

L - Morris County Fair Housing Council

May 24 1979

v. Barton

- Hanover

Transcript of Deposition of Alan Mallaeh - Direct
Examination by Mr. Mac Donald

ps. 17

ML0009315

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, 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, :
DENVERVILLE 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 TOWN- :
SHIP, PASSAIC TOWNSHIP, PEQUANNOCK :
TOWNSHIP, RANDOLPH TOWNSHIP, RIVERDALE :
BOROUGH, ROCKAWAY TOWNSHIP, ROXBURY :
TOWNSHIP and WASHINGTON TOWNSHIP, :

Defendants. :

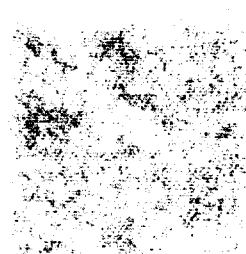
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B E F O R E :

GERARD J. RICHARDS, a Notary Pu'

State of New Jersey, at the Morris

DEPOSITION OF:

ALAN MALLACH



KNARR - RICHARDS, ASSOCIATES

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154

Building, Morris Township, New Jersey, on Monday,
May 21, 1979, commencing at three o'clock in the
afternoon.

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

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

MESSRS. YOUNG, DORSEY & FISHER
BY: JAMES H. MAC DONALD, ESQ.,
Attorneys for Hanover Township

GERARD J. RICHARDS
Certified Shorthand Reporter

KNARR - RICHARDS, ASSOCIATES

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I N D E X

Witness

Direct

ALAN MALLACH

By: Mr. MacDonald

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ERAS
COTTON

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

3 DIRECT EXAMINATION BY MR. MAC DONALD:

4 MS. MASON: Before he begins his
5 deposition we would like to state for the
6 record that Hanover Township is willing to
7 pay Mr. Mallach's cost of his presence here
8 today of the deposition and his pro rata
9 share of his travel expenses.

10 MR. MAC DONALD: We consent to that.
11 It's my understanding that we will be billed
12 for that through Mr. Clapp or directly.

13 Q Mr. Mallach, my name is James MacDonald,
14 I'm an associate with the law firm of Young, Dorsey
15 and Fisher and we represent the Township of Hanover
16 in the proceedings with which you are familiar.

17 I will be asking you certain questions
18 pertaining to the mini-trial aspect of the case with
19 reference to the Township of Hanover.

20 Now, Mr. Mallach, making reference to the
21 section of the report rendered by you, I believe, I'm
22 not certain on what date, is this the March 12th
23 report? A Yes, it's an element
24 in that.

25 Q Mr. Mallach, referring to the element

1 of the March 12th report pertaining to your analysis
2 of the Township of Hanover ordinance, I wonder if you
3 could tell me whether the observations set forth
4 therein is the entirety of your analysis to date in
5 the municipality's ordinance?

6 A That is correct.

7 Q And I wonder if in your work with
8 reference to the Township of Hanover you have had
9 occasion to visit the Township at this point?

10 A Well, I have driven through the Township but
11 I have not done a systematic visit of the Township.

12 Q Now am I correct in understanding that
13 the first page of the Hanover element is your analysis
14 of various items contained in the Township ordinance
15 that in your opinion refer to least cost provisions
16 of the ordinance? A That's correct.

17 Q Now with respect to those provisions,
18 which I believe number seven in total, can you tell
19 me what your conclusions as set forth in page one
20 of the element are intended to convey?

21 A Well, they convey that the Township of Hanover
22 makes no provision for any form of least cost housing.
23 There is a qualification of sorts regarding mobile
24 homes where it's a question of interpretation of the
25 ordinance. Even if one interprets the ordinance to

1 construe that mobile homes were permitted, the fact
2 is that there are no small lots available on which
3 they would be placed.

4 So in some, even with that qualification, the
5 conclusion is that there is no provision for least
6 cost housing in the ordinance.

7 Q And for purposes of the record could
8 you briefly describe the working definition that you
9 are using for least cost housing.

10 A Least cost housing includes any of the six
11 housing types listed from numbers 1 through 6 on the
12 report where such provision is made under standards
13 that are, as the court put it, to paraphrase, least
14 cost feasible consistent with health and safety.

15 So, in other words, any of those types could
16 be least cost housing where the standards are
17 appropriate.

18 Q And this particular element of the
19 report pertaining to the Township of Hanover is your
20 assessment of barriers in the ordinance, in your
21 opinion, to the provision of least cost housing, is
22 it not? A I guess you could construe

23 it as barriers. In this case it is an absence.

24 Q And as far as you are concerned, are
25 these the only absences that you have been able to

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find in the Township of Hanover land use ordinance?

A At this point, yes.

Q Are you able to form an opinion as to whether or not least cost housing would be able to be constructed in the Township of Hanover at this time absent these particular provisions on page 1 of the Hanover element?

A I am aware of no information to the contrary.

Q Have you had occasion to determine the amount of vacant developable land in the Township of Hanover?

A As I may have stated on previous depositions I have not made an independent determination of that fact. I have relied on the determination made by the New Jersey Department of Community Affairs in their study.

Q And is it true that with respect to the Department of Community Affairs that you are also in agreement with the allocation that they have determined to be the fair share of regional low and moderate income housing need assessed to the Township of Hanover?

A I have to answer that in two parts. I personally have mixed feelings on the DCA allocations, I think it's not patently unreasonable but fortunately as I understand it from the scope of my opinion that the DCA plan has no bearing on this

1 case because it's beyond the scope of my role.

2 Q And what do you perceive to be your
3 role with respect to this case?

4 A Well, the principal elements are two.

5 One, is, this is with regard to the maxi-trial,
6 to speak to the issues of least cost housing and
7 overzoning to establish standards in both of those
8 areas to guide the Court.

9 And the second is with regard to the mini-trials
10 which is to present information on the zoning ordinance
11 and any related zoning matters dealing with the
12 individual Defendant municipalities.

13 Q Are you able at this time to elaborate
14 on what you mean by related zoning matters with
15 respect to your testimony in the mini-trials?

16 A Well, obviously I can't be one hundred percent
17 but the representative examples of what that would be
18 would be in those municipalities where there are
19 zones in which multi-family housing at, relatively
20 speaking, moderate requirements is provided, it would
21 include a review of specific sites zoned in that
22 fashion to determine whether the opportunity
23 apparently provided by the ordinance did indeed exist.

24 Q And do I understand from your report
25 that it is your opinion that a municipality, and in

1 particular the Township of Hanover, should provide
2 zoning such that a number of units equal to twice the
3 allocation could be built within the community?

4 A I wouldn't say necessarily twice. The
5 principle of overzoning dictates that an amount of
6 land substantially greater than that on which the
7 fair share could theoretically be housed be provided.
8 There is one factor which is referred to in the
9 Oakwood decision dealing with the likelihood that a
10 certain percentage of least cost units to be built
11 will end up being occupied by more affluent households
12 which that decision strongly suggests should be a
13 basis of a factor of twice, double on acres.

14 However, there are other factors cited in that
15 decision, although without any numbers attached, which
16 in my judgment suggests that the actual ratio of land
17 availability to units would undoubtedly have to be
18 substantially more than two to one, perhaps, three,
19 four, or five to one.

20 Q And I assume from your prior answers to
21 my questions concerning particular sites within the
22 Township of Hanover that you have not made any
23 independent assessment of any sort of environmental
24 factors that would impede building on any particular
25 vacant land in the Township, is that correct?

1 A That's correct, yes.

2 Q Now in your opinion with respect to
3 the provision of least cost housing in the Township of
4 Hanover, would the particular stage of development of
5 the community impact upon your assessment of their
6 duty or obligation to provide any sort of fair share
7 allocation for a regional housing need?

8 A Could you amplify on what you mean by stage of
9 development? I'm not sure.

10 Q The focus of my question is attempting
11 to determine your attitude towards the description of
12 particular communities as to whether they are
13 developing municipalities, predeveloped municipalities,
14 or developed municipalities. Are you able to form
15 any opinion as to what the impact of those particular
16 labels are?

17 A Okay. As to those labels, as you may recall
18 from my testimony in the common defense deposition I
19 don't see them so much as common sense or planning or
20 housing descriptions of meaning but rather somewhat
21 arbitrary terms that have been adopted in certain
22 court decisions.

23 So clearly if a court choses to define a
24 municipality in one or the other categories that has
25 a rather overwhelming bearing on their obligation and

1 what they have to do and so forth. But aside from
2 what a court might do in putting a town into one or
3 the other category the terms to me don't really have
4 meaning as clear distinctions.

5 Q Do you see the term developed municipali-
6 ty as a term that is of any particular use in dealing
7 with the concepts of/provision of fair share of low
8 and moderate income housing?

9 A You have to distinguish two things. There is
10 a legal term that has been used in Washington and
11 Demarest and obviously if a court rules that a town
12 is developed then the series of consequences follow.

13 From a planning, if you will, standpoint, I
14 really think the term is meaningless. There is no
15 such thing as a municipality that is developed once
16 and for all. There are simply differences in degree.

17 Some of the differences in degree might be
18 significant in terms of the approach one might take.
19 In a municipality that had vast reserves of vacant
20 land one might chose to approach development of
21 through the PUD concept and try to create more
22 relatively self-contained communities.

23 In a municipality with less vacant land one
24 would seek to provide opportunities for what's called
25 infill which is more modest development on such

1 developable tracts that would be available.

2 Q Are you able to render an opinion as to
3 what factors you consider in addition to the vacant
4 developable land in a municipality should be taken
5 into account in attempting to make an assessment as
6 to whether a municipality is developed within the
7 guidelines given by the court opinions that you have
8 cited?

9 A I know of no other with
10 the possible exception of small overall size that also
11 seems to be a factor that has been used by the courts
12 in making those decisions. I think I should qualify
13 that. There is language in the Washington and
14 Demarest cases which suggests that perhaps other
15 factors such as the fact that these were almost
16 entirely residential communities may have weighed
17 in their thinking but they are not, I believe, ever
18 set forth as criteria.

19 Q Again, am I correct in assuming that you
20 are not familiar with the housing stock that is now
21 available in the municipality of the Township of

22 Hanover? A Only in the most general
23 way.

24 Q And am I also correct in assuming that
25 you would be only familiar in a general way with the
costs involved in constructing a particular dwelling

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unit in the Township of Hanover?

A That's correct.

Q With respect to your opinion concerning the obligation on the Township of Hanover to provide its fair share of the regional need for low and moderate cost housing, do you see any relevance to the fact that they do not, to date, provide for any multi-family housing?

A I mean that certainly is a feature of the ordinance which would have to be corrected if the town were ever to provide its fair share of low and moderate income housing.

Q Now am I also correct in assuming, and perhaps I shouldn't, based on your prior testimony that when you make these determinations concerning a particular municipality's ordinance, in this case the Township of Hanover, that it is the ordinance as a whole that you are analyzing in order to make your determination as to whether it is exclusionary as you used that term?

A That's correct.

Q And it is not any particular one provision of the ordinance that causes you to come to that conclusion, but an assessment of the ordinance in total?

A Yes. Of course, the

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1 ordinance is the sum of its provisions.

2 Q Agreed.

3 Going back again to the concept of
4 overzoning, is it your opinion that if the Township
5 of Hanover were to overzone by a factor of two to
6 one, or perhaps higher as you indicated earlier might
7 be appropriate in some circumstances, would that, in
8 your opinion, lead to the construction of least cost
9 units? A It may.

10 Q Are you aware of any studies, or have
11 you made any studies yourself that would support that
12 conclusion? A Not as such because
13 the specific situation or the back pattern that would
14 be triggered would differ from past experience.

15 Q Are you aware of any studies that if
16 not specifically deal with that topic can generally
17 deal with it? A I wouldn't
18 characterize them as specific studies. I think there
19 has been a great deal of empirical experience that
20 where multi-family housing is permitted in bulk, in
21 other words, where scarcity is not a factor in the
22 provision of multi-family housing that the product
23 tends to be less expensive and targeted at a less
24 affluent market than where it is limited by scarcity.

25 Q Again with respect to the Hanover

1 Township element of your March 12th report, in your
2 opinion would the land use ordinance which you are
3 considering at this time to be deficient and exclusion-
4 ary be corrected through zoning for least cost housing
5 but of a variety less than the number of various
6 categories in your report here?

7 A No.

8 Q So in order to comply in your opinion
9 all of these particular housing types would have to
10 be provided? A That's correct,

11 with the exception of the PUD, which is category 7.

12 Q Am I correct in assuming that if we
13 were going to use the allocation number of the DCA
14 or some such number that you adjust that number to,
15 that the overzoning for the specified number of least
16 cost units would be dispersed throughout the cate-
17 gories 1 through 6 on page 1 of the element?

18 A It could be. The most appropriate approach,
19 of course, would be to provide a good deal of
20 flexibility so instead of, you know, specifying
21 precise numbers or amounts in each type to provide
22 for a variety of types.

23 Q Do I understand you to mean that those
24 variety of types would be provided for in the
25 ordinance or the ordinance would be worded in such a

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manner that a variety of types of housing could be built in a particular zone?

A Well, they are not mutually exclusive. You would have to provide for the variety of types in the ordinance but there is certainly no reason why given zones could not provide an opportunity for more than one type in the same zone.

MR. MAC DONALD: I think that I will conclude the deposition at this time.

Thank you.

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,

Plaintiffs,

-vs-

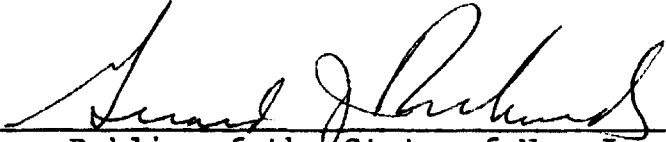
BOONTON TOWNSHIP, CHATHAM
TOWNSHIP, CHESTER TOWNSHIP,
et al,

Defendants.

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: 6/9/79

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