

~~W. A. Carter~~ CA - General 3/23/76

Continued testimony of Douglas S. Powell

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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX COUNTY  
Docket No. C-4122-73 ✓

URBAN LEAGUE OF GREATER :  
NEW BRUNSWICK, a non-profit :  
corporation of the Stat of :  
New Jersey; CLEVELAND BENSON; :  
FANNIE BOTTS; JUDITH CHAMPION; :  
LYDIA CRUZ; BARBARA TIPPETT; :  
KENNETH TUSKEY and JEAN WHITE, :  
on their own behalf and on :  
behalf of all others similarly :  
situated, :

Plaintiffs, :

-vs-

THE MAYOR AND COUNCIL OF :  
THE BOROUGH OF CARTERET; :  
TOWNSHIP COMMITTEE OF THE :  
TOWNSHIP OF CRANBURY; MAYOR :  
AND COUNCIL OF THE BOROUGH OF :  
DUNELLEN; TOWNSHIP COMMITTEE :  
OF THE TOWNSHIP OF EAST :  
BRUNSWICK; TOWNSHIP COMMITTEE :  
OF THE TOWNSHIP OF EDISON; :  
MAYOR AND COUNCIL OF THE :  
BOROUGH OF HELMETTA; MAYOR :  
AND COUNCIL OF THE BOROUGH :  
OF HIGHLAND PARK; MAYOR AND :  
COUNCIL OF THE BOROUGH OF :  
JAMESBURG; TOWNSHIP COMMITTEE :  
OF THE TOWNSHIP OF MADISON; :  
MAYOR AND COUNCIL OF THE :  
BOROUGH OF METUCHEN; MAYOR :  
AND COUNCIL OF THE BOROUGH :  
OF MIDDLESEX; MAYOR AND COUNCIL :  
OF THE BOROUGH OF MILLTOWN; :  
TOWNSHIP COMMITTEE OF THE :  
TOWNSHIP OF MONROE; TOWNSHIP :  
COMMITTEE OF THE TOWNSHIP OF :  
NORTH BRUNSWICK; TOWNSHIP :  
COMMITTEE OF THE TOWNSHIP OF :  
PISCATAWAY; TOWNSHIP COMMITTEE :  
OF THE TOWNSHIP OF PLAINSBORO;

CONTINUED  
TESTIMONY OF  
DOUGLAS S. POWELL

BOOK PAGE  
FRANK SCHALZMAN  
CLERK

MAR 23 1978

MAR 23 1978

DAVID A. JEROME, CLERK

1 MAYOR AND COUNCIL OF THE :  
BOROUGH OF SAYREVILLE; MAYOR :  
2 AND COUNCIL OF THE CITY OF :  
SOUTH AMBOY; TOWNSHIP :  
3 COMMITTEE OF THE TOWNSHIP :  
OF SOUTH BRUNSWICK; MAYOR :  
4 AND COUNCIL OF THE BOROUGH :  
OF SOUTH PLAINFIELD; MAYOR :  
5 AND COUNCIL OF THE BOROUGH :  
OF SOUTH RIVER; MAYOR AND :  
6 COUNCIL OF THE BOROUGH OF :  
SPOTSWOOD; TOWNSHIP COMMITTEE :  
7 OF THE TOWNSHIP OF WOODBRIDGE, :  
8 Defendants. :  
9 ----- :

MIDDLESEX COUNTY COURTHOUSE  
NEW BRUNSWICK, NEW JERSEY  
TUESDAY, FEBRUARY 17, 1976

14 B E F O R E:

15 THE HONORABLE DAVID D. FURMAN, J.S.C.  
16

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

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19 BY: MARTIN E. SLOANE, ESQ.,  
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and  
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21 Attorneys for the Plaintiffs

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Attorney for Defendant South Amboy
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FREDERICK S. AUMICK, C.S.R.,  
Official Court Reporter

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WITNESS

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1 CROSS EXAMINATION OF DOUGLAS S. POWELL BY MR. MORAN:

2 Q Mr. Powell, I show you the documents that have  
3 been marked in evidence as P-40 and P-49, both of which say  
4 they are master plans. One says it's a comprehensive master  
5 plan and the other is a comprehensive plan alternative.  
6 I wonder if you could explain to us just exactly what the  
7 difference is between those two documents.

8 A The comprehensive plan, which is P-40, is entitled,  
9 "An Interim Master Plan," and it was adopted by the  
10 Middlesex County Planning Board in November of 1970. It  
11 was intended as an interim plan to guide the planning  
12 decisions to be made by the County during the decade 1970  
13 to 1980 until a choice could be made with the municipalities  
14 and with the people of the County on two alternatives,  
15 a choice between two alternatives for a long range plan  
16 for the County out to the year 2000.

17 Now, P-49 represents one of those alternatives,  
18 "A plan Alternative" based upon a shaping on a conscious  
19 basis of the growth of the County out to the year 2000,  
20 and the alternative, or opposite to that, would be to  
21 allow the trend of development to shape the growth of the  
22 County out to the year 2000.

23 Q I take it then that P-49 is what the County  
24 Planning Board takes to be more of an ideal for the growth  
25 of the County rather than the interim master plan. Is that

1 correct?

2 A Yes.

3 Q Did either of these documents take into account  
4 the housing needs of the County?

5 A Yes. The interim master plan took into account the  
6 housing needs for the County and also the long range plan  
7 alternative took into account housing needs.

8 Q Did both of them provide or recommend--let me  
9 rephrase that.

10 Did both of the plans as they are set forth make  
11 provisions for meeting the housing needs of the County as  
12 the County Planning Board saw those needs?

13 A Both of them attempted to make provision for housing  
14 needs.

15 Q Which one did so in your opinion in a more  
16 acceptable fashion?

17 A P-20 or rather P-40 outlined a very specific program  
18 for meeting all of the housing needs that could be identified  
19 for the County during particularly the decade 1970 to 80  
20 with certain goals identified for needs of moderate and  
21 lower income people identified specifically for the then  
22 last year of 1975.

23 P-49, the comprehensive plan alternative, took into  
24 account the needs for moderate and lower income people  
25 in general terms by continuing certain of the policies that



1 were enunciated and laid down in P-40, but it didn't  
2 specify specific goals for housing for moderate and lower  
3 income people.

4 Q I see. Would it be fair to say, though, that  
5 the County Planning Board would prefer to see the housing  
6 needs, the future housing needs of the County, accommodated  
7 along the lines of P-49 rather than along the lines of P-40?

8 A I would say it's a matter of both. P-40, in its  
9 specific plan and program, which addressed itself primarily  
10 to the decade 1970 to 80, was of course adopted and  
11 therefore represents the planning board's view.

12 For the period between 1980 and the year 2000, P-49  
13 expresses the views that the planning board has set forth.

14 Q Then what you're saying is that any steps that  
15 are made in 1976 to meet the housing needs of Middlesex  
16 County should not be inconsistent with the long range  
17 comprehensive plan alternatives. Is that correct?

18 A I believe that is correct.

19 Q Now, one of the things that--strike that.

20 What factors did the plan alternative take into  
21 consideration, if any, in meeting the housing needs, the  
22 long term housing needs, which were not taken into account  
23 in P-40?

24 A Well, what P-49 attempted to do was place housing  
25 more in relationship to jobs, transportation lines, leading

1 to the concentration of jobs. Reduce the distances  
2 wherever possible between jobs and housing. It attempted  
3 to place the major new supplies of housing that would be  
4 in higher density planned unit communities in closer  
5 relationship to the areas that were more easily served by  
6 water and sewer facilities. Those were some of the  
7 principle considerations that were involved in shaping the  
8 land use arrangements in P-49.

9 MR. MORAN: Your Honor, I don't have any other  
10 questions at this time; however, I have subpoenaed  
11 Mr. Powell to testify as a witness on Cranbury's  
12 direct case and I don't want to preclude that  
13 possibility by waiving any further questioning.

14 THE COURT: No. You would not be precluded.

15 Mr. Cummins, I believe, is not in the courtroom.  
16 Mr. Busch.

17 MR. BUSCH: Just one or two questions, your Honor.

18 CROSS-EXAMINATION BY MR. BUSCH:

19 Q Mr. Powell, would it be your feeling that the  
20 proper way to handle the unmet housing needs would be for  
21 the municipalities to sit down voluntarily and in cooperation  
22 and try to work it out with the County?

23 A If the goals of those needs can be met on a voluntary  
24 basis, I would say it would be a preferable way.

25 MR. BUSCH: Nothing further.

1 THE COURT: Mr. Plechner.

2 CROSS-EXAMINATION BY MR. PLECHNER:

3 Q Mr. Powell, you're familiar at least in a general  
4 way with zoning developments within Middlesex County. Is  
5 that correct?

6 A In a general way.

7 Q And your office receives copies of changes in  
8 zoning plans, don't they?

9 A Yes.

10 Q And would you say, sir, that there have been  
11 substantial changes in the zoning in Middlesex County from  
12 1970 to 1976?

13 A There have been some changes, Mr. Plechner, but I  
14 don't think that it has changed the basic or overall  
15 character of the zoning structure that existed say in the  
16 period 1967 to '70.

17 Q There have been changes in the quantity of land  
18 zoned different ways?

19 A There have been some changes, yes.

20 Q And have there been changes in zoning concepts?  
21 In other words, new types of zones, P.U.D. and P.R.D. and  
22 that sort of thing.

23 A I would say that there are tending to be more  
24 applications of the zoning technique of planned unit  
25 developments, planned communities, as it varies in name

1 from municipality to municipality. Yes, I would. I would  
2 say there is a greater application of that concept.

3 Q And that concept or that application of that  
4 concept tends to provide for more available residential  
5 housing, does it not?

6 A It tends to provide a higher density of housing than  
7 the single family housing that had been a predominant  
8 characteristic previously, yes.

9 Q And you don't know the exact figures today, though,  
10 do you?

11 A Of what?

12 Q Of what the changes have been in available housing  
13 or the land available and units available for housing in  
14 Middlesex County since 1970.

15 A No. We have not done a complete inventory of the  
16 zoning provisions so that we could compare that to that  
17 we did in 1967.

18 Q Now, since 1970--in 1970, you made certain  
19 predictions as to the growth of the County with regard to  
20 population. Is that correct? And have you found it  
21 necessary to revise any of these predictions for figures  
22 since that time?

23 A Yes.

24 Q And in what direction have these figures been  
25 revised?

1 A The population projections have been lowered  
2 essentially and in terms of employment we are in the process  
3 of revising those and those would be revised downward as  
4 well.

5 Q Now, all of these figures are based on a dynamic  
6 process, are they not, where there are changes and revisions  
7 and reviews necessary from time to time?

8 A Yes. That is correct.

9 Q And that has been your experience here in  
10 Middlesex County, hasn't it?

11 A One must watch what is happening very carefully,  
12 monitor the changes that are occurring from year to year  
13 in order to be able to make corrections in forecasts and  
14 so on toward the end of revising plans and programs on  
15 the basis of the observed changes against what had been  
16 projected.

17 Q Would you know offhand the difference in your  
18 projection of population in 1970 as to what it would be in  
19 '76 and to what is actually now is in '76?

20 A I can't recall now what our projection for let's put  
21 it in terms of '75 was for population, but the actual  
22 population that has occurred in terms of growth since '70  
23 has been considerably lower than the original projection.

24 Q So that projections made and based on the '70  
25 figures would not be accurate projections today unless the

1 same data were updated and changes taken into account. Is  
2 that correct?

3 A Well, some projections might be valid. We had  
4 observed, for example, that job growth up to 1973 at least  
5 was going pretty much as had been projected from the period  
6 '67 to '75. The recession has shut off the job growth  
7 from '73 but that was going pretty much as projected.  
8 In terms of population, no. In terms of housing development,  
9 no.

10 Q Pardon me?

11 A In terms of housing development, it's down.

12 Q And housing needs therefore are down. Is that  
13 correct?

14 A Not in the same proportions as population. As long  
15 as the job growth was going on, we felt that the housing  
16 needs picture was being continuing to generate because of  
17 people being drawn to the jobs. As long as the jobs were  
18 continuing to grow, that would tend to bring people to  
19 fill those jobs.

20 Q And that changed in 1973. Is that correct?

21 A The recession markedly stopped the growth in jobs.

22 Q Now, sir, are you familiar at least in a general  
23 way with the availability of vacant housing units in  
24 Middlesex County?

25 A We had monitored--we had estimated vacancy rates

1 for housing units in our work between 1967 and '70, and  
2 we observed what the 1970 census had identified and we  
3 found out that our estimate work was confirmed pretty much  
4 by the census. Now, in terms of monitoring vacancy rates  
5 since that time, we have not done a systematic--since 1970,  
6 we have not done a systematic job of vacancy monitoring.

7 Q In other words, you won't have any idea if there's  
8 a higher percentage of vacancies then in 1970 or anything  
9 like that?

10 A I cannot answer that question, no.

11 MR. PLECHNER: Okay. Thank you.

12 THE COURT: Mr. Lerner.

13 MR. LERNER: No questions.

14 THE COURT: Mr. Alfonso.

15 MR. ALFONSO: Your Honor, I reserve the right to  
16 call Mr. Powell as part of my main case. Other than  
17 that, I have no questions.

18 THE COURT: All right, Mr. Alfonso.

19 Mr. Spritzer.

20 MR. SPRITZER: Similarly, your Honor, I would  
21 like to reserve my right to call Mr. Powell as my  
22 witness.

23 THE COURT: All right.

24 MR. JOHNSON: No questions, your Honor.

25 THE COURT: Mr. Booream is not in court, I believe.

1 Mr. Farino.

2 MR. FARINO: No questions, your Honor.

3 THE COURT: Mr. Lefkowitz.

4 MR. LEFKOWITZ: No questions, your Honor.

5 THE COURT: Mr. Bernstein.

6 MR. BERNSTEIN: Just a few, your Honor.

7 CROSS-EXAMINATION BY MR. BERNSTEIN:

8 Q Mr. Powell, would it be a fair statement that  
9 the bulk of the workers who live in Middlesex County are  
10 predominantly skilled workers and skilled workers rather  
11 than professionals and businessmen?

12 A That is correct.

13 MR. BERNSTEIN: That's all.

14 THE COURT: Mr. Stonaker.

15 MR. STONAKER: I would like to reserve the right  
16 to call Mr. Powell as part of my case, your Honor.

17 THE COURT: All right.

18 Mr. Baker.

19 MR. BAKER: No questions, your Honor.

20 THE COURT: Mr. Vail.

21 MR. VAIL: No questions, your Honor.

22 THE COURT: Mr. Gruber.

23 CROSS-EXAMINATION BY MR. GRUBER:

24 Q When you prepared, Mr. Powell, your numbers to  
25 determine the fair share of moderate and low income housing



1 in Middlesex County or any community within Middlesex County,  
2 did you conceive them to be a guide or a fixed definite  
3 number?

4 A The work that the planning staff did on calculating  
5 allocations of moderate and lower income housing to meet  
6 needs in the County was done over a several-year period  
7 and we did three different allocations through a calculation  
8 process. It was our intention as a staff, which was  
9 recommended to the planning board, that this would be  
10 considered a basis for then discussion with all of the  
11 municipalities in the county and that that discussion would  
12 be the basis for a negotiation process through which then  
13 the final numbers allocated to the municipality would be  
14 decided. Therefore, the work could probably be characterized  
15 as a guide so that the end process would be one which would  
16 be arrived at with all parties involved in a negotiated  
17 final product.

18 Q Mr. Powell, in P-49, which is the long range  
19 comprehensive plan alternative, on Figure 9, you outlined  
20 the potential water sources and supply for Middlesex County.  
21 Is that correct?

22 A Well, these are potential water sources within the  
23 county or within our study area. These would not be all  
24 potential sources.

25 Q All right. Now, why did you put them, put that

1 chart, in your master plan?

2 A I felt that a very important consideration in the  
3 growth of the county was going to be, of course, where the  
4 water supply that would be necessary to sustain that growth  
5 would come from, and to identify those resources in order  
6 that they might be developed, protected from being  
7 encroached upon to prevent their development.

8 Q And how would you protect these water supplies  
9 in the area of zoning?

10 A Well, in the area of zoning, for such items as the  
11 Crab Island Dam site, or the Six Mile Run Reservoir site,  
12 it would be important that the zoning preclude development  
13 on those sites in order that they could be protected.  
14 Now, for ground water supplies, we had considered that it  
15 would be particularly important to protect the recharge  
16 areas of those ground water supplies, particularly those  
17 swamp or stream areas through which much of the recharge  
18 can take place, and then some of our later studies have  
19 been directed toward the concept of how much of the total  
20 land surface area within a ground water basin, let's put it  
21 in those terms, how much of the total land area should be  
22 allowed to be developed in order that the recharging process  
23 can regenerate that supply adequately.

24 Q Would you consider it good planning to have as  
25 much of a density of population and building in an area

1 over an aquifer as not?

2 A As not over an aquifer?

3 Q Yes.

4 A There could be areas over an aquifer, and I'm now  
5 referring to the land surface that would be above the sands,  
6 not necessarily to the land area that is a recharge area,  
7 there could be densities in certain portions of that that  
8 would match the densities of areas that aren't over aquifers  
9 but it would relate to what was the total land surface  
10 that could be allowed to be developed, not so much the  
11 question of density.

12 Q I'd like to refer you to Figure 4 in the same  
13 document that I referred to before. This is the conceptual  
14 land use pattern map, and I ask you why you and your staff  
15 have designated certain areas on that map as conservation  
16 areas.

17 A Well, part of this relates to the natural resources  
18 that are in those areas. There are some areas that are  
19 swamp land; there are some areas that relate to recharge  
20 to the ground areas; there are also considerations of  
21 keeping the density very low in those areas so as to  
22 preclude an over-extension of utilities, such as, water  
23 and sewer. We had discovered or identified that most of  
24 the southern part of the county was not sewered or provided  
25 with public water facilities in contrast to the areas in

1 the central and northern part of the county. We had  
2 identified that the cost of providing the same degree of  
3 utilities in the ground would be extremely high in the  
4 southern part of the county and we hoped that by keeping  
5 the density low in that area and tending to concentrate  
6 the densities and development more in the central and  
7 northern part of the county that those costs could be  
8 precluded. So it's a combination of protecting the natural  
9 resources and conserving the expenditures for public  
10 facilities.

11 Q In a determination of the placement of housing,  
12 especially low and moderate income housing, would you  
13 consider the factor of mass transportation to be a pertinent  
14 consideration?

15 A We have considered that the provision of mass transit  
16 in relationship to moderate and lower income housing to be  
17 a factor. We felt it was particularly a factor in  
18 relationship to the elderly. That was some of the basic  
19 considerations relating to mass transit.

20 Q On Figure 3 in the same P-49, you designate a  
21 number of areas as being highly productive soils. Why  
22 would you as a planner put that in the Middlesex County  
23 Master Plan?

24 A Well, it had been identified that some of the soils  
25 in Middlesex County, particularly in the southernmost

1 municipalities, were of a very high quality. They were  
2 areas that were being tilled, under agricultural development.  
3 We had identified in our projections of jobs out to the  
4 year 2000 that there would still be agricultural jobs that  
5 could be sustained within the county and we wanted to  
6 identify therefore where the areas would be that should be  
7 considered for the continuation of agriculture in the county,  
8 and that was the purpose.

9 Q Would you say that agriculture is an important  
10 factor in your determination?

11 A We felt it was important enough to make provision for  
12 in the future of the county and we had identified this on  
13 this map, those highly productive soils that should be  
14 taken into consideration in formulating the final land use  
15 pattern.

16 Q And do you believe because the study of aquifers  
17 and water resources is an imprecise science that we should  
18 ignore aquifers and environmentally sensitive areas in  
19 determining the allocation of housing within the county?

20 A Well, I'm not so sure that I would be qualified to  
21 characterize how precise the science is of ground water  
22 technology.

23 We feel, as planners nevertheless, on the basis of  
24 what we know, that there does have to be a careful  
25 consideration of land use in relationship to the ground

1 water supplies and that protection must be considered very  
2 seriously for particularly those recharge areas, and in  
3 fact we are involved in a new two-year study to see how  
4 more precisely we can relate our land use policies in the  
5 county to the need for maintaining and protecting the  
6 quality of the water resources here in the county.

7 Q In computing the fair share allocation to the  
8 individual communities in Middlesex County, you did not  
9 take into consideration or did you take into consideration  
10 the number of people living outside the county but working  
11 within the county?

12 MR. SEARING: Your Honor, objection. This goes  
13 beyond the scope of direct examination.

14 THE COURT: That objection is overruled.

15 You may answer that.

16 A We took into consideration the number of jobs in the  
17 county and what the job growth would be into the future,  
18 and from that the number of households that would be  
19 related to those numbers of jobs to be created, and  
20 attempted then to relate the demands then created by these  
21 households to housing units needed in order to minimize  
22 the distance relationship and time relationship between  
23 the jobs and the housing. So that in essence people  
24 traveling into the county to jobs in the county, particularly  
25 those that would be drawn here by the growth in the jobs,

1 was taken into consideration in the manner that I've just  
2 described.

3 Q Did you add a factor in your number of jobs for  
4 those people, other than what you've said?

5 A Did we add a factor?

6 Q Add additional jobs because there were some people  
7 that lived outside the county and worked within the county  
8 on top of what you've already testified you did.

9 A No. We took into consideration the growth in jobs.

10 Q Which would account for those people?

11 A Which would account for the numbers of households  
12 that would be drawn to the county over the forecast period  
13 by reason of the job growth.

14 MR. GRUBER: May I have a minute, your Honor?

15 THE COURT: All right.

16 Q Are there considerations to be taken into account  
17 in determining a region that must of necessity require  
18 a planner to go say, for example, if we were trying to  
19 determine the region for South Brunswick, to go outside of  
20 Middlesex County in order to determine what region South  
21 Brunswick were in?

22 A Yes. I would believe that there are considerations  
23 outside of the county for different municipalities that  
24 would have to be taken into account.

25 Q Would where the people came from that worked in

1 South Brunswick and where the people worked at who lived  
2 in South Brunswick be considerations that should be taken  
3 into the determination of that region?

4 A I believe they should be viewed, yes, and given  
5 consideration.

6 Q Is South Brunswick influenced by Franklin Township  
7 with regard to this determination of a region for South  
8 Brunswick?

9 A I would say very modestly.

10 Q How about Princeton?

11 A To a much greater degree.

12 Q How about Trenton?

13 A To some degree, yes.

14 Q Mr. Powell, you have reviewed the zoning ordinance  
15 and the master plan of South Brunswick Township, have you not?

16 A I--

17 MR. SLOANE: I have an objection. This goes beyond  
18 the scope of direct examination.

19 THE COURT: I would think that that was so at this  
20 time, Mr. Gruber.

21 MR. GRUBER: I have no further questions, your  
22 Honor, but I understand that Mr. Spritzer from Metuchen  
23 will ask a number of questions and I defer to him.

24 MR. SPRITZER: Your Honor, I had originally  
25 passed but there is one small very brief sphere that



1 I would like to go into with your Honor's permission.

2 THE COURT: All right, Mr. Spritzer.

3 CROSS-EXAMINATION BY MR. SPRITZER:

4 Q Mr. Powell, I show you exhibit P-53. This is  
5 the C.D.R.S. application.

6 I call your attention to Page 68, and it's the summary  
7 for urban county municipalities, and Table 1 is a survey  
8 of housing conditions. Is that correct?

9 A Yes. That's correct.

10 Q And it refers to substandard housing.

11 A Yes, sir.

12 Q And there are twenty municipalities involved in  
13 this application. Is that correct?

14 A That's correct.

15 Q And just taking one municipality as an example,  
16 in Metuchen, what's the number of substandard units?

17 A The number is 166.

18 Q Now, I show you exhibit P-38, which is an  
19 analysis of low and moderate income housing needs in New  
20 Jersey, and I show you Page 21, and that covers Middlesex  
21 County. Is that correct?

22 A Yes.

23 Q And that covers all twenty five municipalities.

24 A That's correct.

25 Q Now, in that particular page, there is a column

1 called "Physical Housing" there. Is that right?

2 A Yes.

3 Q And is that divided into three categories?

4 A Well, I see four.

5 Q Well, the fourth, I think, is the total.

6 A Yes. All right.

7 Q All right. What are the first three categories?

8 A The three categories are deteriorated housing needs,  
9 dilapidated housing needs and lacking plumbing housing needs.

10 Q Now, could you just read, and I'm using Metuchen  
11 as an example here, read for Metuchen under deteriorated.

12 A 256.

13 Q And under dilapidated.

14 A 142.

15 Q And under lack of plumbing.

16 A 36.

17 Q And what would the total be?

18 A 434.

19 Q All right. Now, Mr. Powell, on the first  
20 document I showed you under the C.D.R.S. application, where  
21 did those substandards, so-called substandard units, come  
22 from? Do you know how they were arrived at?

23 A They are calculated.

24 Substandard units, as we define them in the application,  
25 consisted of two basic categories: the number of housing

1 units in the municipality that lacked plumbing, lacked  
2 interior, full interior plumbing facilities, and then  
3 another category, which was called dilapidated. And this  
4 was a calculated number. It was calculated because the  
5 census did not report specifically the dilapidated units  
6 for 1970 and they were calculated from certain factors  
7 which had been identified by the census and that were  
8 reported for municipalities, surrogate factors, which had  
9 a very high correlation factor to what had been formerly  
10 a census category called dilapidated units with plumbing.  
11 And some five or six factors were identified by the census  
12 as having these high correlation factors, and if you did  
13 the calculations using those correlation factors you would  
14 come up with the estimate of what had been formerly been  
15 counted in the census as dilapidated categories. We used  
16 just the two units without plumbing and units with plumbing  
17 that could be considered dilapidated.

18 Q These factors, were they--I show you what looks  
19 like an excerpt from I call it the 1970 census of housing  
20 plumbing facilities and estimate of dilapidated housing.

21 Were these the five factors used by the census?  
22 Could you read them?

23 A One, whether the units lacked central heat or  
24 building heat; whether the number of persons per room was  
25 1.1 or more; three, whether the head of household had

1 completed less than five years of school; four, whether the  
2 unit was a multi-unit structure; and five, whether the  
3 rent or value was below a specified cutoff. Those were  
4 the five factors.

5 Q And were those some of the factors that you used?

6 A We used three of our factors for making our calculations  
7 of the number of dilapidated units with plumbing.

8 Q Now, with respect to the factors used in P-38,  
9 were they not based on a formula, to your knowledge?

10 A As far as --

11 Q Involving income, household, unemployment and  
12 overcrowding of units.

13 A Well, if you're reading from it and indicating that  
14 that was it, yes.

15 Q Well, there has been some testimony here from  
16 one of the people from Tri-State that they used what was  
17 called a computerized formula.

18 A Yes.

19 Q And I noted in this application.

20 Was there any specific definition of substandard  
21 used in the 1970 census?

22 A No. I don't believe there was but that's just my  
23 own recollection. I'd have to go back.

24 Q So it's possible by taking the units that lacked  
25 plumbing plus the dilapidated units and you described how

1 that was arrived at, you came to a conclusion of what was  
2 substandard.

3 A That's correct.

4 Q And that's basically what is in the C.D.R.S.  
5 application.

6 A That's correct.

7 Q Now, do you have any opinion as to whether the  
8 formula used by you and the Middlesex County Planning Board  
9 gives a better picture of substandard than the formula  
10 used on Page 21 of P-53, where it's divided up into three  
11 parts?

12 A As far as the formulas used by us and the formulas  
13 used by presumably Tri-State as a back up or what appears  
14 in P-thirty what? 38?

15 A 38. They are the same basic formulas. Tri-State  
16 used all five categories; we used just three of those to  
17 calculate the number of dilapidated units.

18 Now, what Tri-State did was to go to a further  
19 category and included what was called deteriorating units  
20 and their method of calculating the number of deteriorated  
21 units I can't testify to but they incorporated that  
22 additional factor.

23 Q Would you say that in your opinion the use of  
24 deteriorating units now is a standard to be used or has it  
25 not been used recently to determine substandard housing?

2 A We have maintained that it is not a factor that needs  
3 to be used from a point of getting at a conservative, hard-  
4 core, basic number of units that are substandard. It is a  
5 fact that since the publication of P-38 the Tri-State  
6 Regional Planning Commission has agreed that the calculation  
7 of substandard units for New Jersey Counties, the deteriorating  
8 numbers, will be withdrawn. So it's the hard-core, similar  
9 to those that we have identified.

10 Q So if we took the last two columns, dilapidated  
11 and lack of plumbing, in this Tri-State and compared it  
12 to the substandards in the county, the figures should be  
13 approximately the same.

14 A They should be approximately the same. That's right.

15 Q All right. Thank you.

16 Now, Mr. Powell, the factors that you described that  
17 were used by the county and by Tri-State, were these factors  
18 used all over the United States, do you know, or just  
19 particular to the New York Metropolitan region?

20 A I would believe that they are rather widely used  
21 because there was a problem since the census was not  
22 reporting for 1970 the number of dilapidated units as it  
23 had previously, there would be a need to estimate. The  
24 census bureau and other national organizations devised  
25 methods by which one could calculate that category of  
dilapidated units and those were published nationally and

1 it would be my understanding that they are very likely to  
2 be used in other parts of the country.

3 Q In other words, for 1940, 1950 and 1960, there  
4 had been specific information on structural conditions that  
5 right from the census you could determine the number of  
6 units that were dilapidated.

7 A I can't testify as to the exact material that was  
8 published in '40, '50 and '60, but there was in the  
9 dilapidated category information, at least in 1960, that  
10 was published.

11 Q And that had specifically to do with the physical  
12 condition.

13 A Yes.

14 Q And 1970 that information was not published  
15 so we had to use various factors.

16 A Yes.

17 Q That were garnered from the census.

18 A Yes.

19 Q Is that correct?

20 A Yes.

21 THE COURT: Anything further?

22 MR. SPRITZER: I have nothing, your Honor.

23 THE COURT: Mr. Chernin, any questions?

24 MR. CHERNIN: No, your Honor, except to reserve  
25 the right to call the witness for the defendant's case.

THE COURT: Mr. Rafano, any questions?

MR. RAFANO: No questions, your Honor.

THE COURT: That will be granted, Mr. Chernin.  
Mr. Shapiro?

MR. SHAPIRO: Yes, your Honor.

CROSS-EXAMINATION BY MR. SHAPIRO:

Q Mr. Powell, I believe on your direct examination you indicated that the projected county needs for manufacturing would be in the neighborhood of approximately ten thousand four hundred some odd acres. Is that correct?

A For manufacturing industries.

Q Yes.

A But that would be the demand, total, by I believe it was the year 2000.

Q Now, you indicated manufacturing industries. That does not include certain other forms of industries. Is that correct?

A That's correct.

Q What industries are not included in that projection?

A In that projection of ten thousand total acres?

Q Yes.

A What wouldn't be included would be many other categories, the wholesaling industry, the industries that take in transportation, communications, utilities. It would not include the mining industry and certain others



as well.

Q Do you have any calculations for estimates as to what amount of acreage would be needed for these industries not included in your manufacturing category?

A Yes. That's all in report number 9, as we call it.

Q Broken down as to each particular type of use that you just testified to?

A Yes.

Q As to that ten thousand some odd acre figure, would the apportionment of that acreage be influenced by the presently existing industries in certain of the municipalities?

A Yes, it would.

Q And what type of influence would that presently existing industry exert?

A Well, we had identified that the growth of employment in an industry, a certain portion of that employment growth, will go on in industries that are already established in establishments that already exist. For example, the adding of an additional wing or adding of several bays of structure on an already existing site, that a certain proportion of the additional employment that can be projected for that overall manufacturing growth, let's say, will occur on existing sites, which therefore it's a close relation to where industries already are.

1 Q Did you come up with any sort of factor to  
2 indicate the percentage of growth to be accounted for by  
3 the existing industry expansion?

4 A We, in our projection work as where manufacturing  
5 industry was likely to locate in future years and the  
6 growth in employment of manufacturing industries is likely  
7 to occur, we studied the proportions that could be  
8 identified for previous decades of growth that had occurred  
9 at existing sites, and we used those proportions for our  
10 projection work and it varied from industry to industry.  
11 Let's say chemical industries to industries in contrast to  
12 that, let's say the fast growing industry in the county  
13 might be electrical machinery, and those percentages would  
14 vary.

15 Q Do you know if those individual percentages  
16 are included in any other documents submitted?

17 A I don't recall that a table is included there that  
18 shows those individual percentages. Those are back in our  
19 files. I don't believe it's shown.

20 Q Is it your opinion, Mr. Powell, that in addition  
21 to the expansion of an existing industry, the fact that  
22 industry already exists in particular locations will in  
23 and of itself attract certain satellite industries or  
24 other industries to that area?

25 A It--there are known observations that certain industries

1 seek to be in close relationship to other industries. We  
2 are aware of the desire of industries that are in the  
3 petrochemical category that seek out locations with fairly  
4 close proximity to a petroleum refinery in order to assure  
5 supplies of those petroleum products coming to them with  
6 ease and dispatch.

7 Q Has the influence of that desire also been  
8 accounted for in these projections?

9 A To some degree, but not in as scientific a way as we  
10 would have perhaps preferred, but to some degree it has  
11 been taken into consideration.

12 Q Are you suggesting that it is not an exact  
13 science but is speculative as to the extent of the industry  
14 that will come in as a result of existing industry?

15 A Well, I don't think that the--that one can characterize  
16 the projection of where these are going to be located as an  
17 exact science. There are some observed relationships.  
18 In a very large metropolitan area, those observed  
19 relationships can be used probably with a pretty good  
20 degree of accuracy. The smaller the area that you do down  
21 to, the greater degree of chance factors entering into  
22 the projections, forecasts, increases.

23 Q Mr. Powell, in a fair share computation, do you  
24 believe it wise to give consideration to where there is  
25 currently vacant residential land available?

1 A Where there is currently vacant residential land that--  
2 in our work that we did, we took an account of vacant land  
3 that had proximity to certain basic factors, such as, water,  
4 sewer and land, that was not related to the conservation  
5 of natural resources, protecting the environmental conditions  
6 and so on. It wasn't vacant land pure and simple.

7 Q Okay. What influence did that vacant land play?  
8 I'm trying to figure the relative priorities. I know that  
9 we have allegedly a certain unmet need. Ostensibly, there  
10 is a population existing in each municipality.

11 Vis-a-vis each municipality's purported fair share,  
12 what priority does the vacant land play in the allocation  
13 of your fair share?

14 A Well, it enters into it but it's modified by, as we  
15 had indicated, such things as proximity to water and sewer,  
16 proximity to transit, where people could reduce the amount  
17 of travel, the time and the distance to travel, and those  
18 were in certain of our calculations rather explicitly  
19 taken account of.

20 Q As to the water and sewer, are you referring to  
21 the existing water and sewer facilities?

22 A Primarily to existing water and sewer facilities  
23 and proximity to those, even vacant land that did not have  
24 water and sewer facilities, but in a reasonably close  
25 proximity to those areas that were, so that the cost of

1 extending the facilities would be kept at a basic minimum.

2 Q In arriving at a conclusion as to the cost of  
3 extending those facilities, were any considerations given  
4 to the land through which those facilities would be extended,  
5 the construction costs of extending them?

6 A Well, consideration in what sense? I'm not sure that  
7 I--

8 Q It's possible--do you agree that it's possible  
9 that certain areas are more amenable to the extension of  
10 water and sewer facilities than are others?

11 A It would be related to the capacity of the principle  
12 conduits that bring the water to those areas. If the  
13 principle conduit did not have a very large capacity, then  
14 that might pose a barrier and difficulty in extending the  
15 water and sewer to those lands.

16 Q As to the consideration of transit, what forms  
17 of transit were considered?

18 A Bus--to some degree rail, but it was primarily bus  
19 transit.

20 Q Mr. Powell, are you aware of any bus transportation  
21 facilities in the Township of Woodbridge?

22 A Yes. I think there are bus transit facilities in  
23 Woodbridge.

24 Q Do you know where from, what place to what place,  
25 they travel?

1 A I could not testify without refreshing my memory.

2 Q Mr. Powell, is it a function of the Middlesex  
3 County Planning Board to review the community development  
4 applications submitted by the municipalities in Middlesex  
5 County?

6 A Yes.

7 Q And is it also your function to approve or  
8 disapprove those functions?

9 A The function for those municipalities that are not  
10 included in the twenty municipality urban county application,  
11 the function is to review those applications as to their  
12 conformity to area wide plans and to review and comment  
13 on that conformity and to assure that the--that there are  
14 not going to be conflicts posed by those plans with let's  
15 say other plans applicable for each. The matter of approving  
16 or disapproving is really not in the A-95 review process.  
17 It's not the intent of the A-95 process to indicate approval  
18 or disapproval but to identify the degree to which the  
19 proposal is in conformity with area wide plans.

20 Q Do you know whether the Middlesex County Planning  
21 Board has had occasion to review community development  
22 applications submitted on behalf of the Township of  
23 Woodbridge?

24 A I believe we did.

25 Q And do you know whether or not the Middlesex

1 County Planning Board indicated those applications were in  
2 fact in conformity with the area wide plans?

3 A The Woodbridge plan, for example?

4 Q Yes, specifically.

5 A I believe that we did. I don't remember--I do not  
6 recall as far as the Woodbridge plan is concerned any  
7 problem that we had identified. Now, that is pure  
8 recollection and I'd like to refresh my memory by reviewing  
9 whatever we had said.

10 Q Let me ask you this, though. If your recollection  
11 is correct and that you did not identify any problems,  
12 would that imply that the plans submitted by the Township  
13 of Woodbridge were in fact in conformity with the area wide  
14 plans?

15 MR. SLOANE: Objection, your Honor. It calls  
16 for quite a conclusion.

17 THE COURT: I'll allow it.

18 You may answer that.

19 A If we did not find significant problems, I think that  
20 it would imply that it was in reasonable--a reasonable  
21 relationship to the area wide plans.

22 Q In considering the region to which the Township  
23 of Woodbridge belongs, would you consider municipalities  
24 outside the County of Middlesex?

25 A For the calculations of moderate and low income housing

1 needs that we have made in our studies, the region that was  
2 considered was Middlesex County plus Franklin Township.

3 Q As far as the region that Woodbridge is a part of,  
4 did you consider the Town of Plainfield?

5 A We did not.

6 Q Would you consider Staten Island?

7 A Not explicitly. We did not.

8 Q Could you explain what you mean by not explicitly  
9 as opposed to not at all?

10 A Our belief was that in balancing out the differences if  
11 each county did a calculation in a manner that we did  
12 there would be a very large degree of balancing out of those  
13 differences between the counties. It would not be a  
14 perfect process by any means and I believe our consideration  
15 was that in the balancing among the county a higher agency,  
16 such as the Tri-State Regional Planning Commission would  
17 indeed have to be involved in order to make adjustments  
18 for those inter-county balances that would have to be  
19 arrived at.

20 MR. SHAPIRO: May I have a moment, your Honor?

21 THE COURT: All right.

22 MR. SHAPIRO: I have no further questions at  
23 this time, your Honor, but I would like to reserve  
24 the right to call Mr. Powell as a witness on behalf  
25 of the Township of Woodbridge.



1 THE COURT: All right. You would have that right.

2 That seems to conclude the cross-examination of  
3 Mr. Powell.

4 MR. SLOANE: Your Honor, last week the Court  
5 admitted into evidence plaintiff's exhibit 50A subject  
6 to later authentication, and I would like at this  
7 point to authenticate that exhibit.

8 REDIRECT EXAMINATION BY MR. SLOANE:

9 Q Mr. Powell, I show you Plaintiff's Exhibit 50  
10 and I ask you to identify it.

11 A It is entitled "1970 Census Selected Population and  
12 Housing Statistics for Middlesex County."

13 Q And I show you Plaintiff's Exhibit 50A and I  
14 ask you to identify that.

15 A It has the same title. This one, 50A, has a slash  
16 across its upper right hand corner, indicating a second  
17 printing.

18 Q And is this 50A a publication of the Middlesex  
19 County Planning Board?

20 A Yes, it is.

21 MR. SLOANE: Your Honor, I move this admission  
22 into evidence again.

23 THE COURT: All right. P-50A will be marked  
24 into evidence.

25 MR. LERNER: The defendant Highland Park wishes

1 to also reserve the right to call Mr. Powell as its  
2 own witness at the time of its own case.

3 THE COURT: That is granted.

4 The Court is in recess.

5 (A recess is taken at this time.)

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION-CHANCERY DIVISION  
Docket No. C-4122-73

1 THE URBAN LEAGUE OF GREATER :  
2 NEW BRUNSWICK et al, :

3 Plaintiffs, :

4 vs. :

CERTIFICATE

5 THE MAYOR AND COUNCIL OF THE :  
6 BOROUGH OF CARTERET et al, :

7 Defendants. :  
8 -----

9  
10 I, FREDERICK S. AUMICK, do hereby CERTIFY

11 the foregoing to be a true and accurate transcript of  
12 the above testimony to the best of my knowledge, ability  
13 and belief.

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16 FREDERICK S. AUMICK, C.S.R.  
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