

RULS - AD - 1976 - 90

7/27/1976

- DEPOSITION OF ALAN MULLICH

Pgs - 58

S-1290

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NO. L-25645-P.W.

THE ALLAN-DEANE CORPORATION, :
et al, :

Plaintiffs, :

-vs-

THE TOWNSHIP OF BERNARDS, :
et al, :

Defendants. :

FILED _____
Recorded Bk. _____ Page _____
CIVIL ACTION

DEPOSITION OF:
ALAN MALLACH

S-11203

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NO. L-62374-P.W.

THEODORE Z. LORENC, et al, :

Plaintiffs, :

-vs-

THE TOWNSHIP OF BERNARDS, :
et al, :

Defendants. :

RULS - AD - 1976 - 90

T R A N S C R I P T of stenographic notes of
the proceedings in the above entitled matter, as taken
before DENISE KURDYLA, a Notary Public and Certified
Shorthand Reporter of New Jersey, at the offices of
WILLIAM J. LANIGAN, ESQ., 59 South Finley Avenue,
Basking Ridge, New Jersey, on Tuesday, July 27, 1976,
commencing at 10:15 A.M.

MEL MELILLO & ASSOCIATES
CERTIFIED SHORTHAND REPORTERS
P. O. BOX 1486
UNION, NEW JERSEY
688-4660-1

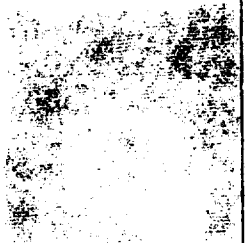
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

MASON, GRIFFIN & PIERSON, ESQS.
HENRY A. HILL, JR., ESQ.
Attorneys for Plaintiff, Allan-Deane Corporation

MICHAEL W. LANIGAN, ESQ.
BY: DANIEL F. O'CONNELL, ESQ.
Attorney for Plaintiff, Theodore Z. Lorenc, et al

MC CARTER & ENGLISH, ESQS.
BY: NICHOLAS CONOVER ENGLISH, ESQ.
Attorneys for Defendants



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX TO WITNESS

Witness

Direct

also WITNESS

3

EXHIBITS

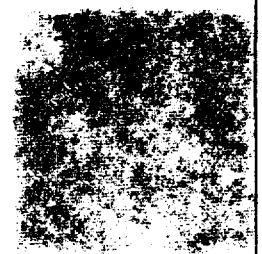
Number

Description

Identification

DM-1

Report dated July 15, 1976,
entitled "Low and Moderate
Income Housing Study Phase I
Preliminary Assessment and
Program Design"



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A L A N M A L L A C H, being first duly
sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. ENGLISH:

Q Mr. Mallach, what is your occupation or
profession?

A I am a principal of a consulting firm named Alan
Mallach & Associates in Trenton, New Jersey.

Q What kind of activity is that firm engaged in?

A This firm works in areas of housing, land use
research, economic research.

Q Could you identify some of the clients of your
firm, past or present?

A Our clients have included the Puerto Rican Congress
of New Jersey for which we act as housing advisers and
also loan consultants on specific housing departments,
the Green Valley Land Company of Vineland, the Jewish
Federation of Greater Trenton, the Atlantic Federation of
Businessmen, the State of Maryland, Department of
Resources, the State of New Jersey, Department of
Public Advocate and the New Jersey County and Municipal
Government Study Commission and quite a number of others.

Q What sort of an enterprise is the Green Valley Land
Company?

Mallach - direct

1 A They are the owners of a P.U.D. in Vineland for which
2 [REDACTED] acting as loan consultants and project developers
3 [REDACTED] for the project of the P.U.D.

4 Q [REDACTED] how many years have you been related to this
5 consulting firm?

6 A This firm has been in existence since the fall of 1975.
7 Predecessor firm was created in the summer of 1974.

8 Q The predecessor firm engaged in the same kinds of
9 activities?

10 A Yes, on a more modest scale than presently.

11 Q Will you tell us, please, what has been [REDACTED]
12 educational background?

13 A I have a Bachelor of Arts Degree from Yale College
14 and subsequently have taken courses or participated in
15 seminars in Urban Planning at Princeton University and
16 in Law, Urban and Social Welfare Law at Yale Law School,
17 as well as in Music at Yale Graduate School of Music, but I
18 have no graduate degrees.

19 Q What was your major as an undergraduate at Yale?
20 [REDACTED] y.

MR. HILL: Mr. English, in our depositions
22 there are a list of Mr. Mallach's publications
23 in our answers to interrogatories. I don't
24 know if you have seen them. There is a page before
25 that, too, there are three pages of his

1 qualifications.

2 Q Mr. Mallach, if I remember your testimony in the
3 [REDACTED] case, at one time I think you taught a course
4 in planning at some State College?

5 A That's correct, Stockton.

6 Q Do you consider yourself as having expertise as
7 a planner?

8 A I certainly do.

9 Q How would you define the function of a planner?

10 A Well, that's a rather difficult question because
11 function of a planner is to a large degree defined by the
12 setting in which the planner finds him or herself. [REDACTED]
13 there are certain traditional functions.

14 The classical function of a planner is to plan and
15 provide such tools and techniques and ordinances as a
16 municipality or other body requires to control its future
17 growth and development and provide for proper future
18 environments for all, that sort of thing.

19 That kind of definition encompasses preparation of
20 [REDACTED], preparation of a zoning ordinance and the

22 Q May I interrupt you.

23 Have you ever prepared a master plan or zoning
24 ordinance?

25 A I have never actually prepared either. To anticipate

1 a question which may arise since those are matters which are
2 fairly explicit covered under the Licensing Act and not
3 being a licensed planner, I do not do that kind of thing.
4 That is probably the most common definition of a planner's
5 role.

6 In addition, a planner can work for state and
7 regional bodies to conduct research in order to anticipate
8 future problems and prepare for future growth and development
9 or do likewise on behalf of developers, builders, housing
10 organizations or civic groups. But I think the essence of
11 preparing for tomorrow, as it were, ^{is} central to the planner's
12 role.

13 Q In your judgment is a planner bound by any criteria
14 or guiding principles such as for example a general welfare
15 or whatever else?

16 A Well, I think since the principal function of the planner
17 is to create those plans or tools that should provide for
18 the general welfare, I think he would be. I think it's very
19 hard to define those in precise terms. I think a planner
20 is guided by his or her good sense, ethics and
21 at the same time a planner has to be responsive
22 to some degree to the interests of his client.

23 Now, one of the major problems with the definition
24 of the general welfare is that it's not a general definition.
25 One person will define it in different terms than another

1 and the planner is in a very difficult position in that
2 ~~respect because~~ at the same time the planner has to be very
3 ~~judicious in~~ imposing his values and his judgments on his
4 ~~clients.~~ He cannot be a mere rubber stamp for behavior of
5 a client any more than an attorney can.

6 So that there is a kind of delicate balance that
7 has to be drawn in that regard.

8 Q As a planner would you be willing to accept a
9 definition of the general welfare or description of it as
10 laid down by the highest court of the State?

11 A I suppose so. I would like to take a look at ~~the~~

12 Q You mean you might take a different view ~~of~~
13 laid down by the Court of Last Resort as to what ~~is~~
14 the general welfare?

15 A Well, those views that I take in the privacy of my mind
16 or mental processes could certainly differ from those held by
17 the Court of Last Resort.

18 I would not -- I would certainly be extremely
19 reluctant consciously to operate or to act as a professional
20 ~~that~~ that I knew or believed to be inconsistent with
21 ~~the~~ the position of the Court. I think if you would
22 specify a particular statement or whatever, I could respond
23 more precisely.

24 Q Now, have you been engaged by Allan-Deane
25 Corporation to act as a consultant or an expert in connectin

1 with the pending litigation?

2 A Yes.

3 Q When were you first approached by Allan-Deane
4 Corporation for that purpose?

5 A I don't remember the actual date but it would be early
6 in 1976.

7 Q Could you fix the month for us?

8 A Off the top of my head I can't, but I have correspondence
9 here that should do it. It would have been in early April,
10 I think.

11 Q What did Allan-Deane Corporation ask you

12 A What they asked me to do specifically was to
13 feasibility of developing low and moderate income housing
14 on the Allan-Deane tract and to develop on their behalf a
15 program that would be capable of producing a reasonable non-
16 negligible number of low and moderate income housing units
17 in that area.

18 Q Have you finished your answer?

19 A I would add and simultaneously to advise them on closely
20 related matters that might arise.

21 Q Such as?

22 A Well, in this case such as
Ordinance Number 385.

23 Q Have you been engaged as an expert witness or
24 otherwise by the plaintiffs in the Lorenc case?

25 A No, I have not.

1 Q Can you describe, please, what you have done
2 pursuant to your engagement by Allan-Deane Corporation?

3 A Yes.

4 Well, first I have written a commentary on
5 Ordinance Number 385 which I believe was supplied to the
6 defendants.

7 I have in addition done a good deal of preliminary
8 work on the question of low and moderate income housing
9 development, including design of hypothetical low and moderate
10 income housing mixes for the Allan-Deane development and
11 an assessment of the availability of Federal subsidies
12 under various Federal Housing Programs and defining
13 of the possible obstacles and how an approach might be
14 made to them.

15 In other words, laying the groundwork for the
16 low and moderate income housing program.

17 MR. HILL: Mr. English, if I may interject,
18 Mr. Mallach has submitted a report and has
19 probably a good deal to say about Allan-Deane's
20 proposed low and moderate income housing mixes.

21 However, you are consolidating two depositions
22 and it might conserve Mr. O'Connell's time better
23 if Allan-Deane's plans for the development could
24 be concentrated on at the latter part of the
25 deposition so that Mr. O'Connell could leave.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. ENGLISH: I will be glad to do that.

MR. O'CONNELL: I appreciate that.

MR. ENGLISH: Off the record.

(Discussion off the record.)

MR. ENGLISH: Mr. Hill has advised me that Mr. Mallach's written commentary on Ordinance Number 385 appears as Exhibit 2 annexed to Plaintiff Allan-Deane's answers to the defendants' first set of interrogatories.

MR. HILL: Also, I might add that is Mr. Mallach's complete resume, together with a list of all the articles he has written, a number of the cases he has testified in which might supplement the questions you have already asked.

MR. ENGLISH: Thank you.

Off the record.

(Discussion off the record.)

Q Mr. Mallach, you've mentioned two things you have pursuant to your engagement by Allan-Deane Have you done anything in addition?

A That's the sum total of my formal work product and I've had a number of conversations with Henry Hill and Carl Lindbloom exploring the case more generally but only in a very informal verbal fashion.

1 Q Do you have any present plan to prepare other
2 written reports on subjects?

3 A The only written material that I plan to prepare at
4 present deals specifically with the low and moderate income
5 housing issue.

6 I think I should add there is a possibility that
7 I may be asked to do additional material. This has not been
8 precluded.

9 MR. HILL: By way of explanation, Mr. Mallach
10 is a general consultant and is doing a study for
11 the company of the feasibility of and scope of
12 implementing low and moderate income housing
13 in the Allan-Deane development plans. He is also
14 a general consultant and may be requested by me
15 at any time to study additional areas as they
16 arise in the course of discovery.

17 MR. ENGLISH: Could I ask, Mr. Hill, that
18 we be furnished with copies of any further
19 written reports that Mr. Mallach may submit in
20 future?

21 MR. HILL: Certainly. We will do, as I
22 believe you were doing, and supplement our
23 answers to interrogatories as there are general
24 questions asking for copies of all written reports
25 and as we receive them they will be mailed to your

Mallach - direct

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

office in the form of supplements to the answers to the interrogatories.



MR. ENGLISH: Without any further specific request?

MR. HILL: Right.

MR. ENGLISH: Thank you.

Q Mr. Mallach, could you describe for me, please, the various programs, the Federal programs on the books for the subsidization of low and/or moderate income housing?

A There are about half a dozen such programs.

Let me list them first and then go back

There are three programs at present sponsored

The Department of Housing and Urban Development known as Section 8, Section 202 and Section 235, respectively. Then there are two programs that are provided by The Department of Agriculture through the Farmers' Home Administration and those are Section 502 and Section 515. These sections all refer to the Housing Act of '49 as amended.

Section 8 is a multi-purpose direct subsidy

the Federal Government makes up the difference between the market rent of housing which a tenant can afford and enters into a contract to do so. There is no fixed amount of subsidy as long as the market rent is below certain level. If the market rent is above the Federal Government sets, the Federal Government

ma
so
we
be VI
stet etnu
eabfvotg

1 whatever dollar amount is necessary.

2 Q May I ask another question: You mentioned a
3 multi-year contract?

4 A Yes.

5 Q Are there any statutory provisions governing the
6 duration or the length of time such a contract can be
7 in force?

8 A Yes, it does vary.

9 MR. HILL: I think I'm going to put a general
10 objection on the record that you are asking a
11 witness who is not a lawyer for legal counsel
12 but I will allow him to continue.

13 MR. ENGLISH: Well, he held himself out as
14 an expert on housing problems, so I assumed he
15 could answer.

16 MR. HILL: We are talking about statutes
17 and we are supposed to be the experts on that,
18 Mr. English.

19 Q Can you answer my question?

20 Yes, depending on a number of factors. If we
21 talk about newly constructed units, if the unit is
22 committed with a mortgage provided by a State housing
23 finance agency, the Government will enter into up to a
24 40-year commitment. If there are new units but they are
25 provided with mortgage from any other source, then it's a

Mallach - direct

1 20-year commitment. Then if the funds are to be applied
2 for existing previously constructed units, there are shorter
3 periods, five years and ten years.

4 You are going to talk about Section 202.

5 A Section 202 is a program under which the Federal
6 Government provides mortgages at the going treasury rate
7 to nonprofit sponsors to construct senior citizens rental
8 housing and includes a provision whereby sponsors who
9 qualify for Section 202 mortgages also get priority for
10 Section 8 funds to make up any difference between
11 capability to pay and rent levels.

12 Section 235 is a program whereby the Federal
13 Government provides a subsidy to reduce the effective interest
14 rate on owner-occupied units to five per cent, which
15 represents, roughly speaking, about a 20 per cent subsidy in
16 order to enable moderate income families to purchase those
17 units.

18 Section 502 and 515 are usable only in
19 municipalities, generally speaking, of under 20,000 population
20 designated as of rural character by the Farmers'
21 Administration. Section 502 is a program for owner
22 occupancy whereby the Farmers' Home Administration provides
23 subsidies which they refer to as interest credits to reduce
24 the effective interest rate to as low as one per cent to
25 the consumer. Section 515 is the same program except for

Mallach- direct

1 rental housing.

2 Q Are there any time limits, either minimum or
3 maximum, involved in these Farmers' Home Administration
4 programs?

5 A Generally speaking, they go up to 33 years though there
6 are some provisions under which specifically for senior
7 citizens housing under the 515 programs Farmers' Home will
8 make mortgage at interest credit commitments up to 40 years,
9 but the general rule is a 33-year maximum.

10 Q Is Bernards Township the sort of municipality
11 which the 502 and/or 515 programs would be applicable
12 or in which they would be available?

13 A Yes.

14 Q Now, have you finished your description of the
15 Federal programs?

16 A That's the general description, yes.

17 Q Now, what can you tell us about New Jersey State
18 programs?

19 A The principal State program is the New Jersey Housing
20 program which provides mortgages to nonprofit or
21 other sponsors to construct low and moderate income
22 housing. The mortgages are based on taxes except the
23 revenue bonds and carry a substantially lower interest rate
24 than commercial mortgages or at least theoretically should,
25 but the tax revenue bond business is not very good at the

1 moment. The State in addition provides what is known as
2 seed money for nonprofit sponsors to enable the sponsors
3 to cover what are known as the front end costs prior to
4 obtaining a mortgage commitment.

5 In addition the importance of the New Jersey
6 Housing Finance Agency program is substantially enhanced
7 by the fact that under an agreement between H.U.D. and
8 the State Housing Agencies nationally they receive a
9 guaranteed allocation of Section 8 subsidies that are applied
10 to their mortgages so that obtaining an FHA mortgage is
11 one vehicle for obtaining Section 8 subsidies. It's not the
12 only one, but it is a significant one. This is referred
13 to as a piggyback arrangement.

14 Q Are there any time limitations, either maximum or
15 minimum, involved in the programs which you have referred
16 to?

17 A The Housing Finance Agency is legally empowered to make
18 mortgages of up to 48 years. They in the case of Section
19 8 piggyback program their mortgage tends to be 40 years
20 as the maximum that the Section 8 commitment

22 Q Now, in addition to what you have told us thus
23 far, are there any other established means of providing
24 subsidies for low or moderate income housing?

25 A Well, there are many means. Those are the programs

1 that are presently available that one could make application
2 under at present.

3 Now, there is a Housing Bill that's in the
4 process of working its way up to the President's desk at the
5 moment which would provide funding under the Public Housing
6 Program which would be housing constructed directly by
7 Housing Authorities.

8 Q This is a Federal Bill?

9 A Yes. The program still exists. It's on the books.

10 At this moment there is no funding for the program
11 somewhat academic under the '76 Housing Act. There
12 be an appropriation for this program, however.

13 Q I'm a little confused with what you mean by
14 "this program."

15 A The Public Housing Program?

16 Q Let me backtrack.

17 At the present time are there any Federal funds
18 available under Section 8?

19 A Yes.

20 At the present time are there any Federal funds
21 available under Section 202?

22 A Yes, though under very specific circumstances. 202 is
23 made available on the basis of national competitive bidding.
24 In other words, H.U.D. in Washington periodically announces
25 it will entertain bids from nonprofit sponsors for 202

1 mortgages and sets an application deadline, then picks from
2 among the applicants. There is money available.

3 The '76 Act would substantially expand the money
4 available under this program.

5 Q Under 202? A Yes.

6 Q Going back for a moment to ^{the} Section 8 program, can
7 you tell us the approximate dollar amount of available funds
8 under that?

9 A I don't really know the dollar amount. I know that in
10 terms of the available units at present we are talking
11 about at present for the northern half of New Jersey
12 is the areas serviced by the Newark Area Office of
13 combining the money they have designated to the Housing
14 Finance Agency and the money they are allocating directly
15 there is, I would say, roughly 5,000 units will be allocated
16 over the next 12 months or so.

17 Q Is Bernards Township located in that Northern
18 New Jersey part?

19 A That's correct.

20 How many thousand units related to Section 8 program?

21 A Correct.

22 Q What about available funding under Section 235?

23 A There is a good deal of it. I don't have a number but
24 we do know that the people in the Newark Area Office of
25 H.U.D. have indicated to us that it's quite readily available.

1 Q What can you tell us about available funding under
2 Section 502?

3 A Again, I don't have numbers to put to these but the
4 ~~various~~ Home Administration offices are actively soliciting
5 applications and have indicated there are reasonable amounts
6 of funds available under both of their programs.

7 Q Both being 502 and 515?

8 A That's correct.

9 Q Is the availability of funds referred to in your
10 last answer related to any particular time frame, such as
11 1976 or going into 1977 or over a period of years
12 ever?

13 A Well, it varies. Every two years or so Congress passes
14 a Housing Act which tends to have some effect on it so that it
15 can change from year to year. The money that's available
16 at present will remain available until used up but, for
17 example, if say hypothetically the Congress decides not to
18 appropriate any money this time next year for say 515 or
19 202, so if you allow for a lag five to six months to use up
20 appropriations, that pipeline will dry up at that

21 ~~point~~ however, where we are talking about multi-year
22 commitments these are obligations once entered into are
23 maintained independent of subsequent Congressional action.
24

25 Q Can you tell me how many low or moderate income

1 subsidized units were placed under construction in New Jersey
2 during 1975?

3 A I don't know. I would guess rather few.

4 Q Is there any reason for your guess that it would
5 be rather few in number?

6 A Certainly. You have to look at the timing issue here.
7 Now, from the point when the initial applications are made
8 to the point where a unit gets into construction can be
9 anything from, say, one to three or four years depending
10 on a variety of factors: Local approvals, State
11 negotiations, money availability and so on.

12 Q Now, what happened is, as well known in
13 President Nixon imposed what was euphemistically called
14 a moratorium on funding Federal housing programs. That had
15 an incredible effect because the programs that have been
16 passed in the Housing Act of '68 which had only been
17 implemented by 1970 were really coming on in New Jersey at
18 the time that this moratorium was imposed. So that a whole
19 series, literally thousands of housing units that were in
20 construction were cut off in early 1973 and so by the end
21 of early '74, by the time the units that had been
22 approved previously had gone into construction, there was
23 no new construction taking place.

24 Q The Section 8 program was enacted in late 1974 by
25 Congress. There were no guidelines prepared by H.U.D. for

1 the administration of Section 8 program until late 1975.
2 The first commitments under the Section 8 program did not go
3 out from N.J.D. until earlier in 1976, so what we had was
4 this hiatus in the Federal Housing Programs because of
5 the Nixon moratorium where a program was killed well before
6 any program had come into being to replace it.

7 So, hopefully over the next couple of years
8 production will pick back up again, but there has been this
9 gray area and because of the Section 8 timetable it's unlikely
10 that there will be significant construction start under
11 subsidized housing programs until 1977.

12 Q Well, specifically can you tell us whether there
13 were any housing units constructed in New Jersey under
14 Section 8 during 1975?

15 A Again without knowing for sure I would doubt it very
16 much.

17 Q What about Section 202?

18 A I think there are a couple I'm familiar with one
19 in Trenton, but I haven't really studied that.

20 you know how many units were constructed in
21 Section 235?

22 A Section 235 was in a similar situation to the moratorium.
23 The old 235 program for which authorizations provided in
24 the '68 Housing Act was killed with the 1973 Nixon moratorium.
25 The program was reopened for applications on the basis of

1 substantially revised guidelines, more restrictive guidelines,
2 I might add, towards the end of '75, so that applications
3 were entertained by H.U.D. as of the end of 1975 in
4 this regard and had not been entertained from January '73
5 up to that point.

6 Q Can you tell us how many housing units were con-
7 structed in New Jersey in 1975 under Section 202?

8 A I don't know the exact number, I believe it was over
9 a thousand, it was somewhere between 1,000 and 2,000 units.

10 Q What about Section 515?

11 A Relatively few.

12 Again to the best of my knowledge, except for
13 a smattering there hasn't been very much business under
14 program. I would guess a few hundred, maybe 500, but that's
15 just a guess.

16 Q Is the situation for 1976 thus far similar to
17 or radically different from 1975 as you have just described
18 it?

19 A Substantially different. For one thing there is now
20 under Section 8 and I would guess that there are
21 at least 3,000 units that are approaching construction
22 under Section 8 in New Jersey in the sense they are far
23 enough advanced in the processing, they have begun to receive
24 the approvals and the commitments and they are substantially
25 more than a gleam in the sponsor's eye.

1 202, I don't know about, or 235. I have no idea
2 how much actual production there is in those areas. There
3 has been a noticeable increase, not an overwhelming one,
4 in the area of 515 and 502. I would guess from a combined
5 total of 2,000 units a year ago is probably up to three or
6 four.

7 Q Thousand? A Thousand.

2 8 Q You mentioned about 3,000 units under Section 8.
9 Was that number included in the figure of 5,000 units for
10 which funding is available under Section 8 that you mentioned
11 a moment before?

12 A No, I'm referring to additional funding for the
13 coming year.

14 Q So, the 5,000 is in addition to the existing three
15 or whatever?

16 A Yes. Again the figure of 3,000 is just a guess.

17 Q I understand.

18 What would you say is the total need in New Jersey
19 for subsidized housing in terms of numbers of units?

 very hard thing to be precise about. I think
 reliable studies indicate that there are probably
22 in the area of half a million households in New Jersey who
23 either live in substandard housing or live under what is
24 known as financial stringency in the sense they are people
25 of lower incomes who pay more than they can afford realistically

1 for rent. So, 500,000 is a gross figure.

2 Now, you would have to subtract some number of
3 ~~units from that~~ ^{of} because/the fact that presumably some of the
4 ~~substandard~~ units would not have to be replaced by new units
5 but could be rehabilitated which might represent a quarter to
6 a third of that total. And in terms of construction many of
7 the families who live under financial stringency do not need
8 new housing, what they need is some form of subsidy to enable
9 them to continue to live where they at present live but without
10 the financial deprivation.

11 As against that, you would have to add ~~some~~
12 reasonable figure based on immigration, family growth, job
13 creation and so forth on low and moderate income ~~house~~
14 families which would be in the area of, say, if we talk about
15 a five-year period it could be, say, an additional 52,000,000
16 units state-wide.

17 So in terms of new construction I think a ball park
18 figure would be something in the area of 300 to say 400,000
19 units for low and moderate income household units state-wide.

20 ~~What~~ for a period of how many years?

21 ~~What~~ that's available because theoretically the need
22 is there for most of those units exists now. And
23 theoretically in the ideal state it would be best to construct
24 those units immediately. So, spacing them over a number of
25 years is really a function of some kind of judgment about

1 feasibility rather than a function that's inherent need.

2 MR. HILL: Could I just say the case talks
3 about present and prospective needs and it's not
4 clear from your question about whether you are
5 asking about present need or prospective need.

6 MR. ENGLISH: Well, I was trying to find out
7 which the witness was talking about.

8 THE WITNESS: Let me backtrack then.

9 I would say, and this is again very rough,
10 these things can be worked up in detail. The
11 present need for new units is probably in the
12 area of 300,000, that's immediate need from
13 of population growth, job growth and so forth.
14 That the prospective need would add to that by
15 a factor of say 10,000 to 20,000 units a year,
16 let's say 20,000 units. So that if one decided to
17 take a 20-year time horizon and to space the present
18 need over that 20-year period, you would have a
19 total of 700,000 units to allocate over 20 years
20 which would yield 35,000 units a year. That's one
21 of doing it.

22 Another way, of course, would be to try to
23 accelerate it so that the present need would be
24 met sooner rather than later.

25 Q Well, if I understood you correctly, does it appear

1 that the presently available funding, public funding, either
2 State or Federal, would fall somewhat short of the hypothetical
3 20,000 units a year that you just proposed?

4 A Most probably.

5 Q I would rather trust your mathematics than my own.

6 About how many units per year would you estimate
7 could be built with presently available funds in New Jersey?

8 A Well this, of course, depends on the kind of actions
9 one gets out of future Congresses and future Administrations
10 which is a big question mark. If one assumed there would be
11 no change in appropriation levels and policies at present,
12 I would guess that 10,000 units a year of subsidized housing
13 would be about what could be achieved.

14 Q Well, what I was hoping you would sum up for me,
15 and maybe you did, was that you mentioned there are presently
16 available funds for about 5,000 additional units under Section
17 8 and some additional funds under some of the other programs
18 and does that add up to about 10,000? Is that what you are saying?

19 A I would say so.

20 you postulated the future need of about 20,000
21 units over the next 20 years over the correction
22 of the existing need?

23 A Yes. The range would be between 10,000 and 20,000.

24 I say 20,000 would be the highest and 10 would be a low.

25 Q Do I understand that that estimate rests on some

1 assumption or projection by you as to future population
2 growth in New Jersey?

3 [REDACTED] It's a very crude one. It would be based on
4 [REDACTED] factors, some of which are certain, some of
5 which are subject to change. The principal certain factor
6 is the creation of additional households. It is quite
7 easily shown that even if there is no population increase
8 or job increase in gross terms in New Jersey because of
9 changing family patterns, there will be continuing for
10 some time a substantial increase in the number of [REDACTED]
11 in that total population because of changes in li [REDACTED]
12 and family formation.

13 Q May I interrupt you to ask you for the source,
14 where is the available data?

15 A The available data is principally that of the various
16 census reports of '50, '60 and '70 which show a very
17 significant curve in declining household size which equals
18 increasing number of households with a constant population.
19 This is supported not just by the numbers, but also by
20 [REDACTED] shifts. For example, there is a substantial
21 [REDACTED] in the overall population of single adult
22 families with children as well as married couples without
23 children which tends to result in more smaller households
24 and more households in the given population, increasing divorce
25 rates, smaller families and the like, all have tended to

1 have this effect. This is based on sort of standard
2 demographic projections from the last three centennial

3 [REDACTED]
4 [REDACTED] I'm afraid I interrupted your main answer as to
5 where you came up with this additional increase in population.

6 A Certain amounts can be projected from the trends of
7 household size and those are independent of sort of economic
8 currents.

9 Now, based on what assumptions one makes about birth
10 rates, about employment growth and about national [REDACTED]
11 patterns, these are the uncertain factors I refer to.
12 One has additional household growth based on these [REDACTED].
13 The principal one, of course, is job growth. Even with
14 relatively pessimistic assumptions about the future of
15 New Jersey's economy, one can probably estimate certain
16 increases in employment in certain parts of the State which
17 are likely to result in immigration. If one makes more
18 optimistic assessments about the economy, then those would
19 go up.

20 [REDACTED] addition, you have a factor which applies
21 [REDACTED] in New Jersey just as it does nationally
22 in movement within the State so that you may have a net
23 relatively constant level of employment State-wide but yet have
24 substantial increases in some parts of the State which are
25 offset by substantial decreases in other parts and because

1 of the distance factor could require net housing construction
2 ~~_____~~ theoretically the number of units might not
3 ~~_____~~ increase that much.
4 ~~_____~~ example could be, say, if there is substantial
5 job growth in parts of South Jersey at the same time as there
6 are job declines in, say, Essex and Hudson Counties.
7 Theoretically the units would still be there in Newark and
8 Hudson but because people would have to move substantial
9 distance to where the jobs are, you would have to construct
10 additional units in South Jersey hypothetically ~~_____~~
11 cost of having to abandon or demolish whatever un ~~_____~~
12 Newark. So, you would have these kind of shifts ~~_____~~
13 as well.

14 Q Do you have any opinions as to the areas in
15 New Jersey which are more likely to need a location of new
16 and additional jobs in the forthcoming years?

17 MR. HILL: One second.

18 I would like to make a general objection.

19 I don't know whether Mr. Mallach's opinions come
20 ~~_____~~ from research that he has done on particular
21 ~~_____~~ areas, as he said he hasn't done any work on this
22 area for Allan-Deane, and you are asking him a lot
23 of general questions which I don't object to. He
24 may at some point be asked to do research in this
25 area for Allan-Deane and I would like to separate

1 those answers which are just opinions from those
2 answers which are based on some kind of study
3 [REDACTED] available data. So that I would appreciate
4 [REDACTED] if you would phrase the questions in such
5 a way as to elicit from Mr. Mallach the source
6 because I don't want to get into the box in which
7 we ask him to do research in a certain area
8 and be bound by some opinion which is based on
9 no research that he might give this morning.

10 MR. ENGLISH: All right. Well, I'm [REDACTED] source
11 interested in the basis of his opinions [REDACTED]
12 Mr. Hill. Perhaps I can rephrase the question [REDACTED]

13 MR. HILL: Well, we haven't asked him to do
14 any work in the area. We might ask him to do the
15 work. We don't want him to give answers today
16 without specifying that they are done on no data
17 which you might argue later are inconsistent with
18 answers that are the result of a study he might
19 do later. That's a caveat and he may answer the
20 question for his benefit as well as yours.

21 [REDACTED] you remember the question?
22 [REDACTED] Maybe the reporter can read it back.

23 (The pending question is read by the
24 reporter.)

25 MR. HILL: One other objection which I just

1 like to say that we've already answered in our
2 interrogatories that the Bernards Township
3 area is one which would expect drastic growth and
4 that is due to the relocation of two giant
5 A.T. & T. facilities in Bernards and Bedminster
6 Townships.

7 Q Now, with the aid of that, can you answer the
8 question?

9 MR. HILL: Off the record.

10 (Discussion off the record.)

11 A Leaving aside specific municipalities there are
12 general regions that have the greatest amount of job growth
13 and they are characterized by a couple of factors.

14 The first is outer metropolitan rings and those
15 are the areas more or less the perimeter of intense development
16 around New York City and Philadelphia, respectively, areas
17 which are accessed by interstate highway systems and where
18 land acquisition costs are relatively low or the ability
19 to acquire large tracts are relatively easy, good access,
20 and so on.

21 That in the North Jersey area we are talking
22 of crescent which tends to correspond in very
23 rough terms with the present and projected alignment of
24 Interstate 287. In going from sort of the edge of North-
25 western Bergen County through Morris County, Western Somerset

1 and Central or Southern Middlesex Counties.
2 In South Jersey the development pattern in
3 [REDACTED] has not been quite as radial as North Jersey,
4 [REDACTED] linear sort of down Camden County. Suburban
5 Camden County is a principal area; that part of Bergen
6 County, I guess South Central Bergen County which has the
7 access in terms of 295 from the Turnpike, I'm talking about
8 Morristown, Mount Laurel, that area, and to some degree
9 Northern Gloucester County, again a kind of wedge going through
10 Camden County with some space off to the edges. [REDACTED] would
11 probably be the prime development areas where you [REDACTED]
12 expect substantial job growth.

13 Q In your judgment is there any serious likelihood
14 that changes in zoning patterns might alter the prospects
15 for such development in the area of, let's say, specifically
16 Interstate 287?

17 A Well, it's conceivable, although developers, whether
18 residential or industrial, tend at first to look around for
19 where they can find land that is already zoned to meet their
20 [REDACTED] there was no land zoned in the prime areas
21 [REDACTED] case, let's say industrial, it seems unlikely
22 but let's hypothesize, that I think there could be substantial
23 efforts made by developers to obtain variances, litigate
24 variance denials and the like, because the advantages of this
25 area relative to other areas I think are great enough to

Mallach - direct

1 make it worth developers' while to make some efforts to
2 obtain zoning changes.

3 I'm not saying that it couldn't change the
4 pattern, but I think it would be tremendous pressure against
5 that happening.

6 MR. O'CONNELL: Off the record.

7 (A brief recess is taken.)

8 Q Mr. Mallach, if I remember correctly, your
9 testimony in the Bedminster case you talked at some length
10 about rent skewing. Are you still of the view that
11 an effective means ^{of} providing for low and moderate
12 housing?

13 A Yes, to a degree.

14 I think that it's most effective as a complement
15 to such available subsidies as can be contained for a
16 development. I think there are a couple of areas in which
17 it can be effective. One is in terms of lowering the price
18 of certain units or the rental level of certain units to
19 make it available to moderate income households independent
or Federal subsidies.

20 another option which may be usable in some
21 cases, for example the 502 program I mentioned earlier, tends
22 to have relative low allowable cost ceilings in terms of the
23 availability of the subsidy money, so that one way of using
24 skewing would be to reduce the price on a certain number of
25

1 units so they would be eligible to obtain the subsidies.

2 So, either of those would be worth pursuing.

3 Q In your knowledge has rent skewing ever been
4 tried and practiced in New Jersey?

5 A I'm not familiar with any -- well, let me qualify that.

6 There is rent skewing on a modest scale. It takes place
7 fairly widely in the sense of developers and builders
8 adjusting the rents and balancing -- for example, if they
9 think the market is stronger for one type of unit than
10 another, adjusting the balance sheet so they might rent
11 one-bedroom units for more than they actually cost, use
12 the money to reduce the costs on two-bedroom units in order to
13 increase rent availability.

14 In terms of specifically seeking to use this for
15 housing low or moderate income people I'm not familiar with
16 any case where it's actually been done. A great deal of
17 discussion but relatively little experience.

18 Q Now, in your opinion as a general proposition
19 does zoning for greater density change the zoning of a given
20 piece of property so as to permit a greater density of
21 development to have any effect on the market value or subsequent
22 purchase or sale price of that land?

23 A Yes.

24 Q What is that effect and the relationship?

25 A As the land is zoned for greater density, the market

Mallach - direct

1 value tends to increase at a rate of about 50 per cent
2 the increase in density.
3 I could explain what that means, is that the
4 market value increases but the cost per unit tends to decline.
5 So, for example, let's say you had a piece of land that
6 was zoned for one house on an acre and that that land was
7 sold for \$10,000. The cost per unit would be \$10,000. If
8 you rezoned that say for five units to the acre, the land
9 cost would go up roughly half of 10,000 times 5 or say
10 something in the area of 25,000 an acre, so the per unit
11 cost would be about 5,000 and so forth.

12 Q Following your example through a little further,
13 suppose you rezoned it for ten units per acre, what would you
14 postulate as the --

15 A Somewhere in the area -- well, it would depend very
16 much on the community and the location.

17 For example, in Middlesex County, for example,
18 typically land that's zoned for garden apartments which
19 ten to twelve to the acre will sell between 2500 and
20 3000 a unit, which means you are talking about
21 25,000 to 30,000 per acre. In areas where multi-family
22 scarce or which are areas extremely desirable
23 standpoint, that could be higher. In some
24 other hand, you can get comparable land for
25 \$20,000 an acre.

12/1/68
of 1000.

1 MR. HILL: Mr. English, this is all very
2 interesting. I'm curious about Mr. Mallach's
3 sources since this is an important area in the
4 litigation, but it's not an area that we have
5 asked Mr. Mallach to work in.

6 I have no objection to the improvements
7 of your education and mine, but I just hate to have
8 a witness making broad general statements when we
9 are trying to make a record.

10 Q Can you tell us the source or basis of
11 about the increase about land values as zoning den
12 increased?

13 A Okay.

14 Well, based on my own experience and contacts with
15 a number of brokers, realtors and attorneys who work in this
16 sort of thing. For example, specific information about land
17 costs in Middlesex County I obtained partly from a Mr. Stein
18 who is a raw land broker.

19 Q S-t-e-i-n? A Yes.

20 is a raw land broker in Middlesex County, as
21 miscellany of other sources in the county that
22 we gathered during the course of work on the Urban League
23 case.

24 I can go back and track down considerable additional
25 sources, that's ^I think reasonably well documented,

1 The figure for the South Jersey-Camden County
2 area is twofold: One is from the contacts I've had with
3 [REDACTED] in Haddonfield who represents a lot of builders
4 and developers and who has cited that to me, Mr. Gerald
5 Haughey.

6 Q How do you spell that name?

7 A H-a-u-g-h-e-y.

8 And, secondly, from ongoing contacts with a firm
9 of brokers in Vineland, McClain, Heller & Reilly, who we
10 use as our brokers for the land development work that we
11 have been doing in that area.

12 Q Are you familiar at all with the Federal
13 known as the Federal Water Pollution Control Act
14 of 1972, sometimes known as Law 72-500?

15 A Not in detail.

16 Q Well, what can you tell us briefly ^{is} the extent
17 of your knowledge about that legislation?

18 A Well, if my references are correct, this is the
19 legislation which provides the funding for construction of
20 [REDACTED] systems, I think 75 per cent Federal funding, and
21 [REDACTED] the water quality standards that have to be
22 [REDACTED] sewer systems.

23 Q In your opinion should any kind of housing be
24 constructed in Bernards Township if doing so will preclude
25 meeting the water quality standards of this Federal legisla-

1 tion I just referred to?

2 MR. HILL: I object to that question.

3 The witness has not been retained as an expert
4 in water quality. He has not done work for
5 Allan-Deane in this area and you are asking a
6 hypothetical question of an expert witness on
7 a subject to which he is not qualified as an
8 expert. He has already told you that he is not
9 intimately familiar with the law which you stated.

10 So, I object to that question on the
11 grounds.

12 MR. ENGLISH: If I may respond, Mr. Hill,
13 on the record, the witness held himself out
14 as having expertise in the field of planning and
15 it would be my view that the question I asked
16 was an appropriate question to put to someone
17 who was a planner without regard to his technical
18 knowledge of water policy.

19 I think it is more a planning question than
20 a water quality question.

21 MR. HILL: Well, the assumption is that if I
22 understand the question correctly that development
23 cannot meet the water quality standards set forth
24 in the Federal Act and you are asking him whether
25 he would advocate disobeying the Act, if I under-

1 stand the question, and I think that's an
2 improper question.

3 It's a legal question and I don't think the
4 witness should try and answer it.

5 In fact, my inclination is to instruct the
6 witness not to answer it.

7 What do you think?

8 MR. O'CONNELL: Well, I think we are making
9 assumptions here as to the standards involved
10 and I don't think this witness is qualified to
11 make a value judgment whether the standards
12 established by the Federal legislation are correct
13 or should not be relaxed. I think we are asking
14 him to go far beyond his field of expertise.

15 For the record, we have not yet retained
16 Mr. Mallach to testify in the Lorenc case. We
17 may very well retain him before the case is
18 scheduled again and I want to indicate that to
19 Mr. English so that he can ask any question,
20 notwithstanding our objection to this question,
21 which may be relevant to the Lorenc case so we
22 don't have to redepose Mr. Mallach at some later
23 date. Any report that he furnishes to us will
24 be furnished to you if, in fact, we do retain
25 Mr. Mallach.

1 MR. ENGLISH: Thank you.

2 Well, my position is that the question is
3 appropriate one.

4 MR. HILL: Could you read the question back?

5 MR. ENGLISH: I would like the --

6 MR. HILL: Read the question back and I will
7 decide whether I will instruct the witness to
8 answer it.

9 (The pending question is read by the
10 reporter.)

11 MR. HILL: I think I will instruct ~~you not~~
12 to answer that, Mr. Mallach. I think it's an
13 improper question.

14 Q Mr. Mallach, do you intend, in the event that you
15 are called as an expert witness by the plaintiffs in either
16 of these cases, to testify on the subject of what is
17 Bernards Township's fair share of housing pursuant to the
18 Mount Laurel decision?

19 A I think intent is strong. I would consider myself
20 do so, if instructed, but I haven't been
21 and I haven't really made any serious effort
22 to do anything of that sort so far.

23 MR. HILL: To assist you, Mr. English, we may
24 ask Mr. Mallach to do some work in this area if
25 we decide in my judgment that we need additional

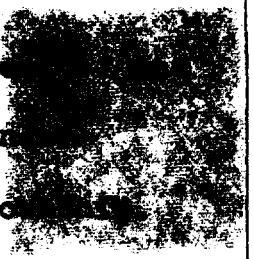
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

testimony in this area.



MR. ENGLISH: Well, if he is not going to get into that field, I obviously have no concern about deposing him.

Could we leave it this way, Mr. Hill: If you decide to use Mr. Mallach in the area of what is the fair share, could you let us know so we could have an opportunity to depose him at that time rather than what may be a blind alley?



MR. HILL: You have a report in front of you in which he states that Mr. Lindbloom used to estimate the fair share for Bernards Tobacco. It was given to you in interrogatories. We may well use him and we consider that since you have full knowledge of what he has to say on that fair game at this point.

So, if you have any general questions as to how he approaches a fair share methodology, you might ask them now and if we submit to you



additional studies, of course, you are going to depose him.

MR. ENGLISH: Thank you.

BY MR. ENGLISH:

Q Well, Mr. Mallach, have you given any thought to the matter of the fair share of Bernards Tobacco?

not testable

1 provide low and moderate income housing?

3 2 A Well, I've looked in a relatively superficial manner
at [REDACTED] bloom's report and as you will note under my
[REDACTED] the memo on Ordinance Number 385 have cited what
5 might refer to certain issues of the fair share that should
6 be given for the consideration.

7 This is the extent of my specific investigation
8 of fair share as it applies to Bernards Township.

9 Q Have you said everything you have to say on the
10 subject of fair share of Bernards Township in the [REDACTED]
11 which you have submitted and which has been made [REDACTED]
12 of the plaintiffs' answers to interrogatories?

13 A Well, for the purposes of that memo and of [REDACTED]
14 on the ordinance, I felt it would be quite excessive to
15 enter into a long and detailed analysis of what, in my
16 judgment, an appropriate fair share would be. So, I just
17 cited there what I felt were two particularly relevant
18 issues about the fair share question and which I think is
19 adequate for the purpose of this memo, namely, the question
[REDACTED] on and the question of what I refer to here. Income
[REDACTED] on.

22 Q All right.

23 Now, what is the substance of your comments about
24 the region?

25 A Well, it's my judgment and I think this is consistent

Mallach - direct

1 with the Court decisions that rather than construct a region
 2 ~~is done for each municipality that one is concerned with~~
 3 ~~in at any given point that one must have a limited,~~
 4 ~~limited number of regions, that if their entirety~~
 5 covered the State and that when looking at a particular
 6 municipality one studies it in the context of the region
 7 into which it fits rather than creating a region from
 8 scratch. I think by creating a Bernards region, a
 9 Bedminster region, a Bridgewater region, a Branchburg region,
 10 you end up with 567 different regions around the ~~state~~
 11 and it is impossible to have any overall consistency
 12 the individual fair share numbers you have arrived at. They
 13 don't add up to a meaningful total.

14 So, even though it is hypothetically part of the
 15 Bernards Township region would be located in Hunterdon
 16 County, say that one still has to take a region that is a
 17 logical region in itself and fit Bernards into that, rather
 18 than taking Bernards and creating a region.

19 So, I argued here that the appropriate region
 20 ~~fair share should be calculated would be the~~
 21 ~~.A.~~

22 Q Those letters stand for what?

23 A Standard Metropolitan Statistical Area.

24 Q Who invented that term?

25 A This is a term used by the U.S. Census Bureau. They

1 invented the term and it's used to define a region that has
2 characteristics and common linkages to a central
3 area that is an economic center for the region.
4 In this case the City of Newark.

5 Q Well, is Bernards Township located in the S.M.S.A.
6 of Newark?

7 A Yes.

8 Q Is it your view that that is the only region
9 in which Bernards can be placed for the purposes of
10 determining its fair share?

11 A I shouldn't say the only; the most logical,

12 Q Well, can Bernards Township exist in more than
13 one region for fair share purposes?

14 A Well, theoretically there can be a new one. The concept
15 of fair share has not yet been defined precisely to everyone's
16 satisfaction, to say the least. One could hypothetically
17 construct a variety of regions because I should add that
18 the concept of region has not been confined to everybody's
19 universal satisfaction.

20 I think using the S.M.S.A. as the region provides
21 rational results, both in terms of consistency
22 across Northeast New Jersey, across the State, as well as
23 in terms of the substantive results that are generated in
24 terms of numbers.

25 I would be willing to accept that some kind of case

Mallach - direct

1 can be made for a "Bernards Housing Region" as Mr. Lindbloom
2 did or conceivably for using Somerset County as a region
3 or conceivably using Somerset and/or Morris County as a
4 region or other counties. But I would argue any of these
5 alternatives are substantially inferior to using the S.M.S.A.

6 Q Well, if you had a municipality which was right
7 on the border of two S.M.S.A.'s, would you under your
8 preferred methodology determine fair share only on the basis
9 of one S.M.S.A. without regard to the immediately adjacent
10 one?

11 A Yes.

12 Q Well, if you place Bernards in the S.M.S.A. of
13 Newark, I take it from your report, which is Exhibit 2
14 annexed to the plaintiff's answers, Plaintiff Allan-Deane's
15 answers to interrogatories, that would increase the numbers
16 constituting Bernards Township's fair share above the figure
17 arrived at by Mr. Lindbloom?

18 A I think that is a reasonable assumption I have made
19 to calculation, but it is a reasonable assumption.

20 Q What are the reasons to support that assumption?

21 A I should note for the record Newark S.M.S.A. as
22 defined by the Newark Consensus Bureau and used by the
23 State includes Essex, Union and Morris and Somerset
24 Counties. The assumption being that the housing need --

25 Q Can I interrupt you?

1 Does it include the entirety of those four counties?

2 A That's correct.

3 [REDACTED] housing need that serves as the underpinning
4 of the fair share concept in my judgment, and this is
5 strictly on the basis of general knowledge rather than
6 specific statistics, should be considerably greater for a
7 region that contains the Cities of Newark, Elizabeth and
8 East Orange, as does the Newark S.M.S.A., than for the region
9 delineated in Mr. Lindbloom's fair share analysis which
10 includes no comparable major core cities.

11 Q Well, if I understand your approach, Mr. [REDACTED]
12 you would place Montgomery Township and Somerset [REDACTED]
13 in the Newark S.M.S.A. without regard to housing [REDACTED]
14 employment conditions in Mercer County or Trenton?

15 A I'm afraid so. I would do so reluctantly but firmly.

16 Q But I take it your conclusion or suggestion that
17 the Bernards fair share should be at a higher figure than
18 Mr. Lindbloom's rests on the general proposition that Newark,
19 East Orange and Elizabeth have serious housing problems

[REDACTED] any specific calculations you've made?

[REDACTED] correct.

22 MR. HILL: Mr. English, I would just like
23 to add that the report states that he would
24 also include an income equalization factor, so
25 there are two reasons he would up that.

1 MR. ENGLISH: Yes. Well, I'm about to get
2 to that. Thank you.

3 Q Now, as Mr. Hill reminds me and as I see in your
4 Lindbloom did not include an income equalization
5 factor. Is that correct?

6 A That's correct.

7 Q Tell me first what you mean by an income equalization
8 factor.

9 A The principle involved here is that where you have
10 a town which has a substantially wealthier population than
11 the rest of its region, however defined, or has some
12 less internal housing need than the rest of the region,
13 substantially more wealth, then, generally speaking, it is
14 appropriate to increase that municipality's fair share in
15 such a way to reflect that advantage it had.

16 Now, I suspect there are numerable ways of
17 calculating a factor that would represent income equalization
18 factor in this regard. I've suggested here a very straight-
19 forward kind of calculation modeled after the one that
20 was used in the Middlesex County case where in
21 what he did was he took the number of low income
22 moderate income households in each township to begin
23 with as of the 1970 census, calculated what that number would
24 have been had it been at the county average and assigned
25 the difference as a kind of bonus on top of the fair share,

1 otherwise arrived at for the municipality.

2 Now, this is one way of dealing with this factor.

3 Q Did I infer from one of your earlier answers
4 that you testified as an expert witness in the Urban League
5 decision of Judge Furman to which you refer?

6 A That's correct.

7 MR. HILL: Excuse me. On the record,
8 Mr. Mallach provided expert testimony in the
9 following cases, they are listed in the answers
10 to interrogatories, there may be more.
11 the resume he gave me.

12 MR. ENGLISH: Thank you.

13 Q Mr. Mallach, in your introductory answer to the
14 current subject, you used the word appropriate. It seemed
15 appropriate that a wealthier municipality have some addition
16 to what would otherwise be its fair share. Did I quote
17 you correctly?

18 A I think so.

19 Q Appropriate sounds to me like a value judgment

20 Can you tell me, please, the factors or
21 underlie your concept of appropriateness?

22 Appropriateness is principally a function of reasonable
23 capacity, in other words, and to some degree a function
24 of value judgments. The principal issue in fair share, the
25 whole concept of fair share, is to allocate the units on the

1 basis that's reflective of realistic capacity of a
2 municipality to have units constructed and make housing
3 [REDACTED] available and to a lesser degree inevitably
4 [REDACTED] the concept of fair share does incorporate a
5 certain kind of philosophy about the nature of society
6 for one's goals in terms of this society.

7 So, I think they really can't be entirely
8 separated.

9 Q What is the philosophy that you just referred to?

10 A The philosophy, I think that's inherent in the fair
11 share concept is that to some degree the responsibility for
12 meeting housing needs should be distributed around a region
13 and that no individual municipality can turn a blind eye
14 as it were, to the needs within the region but outside
15 the municipality's boundaries. And that in turn is
16 implicitly a kind of redistributive philosophy rather
17 than what one might call the traditional social Darwinism
18 of zoning practice that we are talking about, something
19 while if not socialist, at least somewhat more legalitarian
20 [REDACTED] tional than traditional distribution practice.

21 [REDACTED] 1, is the purpose of this redistributive
22 [REDACTED] try to increase the similarity and minimize
23 the differences between different municipalities in terms
24 of their socio-economic mix in the population?

25 A Up to a point -- well, let me back up.

1 I think there is a substantial difference between
2 redistribution and homogenization and I think without any
3 [REDACTED] homogenize a region and to make everything alike,
4 [REDACTED] is implicit in the fair share concept some
5 effort to reduce the extremes, the extreme differences
6 in socio-economic condition between the different
7 municipalities that make up a region, yes.

8 Q Now, in an earlier answer I understood you to
9 say that appropriateness is a function of the reasonable
10 capacity of the municipality.

11 You also used the word realistic capacity. Can
12 you define or describe, please, what you mean by
13 reasonable or realistic capacity or if they are different,
14 tell me about it.

15 A I don't really think they are. I think capacity is
16 a function potentially of a number of factors. One, of
17 course, is the availability of land for development; a
18 second is the amount of employment in the community both
19 employment in place and future employment growth; a third
20 [REDACTED] the physical and present or potential infra-
21 [REDACTED] of the community. And when I say physical
22 [REDACTED] framed in terms of both public wealth in the
23 sense of ratables or private wealth in the sense of income
24 distribution, so these are reasonable factors under which
25 basis capacity can be assessed.

1 Q What is the relationship between private wealth,
2 which is not directly reflected in tax ratables, and
3 [REDACTED] capacity?

4 [REDACTED] actually private wealth tends to be quite closely
5 related to a tax ratable so that I would -- if you included
6 both of them separately in a fair share formula, you would
7 probably be double weighing that factor. They are largely
8 interchangeable.

9 Q Well, in your view is it appropriate to include
10 both factors and therefore double the effect of the [REDACTED]

11 A As a general rule in the work I have done in [REDACTED]
12 I have not. I've used one or the other.

13 Q In your judgment is reasonable capacity [REDACTED]
14 by ecological environmental factors?

15 A It can be.

16 Q It can be in what sense?

17 A Well, there are certain areas where ecological environ-
18 mental structures may impose very specific constraints on
19 development.

20 [REDACTED], for example, it is generally not done in these
21 [REDACTED] in flood plains, in flood ways and to a
22 lesser degree in flood fringe areas and there are specific
23 statutory bases in this State for restricting development
24 in those areas so that becomes the consideration.

25 There are other lands that are subject to similar

1 restraints. However, there are other areas in which environ-
2 mental considerations become, in my judgment, and I'm not
3 going to proclaim myself as a tremendous technical expert
4 in this area, but become more a matter of determining how
5 to build and how to develop rather than whether to build
6 or develop, and these for example would include situations
7 where certain types of infrastructure might be necessary
8 or certain types of site planning or drainage improvements
9 might be necessary to deal with environmental factors, but
10 it would not be an either/or type of proposition.

11 Q In your opinion is available or potential
12 available sewerage capacity a factor or bearing upon
13 share?

14 A Potentially available, yes. Present, not necessarily
15 because I don't think there is any question seriously in
16 order to meet fair share goals in many municipalities that
17 there has to be expansion of sewer capacity.

18 I would argue, though, that honorable approach to
19 the fair share concept requires first arriving at a fair
20 [redacted] seeing whether there is technically an
21 [redacted] sound way to expand the sewerage capacity to
22 meet that fair share rather than designing a sewerage
23 capacity then turning around and then determining it is
24 impossible to accommodate the fair share.

25 In other words, the sewerage has to follow the

1 assessment of need rather than vice versa.

2 Q Suppose you arrived at fair share and then it
3 was determined that the technically feasible sewerage capacity
4 was not sufficient to permit as large a fair share, would you
5 be willing to reduce the fair share for that reason?

6 A Did not exist or could not conceivably be brought into
7 existence?

8 Q Could not be brought into existence.

9 A If it could not really be brought into existence, then
10 I think somebody might have to look -- reappraise the
11 fair share considerations.

12 Q In other words, you would be willing to reduce
13 the fair share on account of inability to make the requisition
14 sewerage capacity available?

15 A Inability defined as stringently as possible.

16 Q Right. A I think so. I certainly
17 wouldn't take one person's word for it.

18 MR. ENGLISH: Off the record.

19 (Discussion off the record.)

20 Q Mallach, I forget whether I asked you this
21 question in your report to Mr. Hill dated June 4th
22 with regard to Bernards Township Ordinance Number 385, which
23 is Exhibit 2 annexed to Plaintiff Allan-Deane answers to
24 interrogatories, substantially set forth your views as to
25 Ordinance 385?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes, it does.

MR. ENGLISH: May I say on the record for O'Connell's benefit I think I have completed an interrogation of Mr. Mallach except with respect to what he has done specifically in the Allan-Deane property.

MR. O'CONNELL: Fine, because I think any testimony that we would ask from Mr. Mallach in connection with our litigation would deal with Ordinance 385, which you have received a copy of his commentary.

MR. HILL: We may ask Mr. Mallach ^{it is} own fair share study since/based on some principles he has outlined here and if the company decides to do that and if we get it before your case comes to trial, we would make that available to you in Lorenc.

Consistent with the policy that we outlined, you would have to make your own arrangements with Mallach in terms of his testifying for you. I haven't obtained an authorization, but it seems to me it might be worthwhile to have a high fair share study and Mr. Lindbloom's fair share study and let the Courts decide which principles they might want to embody in the concept of

1 fair share. This might be an appropriate case,
2 the Allan-Deane case, for the Courts to find a
3 little more stringently the fair share requirement.
4 If we get that, I will supply it to you and
5 to Mr. English.

6 MR. O'CONNELL: And if any further depositions
7 are necessary prior to our case in the event
8 there is an additional fair share study done, then
9 we would just reschedule it.

10 MR. ENGLISH: Sure.

11 MR. O'CONNELL: Well, I will leave
12 gentlemen.

13 MR. HILL: If you don't mind us using your
14 conference room.

15 MR. O'CONNELL: I have no objection.

16 John Richardson, the attorney for the
17 Somerset County Planning Board, has called my
18 office and indicated that he would not be here
19 today. I don't know whether he will be here
20 tomorrow.

21 MR. HILL: You can make arrangements with
22 Mr. Richardson as to whether he gets a copy or
23 not. I don't care, as long as we have one.

24 MR. ENGLISH: Sure.

25 Off the record.

1
2
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
22
23
24
25

(The luncheon recess is taken.)

AFTERNOON SESSION



MR. ENGLISH: During the luncheon recess I

had an opportunity to peruse a report which Mr. Hill handed me entitled "Low and Moderate Income Housing Study Phase I Preliminary Assessment and Program Design" which was prepared for Johns-Manville Properties Corporation by Alan Mallach & Associates. The covering which is part of this report, is dated 1976.



During the luncheon hour I had a chance to look at it. I understand from reading it that this report is likely to be followed in due course by a further study made by Mr. Mallach's organization which is called Phase II and I would suggest that it would be more economical and effort if my interrogation of Mr. Mallach



Phase I report were deferred until we have received Phase II and have studied that and then cover both reports at the same time.

With that thought in mind I suggest that the deposition of Mr. Mallach be resumed without date and be resumed at the

100-100000-1000
100-100000-1000
100-100000-1000
100-100000-1000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

convenience of the witness and Counsel.

MR. HILL: Fine.

May I suggest that you mark the report.

You can have a copy since I have a copy, but just so the record shows that you have received it.

MR. ENGLISH: The report to which I refer may be marked Exhibit DM-1 for identification.

(The report dated July 15, 1976 entitled "Low and Moderate Income Housing Study Phase I Preliminary Assessment and Program Design" was received and marked Exhibit DM-1 for identification.)

(Whereupon, the hearing is adjourned.)



2



ANE CORPORATION, :

Plaintiffs, :

-vs-

C E R T I F I C A T E

THE TOWNSHIP OF BERNARDS,
et al, :

Defendants. :

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

I, DENISE KURDYLA, the officer before whom the
foregoing deposition was taken, do hereby certify
witness whose testimony appears in the foregoing
was duly sworn by me, and that said deposition is
record of the testimony given by said witness; that
neither attorney nor counsel for nor related to or employed
by any of the parties to the action in which the deposition
is taken; and further that I am not a relative or employee
of any attorney or counsel employed by the parties hereto,
or financially interested in the action.

Denise Kurdyla, C.S.R.

CERTIFIED SHORTHAND REPORTER & NOTARY PUBLIC



22

23

24

25