

~~ML~~ ML ~~Piscataway~~ Piscataway 29-June-1984

Certification in support of motion
to suppress testimony adduced
from Carla Jerman with respect
to the planner's conference with
attached transcript.

pgs = 16

ML000547V

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URBAN LEAGUE OF GREATER NEW	:	SUPERIOR COURT OF NEW JERSEY
BRUNSWICK, ET AL.,	:	CHANCERY DIVISION
	:	MIDDLESEX COUNTY
Plaintiffs,	:	
	:	DOCKET NO. C4412-73
vs..	:	
	:	CIVIL ACTION
TOWNSHIP OF PISCATAWAY ET AL.,	:	
Defendants.	:	<u>CERTIFICATION</u>
	:	
	:	
	:	

PHILLIP LEWIS PALEY, of full age hereby certifies
as follows-

1. I am the Township Attorney for the Township of Piscataway. I have represented the Township of Piscataway in this litigation since the remand from the Supreme Court of New Jersey, and I served as trial counsel during the seventeen trial days of this matter, between April 30, 1984, and June 1, 1984.

2, I respectfully submit this certification in support of the application of the Township of Piscataway to suppress all testimony adduced from Carla Lerman, the court

appointed expert, and other witnesses, regarding the use of and application of what has become recognized as the "consensus methodology".

3. During early 1984, following a status conference at which all counsel were present, the court determined that, among other reasons, the interests of judicial economy and administration would best be served in this complex proceeding by arranging for a conference with the planning experts anticipated to be offered at trial by each party to the case. Presumably, the court's thinking was that some consensus might be reached by the welter of planning experts regarding a determination of present need region, prospective need region, appropriate population data, and allocation formulae for both present and prospective need. Accordingly, counsel were advised that an initial conference was scheduled by the court (if memory serves, during late January or early February, 1984) and counsel were requested to insure that all experts expected to be used for testimonial purposes be present at such conference.

4. I have a specific recollection of inquiring of the court, through its law clerk, Mr. Surenian, whether counsel were expected to be present at the initial conference., and I recall Mr. Surenian's advice that the Court wished ~~ti ^ C I S o S ^ S r ^ T C i e o n l y t h e ^ p a r t i e s x p e r t s v~~
municipality attended the initial

~~conference; no municipal attorney attended the subsequent conferences.~~

5. ~~Three conferences of the parties' experts took place between late January or early February, 1984, and early March, 1984. The testimony adduced during this trial has indicated the scope of those conferences. At no time was I aware that anyone but the parties' experts and Ms, Lerman had attended any of these meetings.~~

6. On Thursday afternoon, June 21, 1984, I learned for the first time that ~~I^emejth Mei&erv Esq. and another attorney, Mr. EjlS&ar-f^^^^a both representing the office of the Pirb+ic==Xdv^K^e of the State of New Jersey, apparently participated in at least one of these conferences, the third. Although Mr. Meiser represents no party in connection with the instant litigation, he does^ represent the Office of the lic Advocate in analagous litigation involving a number of Morris County municipalities, arguing for the invalidity of a number of municipal ordinances, on the same bases that the representatives of the Urban League (now "Civic League") of Greater New Brunswick have argued in the instant cause.~~

7. I confirmed that Mr. Meiser was in attendance by speaking with the ~~Assisan^rTo^xistil-p^ Planner^oif Piscataway Township, Richard lia, who was present at that conference. Mr. Scalia informs me that Mr. Meiser took an active~~

~~part in the discussions, arguing forcefully for and against certain propositions offered by one or another planner. I further believe, although I have no firsthand knowledge to support this belief, that ^{^r_3::Mejts^rc^a^z3sie<|^} be present by Carla Lerman^{^i^it^} the Court's knowledge, purportedly to reflect the position of the Office of the Public Advocate, which position, arguably, was deemed to represent the~~

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"public interest".

8. As to the question of "public interest," I have previously argued at trial that neither the Court nor any litigant has a monopoly on the ~~pnbi ijCLiziategejj^~~: As a municipal representative, I find it more than disconcerting to have plaintiff in this case identified as representing the public interest, the builder - plaintiffs deemed to comport with the public interest, and to have a municipality operating under a democratic form of government which has utilized that form of government to develop its resources in accordance with the public interest considered adversarial to the general welfare. How a public body cannot be deemed to represent the public interest escapes me. I daresay that the citizens of any municipality feel that their municipal

* Appended hereto is a copy of several pages of the deposition of Geoffrey Wiener, a planner, taken in the Morris County litigation. Mr. Eisdorfer, serving as counsel in that deposition, contends that he was asked to participate through the^{^nfe^v^irt+niizio^^[hB^trrr+>} see pp. 21, 22 of the attached transcript.

attorney represents the "public interest" at least as effectively as any institution, agency, or private corporation.

9. More to the point, however, the participation in the consensus conference of an attorney-advocate whose position, for all practical purposes, is substantially identical to that of the plaintiff in this case, creates a ~~strong doubt as to the impartiality and independence of the results.~~*

Ha&-any nvu^XcXpalz^st to ErJTe^riJ-nvolved in any Mount Laurel litigation. ~~See E. C. P. H. 2, 3~~ in any portion of the planners dialogue, without the prior knowledge of the plaintiffs in this action, plaintiffs would have undoubtedly (and properly) objected to that participation. Plaintiffs would be legitimately concerned that the results of the planners conference would have been skewed by a municipal advocate to provide some greater weight to the position of the municipality than planning analysis would suggest, in the abstract.

10. Dealing as we are in a relatively novel discipline, that being the need to develop a cogent fair share methodology to effect an achievable result, the participation of any lay (i.e., non-planner) person, parti-

181 A2d 390
190 A2d 374
* As to the requirement of impartiality, see State v. Lanza, 74 N.J. Super. 367, 374 (A.D., 1962), aff'd 39 N.J. 595 (1963), cert. den. 375 U.S. 451 (1964), see also 95 A.L.R.2d 391.

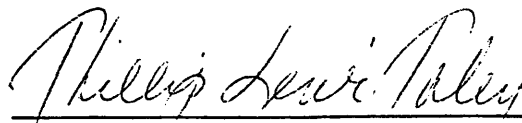
cularly one who strongly advocates a particular end, cannot be said to have had ~~olirl5=rainlma+z^ffHnt~~. If nothing else demonstrates this, the very results reached by the final consensus report of April 2, 1984, providing ~~numbers~~ substantially ~~irr^x^^s^zoSz^whsttr^iB^a^^y^~~ for one, ~~feels~~ ~~appropriate^~~ achievable, and reasonable for itself suggests ~~some anti-municipal bias~~. Certainly, no plaintiff during the trial seriously contended that the numbers should be higher. All builder-plaintiffs were content to rely upon the consensus report; none presented an independent expert. This bias is further demonstrated by the testimony of Allan Mallech, plaintiffs¹ expert, during Piscataway's compliance hearings, rendered on or about June 30, 1984 when Mr. Mallech testified that the consensus formula was devised to produce additional housing units, and to insure that no municipality, whatever it may have done prior to 1980, could possibly meet its prospective need obligation, regardless of its existing housing stock.

11. No recording or verbatim perpetuation of the conversations held at the various meetings of the planners was made. I have no knowledge of any direct substantive communication between the Court and the participants at any such meeting? I ascribe no intentional impropriety to anyone. As lawyers, however, we are expected to maintain a continual surveillance for the appearance of

impropriety: the appearance itself is sufficient to cause professional censure and reprimand. The presence of an attorney-advocate at a meeting which, by court direction and limitation was to include only planning consultants, reflects an appB^raiTcs^sfizlmpropri^t^* and lends an aura of partiality to the entire process.

For this reason, I respectfully urge the court to enter an order that all testimony relating to the development of the consensus methodology be struck and to take such other procedural steps in accordance with that order as may be deemed appropriate by the court.

I certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me are willfully false I may be subject to punishment for contempt of court.



PHI-LLIP LEWIS PALEY

DATED: June 29, 1984

1 you discussed it with other that, the 22 persons who
2 am named in the consensus report?

3 A I believe I also discussed it with persons in my
4 office.

5 Q And want particular persons which you
6 discuss it with in your office. What are not named as one
7 of the 22 because I understand it. Heles is one of the
8 22 also?

9 A That's correct. I believe Richard Price is a
10 major —

11 Q For the record, Mr. Price is an
12 attorney involved in the CIA. Is that correct? From
13 the Public Advocate's office?

14 A That's correct.

15 Q And Mr. Biarrai what was his function
16 so that you consult with him on this committee
17 methodology?

18 A I'm an expert witness in several cases in which
19 he is the attorney for the plaintiff.

20 Q Now, could you indicate to me
21 whether Mr. Kiadorfer or Mr. Kisor or Mr. Diabara were
22 involved in the case that you have heard which
23 Helcov was the Urban League case before Judge
24 Sarantelli?

25 A I don't believe they participated.

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1 Q They wer* not the attorneys that had
 2 retained your «rvir:<j3 In chnt particular case?

3 A \\'o.

4 Q A.T*. aft*?r th> discussions that you had
 5 with Mr. niacfat<5r, Kr. Maia or. And Mr. !:isdorfer, did
 6 you go back to tj>o cons'sisun rvsetinas with other things
 7 in mind or suggestions t^iar they had criven you?

8 A The bul>: of thr> dlscunaions that we had ware
 9 around thf> tim*i of th<- third and lant mftetin<T and I
 10 can't say that I went JT^rci^^with anything new. Aa a
 11 result of thos*! disnn-i'rsionK, I think that ;*rinapi noma
 12 of thf> reservation** ty><t I hnd wore, you know,
 13 confirmed or validahad V/ thoir n;vlpions and soira of
 14 the positive ftj?^lingn T had about tho n<thodology wore
 15 also validated by their, opntions.

16 Q Did you «ank any advice with
 17 reference to tMa canB<in-su<i nrthodology from any othsr
 18 attorcncysi? *

19 A I don't believia so, no.

20 Q Who vG5 tic> attorney that wAH uainq
 21 your ne>rvic(9a as a vjtncv.n in tht? Urtran League caao?

22 A Carl Hisqaier.

23 Q W's t-her^ nivf direction by Judge
 24 Skillnan nivf:n to you on ;i tipeciCic basis ao to who
 25 uhoul<! develop thiu j'articular methodology?

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X)U I say Skillman or Serpentelli?

A T tilink von s-iid Skillmar.

Q I rein rarpentelli.

fc. I don't recall any apwefic instructions as to who should participate in the development of this methodology. The person who was first who were I think first, you know, who were in order to contribute their particular insight. I believe when it came down to the matter of polling the group only ~~persons were included in the poll.~~

Q Did the professional planners who were included in the poll include J.R. Mallach?

A Yes, they did,

and I believe any other individual in that list of 22 persons, who are not professional planners licensed in the State of New Jersey if you know, are from New Jersey?

A I recall that the majority of the persons who are listed in the summary methodology report prepared at the time that the development of this methodology was discussed?

Q Is anyone else besides from the 22 persons who are listed in the summary methodology report prepared at the time that the development of this methodology was discussed?

A For that matter, those listed?

21

Q Other than those listed.

A I believe At the last meeting, Ken Meiaer and Steve Eisdorfer attended and participated in discussions, but didn't participate in the. poll3.

Q So Mr. Meiser and Mr. Eisdorfer were present at the meeting which took nlace in Judge Serpentelli*3 courtroom in ord^r to discuss the development of this consensus metliodology Is that correct, 3ir?

A I believe — ray understanding is that they were invited as representatives of: ^fs=pi^tel+si+iitBzs3irwrES=: regard to the development of this methodology since it was seen as something that did concern the interests of lower income persona throughout the State and Mr. Meiser and Mr. Fisdorfer are Public.Advocates to reprnsent those interests.

Q So, could you tell me who invited Mr. Maiaer and Mr. Sisdorfer to attend the last meeting during the time that the consensus methodology was discussed?

A I don't have any direct knowledge.

MR. FTSroRFrRi Mr. Vecchio, I can make a representation for the rncor<2 if you'd like. Let mo just represent for tho record that Ken Heiser and I w«re t.her-2 at the invitation of Judge Serpentelli. direct

1 Q W... thnt in th* nornlnrj or afternoon?

2 A I... ir vpn rr.orniurr and tally afterr.oor.
3 nrtartinq arounr! hen, fini<?hino up around two, 2:30.

4 Q I g<R. ft-o i-netint;)f>*fore: that you ba-l
5 misa^fl, cermet?

6 A That's correct,

7 Q pid you)no^w ho^T! lor.g th<! nf-et^{ing} the
8 day l'.oforc lastncl?

9 A ^{TT}o, I 'ion't.

10 Q j>x\l {ho^rrirHt roe.r:ing that you attended,
11 how long rtid t)int lA^t, sir?

12 A I believf! that or** ntp.rtfsd at nia.i end w-nt
13 prett/ nuch T13 ^ny until nVout four or 4s30.

14 Q ^ylbyr, during the timu of the third
15 neet.ina, did Hr. Kisdorfr 6Ptc*.r Mr. Meiser make any
16 comments with reference to the methodology?

17 A Yes, they did.

18 Q Do vou recall what, if any, comber.ts
19 they nmdt* and dr-sirjiisco <:« portfoa? that made • rh»
20 comn&nt and r.iv-i rar-.! o^ thv ,»trio» to 'v»hcn it vao fsade

21 A T a«cr» tr- recall t)nt v<* di"? have a dincun^ion
22 about the adema« ~~inent factor~~
23 ~~for reallocation need and that Hr. Kisdorfer made the~~
24 consent that he; f<il t it *as ~~very necessary.~~

25 Q Was the comment, in f^r⁴-t v-nt it was
innuf ficifi'it?

1 A I btjli*iv< hi< opinion vaa If la Insufficient.

2 Q I see.

3 i?uhsc;*i>xt thun to the conponsua
4 nethodology aad during that period of time you discussed
5 the matter with Mr, \:i?-lnrf<r, TB that correct?

6 A Y<<3_r I hava.

7 Q And aftor ho o;)ii;d that it vas
8 insufficient durlng the. consensus methodology hearings,
9 you subsequently in tin-3 fr<r-o car*? no vit>\ thia fifth
10 >]lr>c.at<on factor. JH thnt correct? To the? consensus
11 methodology?

12 A It was subsequent to this.

13 Q Now, did Mr. Meiser make any iei^p^nts
14 during thv tin>> of ~~the consensus hearings~~ or meetnqa
15 that occurred?

16 A Yes, hw did.

17 Q And would you indicate to nr v;hat
18 commentK Mr* Meiser made?

19 A I really "icn't recall.

20 Q >>>t ho r'id <.iincurs tiw consensus
21 nethodology?

22 A He certainly offered ~~an onl~~ SiSa^~~^^~~ certain
23 aspects.

24 Q (Of th>). coriensus methodology. Ts that
25 correct?

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A That's correct.

Q In the TV... parting that were present listen to the comments that were... Vv Knssrs. Kigriorfar and Reiser?

A Some did and some didn't.

Q My Hstan, I munn, sir, did they pay attention when the two gentlemen opok?

A For the no. part VCB,

Q And were there some people that for the most part didn't?

A I believe so.

Q And could you recall which listener and which OJPM didn't based upon your observation of the third notation on the consensus methodology?

A I really couldn't. It was a large group. They were tired when they were, you know, were not as attentive.

Did C-irlrt T. >mn' listnn?

A Yes, I believe she did.

Q My nil.; H sv^iil* to th* cr.r>kn>tP that worn l'!* hv Messrs. FimSerfr <nt ^r. i^i<<- TB that correct?

A I r-oliavo so.

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Q A* woj 1 an tho comriPinti that w*? rade

«Jveryor.a class?

A That's correct.

Q *ni* fiver/onc'fi rovvcntH were considered
;uito carefully in th^ dev^loorcrnt of this particular
mathodology. Is that correct, sir?

A V?all, I believe that on tMa rf^ort that Carla
German prepared, datod April 2, iy^i.cnt*m that really
refloctn the ofjinnonn of the* r^r^oni listed ori P»ae 1 of
that report. TCS^frtrTi!i55E^o:3^:^^t the opinions of

Mr. Eisdorfer and Mr. Meiser were incorporated into a
summary of the consequ^thodology.

Q Can you tell jn^, sir, whose ocinions if
thoqe two warr» non included in tho consensus hsthodolo^y,
could you t<ill jre, «ir, what particulnr opinions wero, in
Cact, included and which particular o^tnio^s of whafc
persons were oxclnd<d?

A My sense is that anybody who expressed an opinion
were taken into consideration in the development of the
final report.

Q Includino tho norrents of Messrs. Meiser
ard Flodorfer?

A 'Jo. A? I iunt ntatnd, T*n not rurv t^t th^ir
opinions fro rofl^ct^d hp»p5»» *i v aren't: crK: ""^ th^ 2?
planners and houim nypc.rtn th.it «ro listscl in Lli« report..

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