

SUPERIOR COURT OF NEW JERSEY
CIVIL DIVISION
CAMDEN COUNTY
DOCKET NO. CAM-L-008135-05

CRAMER HILL RESIDENTS ASO,)
)
Plaintiffs,) TRANSCRIPT
) OF
vs.) HEARING
)
COO PRIMAS AND THE CAMDEN)
REDEVELOPMENT AGENCY,)
)
Defendants.)

Place: Camden County Hall of Justice
101 S. 5th Street
Camden, New Jersey 08103

Date: January 23, 2006

BEFORE:

HONORABLE MICHAEL J. KASSEL, J.S.C.

TRANSCRIPT ORDERED BY:

VINCENT MANGINI, ESQUIRE (Stark and Stark)

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1 THE COURT: Thank you. Please be seated. All
2 right. We're on the record what is commonly known as
3 the Cramer Hill case which is Hargrove et al under
4 docket 4155-04, consolidated with 4238-04, 4431-04, and
5 8135-04. Appearances, please.

6 MR. BARON: Good morning, Your Honor. If it
7 please the Court, Jeffrey Baron, appearing on behalf of
8 plaintiff Hargrove Demolition.

9 MS. POMAR: Olga Pomar, South Jersey Legal
10 Services, appearing on behalf of the resident
11 plaintiffs.

12 MR. MODEL: David Model, South Jersey Legal
13 Services, appearing on behalf of the resident
14 plaintiff.

15 MR. LEVIN: Good afternoon, Judge. Fred
16 Levin, Boise, Hamilton and Levin, Riverfront Recycling.

17 MR. ROSENZWEIG: Gary S. Rosenzweig, Your
18 Honor, for Express Marine and Tucker Towing, Archer &
19 Greiner.

20 MR. DESANTIS: Your Honor, William DeSantis,
21 from Ballard, Spahr, Andrews & Ingersol, on behalf of
22 COO Primas and the Camden Redevelopment Agency.

23 MR. KENNEY: Good afternoon, Your Honor.
24 Joseph Kenney, from Ballard, Spahr, on behalf of COO
25 Primas and the Camden Redevelopment.

1 MR. MILLER: Your Honor, Jeffrey Miller,
2 DeCotiis, Fitzpatrick, Cole & Wisler, on behalf of
3 Cherokee Camden LLD.

4 MR. FISHER: Calvin Fisher, on behalf of City
5 of Camden Planning Board.

6 MR. MAGUIRE: Assistant City Attorney, Mark
7 Maguire, on behalf of the City of Camden.

8 THE COURT: All right. The first thing on the
9 agenda this afternoon is to resolve the motion filed on
10 behalf of the plaintiffs in regard to, a, was there a
11 violation of State law in regards to what occurred at
12 the Planning Board meetings of May 11th and May 18th,
13 2004 and if so what the remedies should be. I'll first
14 -- let me just set it up and then I'll hear from Mr.
15 Miller first, because it represents to me a very
16 significant issue.

17 The matter had been remanded back a couple of
18 times, but on May the 11th and May the 18th, 2004 the
19 Planning Board of the City of Camden held meetings in
20 regard to both the designation of Cramer Hill as an
21 area in need of redevelopment pursuant to the
22 Redevelopment Law, and also in regards to the validity
23 of the redevelopment plan. Here's the hiccup. Mr.
24 Lyons, who is the Chief of Planning of the City of
25 Camden, and I believe it's Mr. Kumar, K-U-M-A-R. Is it

1 a Mr. Kumar?

2 COUNSEL: Yes, it is.

3 COUNSEL: Yes, Your Honor.

4 THE COURT: All right -- who apparently
5 prepared the needs report that justified or seeks to
6 justify the designation of the Cramer Hill area as an
7 area in need of designation were sworn. And, the
8 reason why that presents a potentially fatal problem is
9 because it's argued there's a statute that requires it,
10 and, indeed, there is a statute that requires sworn
11 testimony. The first question is whether or not it's
12 applicable in this context.

13 There's a 2004 Appellate Division case that
14 even though it's argued contains dicta, appears to be
15 fairly square -- four square on point; that's the
16 Princeton case, specifically it's 37 -- it's -- I call
17 it the Princeton case, it's Concerned Citizens versus
18 Meyer -- the full caption in the case is --

19 (Pause)

20 THE COURT: Well, it's Concerned Citizens
21 versus Meyer, 370 NJ Super 429. Mr. Miller, let's
22 start first, the opposition contained three components
23 to it; the first component is, is that the motion is
24 out of time; the second part of the opposition -- I
25 said motion, I meant opposition -- the second part of

1 the opposition is that not only does the law not
2 require witnesses to be sworn, but that, quite the
3 contrary, pursuant to a 45 year old New Jersey Supreme
4 Court case called Wilson that witnesses can't be sworn,
5 and the third argument is that failing the first two is
6 that the remedy should not be to vacate what had
7 occurred as a result of the May 11th and May 18th
8 Planning Board hearings which, essentially, is to knock
9 out the resolutions in the ordinance to both declare
10 the Cramer Hill area as an area in need of
11 redevelopment and that approve the redevelopment plan.

12 And, by the way, if anybody is more
13 comfortable seated rather than standing feel free to do
14 so, if you're more comfortable standing as per the
15 usual practice, but I would ask that everybody indicate
16 who they are before they begin to speak, because
17 there's no question -- I shouldn't say there's no
18 question -- there's a pretty good probability there's
19 going to be an appeal, and it makes the transcript a
20 lot easier to prepare.

21 Let's deal with the second prong of the
22 response to the motion first, whether or not the
23 applicable statute applies in the context of
24 redevelopment hearings, specifically it's NJSA 40:55-10
25 section V. You would agree with me, Mr. Miller, that

1 the Appellate Division in the Concerned Citizens case
2 obviously believed that that statute applied in
3 redevelopment cases; correct?

4 MR. MILLER: Your Honor, in the dicta in that
5 case the Appellate Division did say that, yes, but
6 you've got to readapt dicta and compare it to the
7 expressed language of the statute. The expressed
8 language of the statute, Your Honor, says two things.
9 It says an application in a blight determination is not
10 an application, and it says an application for
11 development. And then the statute itself specifically
12 defines what an application for development is and it
13 does not contain the type of hearing that goes on
14 before the Planning Board when they are making a blight
15 determination.

16 And, Your Honor, I think you've got to go
17 back. I know the plaintiffs make much of the fact that
18 Wilson is 45 years old. Your Honor, there's a lot of
19 good case law that's 45 years old, and, in fact, just
20 this term, the New Jersey Supreme Court again cited
21 Wilson, not for this particular proposition.

22 THE COURT: The problem isn't that Wilson is
23 45 years old, the problem is that Wilson was decided
24 before 1976 and the statute upon which this motion is
25 based came out in 1976. In other words, when Wilson

1 came down 40:55d-10 did not exist.

2 MR. MILLER: But, Your Honor, let's look at
3 that issue, okay? The plaintiffs say, ah, Wilson
4 really doesn't apply here, but what did Wilson do?
5 Wilson said this is a Legislative-type hearing.
6 Everyone agrees in this courtroom that a proceeding
7 before the Planning Board is, in fact, a Legislative-
8 type proceeding. It is not a judicial-type proceeding.

9 The types of cases in proceedings that
10 require the swearing of witnesses are Judicial-type
11 proceedings, not the Legislative-type proceeding that a
12 blight determination involves or a determination of an
13 area in need of redevelopment.

14 THE COURT: Why would it make sense though to
15 require the swearing in of witnesses in routine matters
16 before a Planning -- are you argue -- I want to be
17 perfectly clear, are you arguing that 40:55.10-2
18 section D doesn't apply at all to Planning Board
19 meetings where witnesses in favor of developments so to
20 speak are asked to speak or just in the context of this
21 -- of redevelopment-type law under 40A:12A-1 et sec?

22 MR. MILLER: No, Your Honor. We need to be
23 very specific here, because terms get thrown around
24 here, and, quite frankly, I think that's exactly what
25 is happening here. When a Planning Board has a hearing

1 to determine whether an area should be designated an
2 area in need of redevelopment that is governed by the
3 Local Redevelopment and Housing Law, and there's a
4 specific statutory provision, NJSA 40A:12A-6, which
5 governs that proceeding. That is a Legislative-type
6 proceeding, and you have all sorts of people speaking,
7 not necessarily testifying. There's no cross-
8 examination in that proceeding. That's different from
9 an application, for instance, for site plan approval.
10 In that type of proceeding you have testimony, you have
11 cross-examination, and in that type of proceeding the
12 witnesses have to be sworn. And in that type of
13 proceeding, Your Honor, the appeal, if there's a
14 prerogative writ case filed, goes to the Law Division
15 Judge, and the Law Division Judge sits as an Appellate
16 Court. That's not what happens in a blight
17 determination.

18 The blight determination hearing is a
19 Legislative-type hearing just as if you were appearing
20 before the New Jersey State Legislature or something
21 like that and there's no requirement that those
22 witnesses be sworn.

23 THE COURT: So you're saying both in terms of
24 applications to determine blight and also when the
25 Planning Board meets to determine the validity or the

1 advisability of a redevelopment plan and 40:55.10-6
2 section D does not apply?

3 MR. MILLER: That's correct, Your Honor.
4 That's correct. And, you know, I know the Appellate
5 Division said what they said, but it really was dicta.
6 That case did not deal with the issue of -- that was
7 not a challenge where someone said the witnesses
8 weren't sworn, therefore, you've got to throw the case
9 out. That was a case where the Appellate Division
10 said, look, there were no procedural problems here.
11 They met all of the requirements that they had to and
12 then they just kind of as an afterthought said, oh, and
13 you know what, this statute applied. And, quite
14 frankly, I think what happened there was the Appellate
15 Division read that section that says application for
16 developments, said this is redevelopment and then they
17 said, oh, okay, therefore, it applies.

18 But, you've got to go back to the holding of
19 Wilson because the Court in Wilson laid out the
20 rationale for why it doesn't apply.

21 THE COURT: But Wilson -- I think Wilson is a
22 weak case in that regard, and I'll explain why. First
23 of all, in The Concerned Citizens case there was no
24 attempt to even distinguish Wilson before -- whether or
25 not it's dicta or not, before the language that appears

1 to clearly mandate the swearing of the witnesses who
2 are proponents of the plan as opposed to, for example,
3 the many people who may show up as objectives. Wilson
4 isn't even mentioned in The Concerned Citizens case.

5 In addition, I think it's in the Hirth case.
6 Hirth also refers to sworn -- and let me get the exact
7 citation. Yes. It's Hirth, Hirth versus the City of
8 Hoboken 337 NJ Super 149. And, whether this -- this
9 doesn't look like dicta although it's -- the language
10 itself may be dicta, the holding isn't. On page 163,
11 "Linda's report and testimony before the Board provided
12 the 'substantial evidence' required by NJSA 40A:12A-
13 6B.5 to support a blight determination."

14 And the reason why I read that to you is
15 that's the Appellate Division saying that when you
16 combine the report and the testimony before the Board
17 on the blight determination that was sufficient to meet
18 the threshold level of "substantial evidence."

19 And it seems to me testimony obviously --
20 it's not testimony unless it's sworn, otherwise it's
21 just words. So you not only have to distinguish The
22 Concerned Citizens case, you have to distinguish the
23 holding of Hirth which said that we find "substantial
24 evidence" because of the report of Vendear, V-E-N-D-E-
25 O-R, and his testimony before the Board to support the

1 12A-6 determination.

2 So, implicit in Hirth, it may not have been
3 explicit, but implicit in Hirth is the rejection that,
4 A, the Planning Board doesn't have the power to swear
5 in witnesses, and, B, it was the fact that it was the
6 testimony not just a report, which would be unsworn,
7 but the testimony of the author of the report combined
8 with the report that justified the determination by the
9 Trial Court that there was "substantial evidence."

10 MR. MILLER: Well, Your Honor, quite frankly,
11 I don't think you can read that statement in Hirth as
12 saying that it requires that the witnesses be sworn. I
13 just don't see that.

14 THE COURT: Well, let's break it down a little
15 bit. And, I don't want to be nit-picking, but it's
16 very important, because I agree with you, for whatever
17 reason there's nothing really four square on point
18 that's not dicta. I agree with you that the language
19 in the Princeton case is probably dicta, but it's very,
20 very strong dicta, particularly when compared with the
21 45 year old Supreme Court case, particularly when that
22 45 year old Supreme Court case came down decades before
23 the very statute that's at issue. But, I'll tell you
24 what gives me great concern; it wasn't just the
25 Princeton case. In Hirth it's the Appellate Division's

1 acknowledgment that it was testimony from the
2 individual not just a statement, not just a report,
3 that justified the determination that there was
4 "substantial evidence." So implicit in that was that
5 Mr. Vendeor got sworn. He testified at the blight
6 determination. There was no footnote dropped after the
7 word testimony that said, by the way, we know under
8 Wilson, A, there not only wasn't testimony needed, but,
9 B, there shouldn't have been any testimony, because, as
10 I understand your argument, Mr. Miller, you're arguing
11 not only that there was no need to swear in Mr. Kandor?
12 --

13 MR. MILLER: Kumar, Your Honor.

14 THE COURT: -- Kumar and Mr. Lyons, but that
15 the Planning Board didn't have the power in this
16 context to swear in any of the witnesses.

17 MR. MILLER: Your Honor, we haven't really
18 discussed whether they had the power or not. The issue
19 is whether they were required to, and, quite frankly, I
20 think in this case we would talk about Mr. Kumar's
21 testimony before the Planning Board. It may not have
22 been sworn testimony, but we would use the word
23 testimony. So, I disagree that Hirth --

24 THE COURT: How could it be testimony if it
25 wasn't sworn? Does testimony presume within it that an

1 order to testify you have to be sworn or affirm?

2 MR. MILLER: I don't -- I don't believe so,
3 Your Honor. I think it's sworn testimony. I think we
4 would talk about testimony presented to the Planning
5 Board when Mr. Kumar presented it. But, Your Honor,
6 let's --

7 THE COURT: I mean -- I really don't mean to
8 be nit-picking about the words, but to me --

9 MR. MILLER: Okay.

10 THE COURT: -- implicit in the word testimony
11 was either the witness either swears to the truth of
12 what he or she is saying or affirms to the truth of
13 what he or she is saying. If you just get up there and
14 give your opinion, whatever it is you want to call it,
15 you shouldn't be calling it testimony.

16 I don't want to be playing on words, but that
17 was my presumption when I looked at the Hirth case and
18 saw those words.

19 MR. MILLER: Your Honor, I guess we'll
20 disagree on that point, and, of course, you've got the
21 final say on that issue, but just know that I disagree
22 with you on that. But, you've got to go back to the
23 statute that we're dealing with. The plaintiffs say
24 the Municipal Land Use Law governs this. Okay. The
25 Municipal Land Use Law is not applicable in this

1 redevelopment context. All you have to do -- I -- I
2 know the Appellate Division in Concerned Citizens used
3 -- said that in dicta, but go back --

4 THE COURT: But that's wasn't an aside. The
5 problem, Mr. Miller, and I'm going to permit you to put
6 your distinction on the record because it may very well
7 turn out to be a very meritorious one, and I think
8 legally speaking sometimes the issue as to what's dicta
9 and what's not or what's dictum and what's not can be
10 somewhat muddy. You may be right, but the concern I
11 have is that we have a 2004 case that unequivocally,
12 unequivocally require -- applies 40:55.10-D to
13 redevelopment cases and goes on -- in fact, not only
14 applies it, goes out of its way to say, A, the Rules of
15 Evidence don't apply before the Planning Board with one
16 exception; you've got to swear in the witnesses who are
17 going to testify on behalf of the designation of the
18 area as a blighted area, as an area in need of
19 redevelopment. So you may be right, it's dicta, but
20 it's very compelling dicta.

21 And, while you're certainly free to argue
22 that the Appellate Division got it wrong, I'm not so
23 bold as to say that I think they got it wrong or, more
24 importantly, that I'm going to ignore it and, instead,
25 rely upon a case from 1958 that, again, -- I'm being a

1 bit repetitive here, but I'll try to be repetitive one
2 last time -- when Wilson came out 40:55.10 -- 45:55D-10
3 did not exist. In fact the Statute that Wilson relied
4 upon did not contain any provision requiring the
5 swearing in of witnesses before the Planning Board.
6 That didn't come out until I guess the Carter
7 administration. Wilson was during the Eisenhower
8 administration.

9 MR. MILLER: But, Your Honor, we're dealing
10 with a statute that doesn't apply in this context.

11 THE COURT: But not of concerns -- but not if
12 the Appellate Division is right in their dicta. Let's
13 assume it's dicta. If the Appellate Division is right
14 in their dicta then it does apply.

15 MR. MILLER: Your Honor, if Your Honor is
16 going to follow the Appellate Division's dicta then I
17 will accept that. I disagree with it, but I will
18 accept it.

19 THE COURT: All right. It's not just -- let's
20 cut to the punch. I think -- by the way, let me
21 indicate I'm a Trial Court. Let me speak the obvious.
22 I'm a Trial Court. And, while it is true -- you don't
23 have to remain standing for this, Mr. Miller, if you
24 don't want.

25 MR. MILLER: Your Honor, I'm one of those

1 trial lawyers that feels better on his feet.

2 THE COURT: If the adrenalin is pumping and
3 you want to remain standing that's fine. There are
4 some cases where the dicta of a higher Court -- it
5 looks like throw-away language -- it appears to
6 contradict other reported decisions of parallel
7 jurisdictions or higher -- higher courts, but none of
8 that falls in this category.

9 This is a 2004 case that doesn't even try to
10 distinguish Wilson, so I've got to infer either that
11 the Appellate Division knew -- this panel knew of
12 Wilson and figured it's a 45 year old case that applied
13 different law, doesn't apply or just didn't know about
14 it. Nobody brought Wilson to the Appellate Division
15 panel's attention. And, I think the latter is much
16 more likely than the former, much, much more latter --
17 more likely that the latter than the former.

18 Secondly, it's not the only time that
19 reference to testimony before a Planning Board in
20 regards to a blight determination or to use the more
21 recent terminology, an area in need of redevelopment is
22 used. As I said in the Hirth, H-I-R-T-H, case, the
23 Appellate Division noted in its holding the reason why
24 in Hirth we have "substantial evidence" is because we
25 have the report plus the testimony, not just the

1 statement of or the written report which is
2 supplemented by a second written report, but we have
3 the report plus the testimony.

4 The combination of The Concerned Citizens
5 case with the language quoted in the Hirth case leads
6 me to reflect that clearly Mr. Kumar and Mr. Lyons had
7 to have been sworn in to give their testimony,
8 particularly, if anything, Mr. Lyons who testified
9 extensively at the May 18th, 2004 hearing. Lyons you
10 could make -- strike that. I don't know what I just
11 said. Lyons testified extensively at the May 18th
12 hearing. Kumar much less so at the May 11th hearing.
13 And, all Lyons, as I recall -- it was a little bit
14 difficult reading the transcript -- all Lyons,
15 basically, did was introduce Kumar at the May 11th
16 hearing, but the May 18th hearing the testimony
17 explaining the redevelopment planning, going into
18 what's there, what's not there, that type of thing,
19 that was all part of motion testimony. It was a verbal
20 explanation; all of which is basically stating that I
21 find in dealing with the second prong of the
22 defendant's response to the motion by the plaintiffs I
23 find that based upon The Concerned Citizens case and
24 less so, but a little bit more to add to it in the
25 Hirth case, that the witnesses had to have been sworn

1 that weren't sworn.

2 So, before we go through the third prong
3 we'll deal with the sec -- we'll deal with the first
4 prong. The first prong is why did it take so long for
5 this motion to be made? After all, several of the
6 attorneys on behalf of the plaintiffs apparently were
7 at the very hearing which they complain now for the
8 first time of its deficiency. And, the prejudice is
9 obvious. It's been May 11th to Jan -- May 11th, '04 to
10 January '06 is a year and a half. So that ought to be
11 addressed by the plaintiffs. Why wasn't this motion
12 filed, for example, a year ago. Mr. Baron?

13 MR. BARON: Thank you, Your Honor. Your
14 Honor, as you're aware, in a prerogative writ case and
15 subject to the notice pleading requirements of our
16 rules you do not have to plead with specificity the
17 particular instances you allege cause the
18 transgression. In this case Judge Orlando ruled, and
19 if Your Honor would like us to produce the transcript,
20 I searched to see if I had it. I did not.

21 THE COURT: I read that in your brief. I'll
22 tell you what the problem is. It's not a pleading
23 problem. I would reject out of hand the argument that
24 just because the prerogative writ that nobody contends
25 was out of time did not specifically specify at the

1 time it was filed, whenever that was -- I guess July
2 30th, 2004 -- that -- that this particular problem
3 wasn't mentioned. That's not the problem. The problem
4 is why the motion to throw this case out or at least to
5 throw it back to the Planning Board why that wasn't
6 filed until December -- or actually January 3rd, 2006.
7 That's the hurdle you get -- you don't have to worry
8 about a pleading problem in the prerogative writ
9 complaint. What you need to worry about is why the
10 motion wasn't filed until January 3rd, 2006.

11 MR. BARON: Well, Your Honor, we were under no
12 obligation to file motions at any particular time on
13 procedural aspects until Your Honor ordered in this
14 proceeding that those procedural motions would be filed
15 and returnable before the trial date of the 23rd.
16 There was no specific requirement that it be on a
17 regular motion day, but only that it be at 1:30 in the
18 afternoon.

19 We did file our motion within the Court's
20 order returnable 1:30 in the afternoon on a non-motion
21 day on short notice, not an unusual procedural event.

22 THE COURT: Why wasn't the motion filed before
23 I even got my little hands on the case?

24 MR. BARON: Well, Your Honor, it may just be
25 that as we look through all the various procedural

1 problems we did not emphasize that. I'll be candid,
2 Judge, we believe that the conflict issue that Your
3 Honor ruled against us on was a dispositive issue. I
4 said that time and time again before this Court.

5 There was no reason to even address the
6 swearing of witnesses when I felt so strongly that the
7 City's problems and conflicts in allowing various
8 individuals to act on both the Board's and the
9 redevelopment agency should have mooted the entire case
10 and we should have been done, so we didn't bring it.
11 But, as far as this case is concerned, and I agree with
12 this that is cited in Mr. Miller's brief, the
13 Prerogative Writ Statute has exceptions to it, 4:69-6.
14 One of the exceptions to that is a significant issue of
15 public interest.

16 THE COURT: We're going to get into that.
17 We're going to get into the exception, but we don't get
18 in -- we don't need --

19 MR. BARON: The explanation is, Judge, plain
20 and simple, we were never prohibited by Judge Orlando,
21 who managed this case until only recently, to bring all
22 procedural objections at a particular time. We were
23 told make your motions. We made our motions. It was
24 my determination that the conflict issue was
25 dispositive, that there was no reason to move to any

1 other issue because it should have gotten rid of the
2 case so to speak. Your Honor ruled to the contrary,
3 calling it a closed question. You felt that it was not
4 resolvable in our favor, and we have to abide by that.

5 I indicated to the Court, and this is
6 critical for the record, I was having surgery December
7 the 16th. I would be unable to make this procedural
8 motion in the time normally we would like to because I
9 was going to be in the hospital. I was in the
10 hospital. It took ten days for me to return to the
11 office. The day after I returned to the office we
12 filed this motion on short notice. So, the answer is,
13 because of logistics, that is my logistics, I wasn't
14 able to file it sooner.

15 I know Your Honor could say, well, there's
16 other counsel in this case, why didn't they file --

17 THE COURT: Well, I'm going to get to them
18 since I'm going to ask everybody individually, but the
19 problem so much you're focusing on December and
20 January, your associate was at at least one of the two
21 Planning Board meetings, and the question is why wasn't
22 -- and let's assume the prerogative writ, or the first
23 one, was filed on July 30th, '04, and assuming that
24 nothing ever works exactly or flows, you know, with a
25 sense of immediacy that sometimes Courts impose upon

1 lawyers, the question is not why so much this motion
2 wasn't filed in December '05 or January '06, but why
3 wasn't this motion filed in December '04?

4 MR. BARON: I understand. Your Honor, because
5 -- I want to go through the procedural history,
6 although you know it, I think for the record it's
7 important to put it on the record.

8 THE COURT: Before you do, just one second.

9 (Pause)

10 THE COURT: I'm sorry, Mr. Baron. Go ahead.

11 MR. BARON: Thank you, Your Honor. The case
12 was remanded in one instance and was voluntarily redone
13 by the City Counsel in another instance. The original
14 complaints were filed. The City, after arguments that
15 we made of a procedural nature, took the case back
16 volun -- took the redevelopment plan and study back
17 voluntarily and readopted a new ordinance at council.
18 They then after doing that came back to the Court and
19 said we have cured whatever deficiencies may have
20 existed.

21 When they came before the Court they had
22 another procedural deficiency that arose, which was
23 that they didn't give adequate notice of the ordinance
24 being readopted. Judge Orlando ruled that that was the
25 case. You know that, because in our reply brief we

1 attached a copy of his order.

2 After doing that they had the option to go
3 back and do it over again. And, so for a second time
4 they took it back. Now, Your Honor, you may be correct
5 that during this entire proceeding perhaps I or another
6 one of my co-counsel could have stepped up and said
7 what about the swearing of witnesses, but we were
8 dealing with these issues one by one. The first issue
9 came up. We won or we felt we would win. The City, at
10 least, must have believed it, because they went back
11 and redid the ordinance.

12 The second issue came up. They lost. We
13 won. They did not give notice properly of the
14 ordinance adoption. So then we came back a third time.
15 Before we could make any motion this matter was
16 transferred from Judge Orlando to Your Honor, and there
17 was a period when Your Honor indicated you would not
18 accept any dispositive motions. You had no inclination
19 to do anything, because you had been saddled with a
20 very substantial record, a case that had been going on
21 for a long period of time.

22 THE COURT: I didn't use the word saddled, by
23 the way.

24 MR. BARON: No. That's my word, Your Honor.

25 THE COURT: Gifted.

1 MR. BARON: Gifted with this case, yes. I
2 recall you saying that on the record a particular time.
3 I looked at it as you being saddled with it and
4 certainly not you, Your Honor. But regardless of what
5 you were with it, it was clear that until you were able
6 to get a grasp of the intricacies of the case, both the
7 facts and the law, you were not prepared to hear any
8 dispositive motions.

9 You're right. My associate was here when you
10 indicated you would entertain, and I was here on the
11 second instance when you said you would entertain
12 dispositive motions beginning in I believe it was
13 November, and then I put on the record at that hearing
14 that I would be having surgery, and I would do
15 everything I could to get this motion before the Court
16 on a motion day.

17 THE COURT: I'm not concerned after that point
18 in time. I'm concerned -- and I think you addressed the
19 pre-October/November time period. I'm not -- once
20 you're in that point in time I don't have any problems.
21 I know --

22 MR. BARON: I mean, Judge, --

23 THE COURT: -- you had some medical --

24 MR. BARON: -- you can -- looking back in
25 hindsight one could always say here's a motion that may

1 be dispositive of the case. Why did you not bring it
2 sooner. I don't think that's the appropriate question.
3 I think the appropriate question is were you doing
4 something each step along the way trying to resolve the
5 case, and the answer is --

6 THE COURT: I'll tell you why it would be --
7 why it would be appropriate -- and I understand --
8 believe me, I haven't forgotten the pressures of
9 practicing law, juggling a million different things,
10 and you had some medical concerns. The reason why all
11 this is raised is because perhaps unspoken, but I ought
12 to speak it, is the ugly inference that perhaps this
13 particular issue was pocketed until the very last
14 minute to string the case along as long as possible,
15 time being more on the favor of the objectors and on
16 the governing body all things being equal, and that it
17 wasn't until the last minute that what looked like a
18 fairly dispositive motion was sprung, was sprung out.
19 That, as I say, is a bit of an ugly inference to draw,
20 and it may be entirely inaccurate, and it wasn't
21 necessarily explicitly argued in the opposition, but
22 that's the concern I have. And, it may not even be
23 inappropriate. After all, lawyers zealously represent
24 their clients, and if it's permissible to time a motion
25 in such a way to get the maximum bang out of it, so to

1 speak that's an appropriate way to represent a client.

2 After all, to the extent this was an issue
3 available to both sides to raise, it would be less
4 obvious for why the defendants would raise it except
5 defensively, saying this might be an issue in the
6 future, let's raise it now rather than having the other
7 side raise it a year from now, to either get it one way
8 or the other so we can anticipate, but that's why I
9 raise all this. I'm not --

10 MR. BARON: I understand.

11 THE COURT: -- I'm not concerned about --

12 MR. BARON: I understand.

13 THE COURT: -- what was in the prerogative
14 writ complaint in July 2004 or what happened in
15 November or December. I'll easily allow for that.

16 MR. BARON: Your Honor, there was -- all I can
17 do is speak for myself. I'm sure other counsel --
18 there was never any attempt to hold any particular
19 issue back to get the bigger bang for the buck just
20 before the trial. As I indicated to the Court, we
21 address these issues ad seriatim as they occurred. The
22 first issue we raised to the Court it was a procedural
23 mistake. They voluntarily correct it. I don't need to
24 bring a motion after I win on that motion, because they
25 have to take it back.

1 The second procedural error, the failure of
2 notice, we win on that. They take it back. They redo
3 the ordinance.

4 There was no reason to get to this issue in
5 my judgment until those other issues had been resolved,
6 and then, as I indicated to Your Honor, I truly
7 believed and I truly believe today, and I mean this
8 with all due respect to Your Honor, because I know how
9 hard you worked on this issue, I think the conflict
10 issue is dispositive of the case in our favor. Of
11 course I would. I wouldn't have spent all that time
12 and argued the time I did in front of you.

13 Your Honor didn't feel so, as I said,
14 indicated it was a close call. We did not proceed by a
15 shotgun method in this case. We did not throw every
16 single issue we had against the wall and hope that
17 something would stick. Instead we went issue by issue.
18 We won on each one of those issues.

19 Now, I would say this with due respect to the
20 Court, let's assume that this may not be within the
21 time that Your Honor would have liked to see it.
22 Really, and you raised this previously in another
23 session management conference, what is the prejudice to
24 the defendants? They can't prepare for this? Either
25 they were sworn or they weren't sworn.

1 THE COURT: Well the prejudice -- I'll answer
2 the question. The prejudice they've lost presumably up
3 to a year and a half of time. If the motion had been
4 made -- in an ideal world, which none of us live in,
5 the motion would have been made approximately August or
6 so 2004 if the governing body, City of Camden,
7 recognized either, A, the motion was meritorious or, B,
8 that it was a close enough call so as to not create an
9 issue, they could have redone it, so to speak, or
10 attempt to redo it or get the process in motion a year
11 and a half or so ago. So the prejudice is the year and
12 a half and all that's attendant with that.

13 MR. BARON: Well, Your Honor, that, I think,
14 ignores one fact. In all of these cases -- and Mr.
15 Miller and I have said this several times, these quasi-
16 Legislative-type proceedings -- there is no presumption
17 of validity of the action of the municipal agency.
18 That being said, they are required to comply with the
19 procedural requirements of the Redevelopment Act. As
20 we have briefed to Your Honor, I believe that
21 incorporates 40:55D-10B. I believe that's
22 incorporated, and that's what Princeton says, Concerned
23 Citizens says.

24 That being the case, it is not our obligation
25 to educate them. If the City of Camden and all of the

1 lawyers the City of Camden had were not astute enough
2 to understand the requirements of the redevelopment
3 study and plan perhaps they never should have undertaken
4 a redevelopment study and plan, but they did. And, in
5 doing it the did not comply with -- I don't believe it
6 is dicta. I think it couldn't be clearer, but I'm sure
7 that can be argued some other place and some other
8 time.

9 THE COURT: Oh, it's dicta, because the
10 ultimate holding in the case did not depend upon
11 whether --

12 MR. BARON: I agree with that.

13 THE COURT: -- the witnesses were sworn.

14 MR. BARON: I agree with that. But when I say
15 it isn't dicta, they did deal with procedural
16 requirements, not these procedural requirements, I
17 agree, but as Your Honor said, after looking at the
18 other procedural requirements, they go out of their way
19 to say there's only one that's mandatory.

20 Now, Judge, I appreciate -- I appreciate your
21 concern that it may come late to the Court, however it
22 should have come a year and a half ago. They should
23 have -- they are required to follow all of the
24 regiments of the Redevelopment Act and of the Municipal
25 Land Use Law. We've given you the history of the

1 Redevelopment Act. It, in essence, incorporates many
2 of the procedures of the Land Use Law in it's most
3 recent incarnation.

4 As you pointed out, the Land Use Law wasn't
5 in effect when the Blight Act was used, so Wilson
6 clearly is applicable, but the point being it's their
7 burden. It isn't my burden to come to the Court and
8 say, Judge, they didn't do this. We weren't even able
9 to do that, because they were going through the process
10 full boar, from one step to another.

11 At the end we're able to challenge it. We
12 did. We went issues by discreet issue. We won. We
13 lost on the conflict, and after the conflict we were
14 left with, well, my judgment two issues. I know Your
15 Honor won't hear the net opinion, but certainly the
16 failure to swear witnesses and then in my judgment
17 ultimately at some point a net opinion issue.

18 There's nothing that we did that's
19 inconsistent with good practice. There's nothing we
20 did that would be surprise. There's nothing that we
21 did that disadvantaged the other side.

22 If they've lost a year and a half, I would
23 respectfully submit, it's because they did the
24 redevelopment study and plan and ordinance wrong twice.
25 That's why they've lost this time not because of us.

1 From the time that Judge Orlando made his
2 determination that the notice was improper until now
3 approximately six months has past. We did not delay
4 them. They delayed themselves in what they've done and
5 the way they've done it.

6 And, Your Honor, just one other thing; I'd
7 like to reserve the opportunity, talk to you about the
8 exceptions, because even if Your Honor were to find
9 that under prerogative writ it should have been stated
10 at a certain time, there is an exception, an important
11 exception.

12 THE COURT: I know. That arose in the
13 Princeton -- the one I -- the Princeton case which is -
14 -

15 MR. BARON: Yes.

16 THE COURT: -- Judge Feinberg found it
17 applied -- that the prerogative writ wasn't even filed
18 till almost a year after it should have been, and he
19 Appellate Division affirmed or exercised their
20 discretion in saying that because --

21 MR. BARON: And, I can give you a litany of
22 cases, prerogative writ cases, normally in land use
23 context, in which the Deptford Township case comes to
24 mind with Walmart in which Judge King allows 18 months
25 after the action, because it wasn't an issue of

1 important public interest before the suit had to be
2 filed. So, I'd like to talk about that exception if,
3 Your Honor, in some -- in some way feels that we came
4 too late to this issue.

5 THE COURT: All right. All right. Anybody
6 else on behalf of the plaintiffs before Mr. Miller --
7 before I let you respond, let me hear -- yes, Mr.
8 Levin.

9 MR. LEVIN: (Mr. Levin is not near a
10 microphone). Just briefly, I wholeheartedly concur with
11 Mr. Baron in terms of the discreet issues that were
12 presented to the Court concerning objections to the
13 plaintiff from onset. I was intimately involved in
14 this case from the filing of the initial complaint in
15 lieu of prerogative writ. Issues were addressed which
16 we believe were compelling and would be decided
17 appropriately in opposing the action by the City, and,
18 in fact, it was granted in one instance by Judge
19 Orlando with remanded it back to the council.

20 I will represent to the Court in 32 years of
21 practice in this county I was not aware of the pending
22 motion to dismiss based upon the failing to swear
23 witnesses at the Council until it was most recently
24 detected and brought forth by Mr. Baron in a motion.
25 And, I think that should put to rest any thought Your

1 Honor would have to the contrary.

2 THE COURT: Thank you, Mr. Levin. Anybody
3 else on behalf of the plaintiffs? All right. Mr.
4 Miller?

5 MR. MILLER: Your Honor, Mr. Baron said an
6 awful lot about how it was our obligation to know that
7 this wasn't done correctly. Putting aside the fact
8 that we disagree with Your Honor's ruling on the
9 applicability, Your Honor, we asked in interrogatories
10 for the plaintiffs to set out all of their claims.
11 Nowhere in those responses to interrogatories was the
12 failure to swear witnesses before the Planning Board
13 ever listed.

14 And, as Mr. Levin just said, he wasn't even
15 aware of the claim until just recently. Your Honor,
16 there is prejudice here. The Prerogative Writ Statute
17 has a 45-day provision in it to allow a municipal
18 entity to go back and correct something close to the
19 time that it apparently occurred incorrectly. That's
20 why the 45 days is there.

21 As Mr. Baron has indicated, we've gone back
22 twice; the first time because of an alleged conflict of
23 a couple of the Council members; the second time
24 because of a failure to comply with the Open Public
25 Meeting's Act Notice where the City missed it by a

1 couple of hours.

2 Your Honor, we willing did that. We
3 voluntarily went back and corrected those things. And,
4 had the plaintiffs brought this argument at that point
5 in time we would have gone back and corrected this. We
6 didn't, because it was never raised. We didn't correct
7 it, because we don't believe it was done
8 inappropriately, but Your Honor's ruled that you
9 believe it was, but it is plaintiff's obligation to
10 bring this to the Court's attention and to bring it to
11 the municipal -- the municipality's attention so that
12 it can be corrected. They didn't do that.

13 They sat, whether they knew it or not, quite
14 frankly, Your Honor, I don't -- I don't characterize
15 them as holding this in the bag. I think what happened
16 is somebody read Concerned Citizens as they were
17 getting ready for trial, and they said, oh, gee, look,
18 it says there that they have to be sworn. I don't
19 remember the witnesses being sworn. I think that
20 happened in January or December of 2004.

21 But the point, Your Honor, is nowhere was the
22 City ever put on notice. I know Your Honor has said
23 that you don't believe that it's really that important
24 whether or not it was set forth in the pleadings, I
25 believe it is important, Your Honor.

1 THE COURT: But it's already been -- it's not
2 law of the case, but Judge Orlando's already made
3 rulings as to the adequacy of some of the pleadings. We
4 all know this is a notice jurisdiction and we all know
5 the various cases under 4:9-1 that allow amendment to
6 various pleadings, and I would be the first to agree
7 with you that ideally -- even less than ideally, the
8 prerogative writ complaint should have right from the
9 get go alleged that the witnesses weren't sworn.
10 Although you bring up -- you just bring up a very
11 interesting issues. The Princeton case wasn't decided
12 until 2004. And let's see exactly when it was
13 published -- July 2004. So, pretty much -- ironically
14 at the time that the meetings occurred Princeton hadn't
15 been decided yet, and it was pretty much I guess
16 anybody's guess whether or not you had to swear in
17 witnesses in May 2004.

18 I think after the Princeton case gets
19 published at least everybody has a notice that this
20 might be an issue. I interrupted you, Mr. Miller.

21 MR. MILLER: Well, Your Honor, I just wanted -
22 - I just want to, you know, state again, the City is
23 prejudiced. If -- if this had been brought to the
24 City's attention a year and a half ago, a year ago it
25 would have been corrected, could have been corrected.

1 It wasn't and now we are on the eve of trial. Tomorrow
2 we start the trial, and we're arguing this motion.

3 THE COURT: All right. I agree with
4 everything Mr. Miller said except for the punch line.
5 The City is prejudiced. It's been a year or a year and
6 a half, and it seems to me that procedurally what
7 happens is the Planning Board meets in May 2004, the
8 Princeton case comes out, published in July 2004, and
9 the best practice, so to speak, would have been to have
10 raised this issue by motion in August-September,
11 something like that, 2004, but nobody's perfect, and
12 the question is is the lateness such that, in essence,
13 I considered the motion to be waived.

14 In Concerned Citizens perhaps ironically that
15 issue was also -- that issue also arose not in the
16 context of the filing of a motion, but whether or not a
17 prerogative writ complaint or a complaint in lieu of
18 prerogative writ, which is filed almost a year, almost
19 a year late, should be heard, and the -- Judge Feinberg
20 said yes, because of the public interest exception, and
21 the Appellate Division affirmed.

22 And, the following language I would like to
23 read in the record, because it -- again, it's
24 discretionary, but -- and I don't want to editorialize
25 unduly here -- two types of judicial discretion; one

1 type is we really can do what we want subject to very,
2 very limited parameters; the other thing is we have the
3 discretion, but if a higher court doesn't like the way
4 we exercised our discretion then we get reversed. That
5 may sound a little bit flippant, but I'd be less than
6 candid if I didn't say to the contrary. In this case I
7 feel that the discretion I would exercise falls into
8 the latter category and not the former one, but the
9 line which begins on page 446 of Concerned Citizens
10 "Here the subject redevelopment designation, i.e. the
11 blight determine, was formerly adopted by Borough
12 Council on February 26, 2002. Thus, any challenge to
13 that designation should have been brought within 45
14 days thereof. It was not. The complaint was filed on
15 January 10th, 2003. And, for those of you that want to
16 do that math, that is almost 11 months later.

17 Furthermore, however, we conclude that there
18 was ample basis for the Trial Court's ruling that the
19 subject redevelopment designation was of sufficient
20 public interest to warrant relaxation of the 45-day
21 filing limitation for application of Rule 4:69-6C.
22 Plaintiffs alleged numerous violations in this
23 application of the LRHL, as well as arbitrary and
24 capricious municipal action in the redevelopment
25 designation of public lands.

1 Further, as noted by the Judge, the
2 redevelopment designation implicated the expenditure of
3 public funds to the issuance of bonds, and plaintiffs
4 have submitted a significant number of signatures
5 opposing the project, demonstrating a strong public
6 interest. And, in this particular case somebody put in
7 one of the briefs that 800 people showed up at the
8 Planning Board meeting. I don't know whether that's
9 hyperbole or accurate, but if it's anywhere remotely
10 close as to what the reality is this clear -- this case
11 clearly falls into the strong public interest
12 exception, even assuming that the prerogative complaint
13 had been filed late, it wasn't.

14 The problem with the prerogative writ
15 complaint was that it should have been a bit more
16 specific as to the nature of the deficiency in the May
17 11th and 18th Planning Board meetings, but we all know
18 the relaxed rule 4:9-1, et cetera, et cetera, and it
19 seems to me that if ever a case involves strong public
20 interest this case does.

21 In balancing the two tests I agree, and I
22 disagree to the extent that somehow there's no
23 prejudice. There's no prejudice that says that evidence
24 has been lost in the year and a half or that witnesses
25 that were otherwise available a year and a half ago are

1 now living in Bolivia or something like that. That's
2 not the prejudice. The prejudice is that time, which
3 in many cases is critically important, has been lost,
4 and that makes it a very -- a closer issue. But,
5 again, using the language I've just cited and the
6 strong public interest in the case and the fact on the
7 merits of the case the two critical witnesses, one in
8 particular, who testified for, I don't know, 50, 60, 70
9 pages worth of testimony at the May 18th hearing were
10 never sworn.

11 It's very easy, by the way -- let me indicate
12 parenthetically it's very easy to secondguess what
13 somebody else does, and I don't mean to do that at all,
14 but I, again, want to indicate that the Legislature, I
15 believe, has made it very clear that unlike every other
16 rule of evidence which does not apply before the
17 Planning Board witnesses who are proponents of
18 development plans, which I believe include
19 redevelopment plans like this, and the Appellate
20 Division in Concerned Citizens clearly indicated would
21 apply, the witnesses have to be sworn, and they weren't
22 sworn, and that -- it's critical. And, we'll go into
23 why it's so critical when we go right now into the
24 third part of the opposition is give the violation of
25 the statutory mandate and given that I find that it has

1 not been presented by motion so out of time or in such
2 condition so that it should be forfeited or waived or
3 equitably estopped, what is to be done? And, it seems
4 pretty clear what needs to be done.

5 And, I thought about an analogy, Mr. Miller,
6 and let's see if you can respond to the analogy,
7 because it makes it, I think, so much easier. At least
8 it puts it in terms that I best understand it, since I
9 started out as a lawyer as a Prosecutor. Assume the
10 following: we have a Grand Jury proceeding; two
11 witnesses on behalf of the State, and the defendant
12 also testifies. He is invited to testify. He
13 testifies. Defendant testifies that when the victim
14 was mugged the defendant was in Kansas City, didn't do
15 it. Witness number one, who is sworn, says I saw
16 defendant mug victim, and it was clearly defendant.
17 Witness number two, the Prosecutor forgets -- or the
18 Grand Jury Clerk forgets to swear in witness number
19 two, but he tells the Grand Jury it was the defendant
20 who mugged the victim. Grand Jury indites. Before
21 trial a motion is made to dismiss the indictment.
22 What's the basis? Well, there were two witnesses on
23 behalf of the State, one was sworn and one wasn't
24 sworn. And, we don't know what the Grand Jury would
25 have done if -- we can't just knock out witness number

1 two. It's a nullity. It's not sworn. But in that
2 context is there any result other than to dismiss the
3 indictment?

4 MR. MILLER: Your Honor, that's a judicial
5 proceeding. The proceeding before the Planning Board
6 once again is a Legislative proceeding. It is not a
7 judicial proceeding.

8 THE COURT: What's the remedy?

9 MR. MILLER: You cannot equate -- what's the
10 remedy here?

11 THE COURT: Yes. What's the remedy -- let's
12 just talk generally. My apologies for interrupting
13 you. Is that -- is that the distinct -- the
14 distinction is the Grand Jury there's a judicial in
15 this -- in the Planning Board proceeding is sufficient
16 unlike a Grand Jury proceeding that one result calls
17 for a dismissal of the indictment, whereas the other
18 result is something other than a dismissal -- not of an
19 indictment, but vacating the resolution and ordinance
20 that flew from it?

21 MR. MILLER: Absolutely, Your Honor. And I
22 don't think -- and that dovetails with the argument
23 that Legal Services has made about the type of
24 proceeding that's supposed to go on before Your Honor.

25 This is not an appeal from the Planning Board

1 where you would be -- where the record is set in stone
2 and you are obligated to deal with what occurred at the
3 Planning Board. This is a Legis -- this is a -- what
4 occurred before the Planning Board is a Legislative
5 hearing. It -- I don't think there's any doubt about
6 that. I think Your Honor agrees with that. I think
7 the plaintiffs agree with that.

8 It's not a judicial proceeding. To equate it
9 to a Grand Jury proceeding, which is one of the most
10 judicial type proceedings in a criminal proceeding that
11 we can have is as far removed from what goes on before
12 the Planning Board in a blight determination as
13 anything.

14 That analogy is totally different than --

15 THE COURT: I'll tell you why -- I'll tell you
16 why I disagree in terms -- they're different, but not
17 totally different. They're both screening procedures.
18 This is the Grand Jury. This is screening bad cases
19 from good cases or at least cases that should go onto a
20 jury from that. Purposes of the Superior Court in
21 redevelopment cases is to screen out those cases where
22 the Planning Board and the Governing body acted
23 arbitrary, capriciously or unreasonably. Both are
24 mechanisms used to screen the A from the B, the good
25 from the bad, whatever it is.

1 So, whatever terminology you wish to give to
2 either, they serve the Superior Court in overlooking
3 what each one does, either the Superior Court in
4 overlooking what a Grand Jury does in indicting
5 somebody or in overlooking what a Planning Board does
6 in determining whether or not an area should be
7 designated as an area in need of redevelopment. We
8 look at a certain quantum of evidence. We look less at
9 the quality of evidence than the quantum of evidence;
10 probable cause in the Grand Jury setting, here
11 "sufficient credible or sufficient evidence." We
12 wouldn't go back to the credible debate again. But
13 that's why I say that there's sufficient similarity to
14 make the analogy useful.

15 MR. MILLER: Your Honor, I disagree, and,
16 quite frankly, here's why: --

17 THE COURT: All right.

18 MR. MILLER: -- because in the criminal
19 setting that you're talking about that is a judicial
20 proceeding, in the proceeding in the Law Division, that
21 criminal judicial proceeding before the Law Division,
22 you are stuck with what occurred in the Grand Jury.
23 You cannot change the Grand Jury.

24 THE COURT: You just resubmit the case to the
25 Grand Jury again only this time swear in the --

1 MR. MILLER: But you --
2 THE COURT: -- second witness.
3 MR. MILLER: But you've got to go back to the
4 Grand Jury. That is not what we have here. As the
5 Lyons case said, as the Levin case said, that's a
6 different type of proceeding. The proceeding before
7 Your Honor in a blight determination you decide based
8 upon all of the record that is presented to you. The
9 witnesses, if you believe that Mr. Lyons needs to be
10 sworn, he can be sworn here and testify exactly the way
11 he did before the Planning Board. If you believe Mr.
12 Kumar needs to be sworn, he can be sworn here and
13 testify exactly the way he did before the Planning
14 Board.

15 The first question we can ask him is was the
16 testimony that you gave before the Planning Board
17 truthful, and it solves the problem. It is very
18 different, Your Honor, from a criminal proceeding
19 before a Grand Jury. It is as far removed --

20 THE COURT: Well, why wouldn't it be analogous
21 in a Grand Jury setting to say, look, we forgot to
22 swear in witness number two before the Grand Jury, but
23 he'll be available before the petit and we'll swear him
24 in before -- when we get to the real jury?

25 MR. MILLER: Because, Your Honor, that Grand

1 Jury has to -- has to hear all of those witnesses.
2 THE COURT: It serves a critical -- because it
3 serves a critical function in the flow of criminal
4 cases just as the Planning Board -- Planning Board in
5 redevelopment cases serves a critical aspect.

6 There's some notion, and this dovetails to
7 some extent on the briefs that were submitted on what
8 extent each side is permitted to supplement the record,
9 which I read with some interest. Because if -- we know
10 that Lyons and Levin discuss some limitations and
11 supplementation, but among many other problems that are
12 developed with supplementation are as follows: let's
13 assume in this case, and this is a bad analogy, because
14 it -- nothing close to this happened, but let's assume
15 it did. Before the Planning Board we called me. I was
16 the witness before the Planning Board. I said, you
17 know something, I drove through Cramer Hill last night,
18 looks terrible today, looks blighted, and that's my
19 only testimony. The Planning Board then votes to say
20 that the Cramer Hill area is an area in need of
21 redevelopment. It's based upon Kassel's testimony of
22 this afternoon. At that point, of course, the
23 residents, through their counsel or pro se, file their
24 complaints in lieu of prerogative writ and they say the
25 evidence is insufficient. It didn't come close to

1 being the necessary evidence to justify the Planning
2 Board's determination. The response to all of that
3 can't be, it can't be, well, we're going to supplement
4 the record with five experts and FBI crime statistics
5 and Board of Education records and other types of
6 evidence. So, in essence the Superior Court becomes a
7 defacto Planning Board.

8 After all, Levins -- Levin made very clear
9 that the only thing that even should be considering
10 supplementing the record with are -- is evidence that
11 either should not or could not have been presented to
12 the Planning Board. That's what Levin said.

13 MR. MILLER: Your Honor, once again, I -- I
14 hate to be on the disagreeing part of this conversation
15 today, but I disagree. Your Honor, does not become the
16 defacto Planning Board. What Your Honor does is decide
17 whether a quantum of evidence has been met.

18 THE COURT: Before whom?

19 MR. MILLER: Before Your Honor.

20 THE COURT: No, no. I think it's before the
21 Planning Board and governing body.

22 MR. MILLER: Your Honor, with all due respect,
23 the Lyons Court specifically says --

24 THE COURT: What about Levin?

25 MR. MILLER: The Levin Court says it as well.

1
2 THE COURT: And, think Levin -- I'll get the
3 case -- I think Levin made very clear that all this --
4 in fact, let me just -- let's just take a two-second
5 break, because I want to get the language of Levin,
6 because it's important. Less -- more than two seconds.
7 That is hyperbole. Give me 60 seconds.

8 MR. BARON: Your Honor, would you like it?

9 THE COURT: I have my own copy.

10 MR. BARON: Mine is the same one though.

11 (Pause)

12 THE COURT: All right. The language I'm
13 referring to which comes from Levin has been repeated
14 countless amount of times, but I'd like to read it into
15 the record. All right. Relying on -- this is on page
16 517. It's the first full paragraph, about four or five
17 lines down: "Relying upon Lyons v. Camden, citation
18 omitted, plaintiffs persuaded the Trial Court to give
19 them what was substantially a trial de novo review of
20 the blight determination. In sort, in spite of the
21 deliberate decision to produce no evidence before the
22 Planning Board, plaintiffs were allowed to attack its
23 determination on the basis of evidence which in
24 fairness should have been presented for consideration
25 at the first level of determination."

1 Here's where the more important language is;
2 page 528: "It was not this Court's intention in Lyons
3 to authorize persons opposed to a determination of
4 blight to withhold evidence available to them or to
5 make no effort to obtain and to submit evidence in
6 support of their position at the Planning Board
7 hearing. That is the place and time where ordinarily
8 the basic record should be made. In the later
9 prerogative write proceedings additional pertinent
10 evidence may be presented by either party in support of
11 the position he espoused below."

12 And then the next paragraph, last line before
13 the end, "We caution, however, that Lyons should not be
14 read to sanction a willful withholding of facts at or a
15 willful failure to prepare for the Planning Board
16 hearing in the expectation of obtaining a full de novo
17 trial in the Law Division."

18 Mr. Miller, I read -- and that's been
19 repeated in numerous cases since then, but the Superior
20 Court's not the Planning Board. The Planning Board
21 should be hearing this evidence and it there's a need
22 for some -- some good reason for supplementation that's
23 fine, but it should not be having the tail wagging the
24 dog, to use the overused metaphor, analogy, whatever
25 you want to call it.

1 MR. MILLER: Well, -- I'm sorry, Your Honor.
2 I didn't mean to -- Your Honor, but that language that
3 you just read specifically, one, deals with opponents
4 as opposed to the municipal parties and what it says is
5 you can't just sit on your rights. You can't let the
6 municipality proceed, not do anything and then expect
7 to be able to get a prerogative writ action and try the
8 case. That's not what we're talking about.

9 If you go back to the Lyons case, Your Honor,
10 what the Lyons case says, and this is at page 534, it
11 says "If at the case -- if at the close of the
12 plaintiff's case the municipality or the Planning Board
13 wishes to supplement the existing record by further
14 competent evidence it should be allowed to do so. The
15 Trial Court's decision as to whether the resolution of
16 blight is supported by substantial evidence should then
17 be made upon the entire proof submitted."

18 So, in other words, the municipality may
19 supplement the record, and the Court is to decide based
20 upon all of the evidence that is before it, but that
21 doesn't turn the Court into a de facto Planning Board.

22 Courts all the time in prerogative writ
23 actions have to make a decision as to whether a
24 specific quantum of evidence has been met and that's --

25 THE COURT: I agree with that, but it's a very

1 difficult issue. That cases aren't all that clear, but
2 to use this as an example, we know that in the Need
3 Study, the preparers of the study dichotomize the
4 properties in three categories; basically good, average
5 and bad, and there was a percentage given to the bad.
6 All right. Now, it seem to me that in response to that
7 if the plaintiffs have their own expert to say they got
8 it wrong the bad is not 7.1 percent; the bad is really
9 3.1 percent. And, if that's the type of thing they
10 couldn't have presented before the Planning Board then
11 it's appropriate, A, to allow the plaintiffs to
12 supplement the record with that evidence and, B, of
13 course to allow the defense to respond to their expert
14 -- to the plaintiff's expert concerning the percentage
15 of properties deemed to be substandard.

16 However, I don't read the ability to
17 supplement the record as carte blanche opening the door
18 for everything that could have been presented to the
19 Planning Board, but here we're getting a little far --
20 and I invited this so I'm at fault -- but it was in
21 response as to whether or not the remedy should be,
22 well, at the hearing itself we'll swear in the
23 witnesses. I don't think that's remotely sufficient.
24 This was a statutory mandate, the only one in regard to
25 swearing in witnesses, and either the remedy is

1 nothing, because to say that we can remedy at the trial
2 is to me similar to telling somebody who gets indicted
3 through faulty testimony before the Grand Jury by
4 unsworn witnesses don't worry about that, it will work
5 its way out before the petit jury.

6 We know what happens. The indictment gets
7 dismissed and the State has two choices, give up or
8 resubmit the properly sworn witnesses to the Grand Jury
9 for a new indictment. All right. Yes, Mr. Miller.

10 MR. MILLER: Your Honor, my argument, Your
11 Honor, is that there is absolutely no authority for the
12 remedy that the plaintiffs seek.

13 THE COURT: There was a Law Division case.
14 There was one Law Division case that is authority for
15 it?

16 MR. BARON: Hoboken, Judge Fuentes' case, Your
17 Honor.

18 MR. MILLER: No, Your Honor. That is a
19 different -- there's no authority for a Planning Board
20 not swearing a witness in.

21 THE COURT: I agree with you.

22 MR. MILLER: In fact, there's a Law Division
23 case that goes the opposite way, where the witnesses
24 were not sworn, and the Court said, you know what,
25 we're not gonna throw it out. So --

1 THE COURT: Planning Board case or a Zoning
2 case?

3 MR. MILLER: Planning Board case, Your Honor.
4 And, so there's no authority cited by the plaintiffs in
5 support of the remedy that they are seeking.

6 THE COURT: It depends when you say there's no
7 authority; is authority for the proposition that if
8 there is a deficiency significant enough before the
9 Planning Board the remedy should be to vacate what the
10 Planning Board did. That's what the recent Law
11 Division case cited in the plaintiff's brief.

12 MR. BARON: Yes. Your Honor, Judge Fuentes,
13 if I might, in the Hoboken case faced a situation which
14 on -- on sort of parallel tracks they were pursuing
15 both an amendment to the redevelopment study and plan
16 and also a site plan. And, Judge Fuentes invalidated
17 both of them. He invalidated the redevelopment
18 amendment, the attempted redevelopment amendment and
19 the site plan, and he indicated it was on procedural --
20 I'm going to call it procedural grounds. Your Honor
21 knows what it was. There were nine members of the
22 Board. Apparently for many, many years the City of
23 Hoboken allowed people to -- I'm going to use the word
24 holdover, not in the legal sense, and they were never
25 reappointed. It was clearly either a conflict or a

1 procedural mistake, and based upon that he invalidated
2 all the proceedings of the Planning Board and indicated
3 that the appropriate equitable remedy would be to
4 reimburse the redeveloper who had done nothing wrong in
5 this process that had been done wrong by the Planning
6 Board to reimburse the developer for their expense in
7 pursuing the site plan and the litigation.

8 There is no site plan here. That hasn't
9 happened. And, it's interesting, and I don't think I
10 can let it pass without at least commenting, in every
11 one of these applications Mr. Miller has taken the lead
12 even though he's the redeveloper and the City has
13 rarely argued at all. Mr. Kenney, for the Redevelopment
14 Agency sometimes does, but he's been the lead dog.
15 And, I'll admit that I've been the lead dog on our side
16 as well. The point being I'm not sure how they could
17 reasonably ask for compensation when they've been
18 running this show from the very beginning, but the
19 remedy Judge Fuentes granted, and it was not reversed
20 by the Appellate Division. It was never granted cert
21 by the Supreme Court, was to invalidate the
22 proceedings.

23 We know it's not binding on Your Honor, but I
24 think it makes good sense. I'd also submit to your
25 Court -- to Your Honor, I don't think Judge Fuentes

1 ended upon the Third Circuit because he didn't make
2 good decisions.

3 THE COURT: I don't know what inference I'm
4 supposed to draw from the fact that the Trial Judge --

5 MR. BARON: Just that -- just that I was smart
6 enough to find out that Judge Fuentes was on the Third
7 Circuit.

8 MR. MILLER: Your Honor, if I might, the
9 DeMaria case that plaintiffs themselves mentioned, is
10 the only case that --

11 THE COURT: That's another Law Division case.

12 MR. MILLER: That's a Law Division case.
13 That's correct.

14 THE COURT: Yes.

15 MR. MILLER: The difference between that and
16 the Hoboken case that the plaintiffs rely on, Your
17 Honor, is that the Hoboken case the technicality went
18 to the actual vote of the council members, Your Honor.
19 When we had that situation here in this case where the
20 actual council members could not sit we voluntarily
21 went back and redid it. That's different then what we
22 have here, Your Honor. The remedy here is completely
23 inappropriate. The remedy that they're seeking, the
24 dissolution, if you will, of the Planning Board
25 proceedings there's no authority for that.

1 MR. BARON: Your Honor, may I just say this?
2 We brought DeMaria to the Court's attention. And, I
3 say that, because you asked I think an entirely
4 appropriate question; were we holding things back from
5 the other side. We brought DeMaria up in our original
6 brief, and we distinguished it, and it's easily
7 distinguishable. It is a Planning Board case under a
8 Land Use case, and there was a presumption of validity
9 to the action of the Board. The Court is obligated
10 under the case law to accept that presumption of
11 validity. No such presumption of validity attaches to
12 these proceedings, never has, no case says it does.

13 DeMaria involved what we normally referred to
14 as a by right plan, meaning by right you are entitled
15 to an approval if you meet the ordinances of the town.
16 No such by right applies here, Your Honor. DeMaria
17 clearly does not dictate that result.

18 THE COURT: I would also note in DeMaria,
19 which is 372 NJ Super at 135 the Law Division Judge, I
20 believe it was himself, pointed out on page 147, "Here
21 the Board had little, if any discretion to deny JEB
22 Brooks site plan application since it satisfied
23 applicable zoning -- excuse me -- zoning and site plan
24 ordinances."

25 Neither DeMaria nor the Law Division Hoboken

1 case is controlling. To me what's controlling is the
2 Legislature has spoke out unequivocally. I grant Mr.
3 Miller's argument, and, frankly, when I first read the
4 Wilson case it was very helpful language in Wilson for
5 his position, but Wilson, as I said, and this will be
6 the last time, Wilson came out decades before the
7 statue in question came out.

8 The Statute's very clear. I don't see any
9 reason -- in fact there's a better reason in these
10 redevelopment cases that implicate potentially hundreds
11 -- yes Mr. Kenney? Did you want to say something?

12 MR. KENNEY: Judge, I want to talk about the
13 remedy. And, I recognize that you --

14 THE COURT: Sure. I didn't realize --

15 MR. KENNEY: -- that's where you are. You've
16 disposed of the other ones. As I sit here and listen
17 to the various arguments going back and forth and I
18 think about today was the date actually set for trial
19 and the Court said because these motions were made late
20 I'll hear these in limine motions before we start our
21 trial tomorrow. And, I'm here on behalf of Mr. Primas
22 who has a five-year term in order to turn this around,
23 and that law was passed in 2002, and that time is very
24 quickly coming to an end.

25 And, I ask myself how is the concept of

1 justice and fair play offended by somebody who
2 testified without being sworn? Is it somebody is going
3 to show that they lied, they deliberately lied because
4 they weren't under oath? And the remedy, how easy it
5 is for this Court to remedy this situation that was not
6 caused by us. Okay. By that I mean it was not caused
7 by us, because there's 45 days that the obligation is
8 on the other side to come forward and tell us about it
9 so we can be cured not on the day before trial some
10 year and a half later.

11 When you have the cases that enable this
12 Court as a trial judge to hear evidence outside of what
13 was before the Planning Board the first thing you could
14 do, you could -- you could have as your first two
15 witnesses Dennis Kumar and Mr. Lyons, and let them come
16 in here and be sworn and look at their testimony and be
17 questioned on their testimony to see whether or not the
18 people on the Planning Board relied on something that
19 was not true. They relied on something that was
20 deliberately false. In other words, that's the remedy.

21 Why send us back and lose a year and a half
22 to start this whole process over again, these thousands
23 and thousands of dollars that have been spent in
24 getting this case ready, the thousands and thousands of
25 dollars that have been spent in getting experts --

1 expert reports and experts ready to testify when this
2 Court can say I have the authority, I have the
3 discretion to do this and I'm not offending fair play
4 on -- in any way by saying, all right, the first two
5 things that I will hear, I will hear Mr. Lyons, the
6 City Planner, and I will hear from the Hilliard
7 employee, Mr. Kumar, to see whether or not their
8 unsworn testimony had some effect in making the
9 decision of the Planning Board a nullity or the wrong
10 decision, and you can do this. I mean, --

11 THE COURT: That should have been done by the
12 Planning Board.

13 MR. KENNEY: Your Honor, --

14 THE COURT: I don't disagree with what you
15 said, and I don't mean to cut you off, but while you're
16 still on that thought, it's the same reason why people
17 convicted for horrendous crimes have had their
18 convictions reversed and the State has been asked to
19 reprove a case sometimes 10, 15, 20 years later in the
20 context of reversals based upon PCR. Dangerous
21 criminals are set free to pray upon us because some I
22 wasn't crossed or T -- some I wasn't dotted or T wasn't
23 crossed. If it's fundamental enough about the I or the
24 T, for example, somebody convicted on totally unsworn
25 testimony or even a critical witness who was unsworn,

1 you know, the conviction is reversed. And, if the
2 State at that point in time, can't -- doesn't have the
3 evidence to reconvict a murderer or rapist, whatever it
4 is, he or she goes free. And, that's an unfortunate
5 consequence, but I'm not so sure that I'm in a position
6 after the Legislature has mandated that certain things
7 be done to do something differently.

8 And, in response to your larger point, I
9 haven't gone into the motions in limine. And, the
10 reason why interrupt you, because I don't want to lose
11 this thought. There were motions in limine, response
12 to the motion in limine, reply to the response to the
13 motion in limine, but I have -- this is my own dicta --
14 a completely different version as to what a Trial Court
15 looking over the shoulder of a Planning Board should be
16 -- should be doing. I really do. And, I don't intend
17 to flush it out here. It's not appropriate
18 procedurally, although it might be useful. But, I
19 don't regard these battles, whether or not it's
20 determining whether or not Mr. Kumar or Mr. Lyons was
21 lying, fabricating, exaggerating, didn't know what they
22 were talking about, was offering net opinions, all
23 those things as being initially my role. It is the
24 role of the Planning Board. It is the role of elected
25 officials and their designees to make these

1 determinations. The remedy for a lot of this stuff is
2 the ballot box. It is not having some unelected judge
3 make these decisions for the citizens of the City of
4 Camden. That sounds like a speech. My apologies for
5 it, but, Mr. Kenney, please continue.

6 MR. KENNEY: Judge, it is your job to see
7 whether or not there's substantial evidence before you
8 and that's -- and all the case law says that. And,
9 despite the fact that you might feel that that's
10 somewhat legislative, I don't think it is. I think
11 it's completely judicial. Judges do it every day.
12 They listen to the facts and they listen to the
13 witnesses and they finally apply the law and say, yes,
14 there's substantial evidence to show that this area,
15 this area in Cramer Hill, is in need of redevelopment.

16 THE COURT: What is the purpose then of having
17 a Planning Board if a Planning Board doesn't do --

18 MR. KENNEY: The purpose of the Planning Board
19 obviously, Your Honor, is just like Justice Francis
20 said I believe in Lyons, the first thing you do is the
21 lawyers get together and they agree that this is a
22 transcript from the Planning Board and this is a
23 transcript from City Council and they all agree on that
24 and that goes in as a joint exhibit, and then the Court
25 takes evidence, okay.

1 THE COURT: But that's where -- and my
2 apologies for interrupting -- it seems to me, and this
3 is backed perhaps more by Levin than Lyons -- that
4 these -- the appropriate battle ground for these
5 battles is the Planning Board. Nobody elected me. I
6 understand my role in reviewing whether or not it's
7 Grand Jury testimony or testimony before a Planning
8 Board is to determine adequacy, whether or not it's
9 defined by probable cause or defined by "sufficient
10 evidence" or "sufficient credible evidence," the battle
11 ground, the tug -- the back and forth, the tug and --
12 the tug and flow, whatever, that's before the Planning
13 Board.

14 The role of Superior Court is more limited
15 then to turn on a case where the Planning Board might
16 have heard, for example, an hour of testimony and then
17 the Superior Court it was quoted in today's paper of
18 two weeks, if I let everything in that's the subject of
19 the motions in limine we'll be here till the summer.
20 That sounds a bit hyperbolic, but maybe not. That's
21 putting the cart before the horse. That's the tail
22 wagging the dog. That seems --

23 MR. KENNEY: We're suggesting that it's going
24 to be ten trial days, Your Honor, and I think we can --
25 I think we can meet that, but all I'm saying to this

1 Court, the Planning Board did their job and they
2 listened to "unsworn testimony", and some of it was
3 unsworn testimony, and they made a decision, and they
4 were unanimous in their decision. And, I'm saying to
5 this Court, all right, it was unsworn, maybe it should
6 have been sworn, maybe it wasn't, but I can cure that,
7 because I can ask these two people. I can put them
8 under oath, okay, before me who is the ultimate
9 determine -- the ultimate person that's going to
10 determine whether or not there's substantial evidence.
11 I can put them under oath, and before we hear from any
12 other witness, okay, I can determine whether or not
13 that evidence that they gave before --

14 THE COURT: Let me ask you this hypothetical.
15 Let's assume that -- and, after all, we have to assume
16 that the oath means something. All right. It may be a
17 legal fiction. I may be a naivety to believe that
18 anybody actually is influenced by the fact that they
19 put their hand on a Bible and swore to tell the truth
20 or that they affirmed to tell the truth, but if you get
21 beyond what may be a legal fiction I have to assume
22 that people testify differently when they're actually
23 put under oath and sworn then when they're just giving
24 information to, for example a Planning Board. And, it
25 seems to me the initial determination as to whether or

1 not there was sufficient evidence or whether or not
2 this was a good idea. After all, my test is different
3 than the Planning Board's test. The Planning Board
4 isn't governed by the sufficient credible evidence
5 test. They've got to decide what's in the best
6 interest of their community just like the governing
7 body who, by the way, is elected -- I'm not -- has to
8 decide what's in the best interest of their community.

9 My review is the review you just mentioned.
10 It seems to me my review is by reviewing what's before
11 the Planning Board subject, of course, to the very
12 murky issue. What I'm suggesting is that the issue is
13 far murkier than the briefs may make out as to what is
14 appropriate supplementation for both sides. It's not
15 just one side. It's both sides. So, there is language
16 -- I don't want to go further than that. There's
17 language -- there's language that further muddies up
18 whether or not, for example, the defendants are limited
19 to merely rebuttal to what the plaintiffs offer in
20 supplementation or can they de novo present their own
21 independent evidence that's not technically in rebuttal
22 of the plaintiff's case. All those issues will
23 eventually, I'm sure, be before me, but they're not
24 going to be before me this afternoon.

25 MR. KENNEY: Well, there may not be -- we're

1 hoping tomorrow -- let me -- I'll end on this, Your
2 Honor. When we talk about something that may be a
3 public interest, is it of a public interest to the
4 citizens of Camden and to the citizens of the State of
5 New Jersey that Camden starts to be turned around, that
6 you have a situation that as every year goes by the
7 deficit gets larger and larger, that when you have a
8 school district that has a budget of approximately \$300
9 million a year, and the taxes that are raised in the
10 City of Camden are three percent of that --

11 MR. BARON: Your Honor, none of this is before
12 the Court.

13 THE COURT: I -- I'm going to allow Mr. Kenney
14 to speak.

15 MR. KENNEY: All right. Thank you. And the
16 taxes that are raised, the property taxes that are
17 raised in order to support that is approximately three
18 percent. If we have a -- a budget, a municipal budget
19 that is somewhere in the area of 161,000 and the City
20 only raises about 46 percent of that and every year
21 that keeps getting -- the deficit keeps getting larger
22 and larger, there's more money coming from the State,
23 when are we going to start allowing the City to turn
24 itself around?

25 I've said to you many times every day that

1 goes by is a victory for the defendants. It's a
2 victory for --

3 COUNSEL: Plaintiffs.

4 MR. KENNEY: -- for the plaintiffs -- excuse
5 me, Your Honor, who are entrenched in their recycling,
6 buying more land, using more land for recycling every
7 day down there and it's an opportunity, Your Honor,
8 that we should have starting tomorrow. All you have to
9 do is say bring those two witnesses in, let me hear
10 from them to see whether or not there was anything that
11 they said or did at that Planning Board hearing that
12 would in some way make it a very, very unfair
13 proceeding.

14 And you have the defendants here ready to
15 cross-examine them and to bring to your attention that
16 what they did if they had been sworn they would have
17 testified differently. You have the discretion to do
18 that instead of sending us back for -- and to lose the
19 year and a half that we've now spent getting ready for
20 this trial today.

21 To me, when we talk about public policy and a
22 public interest, the public interest is let's allow the
23 evidence to come before you to see whether or not, in
24 fact, the Need study is proper and that Cramer Hill is
25 an area in need of redevelopment. I think it's easy

1 for you to do.

2 MR. BARON: Your Honor, may I respond briefly?

3 THE COURT: Thank you, Mr. Kenney. Yes, you
4 may, Mr. Baron.

5 MR. BARON: Thank you, Your Honor. First of
6 all, I'd like to object to Mr. Kenney's references on
7 the records to facts that have never been in evidence
8 before the Court today to deficit of the City of
9 Camden, et cetera. To answer his question very briefly

10 --

11 THE COURT: It's part of the motions in
12 limine.

13 MR. BARON: -- when can the City of Camden
14 begin to right itself, when it complies with the law.
15 It's a very simple answer. In terms of Mr. Kenney's
16 arguments about what Lyons says, no one has pointed
17 this out. It may be relevant to the Court. Lyons was
18 the Blight Act. Levins is the redevelopment Act. It
19 was significant in regard to the swearing of witnesses.
20 I think it's significant as to the scope of
21 supplementing the record. Lyons look at the old Blight
22 Act and told us what you could do. Levins, the Supreme
23 Court case, looks at the Redevelopment Act and says
24 that the plaintiffs can supplement, doesn't suggest the
25 defendants can. I know the other cases. We all know

1 the murky area that we get into with all the various
2 cases.

3 The final thing -- the final thing I'd like
4 to say to the Court is this, we may all argue whether
5 the proper standard is substantial evidence, which is
6 in the Redevelopment Act, or substantial credible
7 evidence, which is in the Perth Amboy case and in the
8 Princeton case and other cases. The one thing we know
9 logically if the word credible is to be considered by
10 the Court then it had to have been sworn. I'd
11 respectfully submit to you that evidence cannot be
12 credible under the Legislative rubric of the act and
13 the decision in Princeton unless someone took an oath,
14 and here's why; because when I stand before any agency
15 or any Court and swear to tell the truth I have no idea
16 what I'm going to be asked. I have no idea what
17 someone may require me to respond to under oath, and I
18 say or affirm, I swear or affirm, I will tell the
19 truth. It's a completely different situation to bring
20 someone in after the fact when no cross-examination was
21 permitted of them at the hearings and say, oh, yeah,
22 what I said was truthful. That's not the test. That's
23 not what the Legislature intended and that's clearly
24 not what Princeton intended.

25 I've heard this argument made at Planning

1 Boards. When someone gives testimony and they forget
2 to swear them and then they said, oh, I forgot.
3 Listen, did everything you just say, was that all true.
4 Well, it's too late to ask that question. They have to
5 say it before a word exits their mouth.

6 THE COURT: Mr. Miller, you want to respond?

7 MR. MILLER: You're shaking your head no, Your
8 Honor. I --

9 THE COURT: Oh, no.

10 MR. MILLER: Just two things Your Honor;
11 first, in response to that last argument, all of that
12 goes out the window when Your Honor recalls that you're
13 supposed to determine whether there's substantial
14 credible evidence presented before you. It's not
15 whether there was substantial credible evidence
16 presented to the Planning Board. It's what is
17 presented before you, and clearly all the witnesses
18 presented before you --

19 THE COURT: I'm not so sure about --

20 MR. MILLER: All right.

21 THE COURT: I hate to go out on a limb, but I
22 know there at least is one case. I have a recollection
23 of the test being formulated as to whether or not there
24 was substantial -- not sub -- this credible word comes
25 up in the recent cases. All right. Those that have

1 argued that the word credible doesn't appear in the
2 statute are right. The statute requires substantial
3 evidence not substantial credible evidence. And, to
4 the extent that it makes a difference will be dealt
5 with on a separate date.

6 But, I know that there's some case law that
7 states that the Court's review is whether or not there
8 was substantial evidence before the Planning Board and
9 governing body. I have a pretty good memory, and I
10 know that's in one of the report -- at least one of the
11 reported cases. All right.

12 MR. MILLER: Your Honor, if I might?

13 THE COURT: Yes.

14 MR. MILLER: Putting that aside, I take it
15 from the way this discussion has gone this afternoon
16 that Your Honor is inclined to rule in plaintiff's
17 favor.

18 THE COURT: I think I have to.

19 MR. MILLER: Well, --

20 THE COURT: I'll explain in a reason why.

21 MR. MILLER: Okay.

22 THE COURT: Mr. Kenney indicated --

23 MR. MILLER: Let --

24 THE COURT: -- about discretion. I don't
25 think it's discretionary.

1 MR. MILLER: Okay. Let me just ask though
2 that Your Honor do as Judge Orlando did when Judge
3 Orlando ruled that there was -- that the City Council
4 had failed to comply with the Open Public Meetings Act,
5 and what he did was he stayed the action for 90 days so
6 that the City could go back and correct the problem. I
7 would ask that the same action be taken by Your Honor.

8 COUNSEL: May I be heard?

9 MR. MILLER: There's absolutely no reason not
10 to do that, Your Honor.

11 THE COURT: Well, we'll get into that in a
12 second. I want to -- that goes into remedy before. I
13 want to indicate exactly what it is that I find and
14 then we'll discuss that, and I'll be glad to hear from
15 everybody concerned. Let me indicate that the
16 Legislature was quite clear as to how it wanted
17 Planning Board meetings conducted when it came to
18 witnesses, specifically in regard to those witnesses, -
19 - this is directly from 40:55D-10D, "The testimony of
20 all witnesses relating to an application for
21 development shall be taken under oath or affirmation by
22 the presiding officer," et cetera, et cetera. It's not
23 discretionary. It's mandatory and following a line of
24 cases that basically indicate it's more in the Grand
25 Jury context that where there's a -- that type of

1 deficiency, and it's high -- it's hardly minimal, it
2 goes to the very core of the nature of the evidence
3 presented. That's why we swear witnesses in. So, I
4 don't believe it's discretionary. I believe that the
5 failure to swear in, in particular, like I said, the
6 testimony of Mr. Lyons on May 18th was extensive, a
7 little bit less so in regards to Mr. Kumar on May the
8 11th, but, nevertheless, Mr. Kumar, as I understood,
9 prepared the Hilliard report. That was a report that
10 designated the area in question as an area in need of
11 redevelopment. And, we've gone over this, but it was a
12 violation of that statute to have to swear in the
13 witnesses, and the remedy of -- and we'll now discuss
14 the issue concerning whether or not there should be a
15 further remand, because, frankly, my inclination is
16 simply to grant the motion for summary judgment, vacate
17 the resolution in the ordinance, and then the City can
18 do whatever it feels is appropriate. Why do I need to
19 keep this open for 90 days?

20 MR. BARON: Your Honor, and not only is that
21 appropriate but let me explain the consequence of doing
22 what Mr. Miller said.

23 THE COURT: We've already done that already
24 once before, haven't we?

25 MR. BARON: Yes. We've done it once before,

1 and I can -- I can perceive of the following situation.
2 It goes to the Planning Board and they try to use some
3 of the same evidence, some the same stuff that came up
4 before and simply say, Mr. Kumar, did you tell the
5 truth? Yes. And here we are again. No. That's not
6 the appropriate procedure.

7 If you invalidate the proceedings then the
8 only appropriate remedy after doing that is to leave
9 the City of Camden and the redevelopment agency and the
10 Planning Board where they originally are.

11 THE COURT: To the extent that the request was
12 to hold up the 90 days was merely to waive the
13 transcript in front of Kumar and Lyons and so, by the
14 way, when you gave this testimony was it true, that
15 won't do the trick so to speak.

16 MR. BARON: And they shouldn't be allowed to
17 use any of the evidence that was before the Planning
18 Board --

19 THE COURT: I'm not ruling on -- I'm not
20 ruling on any of that.

21 MR. BARON: But I appreciate that. And the
22 only way to insure that those issues don't arise in one
23 context or another is what Your Honor said. Invalidate
24 the proceedings and leave the defendants where they
25 should have been from the beginning and let them do

1 whatever they want.

2 THE COURT: All right.

3 MR. KENNEY: Your Honor, --

4 THE COURT: Mr. Kenney.

5 MR. KENNEY: -- I think this is really
6 critical. Just think about the time, energy and
7 expense that is going on, and the reason that we are
8 asking this Court to get a -- to not dismiss this case,
9 but to grant a period of time for us to correct the
10 situation that you are now ruling on today, and that is
11 to remand the matter back to the Planning Board so that
12 we can start this procedure over in this -- under the
13 same docket number, and with all the discovery and all
14 the sworn witnesses and all the depositions, all the
15 interrogatories, all the motions, all the rulings that
16 have been made are still --

17 THE COURT: Why can't procedurally -- but I
18 think I know where you're going, Mr. Kenney, and I'm
19 not ruling on it, but -- but Rule 4:50 is still in
20 existence. Assuming that we're in the one-year period,
21 or whatever is reasonable, whatever comes first, if the
22 deficiency is correct, and I'm not suggesting -- it's
23 not for me to tell people how to correct deficiencies.
24 I have an idea, but I'm not -- I'm going to resist that
25 temptation. Why can't a 4:50 motion to reinstate with

1 a certification saying X has been done? That may or may
2 not be enough, but there are procedural mechanisms in
3 effect that don't necessarily require that everything
4 always be starting from scratch. But, I want to
5 indicate parenthetically, and this goes into the
6 motions in limine, that my conception is, is that I am
7 not the Planning Board. Evidence to justify the
8 designation that this area is blighted should in the
9 first instance be presented to the Planning Board. The
10 FBI crime statistics are a perfect example. If they're
11 relevant to show the area is crime infested the
12 Planning Board ought to know about that. That's just
13 by way of example.

14 MR. KENNEY: Right. Your Honor, but the
15 reason that you are ruling the way you did today was
16 because there was a procedural error. Two people were
17 not sworn. They gave testimony, but they were not
18 sworn. We're asking you to keep this case alive, to
19 keep this docket number, to keep all of the discovery
20 and the legal rulings that have been in and to send
21 this matter back to the Planning Board to allow the
22 City to proceed with a hearing before the Planning
23 Board that will meet Your Honor's --

24 THE COURT: Mr. Kenney, I'm not -- just so
25 we're not arguing over terminology, why I envision --

1 this case is not being dismissed with prejudice. It's
2 not like some time down the block a new complaint with
3 a new filing fee and a new docket and a new Judge and
4 new ruling is going to occur. You're going to get an
5 order. Perhaps somebody wants to take this to the
6 Appellate Division with a request for an expedited
7 appeal. The issue is very narrow, by the way.

8 No one disputes the witnesses weren't sworn.
9 Either, A, the law required them to be sworn, if it did
10 then you can argue remedy, if not, I should be
11 summarily reversed and we should be back here in a week
12 or two maybe for trial. That certainly could possibly
13 happen, but if I -- if I grant the motion for summary
14 judgment and I vacate the resolution and the ordinance
15 that doesn't mean that assuming the governing body
16 believes it's correct in its deficiency, it can't file
17 a motion to -- to reinstate, so to speak, all three --

18 MR. KENNEY: Why --

19 THE COURT: -- complaints --

20 MR. KENNEY: -- do we have to do that, Your
21 Honor, because you have the power today, okay, to grant
22 their motion without prejudice for a period of a set
23 number of days. We suggest 90 days for the City to
24 cure it. That's all we're asking. Within --

25 THE COURT: You think the City can --

1 MR. KENNEY: -- the same confines --
2 THE COURT: -- do that in any event?
3 MR. KENNEY: -- of this case. You keep
4 jurisdiction. Continue jurisdiction, stays with you.
5 THE COURT: Jurisdiction to do what?
6 MR. KENNEY: Jurisdiction to allow the City to
7 cure the swearing of two witnesses at a --
8 THE COURT: Why do they need me to do that?
9 Why can't the City do it all on its own?
10 MR. KENNEY: Because they can do it all on
11 their own, and they will do it all on their own, and
12 they --
13 THE COURT: Well, why do they need me --
14 MR. KENNEY: -- don't need you.
15 THE COURT: -- to keep the case -- why do I
16 have to keep the case active "for 90 days?"
17 MR. KENNEY: Well, why wouldn't you want to
18 keep it active? Do you -- you want us to start all
19 over again, Your Honor?
20 MR. BARON: I can tell you --
21 THE COURT: No, no.
22 MR. BARON: -- why Mr. Kenney wants the case
23 to stay --
24 THE COURT: Let me Kenney speak for himself,
25 Mr. Baron. What I envision doing is granting the

1 summary judgment motion, since the order did not
2 contain the language, pen in the language that the
3 resolutions of the Planning Board and the ordinance of
4 the City are vacated, not with prejudice. Nothing is
5 dismissed with prejudice. That is it. We still have
6 three cases that have been consolidated. They have not
7 been dismissed, and if it takes the City a day, a
8 month, a year, whatever it is, so be it, but I don't
9 see that I have to do anything visa vis the City if it
10 wishes to either resubmit the case or file a motion for
11 leave for appeal or, frankly, --
12 MR. KENNEY: That's fine.
13 THE COURT: -- you might be better off --
14 MR. KENNEY: Your Honor, --
15 THE COURT: -- with finality, because then
16 you get an appeal as a matter of right.
17 MR. KENNEY: That's exactly what we're asking
18 you to do. That's exactly what we're asking you to do.
19 That's exactly --
20 THE COURT: But you don't get that if I keep
21 the -- if I keep everything active. Then it's
22 interlocutory; isn't it?
23 MR. KENNEY: Your Honor, you're doing exactly
24 what we're making the application to do. You're not
25 dismissing your case. You're making findings, and

1 you're giving the City the right to go back and to the
2 cure the ill, and that's exactly what we'll do.

3 MR. KENNEY: Judge, so we're clear, Your
4 Honor, you are granting -- I believe you are granting
5 the plaintiff's motion for summary judgment and you're
6 vacating void ab initio the action of the Planning
7 Board and the City. It is important, because that is a
8 final order of the Court, and that final order kicks us
9 into on the challenge to the conflict also enables us
10 to go to the Appellate Division as of right on that
11 issue. We won't have to go interlocutory.

12 THE COURT: Yes. I'm not supposed to be --

13 MR. KENNEY: That's what's significant.

14 THE COURT: -- doing anything to even
15 remotely gain the system for Appellate purposes, but it
16 seems to me, Mr. Kenney, that if there's nothing else
17 for me to do pending further action by the Planning
18 Board then the cases are dismissed. And it doesn't
19 necessarily mean that everything that's been done has
20 to be done again. It's not like the discovery
21 depositions and everything else goes down the drain.
22 That doesn't happen. That doesn't happen equitably.
23 That's not reasonable. But it seems to me everybody's
24 better off there's some type of final judgment, a final
25 order from which they can appeal as a matter of right.

1 MR. KENNEY: Your Honor, we would like to have
2 a final judgment as a matter of right when we have
3 corrected the procedural deficiencies that this Court
4 has said that have occurred. And, if you allow us to
5 go back and cure the procedural mistakes that have been
6 made we would then like to have a hearing, a
7 prerogative writ trial before you, and then we will
8 have a final hearing.

9 By the way, there's lots of -- there's lots
10 of other claims. Unfortunately in this case nobody has
11 the right to go up as a matter of right, because not
12 all -- you haven't ruled on all issues. But, let's
13 forget that for the moment. Judge, that's what the
14 final order should be that goes to the Appellate
15 Division. We just -- you said --

16 THE COURT: If it's not final it may not ever
17 reach the Appellate Division -- I mean, again, it's not
18 for me to speak for the Appellate Division. Anything
19 other than a final judgment or a final order is
20 interlocutory and you have to file motion for leave to
21 appeal it, which it may or may not be heard. My point
22 is that a final judgment gives everybody the right to
23 appeal as a matter of right. That seems the cleanest
24 thing to do.

25 MR. KENNEY: Well, Judge, let me say this to

1 you, and we hate to keep referring to what a Judge down
2 the hall did, but when the Judge down the hall, okay,
3 found that there was a procedural error he gave the
4 City 90 days to cure it, and that's --

5 MR. BARON: Excuse me. I'm sorry.

6 MR. KENNEY: -- and that's what we're asking
7 you to do. We're asking you to give the City 90 days
8 to cure the procedural error.

9 THE COURT: Just so I understand, what you're
10 asking is the order should state the motion for summary
11 judgment is granted. I am vacating the resolutions in
12 the ordinance, but I'm also putting in the order that
13 I'm willing to give the City of Camden and its Planning
14 Board 90 days to correct the deficiencies that resulted
15 in this order?

16 MR. DE SANTIS: Your Honor, I believe Mr.
17 Baron submitted to Your Honor in his reply brief a copy
18 of the order that Judge Orlando entered.

19 THE COURT: Yes.

20 MR. DE SANTIS: So rather than all of us
21 paraphrasing it, we can probably just go to it.

22 MR. BARON: Before we get off on a tangent,
23 Your Honor, --

24 THE COURT: Well, hold on.

25 MR. KENNEY: Can we just finish?

1 THE COURT: I'll let you speak. I just --

2 MR. KENNEY: All right. Thank you.

3 THE COURT: What I did is get -- I got a fax
4 and --

5 MR. KENNEY: It's Exhibit A.

6 THE COURT: There's no Exhibit A attached to
7 this.

8 MR. KENNEY: I'll be happy to give it to the
9 Court.

10 THE COURT: You can give me a copy.

11 MR. DE SANTIS: Your Honor, I can hand up my
12 copy if Your Honor would like.

13 THE COURT: That's fine. Thank you. All
14 right.

15 (Pause)

16 THE COURT: I don't want all three of you
17 standing. I mean, the first paragraph voids what had
18 occurred in terms of the -- let's see, the designation.
19 It's the second paragraph. All right. All right. Mr.
20 Baron, what's the objection?

21 MR. BARON: Your Honor, this is in no way
22 controlled by Judge Orlando's prior ruling and Judge
23 Orlando in no way in my judgment would ever allow them
24 to do it again.

25 THE COURT: Let's not worry about what --

1 MR. BARON: What happened --
2 THE COURT: -- what would have --
3 MR. BARON: -- what happened --
4 THE COURT: Why is a bad idea to do this?
5 MR. BARON: Right. What happened in the first
6 case was they failed to publish the notice of the
7 readoption of the ordinance properly. It was, as Your
8 Honor has normally referred to it, a discreet issue,
9 easily resolvable by simply going back, giving notice
10 and doing it again. So, Judge Orlando gave them 90
11 days to go back and do it again. That's not what's
12 involved here. What's involved here is to conduct
13 hearings to give notice to redo the hearings, to have
14 them before the Planning Board. There's no
15 justification for this Court retaining jurisdiction.
16 If summary judgment is granted, it's granted.
17 There is no ability to preserve the case in front of
18 Your Honor once you've granted summary judgment. If we
19 win on this issue, which Your Honor has indicated we
20 do, then we have prevailed in the case. They may go
21 back and do it over again. We may challenge it or,
22 surprisingly, if they ever do it correctly we may not
23 challenge it, but it would be inappropriate for Your
24 Honor to retain jurisdiction of a case after granting
25 summary judgment. All kinds of subsequent motions

1 could be made to you during the Planning Board
2 proceedings.
3 I respectfully submit to Your Court Hoboken
4 is the appropriate way to do it. It's not governing on
5 Your Honor, I recognize that, but that's the
6 appropriate procedure. The appropriate procedure is to
7 grant summary judgment. That's a final determination.
8 That's appealable.
9 MR. KENNEY: Judge, you've ruled that we have
10 lost today because of a procedural defect. Two
11 witnesses were not sworn. What prejudice is it to the
12 plaintiffs to give us the right to remedy that
13 procedural error that was made?
14 In this case there have been 12 complaints
15 filed.
16 THE COURT: Just out of curiosity, --
17 MR. KENNEY: We have -- we have answered --
18 THE COURT: -- when you say remedy the
19 problem, and you don't have to answer the question if
20 you feel like you're revealing strategy, that type of
21 thing, but this was alluded to by Mr. Baron, if the
22 remedy is such that we're simply going to ask the
23 witnesses before the Planning Board here's a copy of
24 your transcript, review it. If you've been sworn or
25 not, we swear you, is everything you said the truth.

1 MR. KENNEY: Your Honor, please. Give us the
2 benefit of having -- having listening to you, having
3 read the cases and trying to do it the way it will
4 satisfy the law and Your Honor's interpretation of the
5 law. Give -- in other words, to suggest that we're
6 going to go back and it's going to be a two-minute
7 hearing; did you read your transcript, yeah; is
8 everything you said in there true, yes; you're
9 dismissed, Judge, you have told us that we didn't do it
10 the right way. You voided the proceedings. We have to
11 go back and have a hearing in the Planning Board and to
12 make a record, and it's up to us to make that
13 particular record, but I was saying to you, Your Honor,
14 just to have some concept of this, there's 12
15 complaints filed here. We've been served and answered
16 a thousand interrogatories. All right. I don't know
17 the number of depositions that are taken. I can tell
18 you the number -- I think that the number of experts
19 are four, -- five, experts have been hired and
20 submitted reports and been deposed. Judge, give us, as
21 I say, to do justice and not to let this thing go on
22 for another year and a half, give us 90 days as Judge
23 Orlando did when we made a procedure error to remedy
24 it.

25 What's -- what's going to be the prejudice?

1 Everything is done. We are supposed to start tomorrow.
2 We have to do it over. Let us do it over with you
3 retaining jurisdiction so that we don't have 12 more
4 complaints. We don't argue the same motions again. We
5 don't depose these people again. We don't answer
6 another thousand inter --

7 THE COURT: That's not going to happen. No
8 matter what the order states, I'll be very glad to
9 state for the record it's not going to be a redo of all
10 the discovery, interrogatories and all that type of
11 thing, and that can easily be managed if the issue
12 arises. That's not going to happen.

13 MR. BARON: Your Honor, can I answer Mr. --

14 THE COURT: I want Mr. -- Mr. Kenney to
15 complete his thoughts before Mr. --

16 MR. KENNEY: And I will. Judge, all I'm
17 saying is, Judge, if you retain jurisdiction and you
18 don't dismiss the complaint and allow us to remedy the
19 two procedural errors and retain jurisdiction within 90
20 days we'll be ready to proceed with a trial, with a
21 prerogative writ trial before you if the Planning Board
22 passes it and if City Council passes it. That's all
23 we're asking you to do.

24 And, in light of where we're going and in
25 light of what I say to you, and by the way, I'm not

1 sworn, but I say to you that when -- if you're really
2 looking at, you know, my client and the very limited
3 time period that he has to make something happen in
4 this City that it -- I say it's discretionary -- it's a
5 discretionary call on your part, but I think, you know,
6 justice and fair play really weigh in favor of give us
7 90 days to remedy a procedural error and then to come
8 forward back to you and to have a prerogative writ
9 case.

10 THE COURT: Uh-huh.

11 MR. BARON: Your Honor, there's 1,100
12 residents in the City of Cramer Hill who have lived in
13 fear of losing their homes for the last year and a
14 half. That apparently is of no consequence to my
15 adversaries. All that's important to Mr. Kenney is
16 that Mr. Primas' term will end in 2007. By the way,
17 he's not an elected official either.

18 THE COURT: Well, let's discuss the merits --
19 without getting into that stuff, let's discuss how your
20 clients are prejudiced if I sign an order.

21 MR. BARON: Oh, I just thought I'd get to make
22 a speech too. That's all.

23 THE COURT: Well, I'll be glad to give you a
24 chance to make the speech, but let's rehash this out
25 first. If I sign an order that says summary judgment

1 is granted which allegedly says something else is
2 almost meaningless in the context of this type of case,
3 so meaning what? It means the resolutions in the
4 ordinances are vacated. They're null and void. It's
5 like they hadn't occurred, but I don't think it's
6 necessary, but just for precautionary purposes, there's
7 further language that says -- and I'm not talking about
8 drafting everything in Judge Orlando's order -- that
9 the City will have 90 days. If the City believes it
10 has cured the deficiency that resulted in this order
11 within 90 days, what, the City can -- there's got to be
12 something -- what -- the City can seek to then hold --
13 request a hearing on the blight determination? The
14 City can then request that all the other motions that
15 haven't been heard be heard? There's got to be a
16 triggering. What happens if within the 90 days the
17 City believes it has cured the deficiency.

18 MR. BARON: And --

19 THE COURT: Let me -- let Mr. Kenney respond
20 to that.

21 MR. KENNEY: Judge, we would like you to keep
22 -- continue jurisdiction of this case, which you have
23 discretion to do, and to give us 90 days to cure the
24 procedural deficiency. Everything that has happened in
25 this case remains as part of this case. If the

1 Planning Board doesn't pass the resolution, if the City
2 Council doesn't pass the ordinance it's over. We have
3 90 days to do that. If we do that, Your Honor, then
4 you're going to -- we are going to then sit down, as
5 the Supreme Court has suggested we do, and agree on the
6 record that was before the new hearing of the Planning
7 Board, the new hearing before City Council, and that's
8 the record, and then any supplemental evidence that you
9 allow will be heard by you and then you will make the
10 call as to substantial evidence.

11 THE COURT: Okay.

12 MR. KENNEY: All we don't -- all we do not
13 want to happen, Your Honor, is for this case that's
14 before you now to be dismissed.

15 THE COURT: Even if -- here's what -- here's
16 the catch. I don't understand why it is that without
17 me putting all that language in the order, because I
18 can state on the record, A, I don't anticipate that
19 anything's been done in terms of discovery or motion
20 practice is going to be redone again; B, I'll be the
21 Judge that will take the case; C, that should the City
22 do with -- in 60 days, 90 days or 120 days that which
23 it believes remedies the situation, under Rule 4:50 why
24 can't the State -- why can't the City move to reinstate
25 the cases?

1 MR. KENNEY: Well, Your Honor, we just -- we
2 can do a lot of things, but that doesn't mean that the
3 other side is going to stand by and say, oh, wait a
4 minute, this is a whole new case. This is something
5 that we've got to start out fresh with.

6 THE COURT: It just strikes me as --

7 MR. KENNEY: It just seems --

8 THE COURT: -- the only thing to do is to --
9 is to grant the application, dismiss the prerogative
10 writ complaints. The City can do what it wants, and
11 everybody can file in response to what it wants, but it
12 doesn't mean that we redo everything that's been done.

13 The fact that -- probably have exactly the
14 same caption, it might have different docket numbers,
15 but I've indicated it will be my case, and nothing's
16 going to be redone unnecessarily so to speak.

17 MR. KENNEY: Judge, that's a whole new
18 timetable of filing of a complaint, the filing of an
19 answer. Judge, if you take this case and continue your
20 jurisdiction over this case all that time is over and
21 done, okay. All those motions that have been filed,
22 you know, -- you know, I'm not suggesting that somebody
23 did something deliberately, but it's just, you know,
24 one after another procedural motion.

25 All -- what's wrong with keeping jurisdiction

1 and saying, look, I know that there's a dispute in the
2 law?

3 THE COURT: The answer is --

4 MR. KENNEY: And you guys lost and you guys
5 won, but that doesn't mean that you have to start over
6 from day one. I'll give you 90 days to cure the
7 deficiency, and if you do we'll pick up right from
8 there. There doesn't have to be a new complaint filed.
9 There doesn't have to be a new docket number. We have
10 a record already established, and we can go right on --
11 on with it. What's wrong with that?

12 THE COURT: Because I can do the same thing --
13 once the complaint is filed and served a phone call
14 could be made in my chambers asking everybody to come
15 in fontecemo (phonetic) and I schedule on a very, very
16 expedited basis the hearing, et cetera, et cetera.
17 Everything that you're concerned about can be done just
18 as easily and I think in a much cleaner way by me doing
19 what is the usual course. I know that it wasn't done
20 earlier on in regard to one aspect of this case, but,
21 after all, the prerogative -- the relief on the
22 prerogative writ complaint was to void the action taken
23 by the Planning Board and the governing body. If I do
24 that then I've done that what the complaint sought to
25 do, the complaint, therefore, needs to be dismissed.

1 If the complaint seeks \$300,000 in damages because of a
2 breach of contract and the \$300,000 is paid either in
3 settlement or in judgment, the complaint gets
4 dismissed. If there's a question about enforcement, if
5 it's one of those type of cases, then you're right, the
6 Court sometimes can retain jurisdiction for enforcement
7 purposes, but this is not an enforcement type of
8 situation.

9 MR. KENNEY: But, Judge, who's in charge of
10 filing a complaint? When do they file the complaint?
11 Do you give them another 45 days after the final action
12 of the -- of City Council?

13 THE COURT: Yeah.

14 COUNSEL: Your Honor?

15 MR. KENNEY: Why do you have to do that, Your
16 Honor?

17 THE COURT: Because I'm voiding ab initio what
18 was done, because it was a violation of State Statute.

19 MR. BARON: Exactly. And, Your Honor, can I
20 just say one thing?

21 THE COURT: Let me Kenney finish his
22 thoughts.

23 MR. KENNEY: So do they get another year and a
24 half, Your Honor?

25 THE COURT: No. That clearly -- let me

1 explain to --

2 MR. KENNEY: Well, who's --

3 THE COURT: -- everybody, that clearly --

4 MR. KENNEY: -- you know, all due respect,
5 Your Honor, we all think that, you know, we're going t
6 be here next month and the next few months, who says
7 that, you know, that this will be your case then?

8 THE COURT: Well, I can appreciate that, but I
9 can say on the record that it will be treated as though
10 4155-04, et cetera, et cetera, had never been
11 dismissed. It's not going to be starting from scratch
12 with another year and a half. There's not going to be
13 any of that stuff. It's going to be -- if there are
14 prerogative writ complaints filed it's going to be on
15 the shortest, quickest docket that I have. I made
16 every effort given the limitations that I have to deal
17 with with bringing this thing in, doing whatever I
18 could on a timely basis, and that's exactly what I'm
19 going to do whether or not I were to retain
20 jurisdiction over these matters under these dockets or
21 to dismiss them under the understanding that if the
22 governing body and the Planning Board -- Planning Board
23 and then the governing body adopts, readopts, that type
24 of thing, then we'll be back here again,

25 In any event, I've heard enough argument

1 unless somebody wants to argue something different.

2 MR. DE SANTIS: Judge, --

3 THE COURT: Yes, --

4 MR. DE SANTIS: -- I should point out, Your
5 Honor, --

6 THE COURT: -- Mr. DeSantis.

7 MR. DE SANTIS: I should point out, Your
8 Honor, that there are other claims asserted by the
9 plaintiffs which are not covered by this motion. This
10 motion was filed as a motion for summary judgment, but
11 it really isn't. It was a motion for partial summary
12 judgment, because before the Court was involved after
13 the redevelopment plan lawsuit started there was an
14 effort by the City to institute a condemnation action
15 under the Fair Housing Act. An amended complaint was
16 filed. Those claim have nothing to do with the
17 Planning Board --

18 THE COURT: All right.

19 MR. DE SANTIS: -- so this is not a final
20 judgment of all the claims, of all the claims in the
21 case.

22 THE COURT: I agree with you -- I agree with
23 you that the orders are entered allowing modification
24 of the TRO to allow the gas station that was abandoned
25 since 1977 to be the subject of the -- what do you call

1 it, the filing of something? The filing of what, the
2 filing --

3 MR. DE SANTIS: Notice --

4 THE COURT: -- notice --

5 COUNSEL: Declaration --

6 THE COURT: -- that's not in any way remotely
7 affected by this. Should there be some disagreement as
8 to the affect of this order I'll be very glad to
9 clarify it, but the initial relief sought, I know by
10 Mr. Baron in his prerogative writ, certainly probably
11 dovetailed by all the others, was to vacate the
12 designation of Cramer Hill as an area in need of
13 redevelopment and, therefore, necessarily, the
14 redevelopment plan. That's what I'm doing. I don't
15 see anybody being prejudiced by me not retaining
16 jurisdiction, because, as I said, I'll say it for the
17 record, should the matter be reinstated other than the
18 fact that there's 45 days from -- as an accrual date,
19 there's not going to be any long -- it depends upon
20 also what occurs at the Planning Board.

21 I don't want to put myself in concrete, but I
22 will say this, there will be no gamesmanship. I don't
23 mean that in a pejorative sense, but I understand the
24 history of this case now better than anybody except for
25 possibly one person in this building among the judges,

1 and it's not going to be used as the basis for delay,
2 let me put it that way, beyond the inherent delay due
3 to the fact that correctly or incorrectly I find that
4 the Planning Board did not follow statutory mandate
5 necessitating the vacating of the resolution thereby by
6 domino effect, the ordinance approving the
7 redevelopment plan.

8 So, that's what I'm going to do. I want to
9 make sure everybody has an order.

10 MR. BARON: I'll prepare an order, Your Honor,
11 and submit it --

12 THE COURT: I don't want there to be arguments
13 on the form of the order. I want to do that now.

14 MR. BARON: Okay.

15 THE COURT: Let me get the order out that was
16 attached to the motion.

17 (Pause)

18 THE COURT: Anybody have an extra copy?

19 MR. BARON: Of the order we submitted, Your
20 Honor?

21 THE COURT: Yes.

22 MR. BARON: I apologize. I did not bring --

23 THE COURT: I had -- I had a copy.

24 MR. BARON: I might be wrong. I may have it.

25 THE COURT: Here it is. I have it. I have

1 it.

2 MS. POMAR: Your Honor.

3 THE COURT: Yes.

4 MS. POMAR: I don't want to complicate the
5 matter, but I do think we need clarification.

6 THE COURT: Yes.

7 MS. POMAR: We have an injunction in place
8 against proceeding with eminent domain and that
9 injunction applies to properties which the
10 Redevelopment Agency and the City contend they can take
11 by eminent domain under the Fair Housing Act. We have
12 a separate count challenging that authority to take the
13 properties under the Fair Housing Act. We need
14 clarification as to what happens with that injunction
15 and whether that issue needs to be separated out and
16 tried separately in order to preserve the injunction.
17 We don't want the injunction dissolved against the
18 taking of those properties which the City contends they
19 have the right to take at this present time.

20 THE COURT: The problem, Ms. Pomar, is that,
21 and correct me if I'm mistaken, none of that's been
22 addressed in any of the briefs -- what -- at least the
23 briefs that I indicated I would hear this afternoon,
24 which was whether or not due to the failure to swear in
25 Mr. Kumar and Mr. Lyons that the resolutions, plural,

1 and the ordinance should be vacated. That's what I'm
2 prepared to do and that's all I'm prepared to do at
3 this point in time.

4 MS. POMAR: Well, in that case that would not
5 dispose of our entire complaint, because we have a
6 complaint dealing with the Fair Housing Act which would
7 not technically be affected by the voiding of the
8 Planning Board resolution.

9 THE COURT: That may very well survive, and
10 that has to be dealt with then separately.

11 MS. POMAR: Right.

12 THE COURT: Anybody have any thoughts on that?

13 MS. POMAR: I believe that's Count Seven of
14 our complaint.

15 THE COURT: All right. Anybody have any ideas
16 about that?

17 COUNSEL: Well, that complaint can be severed.
18 They were consolidated originally, and it's just as
19 easy to sever it.

20 MR. BARON: I made the motion, Your Honor, on
21 behalf of Hargrove. I think the discreet way of
22 resolving it is to grant relief to Hargrove, dismissing
23 their actions, let all of the other parties, whether
24 you dismiss all the other complaints or don't that
25 survives. It accomplishes the necessary effect which

1 is to invalidate the proceedings of the Planning Board
2 and the City, and then someone can argue at some later
3 time whether that injunction should be in place or not.

4 THE COURT: You're arguing the orders should
5 just contain the 4155-05 docket and caption so to
6 speak?

7 MR. BARON: I think that that -- I think you
8 could include Mr. Rosenzweig's client, Mr. Levin's
9 client and my client.

10 THE COURT: Everybody except Ms. Pomar?

11 MR. BARON: Right. And, Ms. Pomar, who has a
12 different standing as we all know, in regard to the
13 residents versus the commercial, could be left there to
14 be argued another day whether the injunction should
15 stay in place or not. That eminent domain power has not
16 sought to be enforced against any of our clients as of
17 this time.

18 THE COURT: All right. Mr. Miller, Mr.
19 Kenney, Mr. DeSantis, Mr. Fisher --

20 MR. KENNEY: Well, it's obvious that you can't
21 -- you know, that this is not a final order, and I
22 understand that you're not going to dismiss it with
23 prejudice anyway, so --

24 THE COURT: All right. So then there's no
25 objection to me indicating in the order itself that it

1 will be an order granting plaintiff's motion for
2 summary judgment except plaintiff Cramer Hill Residents
3 Association.

4 COUNSEL: Judge, I would -- I think the
5 appropriate way is to sever that complaint. These
6 complaints were originally consolidated for the purpose
7 of this hearing. All the actions of my client that I
8 believe Mr. Baron and Mr. Rosenzweig's clients are now
9 completed.

10 THE COURT: All right. Well I can easily --

11 MS. POMAR: And --

12 COUNSEL: It only leaves --

13 THE COURT: Just so I'm clear --

14 MS. POMAR: And, I also believe that our --
15 this should also apply to all the counts in our
16 complaint that do relate to the redevelopment
17 designation and the redevelopment plan. It's only
18 Count Seven that stands separate from the proceedings
19 before the Planning Board.

20 THE COURT: Well, what --

21 MS. POMAR: So, really --

22 THE COURT: -- I could do then is in this
23 order add in the language about that the resolutions in
24 the ordinance are vacated, and put in with -- that
25 Count Seven, as contained in Docket 81-35-04 is not

1 dismissed.

2 MS. POMAR: Yes.

3 COUNSEL: Your Honor, I think I agree with Mr.
4 Levin. I think there should be language in there
5 uncoupling all of the consolidation, and the reason for
6 that is you then are going to have a procedural
7 quandary not only amongst but probably also in the
8 Appellate Division as to whether this was or was not a
9 final decision.

10 THE COURT: All right. Well then maybe the
11 easiest thing to do is before I sign this order is sign
12 an order severing the 8135-04 case. That's the first
13 thing. I then sign this order where I X out reference
14 to Cramer Hill Residents Association versus Primas.
15 And, then I'm given a separate -- I have two more
16 orders. I have an order severing the Cramer Hill
17 Residents case v. Primas. That's now severed from the
18 other three cases. I sign this order deleting
19 reference to that caption. I sign an order for
20 severance and the third order is a separate stand-alone
21 order involving Cramer Hill Residents versus Primas
22 under 8135-04 which grants partial summary judgment,
23 vacates the resolutions in the ordinance, but leaves
24 intact, so to speak, Count Seven of that complaint.

25 COUNSEL: That's acceptable to us, Your Honor.

1 MR. BARON: Your Honor, the -- may I approach
2 the bench for just a minute? And, it's not for
3 conversation. I just want to see the order you're
4 referring to --

5 THE COURT: Sure.

6 MR. BARON: -- so that I know which one it
7 is. I can hardly object to my own order. I just want
8 to make sure it wasn't the defendant's order.

9 THE COURT: All right. Well, one of the
10 things I want to do is to give physical orders to
11 everybody as quickly as possible for obvious reasons,
12 but unless everybody wants to stick around and
13 handwrite an order for severance in a separate order it
14 would be really, Ms. Pomar, you in conjunction with
15 everybody else, a separate order which will parrot a
16 relief granted in this order with the caveat that Count
17 Seven remains in effect I'll be glad to wait so I can
18 sign that. It shouldn't take more than about 15, 20
19 minutes to draft. But, I could start on this right now
20 and then everybody can work off this as the model.

21 MR. BARON: Please, Your Honor.

22 (Pause)

23 THE COURT: All right. I'll tell you what;
24 Judy, do me a favor and make probably about a dozen or
25 so more copies. It's two pages. All right. Everybody

1 take a look at this to make sure that everything here
2 is mechanically correct, and then I'll await the order
3 of severance and then the separate order in regards to
4 the Cramer Hill Residents Association.

5 Like I said, I want everybody to leave here
6 with signed orders, and there's no reason not to. All
7 right. Very good.

8 MR. BARON: Thank you, Your Honor.

9 MR. KENNEY: Could you read it to us, Your
10 Honor, so that if we have some comment we might make
11 it?

12 THE COURT: Certainly.

13 MR. BARON: If we're going to get copies
14 couldn't we just read our copies?

15 THE COURT: Well, the only thing I've really
16 added in that's not contained in the form you have, Mr.
17 Kenney is other than the leading reference to Ms.
18 Pomar's clients is I've added in the following
19 paragraph: "The resolutions determining Cramer Hill to
20 be an area in need of redevelopment an ordinance
21 readopting the redevelopment plan are vacated."

22 MR. BARON: I think, Your Honor, respectfully
23 -- no, that's fine. That's fine. The blight
24 determination is all that's in front of the Court at
25 this time. That's fine.

1 THE COURT: Okay. All right. All right. As
2 soon as you have any type of orders ready for me to
3 sign or look at or should a dispute arise concerning
4 the content of the form let me know. All right?

5 MR. BARON: Thank you, Judge.

6 THE COURT: Thank you, all.

7 * * * * *

8 C E R T I F I C A T I O N

9 I, Janet Barbieri, the assigned transcriber, do hereby
10 certify the foregoing transcript of the videotape
11 recorded proceedings in the Camden County Superior
12 Court, on January 23, 2006, is prepared in full
13 compliance with the current Transcription Format for
14 Judicial Proceedings and is a true and accurate
15 compressed transcript of the proceedings as recorded.

16
17
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19
20
21 _____
DATE

JANET BARBIERI

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