

RULS-AD - 1984 - 285

8-28-84

- Affidavit of Mallaoh

5 pgs

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ATTORNEYS FOR PLAINTIFFS
LINN CEISWICK ET AL.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY

ALLAN-DEANE CORPORATION
et al.,

Plaintiffs

vs.

TOWNSHIP OF BEDMINSTER

Defendants

Dockets No. L-36896-70 P.W..
L-2801-71 P.W.

AFFIDAVIT OF ALAN MALLACH

MERCER COUNTY)
) :ss:
NEW JERSEY)

ALAN MALLACH, of full age, being duly sworn according
to law, deposes and says:

1. I have been retained by the New Jersey Department of the
Public Advocate to advise them with regard to resolution of
the remaining issues in the case of Allan-Deane et al v. Town-
ship of Bedminster. In that capacity, I have reviewed the sites

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through which the Township proposes to comply with Mount Laurel II, the proposed compliance ordinance, and the reports submitted by various experts with regard to these matters.

2. Based on this review, and subject to certain considerations which I will provide below, I believe that the following sites, and lower income units, have a realistic possibility of development during the forthcoming six year fair share period:

Site A	Hills PUD (under construction)	260
Site B	Hills PUD Highlands	180
Site C	Hills PUD out-parcel	34
Site D	Ray	35
Site E	Ellsworth	120
Site G	AT&T	90
	Senior Citizens Housing (site to be determined)	<u>90</u>
		809

The following sites, which have been zoned to provide for added lower income units, may result in development during this period, but I do not consider that to be as likely:

Site F	Multiple Owners	51
Sites H/I	Bedminster Village	HO

3. In order that all of the above sites, excluding sites F, H, and I, can be considered realistic possibilities, the following conditions must be met:

a. The franchise area for the sewer system run by the Environmental Disposal Corporation (EDC) must be expanded to include site G.

b. The treatment capacity of the EDC facility must be expanded to accommodate all of the above sites in the Pluckemin area.

To accomplish these objectives, the Township must be committed to support EDC actively in pursuing the necessary approvals for

expansion of the EDC franchise area, and expansion of the EDC sewerage treatment facility. It is my understanding that such a commitment by the Township is part of the proposed settlement.

c. Limited Federal funds for senior citizen housing, potentially available either through the HUD Sec.202 program, or the Farmers Home Administration Sec.515 program, must be actively and energetically pursued.

Since at this time there is no established and experienced non-profit corporation in place, nor has a site been obtained, it is necessary for the Township to provide the initial support so that a credible funding application package, including a specific site, can be prepared.

4. I believe that there are a number of circumstances under which a housing goal smaller than the fair share number, as it may be determined through a formula approach, should be acceptable, even if there is adequate vacant land within the municipality on which to accommodate the larger number:

a. The benefits of a settlement, in my opinion, enough outweigh those of a court order entered at the end of an extended period of litigation to justify a substantial reduction in the fair share number, or target, for the municipality. As a result of a voluntary settlement, which the municipality has participated in framing, the process of development is likely to begin substantially sooner, and to proceed significantly more smoothly. It is my understanding that this premise has been recognized by the courts in a substantial number of settlements, including those in the Morris County Fair Housing Council litigation, the Urban

league litigation, and a number of other cases involving single municipalities, such as West Windsor Township.

b. In Mount Laurel II, the Supreme Court suggested that trial courts may choose to phase-in a municipality's fair share goal more gradually, where the full production of the fair share goal "might result in the immediate construction of lower income housing in such quantity as would radically transform the municipality overnight (at 219)". In 1980, Bedminster contained a total of 884 occupied housing units; full development of the 809 lower income units cited in paragraph 2 would result in an increase of 3,700 total housing unit in the Township, for a 4.19% increase. The scope of this increase suggests that consideration be given to arguments that some part of Bedminster's 1990 fair share goal can reasonably be phased in over a more extended period.

5. Notwithstanding my general conclusion that the proposed compliance plan is a reasonable one, and the sites selected are suitable for the purpose, it is my opinion that this proposed settlement would be definitely enhanced by incorporating a fall-back provision in the event that assiduous efforts by the Township fail either to obtain funding for senior citizen housing, or to obtain a site on which such housing can be built. A fall back provision would specify that, after some period such as three or four years, if either had failed to take place, the Township would take appropriate actions, which actions can take a wide variety of forms. Such a provision would increase the likelihood of these units (which will not trigger four times their number in market rate units) being built, and thus enhance the sound-

ness of the proposed settlement, without imposing any greater impact on the Township of Bedminster.

6. In conclusion, I believe that the proposed settlement represents a reasonable approach, which I believe can reasonably be approved by the court.



ALAN MALLACH

Sworn to before me this JJj th day
of **S^X'**, 1984

Kenneth E. Meisen
Attorney at Law
State of New Jersey