

AD - Bernards

~~Date~~ 1976

~~#~~ Allan Deane Corp v Twp. of Bernards

pgs 12. Defendant's first request for admission.  
(has some handwritten notes in it)

AD0000089

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Attorneys for Defendants

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - SOMERSET COUNTY  
DOCKET NO. L-25645-75 P.W.

THE ALLAN-DEANE CORPORATION, a :  
Delaware corporation, qualified :  
to do business in the State of :  
New Jersey, :

Plaintiff

-vs-

Civil Action

THE TOWNSHIP OF BERNARDS, IN THE :  
COUNTY OF SOMERSET, a municipal :  
corporation of the State of New :  
Jersey, et al. :

FIRST REQUEST FOR ADMISSIONS

Defendants :

TO: Mason, Griffin & Pierson, Esqs.  
Attorneys for Plaintiff  
201 Nassau Street  
Princeton, NJ 08540

SIRS:

Defendants herewith request plaintiff to admit, within  
30 days of service hereof upon you in accordance with Rule 4:22,  
the following:

1. Plaintiff was originally incorporated in 1969 as a  
wholly owned subsidiary of Johns-Manville Corporation.

2. Plaintiff is presently a wholly owned subsidiary of a subsidiary of Johns-Manville Corporation.

3. Plaintiff was formed by Johns-Manville Corporation for the purpose of acquiring, holding legal title to, and developing land which Johns-Manville Corporation had decided to buy with the use of its own funds.

4. In or about the year 1969, plaintiff took title to a contiguous tract of land in Bernards and Bedminster Townships which, with minor changes in area, now consists of approximately 1,071 acres located in Bernards Township and approximately 461 acres located in Bedminster Township.

5. The source of the purchase price paid for the aforesaid lands was Johns-Manville Corporation.

6. The average price which Johns-Manville Corporation or plaintiff paid for the aforesaid lands in Bernards Township and Bedminster Township was approximately \$3,500 per acre.

7. When plaintiff took title to the aforesaid lands, both plaintiff and Johns-Manville Corporation knew that the land in Bernards Township was zoned for single-family residences on 3-acre minimum lots, and that most of the land in Bedminster Township was zoned for single-family residences on 5-acre minimum lots.

8. Johns-Manville Corporation acquired the aforesaid land in the name of Allan-Deane Corporation as an investment for the purpose of making money.

9. As of December 31, 1969 Johns-Manville Corporation had assets in excess of a half billion dollars and no long-term corporate debt.

10. The Johns-Manville Corporation annual report, 1969, includes the following statement:

"As a matter of policy, Johns-Manville aggressively seeks growth both in its present businesses and in new lines of endeavor, where the Company's raw materials, manufacturing know-how, marketing and sales experience offer the best profit potential. To coordinate the implementation of this policy two new corporate departments, each under the direction of a vice president, were established in 1969 -- 'Planning' and 'Growth and Development'.

"The Corporate Planning Department will organize and coordinate short and long range planning throughout the Company; develop growth strategy; identify, review and recommend growth businesses and markets which Johns-Manville should consider entering or participating in on an expanded basis.

"The Corporate Growth and Development Department will implement approved growth plans through acquisition, new business development, or licensing agreement.

"An initial project, combining the efforts of both new departments, resulted in the Company's purchase in November of 1,363 acres of land in Somerset County, New Jersey, for investment and the eventual development of a balanced community. Responding to the growing demand for leisure time facilities, Johns-Manville is working with the local planning authorities to develop the area for both recreational and compatible residential use."

11. The Johns-Manville Corporation annual report, 1969, includes on page 16 a picture of a topographic model of the Allan-Deane property in Bedminster and Bernards Townships with a caption reading:

"Topographic model of Johns-Manville's 1,363 acre New Jersey land development project is reviewed by —

1. Fred L. Pundsack, Vice President for Research and Development.

2. George C. Sillion, J-M Director and President of Butler Manufacturing Company.

3. George B. Munroe, J-M Director and President of Phelps Dodge Corporation.

4. W. Richard Goodwin, Vice President for Corporate Planning."

In the picture Mr. Goodwin is holding a pointer which he is directing to the topographic model.

12. Johns-Manville Corporation annual report, 1969, states corporate assets as of December 31, 1969 at a figure of \$501,829,000.

13. Johns-Manville Corporation annual report, 1975, identifies W. Richard Goodwin as President and Chief Executive Officer. The W. Richard Goodwin who in 1975 was President and Chief Executive Officer of Johns-Manville Corporation is the same individual who in 1969 was Vice President for Corporate Planning of Johns-Manville Corporation.

14. Johns-Manville Corporation annual report, 1975, contains a consolidated balance sheet for Johns-Manville Corporation and subsidiary companies. The said consolidated balance sheet shows total corporate assets of \$1,077,380,000. Said consolidated balance sheet includes the following entry under the heading "Assets":

	(Thousands of Dollars)	
	<u>December 31</u>	
INVESTMENT IN AND ADVANCES TO REAL ESTATE SUBSIDIARY	1975	1974
	<u>21,577</u>	<u>17,126</u>

15. The Passaic River is among the 10 worst polluted streams in the United States of America.

16. Under the present state of technological development,

*1. selected text  
# 2*

*Engineer*  
7  
economically feasible sewage treatment plants inevitably introduce pollutants into the receiving waters.

*Yes*  
17. A large part of plaintiff's land in Bernards Township drains naturally into the Dead River.

*Quantity of surface runoff*  
*Development*  
18. Development of plaintiff's land in Bernards Township as proposed by plaintiff would cause a large increase in the quantity of surface water runoff.

*No*  
*to*  
*increase*  
*in*  
*runoff*  
19. An increase in the surface water runoff from the plaintiff's lands into the Dead River would cause flood problems downstream.

*Yes*  
20. The Dead River flows into the Passaic River.

*Yes*  
21. Flooding problems along the Passaic River downstream from the Dead River are already severe and a matter of public concern.

*Yes*  
22. The Governor's Commission to Evaluate the Capital Needs of New Jersey stated in its Volume 2, Research Report, April 1975, at p. 46:

"The Commission feels that an immediate change in priorities must be made. Greater emphasis should be placed on projects for cleaning up polluted water and for rebuilding outmoded sewerage systems in the urban areas. A correspondingly lower emphasis should be given to construction that will cause urban sprawl. There is simply not enough money, nor is it desirable, to provide sewers for every community in New Jersey. The undesirable effects of excess sewer capacity are all too evident and have been documented in several reports. Among these are the report of the study contracted by the Department of Community Affairs to be released shortly and entitled Secondary Impact of Regional Sewer Systems, and the report of a study done by the

Environmental Quality Council in 1974, entitled  
Sewers and Suburban Sprawl." (p. 46)

The Commission's recommendations included the following:

"A study of a Master Water Cycle Plan based on conservation, desirable land use, and population growth should be initiated immediately, and no major financial State involvement in water supply projects should be contemplated until justified by that study. Based on some preliminary estimates, the State's share of the capital needs in this area may range as high as \$185 million. \* \* \*

Priority should be given to developed areas needing rehabilitation over new projects.

A strict administrative review should be required of all funded sewer projects to prevent unplanned growth through excessive overbuilding."  
(p. 64)

23. In June 1975, the Department of Community Affairs issued a report entitled "Secondary Impact of Regional Sewerage Systems, Volume 1" in which the following general recommendations were made:

"The State of New Jersey should regulate investment in sewerage systems to insure that the considerable sums it controls are used first to eliminate the tremendous number of water quality problems across the State and secondly to provide extra capacity for future populations." (p. 8)

"Rural areas in New Jersey should be considered a highly valued resource and protected from extensive sewerage systems where need for service is not demonstrable.

"In the absence of a State land use program, the best course of action is to keep development options open for the future as much as possible, rather than locking the State into configurations dominated by sewerage plants. This could be done by concentrating investment on the severe problems in already built up

areas and only investing in minimum essential capacity in those developing areas where problems exist and headwaters or recreational waters must be protected. A further step in carrying this course of action should be increased enforcement of the regulatory power of the DEP in dealing with septic systems and package treatment plants." (p. 9)

The Report states the following conclusion at p. 58:

"Lack of concern about secondary impacts exist at all government levels. Estimating the long-range impacts of growth induced by sewers is a complete task demanding many different kinds of expertise. Before the issues relating to growth and its impact can be clarified for the public, a great deal of analysis has to be done. Direct or primary impacts are much easier to measure and understand, such as those dealing with the flora and fauna on the sewer rights of way, the number of trees to be taken down in order to put in pipes, etc. Thus consultants put their emphasis on primary impacts and slide over the secondary ones in environmental assessments. Furthermore, besides not appearing in the assessment, the effects of the proposed system on future water supply and water quality, on runoff and flooding, on increases in municipal service costs, on the character of the area are usually not factored into the earlier planning and design of the system. So secondary impact analysis is almost totally absent from the decision-making process."

24. The State of New Jersey, County and Municipal Government Study Commission, in a report entitled "Water Quality Management: New Jersey's Vanishing Options", issued June 1973, stated:

a. "Much of New Jersey's water is polluted. Each day more than one billion gallons of inadequately treated domestic and industrial wastes are spewed into the State's waterways. All the major rivers in northeastern New Jersey, from the Ramapo to the Raritan, and all the major streams in the Delaware River Basin from Trenton



to Cumberland County fail to meet State water quality standards. The Passaic River and the Arthur Kill are among the 10 worst polluted streams in the nation. Even the Atlantic Ocean is polluted -- all ocean shellfishing grounds from Sandy Hook to Beach Haven within one mile of the shoreline have been closed to harvesting due to potential health hazards.

For years, New Jersey has been heading for a water quality crisis. Urban growth, suburban sprawl, and industrial development have hastened the deterioration of water quality. As a consequence of the expanding and competing demands, fresh water must be used and reused many times throughout the State. Along the Passaic River, for example, the Passaic Valley Water Commission (PVWC) takes 75 million gallons daily from the river at Little Falls to supply over 400,000 people in sixteen municipalities. Sewage treatment facilities located above Little Falls discharge 50 million gallons of treated domestic and industrial wastes daily. This means that during the summer months when the river's flow is 100 million gallons daily, the PVWC actually supplies at least 25 mgd of reused water. \* \* \*

"Water is a basic resource; it is necessary for sustaining life. The use of rivers, streams, and bays as sewers for dilution and transport of wastes negates their use as a source of water supply, as a base of recreational activity, as a habitat for fish and wildlife. In the extreme it may mean the survival of the State's economic base. In the headwaters of the Passaic River alone, continued degradation of water quality could contaminate the potable water supply for millions of people." (p.1)

b. "Municipal planning boards rarely consider water quality when giving approval for more and more construction. Their lack of comprehensive consideration is now evidenced by the bans on further development. In New Jersey, a State with critical housing shortages, the building bans will be felt in those communities which have recently developed or are now rapidly developing. Even beyond the question of housing, there is the issue of the basic economic vitality of the State. Rapid growth has occurred at the expense of the overall quality of life and the impact is significant:

Formerly unregulated discharges by industry must now be replaced by modern treatment facilities.

Municipalities that fostered rapid growth without providing adequate sewerage facilities will face a dramatic halt to development and a high bill for new wastewater treatment facilities.

The seashore recreation and fishing industries will remain threatened as long as water pollution and the ocean disposal of sludge and other harmful wastes continues.

Land use and community development planning will continue to be incoherent as long as water quality is not viewed as an equal, basic factor in decision-making.

The failure of water quality management to date affects these and other broad governmental performance considerations. Most of all it points up the need to reassess basic land use planning principles if there is to be more orderly and beneficial development in the future. Finally, it reflects a need to define and establish institutional arrangements for coordinating the water quality goals and implementing the activities of the various governmental units." (p.5)

c. "Without controls it is impossible to force [sewerage] authorities to plan with municipal, county, and State planning agencies. The absence of integration and coordination which was observed in all twenty-one counties, has thus resulted in a hindrance to orderly development and wanton sewerage of headwater areas, flood plains, and wetlands which in turn precipitated development where it should not occur. Sewers are meant to protect the environment from the adverse impact of polluted waters. It seems a contradiction that millions of dollars are being expended without stringent controls and that the net result is often environmental degradation and uncontrolled growth patterns." (p.97)

25. Tri-State Transportation Commission, in a report entitled "Regional Development Guide - Technical Perspectives", November 1969, stated on pp. 25 to 27:

"The Region's hydrologic cycle, with its network of rivers and streams, is its natural waterworks. Naturally available water is the Region's most important natural resource. For smoother performance the Region must use this resource as completely and effectively as possible. Accordingly, the form of this resource and the way it functions may determine where development should locate, and where it should not.

"An urban region needs a plentiful and continuous supply of water for many different purposes, both direct and indirect. There are many more such purposes requiring much greater quantities than we usually suspect.

"Household, industrial and public water supplies are essential to the existence of an urban region: its streams and ground water aquifers are, so to speak, the Region's natural water supply and distribution systems.

"Water bodies and streams are the outdoor recreational features in highest and most substantially increasing demand in our society.

"The dilution and removal of wastes by its streams to the ocean is the Region's natural sewage disposal system: the more water in the river, the less purification of effluent is necessary.

"The ground water reserves, which maintain a minimum flow in the streams and can be tapped by wells, are some of the Region's natural water-supply reservoirs: rainfall replenishes them where the ground is permeable and through aquifers. Urbanization makes the ground less permeable and the streams more flood-prone.

"Plentiful irrigation in dry years is essential in the Region's open spaces, public and private, to maintain their cover of vegetation, and therefore the significance and usefulness of their openness.

"Forest cover, to survive, requires enough water in the ground: the Region's forests are its natural water-supply regulators, its natural flood controllers, its natural purifiers of the air, and may even play a part in maintaining the level of annual rainfall.

"Thus water is a critical resource. Though plenty of water is available urbanization wastes it. Urbanization pollutes water and makes it unusable. Urbanization substitutes instant runoff and discharge through storm-sewers and streams into the ocean, for percolation, which stores water in the ground, and for evaporation and transpiration, which return water to the air. If urban development were to cover the entire land surface of the Region, its water supply would have to depend on an increasingly elaborate system of cisterns to capture it, reservoirs to store it and treatment plants to purify it. Or superregional systems of aqueducts would have to bring it from increasingly faraway places. Desalting plants are another alternative. These devices are expensive -- feasible and perhaps necessary in part for public water supplies, but certainly not feasible for recreation, irrigation, waste removal and climate control. It is surely less costly for most purposes, first to use the water that is already in the Region, the 40 inches of rainfall that nature delivers each year to every square inch of its surface. Careful conservation and the fullest possible utilization of nature's built-in water-supply and control system is the way to do it.

"The headwater areas of the Region's streams are the places that 'produce' and regulate the Region's water. Their higher elevations catch and hold more snow in the winter. Summer rainclouds tend to discharge there. In the natural state their forest ground absorbs the rainwater like a sponge, reduces flood crests by retaining the water after heavy rainfall, and holds it there in storage for continuous discharge throughout the year. It is the water that percolates into the ground at these higher elevations that recharges the Region's aquifers, including those of Long Island. Indeed, natural lakes, ponds and swamps, both large and small, in the headwater areas are always water collectors and holders, forming a huge natural reservoir system that artificial reservoirs can enlarge, if necessary, many times over. Finally, the rainwater that falls in the headwater areas has the longest distance to go before it is lost in the ocean. During this journey the largest number of people have the greatest chance to use and reuse it, and more of it will be able to percolate into the ground to recharge the ground-water table.

"The Tri-State Region must therefore deal

carefully with its headwater areas. If they can remain predominantly in the natural state, where the artifacts of man have only an incidental effect on the natural landscape, the Region's headwater areas will continue to function effectively as important natural suppliers of its water."

26. Tri-State Transportation Commission became the Tri-State Regional Planning Commission by virtue of L. 1971, c. 161 (N.J.S.A. 32:22B-2, et seq.).

27. The lands owned by plaintiff in Bernards and Bedminster Townships occupy a position in the headwaters of both the Passaic River and the Raritan River watersheds.

28. Exhibit A, attached hereto and made a part hereof, is a genuine copy of Interim Technical Report 4509-1506, a Staff Report of Tri-State Regional Planning Commission, January 1976, entitled "Most Likely Targets for Planned Growth."

29. The genuineness of "Regional Plan News, March 1975, Number 97, The State of the Region", a copy of which is served upon you herewith.

Yours respectfully,

McCarter & English  
Attorneys for Defendants, Bernards  
Township, et al.

By NICHOLAS CONOVER ENGLISH  
Nicholas Conover English  
A Member of the Firm