

RULS - AD - 1978 - 50

3/23/78

Affidavit of Alan Mallach in Support of Order to
Show Cause

Pg. 13

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FILED

REC'D
Recorder

FILED

MAR 23 1978

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J. Ann Bunch

MAR 28 3 39 PM 1978

SOMERSET COUNTY
L. R. OLSON, CLERK

-36896-70

P.W.

MASON, GRIFFIN & PIERSON

201 NASSAU STREET

PRINCETON, N. J. 08540

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ATTORNEYS FOR Plaintiff, the Allan-Deane Corporation

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NOS. L-36896-70 P.W.
L-28061-71 P.W.

THE ALLAN-DEANE CORPORATION,
et al.

Plaintiffs,

THE TOWNSHIP OF BEDMINSTER,
et al.

Defendants.

Civil Action

AFFIDAVIT OF ALAN MALLACH
IN SUPPORT OF ORDER
TO SHOW CAUSE

RULS - AD - 1978 - 50

STATE OF NEW JERSEY)
) ss:
COUNTY OF MERCER)

ALAN MALLACH, residing at 301 West State Street,
Trenton, New Jersey, duly sworn, upon his oath, deposes and says:

Personal Background

1. I am the principal of the firm of Alan Mallach/
Associates, a firm engaged in research and development activi-

ties in the fields of housing needs, effect of land use ordinances on housing costs, low and moderate income housing and social research on service needs and problems of inner-city and suburban residents in the field of housing.

Previous Work Experience

2. I was responsible, until 1976, for the direction of research activities of the New Jersey County & Municipal Government Study Commission (known as the Musto Commission), have taught courses on housing, planning and land development at Stockton State College, Livingston College of Rutgers University, and Fairleigh Dickinson University.

3. I have written the following published articles regarding land use and housing issues:

- a. "Housing in New Jersey: Needs and Programs" Trenton, New Jersey; New Jersey Department of Community Affairs (1968)
- b. The Housing Crisis in New Jersey (principal author), Trenton, N.J., DCA (1970)
- c. "Changing Governmental Roles in Housing and Urban Development" in Federal/State Aid and the Local Fiscal Crisis, Trenton, N.J., County & Municipal Government Study Commission (1971)
- d. Housing & Suburbs: Fiscal and Social Impact of Multifamily Development, Trenton, N.J.,

C&MGSC and U.S. Department of Housing & Urban Development (1974)

- e. "Implications of Multifamily Development for Local Government" in New Jersey Municipalities, Vol. 52, no. 4 (April, 1975)
- f. "Do Lawsuits Build Housing: The Implications of Exclusionary Zoning Litigation", Rutgers-Camden Law Journal, Vol. 6, no. 4 (Spring, 1975)
- g. "Zoning Litigation and Housing Production", articles in After Mt. Laurel: The New Suburban Zoning, published by the Center for Urban Policy Research (1977)

Expert Testimony

4. I have provided expert testimony, and have been qualified as an expert witness on housing, planning, zoning and land use issues in the following cases:

- a. Southern Burlington County NAACP v. Township of Mt. Laurel (1971, and at the second trial in 1977) Provided testimony on housing needs, housing conditions, etc.
- b. New Jersey Welfare Rights Organization v. Cahill (1973) Testified on housing

needs and conditions, housing costs, and supplied the Court with an analysis of housing of welfare recipients.

- c. Allan-Deane et al v. Township of Bedminster (1974) Testified on housing needs and conditions, housing costs, impact of the Zoning Ordinance on housing costs, etc.
- d. Camden National Realty v. Township of Cinnaminson (1975) Testimony similar to that in Allan-Deane case, including detailed analysis of Zoning Ordinance provisions.
- e. Urban League of Greater New Brunswick v. Borough of Carteret (1976) Testified before Judge Furman to the effect of the Land Use Ordinances of 23 municipalities in Middlesex County on housing costs.
- f. Round Valley Associates v. Clinton Township (1977) Testimony on regional housing needs, region definition and fair share issues.
- g. South Jersey Homebuilders League v. Township of Berlin et al. (1977) Testimony on demographic trends and zoning ordinances with regard to low and moderate income housing feasibility.

Education

5. I graduated from Yale College in 1966 (B.A. Cum Laude in Political Sociology) and have been retained by the Allan-Deane Corporation as an expert witness in this action.

6. In preparation for testimony in this action I have analyzed the Zoning Ordinance passed by Bedminster Township on December 19, 1977, together with the Subdivision and Site Plan Ordinances, have reviewed numerous site plan designs prepared in an attempt to comply with the new Zoning Ordinance and have specifically analyzed all parcels in Bedminster Township designated as R-6, R-8 or R-20 districts under this new Ordinance.

Conclusions

7. Based on this analysis, I have come to the conclusion that Bedminster Township's new Zoning Ordinance does not represent a bona fide effort towards the elimination or minimization of undue cost-generating requirements and that the Township has not zoned a reasonable area for multifamily development so as to provide the opportunity for the construction of its fair share of the regional needs for least cost housing. This general conclusion is based on the following specific conclusions:

- a. The new Zoning Ordinance permits less multifamily housing to be built in Bedminster Township than the 1973 Ordinance which was invalidated by this Court.

- b. The maximum number of 300 "least cost" units permitted under the Ordinance is arbitrary and in no way corresponds to Bedminster's fair share of the regional "least cost" housing needs, which have been determined to be in excess of 6,000 units (9% of the County's "least cost" housing needs).
- c. The new Zoning Ordinance both contains more undue cost-generating requirements and induces higher housing costs than the 1973 Zoning Ordinance which was invalidated by this Court.
- 1) The 300 units permitted as a conditional use through "Compact Residential Clusters" cannot be considered "least cost" because, among other reasons specified below, the densities permitted are insufficient to achieve "least cost" housing; and furthermore, a density based on the ostensible 30% Gross Floor Area Ratio is impossible to achieve under the Ordinance, by virtue of the imposition of the more highly restrictive Net Floor Area Ratio requirement.
 - 2) The quantity of vacant developable land

in the R-20 zone, the district purportedly introduced to accommodate "least cost" housing (through the Compact Residential Cluster conditional use, permitted only in R-20 zoned land in the Pluckemin area) amounts to less than 2% of the township's undeveloped land. This patently insufficient amount will result in an extreme scarcity of such land for development purposes, tending in turn to increase land costs for any proposed "least cost" housing development. Furthermore, the argument that all Compact Residential Clusters be separated one from the other by "interstate or state highways or a distance of 1/2 mile between the center of each cluster" is not only not grounded in any sound planning or housing principles, but is arbitrary, and restricts development on certain sites on the basis of the development of adjacent lands.

- 3) The requirement that, in the absence of an existing public sewerage system of sufficient capacity, applicant must

provide on-site treatment, taken in conjunction with the maximum permitted Compact Residential Cluster or Village Neighborhood size of 150 units, imposes extremely high costs on a per unit basis and establishes a further serious impediment to realistic development of "least cost" housing.

- 4) The Ordinance, by stipulating that all detached and townhouse units be "susceptible to sale on an individual lot":
 - a) Requires that any Compact Residential Cluster undergo subdivision approval, including the payment of excessive fees. Such fees prior to approval could exceed \$50,000 for a 150 unit Compact Residential Cluster, an amount of front money well in excess of that which a low or moderate income housing sponsor could be reasonably expected to obtain, and an unconscionable exaction on same.
 - b) Requires that a Compact Residential Cluster developer incur large and unnecessary expenditures by re-

quiring that all internal roads serving other than detached single family dwellings have "right-of-way" widths of at least 70 feet (if parking is permitted).

- c) Imposes a requirement that is unpalatable in the extreme to governmental housing agencies providing rental subsidies and mortgage financing, as under the Section 8 program.
- 5) The parking requirements (one 10'x20' space required for each bedroom) vastly exceed what is either needed or held acceptable by agencies financing low or moderate income housing. By including such parking areas, whether paved or merely graded, in the floor area ratio the maximum density is unreasonably reduced.
- 6) Unit type, mix and size requirements are cost-generating and reduce the feasibility of "least cost" housing for the following reasons:

- a) Two and three bedroom garden apartments, which are prohibited by the Ordinance, involve approximately 10% less brick and mortar costs than the conditionally permitted townhouses for comparable accommodations. The New Jersey Housing Finance Agency looks askance at developments which provide two bedroom units as townhouses rather than garden apartments.
- b) Similarly, four bedroom townhouses, also prohibited by the Ordinance, are approximately 10% less expensive in direct construction costs than detached or twin houses.
- c) By preordaining a specific bedroom mix, the flexibility required by a housing sponsor to find a cost-effective combination of unit types and sizes under the Section 8 Subsidy Program is greatly reduced, thus further reducing the likelihood of a feasible Section 8 development under the Ordinance.

- a) Two and three bedroom garden apartments, which are prohibited by the Ordinance, involve approximately 10% less brick and mortar costs than the conditionally permitted townhouses for comparable accommodations. The New Jersey Housing Finance Agency looks askance at developments which provide two bedroom units as townhouses rather than garden apartments.
- b) Similarly, four bedroom townhouses, also prohibited by the Ordinance, are approximately 10% less expensive in direct construction costs than detached or twin houses.
- c) By preordaining a specific bedroom mix, the flexibility required by a housing sponsor to find a cost-effective combination of unit types and sizes under the Section 8 Subsidy Program is greatly reduced, thus further reducing the likelihood of a feasible Section 8 development under the Ordinance.

d) Indeed, in the context of the many restrictions and impositions dealing with larger units, the mandated bedroom distribution acts as a disincentive to any development under the Village Neighborhood or Compact Residential Cluster provisions generally.

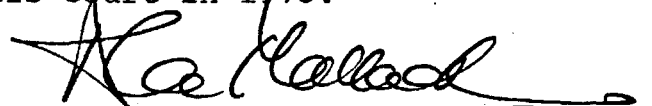
7) Over and above specific cost-generating provisions, the Ordinance grants such broad discretion to municipal officials that a developer could easily become subject to additional increased costs and a further reduction in much-needed flexibility.

d. The Zoning Ordinance prohibits (Sec. 4.2.2) mobile homes, a major means through which "least cost" housing can be provided.

e. Housing eligible for Federal or State subsidies cannot be built under the new Zoning Ordinance due not only to the above unreasonable cost-generating requirements, but also to the failure of the Township to provide for tax abatement (payments in lieu of taxes), the failure of the Township to

adopt a resolution of need, as required by the New Jersey Housing Finance Agency Act, and the failure of the Township to provide public sewerage service to areas proposed for multifamily development.

f. The new Zoning Ordinance appears to have been deliberately drafted in order to mislead the Courts or developers into believing that it represents an attempt to provide least cost housing. The conclusion that this Ordinance does not represent a bona fide attempt to comply with the Court Order, is further indicated by the fact that significant areas designated on the Zoning Map as R-20 districts cannot, in fact, be used for either Village Neighborhoods or Compact Residential Clusters; indeed, for anything but single family homes, because of specific prohibitions contained elsewhere in the Ordinance, and the plain fact that the new Ordinance is more exclusionary, in almost every respect, than the Ordinance invalidated by this Court in 1975.



Alan Mallach

Sworn to and subscribed
before me this 15th day
of March, 1978.

JERENE V. MYRICK *Jerene V. Myrick*
NOTARY PUBLIC OF NEW JERSEY