

Focus Is on Morris In Housing Dispute

By MAURICE CARROLL

THE most sweeping legal challenge to the suburban right to exclude cityscape sights — high-rise buildings, row housing, mobile homes — is working its way toward a decision in Morris County.

The legal antagonists are the state government and the governments of 27 of the county's 39 communities.

The case, brought last year and now going through the tedious legal process of "discovery," in which the two sides trade information, is the broadest effort yet attempted to force residential suburbs to accept low-cost housing.

"Given the attractiveness of Morris County and its growth, it's bound to have a major impact on the whole New York metropolitan area," said Linda

R. Hurd, the state's Assistant Deputy Public Advocate, who is handling the case for New Jersey.

"It's a very, very important case," declared Paul Davidoff of the Suburban Action Institute, which has led the assault upon local power to decide what sort of housing a locality will accept.

Both said that courts throughout the metropolitan area, including those in New York and Connecticut, were carefully watching the series of New Jersey cases that have culminated in this countywide challenge.

It appears that, because of the fine legal line that the State Supreme Court has drawn in cases of this sort, the defendant communities include those in Morris County that could be described

Continued on Page 3

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Continued From Page 1

as "developing" and not just the hand-fut that are mostly built up.

Much of Morris, which escaped the first splurge of row-upon-row housing development in the years immediately after World War II, is a vision of how new-style suburbs are supposed to look.

The second postwar wave of housing spread ample, often expensive, homes amid the mansions that had been there since construction of the Delaware, Lackawanna & Western Railroad made the county a haven for the well-to-do in the 19th century.

Development was less crowded and haphazard than in the first postwar wave. By the time the builders had moved into Morris in force, suburban officials had become aware of the mistakes of the first wave. Along with the new homesteaders, they tried to lure the sorts of business, such as research facilities, that would yield taxes while keeping the neighborhood attractive.

But, according to the state complaint, they neglected their social obligations to their urban neighbors.

"The defendants, with few exceptions, have encouraged and welcomed industrial and commercial growth that has generated housing needs for persons of all economic classes," the state charges. "However, residential housing opportunities have been limited primarily, if not exclusively, to large, single-family homes on large lots, which are within the financial reach of only higher-income persons."

To many Morris County residents, groaning under the mortgages they accepted in an effort to get away from the sort of crowding that, to some, the state suit seems to threaten, the numbers

that New Jersey quotes in support of its charges might seem unrealistic.

When Arthur Penn, the state's

Assistant Public Advocate, announced the filing of the suit last October, he noted that "more than 95 percent of home sales in the municipalities during 1977 were for more than \$30,000."

Where in the New York metropolitan area, one might wonder, could anyone buy a home for less than \$30,000?

But the state's basic aim, as Miss Hurd describes it, is not necessarily to ensure that low-cost housing will be built. "The point is to remove the barriers to low-income housing," she said.

Excluded from the suit, according to Mr. Penn, are 12 Morris County communities with "higher concentrations of low-income persons and minorities." They are Boonton, Dover, Victory Gardens, Netcong, Butler, Chester, Mine Hill, Mount Arlington, Chatham Borough, Rockaway Borough, Wharton and Morristown.

Included are Boonton Township, Chatham Township, Chester, Denville, East Hanover, Florham Park, Hanover Township, Harding Township, Jefferson Township, Kinnelon, Lincoln Park, Madison, Mendham (borough and township), Montville, Morris Township, Morris Plains, Mountain Lakes, Mount Olive, Parsippany-Troy Hills, Passaic Township, Pequannock, Randolph, Riverdale, Rockaway (borough and township) and Washington Township.

The state's Department of the Public Advocate brought the suit, along with the Morris County Fair Housing Council and the Morris County branch of the N.A.A.C.P.

Judge Robert Muir of Superior

Court, the Morris County assignment judge, took over the case himself. He directed the 27 communities to cooperate in what is called the "maxicase," the overall argument that there is a shortage of lower-priced housing and that the accused communities have an obligation to help do something about it.

Judge Muir directed that they then go their own way in the so-called "minicases," that each community change its zoning codes to absorb its share of lower-cost housing.

The latest of what is likely to be a series of papers going back and forth was a community-by-community roster of "land-use provisions considered exclusionary."

A pretrial conference has been set for July 3, and a trial before Judge Muir could start sometime in the autumn. Or there could be some sort of a deal.

The state, Miss Hurd said, was "very open to talk of a settlement as more cards come out on the table."

Roger Clapp, the attorney for Harding Township, who is coordinating the 27-community defense, declined to comment on that suggestion or on any other aspect of the complex case.

As seen by Mr. Davidoff of the Suburban Action Institute, the case is highly significant because "the state has brought legal action against its own communities" and because its claim is that the spreading about of low-income housing is "a regional responsibility."

It would seem, too, that the case could clear up some confusing legal signals from the state's highest court.

In the case that first focused challenges to so-called "exclusionary zoning," the Supreme Court decided in 1975 that Mount Laurel Township in

Burlington County must change zoning restrictions that excluded low-priced housing.

But the court seemed to retreat later from the full implications of that decision. In 1977, it ruled, in a case involving Demarest and Washington Township in Bergen County, that communities of one-family homes were not obligated to make room for apartments or other housing that would accommodate low-income people.

The distinction appeared to be that built-up places were permitted to stay the way they had been built, while "developing" communities had to allocate their vacant land in such a way that low-income housing would not be shut out.

Judge Morris Pashman argued in dissent that such a distinction was unfair. He wrote that communities "which have already attained exclusionary bliss" could "forever absolve themselves" of the obligation to share with their less built-up neighbors in spreading low-income housing throughout an area.

The Morris County suit would impose a regionwide obligation.

And Morris, although the current target, would not necessarily be the last. Mr. Penn asserted. "A similar challenge could be made in many of New Jersey's 21 counties," he said.

According to Miss Hurd, the state is determined to push not only for the sort of row housing and garden apartments that even some suburbs of single-family homes might grudgingly swallow, but also for mobile homes.

"Mobile homes definitely are included," Miss Hurd said. "We will be able to prove that they are healthful and safe. And they are the most affordable housing."