Again, there are a lot of factors that come
17 into consideration. As a general rule, it would be.
18 It is possible or it might be possible to come up with
19 a hypothetical situation which it might not, but as
20 a general rule, it would be.

21 MR. JOHNSTON: We both get paid by the
22 hour, so I don't think there is any necessity to
23 prolong this. Do you have any questions you
24 would like to ask?

25 MISS MASON: No, I do not.

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MR. JOHNSTON: We are finished and I
note that we have consumed 50 minutes of time.

THE WITNESS: I have 55.

* * *

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 als,

Plaintiffs,

-vs-

BOONTON TOWNSHIP, et als,

Defendants.

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: CERTIFICATE
:
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I, VICTOR SELVAGGI, JR., a Certified Shorthand Reporter and Notary Public of the State of New Jersey certify that the foregoing is a true and accurate transcript of the deposition of ALAN MALLACH who was 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 this action in which this deposition was taken and further that I am not a relative or employee in this case, nor am I financially interested in this action.

Victor Selvaggi, Jr.
A Notary Public of the State of New Jersey

Dated: 6/15/79

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