

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No: 02-80065-CIV-SEITZ
Magistrate Judge Garber

BASIL DIAMOND, *et al.*,)
)
Plaintiffs,)
)
v.)
)
TOWN OF MANALAPAN, *et al.*,)
)
Defendants,)
)
and)
)
DONALD SILPE, *et al.*,)
)
Defendant-Intervenors.)
/

NIGHT BOX
FILED
JUN 28 2002
CLARENCE MADDOX
CLERK, USDC / SDFL / MIA

STATEMENT OF MATERIAL FACTS AND EXHIBITS

IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

Statement of Material Facts

Attachment 1: Plaintiffs' Affidavits

Attachment 2: Deposition Excerpts of Town Designee

Exhibit F to deposition: April 11, 2002, Memo from Town Special
Counsel to interim Town Attorney

Attachment 3: Deposition Excerpts of Town Commissioner Hal
Prewitt

Attachment 4: Article, *Palm Beach Daily News*, June 6, 2002

71
AB

Pursuant to S.D. Fla. L.R. 7.5 D, plaintiffs assert that the following material facts are not in dispute.

1. The Town of Manalapan is a coastal community located in Palm Beach County, Florida. February 22 Order (DE #42), p. 2.

2. The Town consists of two distinct areas, the Ocean and the Point. *Id.*

3. The Town provides a full range of municipal services. *Id.*

4. Each of the plaintiffs is a resident of the Point, is registered to vote and has regularly voted in Town elections, including the May 5, 2002, election. Plaintiffs' Affidavits, attached hereto as Attachment 1.

5. Apportionment is the allocation of legislative seats based upon population. Tr. 1, 143:9-14 (Webster).¹

6. Malapportionment occurs when the population within the varying districts become very unequal. Tr. 1, 143:15-18 (Webster).

7. The ideal population for each district is arrived at by dividing the total number of people by the number of seats. Tr. 1, 143:19-22 (Webster).

8. U.S. Census data is the generally accepted source of data utilized for apportionment because of its consistency and accuracy; the 2000 census was substantially accurate. Tr. 1, 143:23 - 144:14 (Webster). *See also* Plaintiffs' Exhibit 6, "An Evaluation of Issues Relating to the Design and

¹ Tr. 1 references the transcript from the February 21 Preliminary Injunction hearing, on file with the Court at DE #49. The transcript from February 22 is on file at DE #50.

Malapportionment of Manalapan” by Professor Gerald Webster.²

9. There is an established procedure for a municipality to challenge the accuracy of the U.S. Census data; the Town of Manalapan did not challenge the accuracy of the 2000 census data and certified that the data was accurate. Tr. 1, 144:15 - 146:7 (Webster); 247:16 - 248:7 (Town Manager).

10. Of the three sets of data that were available to the Town of Manalapan (2000 U.S. Census, Town of Manalapan independent census, and Town Attorney’s estimate), the census data is the most accurate and most complete. Tr. 1, 147:18 - 159:25 (Webster).

11. Based upon the 1990 U.S. Census, the Town of Manalapan’s election districting scheme had a minimum total disparity of 121.5%, a rate 12 times the maximum acceptable level. Tr. 1, 166:14 - 167:25 (Webster).

12. The 1990 census data would have been available to the Town of Manalapan by April 1, 1991. Tr. 1, 170:17-25 (Webster).

13. Based upon the 1990 census data, the Town of Manalapan should have been reapportioned at that time because the Point was very underrepresented. Tr. 1, 171:1-9 (Webster).

14. Based upon the 2000 U.S. Census, the Town of Manalapan’s election districting scheme had a minimum total disparity of 175%, substantially greater than in 1990. Tr. 1, 171:10-23. (Webster).

15. As a result of the malapportionment, the Ocean had one Commissioner for every 22 residents while the Point had one Commissioner for every 116 residents, leaving Ocean residents five

² Dr. Webster’s report was admitted into evidence at the preliminary injunction hearing on February 21, 2002, and is on file with the Court. *See* Tr. 1, 211:22 - 212:11.

times more well represented than Point residents; Point residents access to the political process was substantially less than other residents of the Town. Tr. 1, 171:24 - 172:23 (Webster).

16. Holding the March 5, 2002, election under the old scheme resulted in the same disparity with the Ocean retaining four Commissioners to the Point's two Commissioners. Tr. 1, 172:24 - 173:11 (Webster).

17. The Charter amendments put forward by the Town Commission and adopted by the electorate do not require reapportionment in the future when changes in population occur. Ordinance 199 (Exhibit A to Moore Affidavit attached to Town defendants' motion, DE #61).

18. There are no Town policies in place that would require the Town to revisit reapportionment at any time in the future. LaVerriere deposition, 22:6 - 23:2, excerpts attached as Attachment 2.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

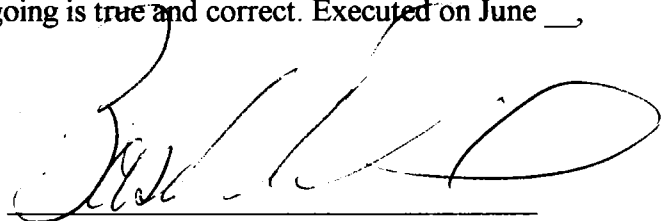
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DONALD SILPE, *et al.*,)
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Defendant-Intervenors.)
_____ /

AFFIDAVIT OF BASIL DIAMOND

1. My name is Basil Diamond and I am one of the plaintiffs in this action.
2. I live at 1625 Lands End Road in Manalapan, Florida, which is in the Point section of the Town of Manalapan, and have lived there since November 1998.
3. I am a registered voter in the Town of Manalapan and have regularly voted in elections for Town Commissioners, including the March 5, 2002, election.

I state under penalty of perjury that the foregoing is true and correct. Executed on June __, 2002.



Basil Diamond

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

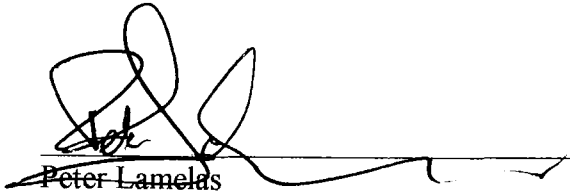
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)
DONALD SILPE, *et al.*,)
)
Defendant-Intervenors.)
_____ /

AFFIDAVIT OF PETER LAMELAS

7. My name is Peter Lamelas and I am one of the plaintiffs in this action.
8. I live at 65 Spoonbill Road in Manalapan, Florida, which is in the Point section of the Town of Manalapan, and have lived there since Approx 1994.
9. I am a registered voter in the Town of Manalapan and have regularly voted in elections for Town Commissioners, including the March 5, 2002, election.

I state under penalty of perjury that the foregoing is true and correct. Executed on June __, 2002.


Peter Lamelas

10:18 PM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No: 02-80065-CIV-SEITZ
Magistrate Judge Garber

BASIL DIAMOND, *et al.*,

Plaintiffs,

v.

TOWN OF MANALAPAN, *et al.*,

Defendants,

and


DONALD SILPE, *et al.*,

Defendant-Intervenors.

AFFIDAVIT OF ELAINE DARWIN

10. My name is Elaine Darwin and I am one of the plaintiffs in this action.
11. I live at 1444 Paslay Place in Manalapan, Florida, which is in the Point section of the Town of Manalapan, and have lived there since February 14, 1998
12. I am a registered voter in the Town of Manalapan and have regularly voted in elections for Town Commissioners, including the March 5, 2002, election.

I state under penalty of perjury that the foregoing is true and correct. Executed on June 27, 2002.


Elaine Darwin

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No: 02-80065-CIV-SEITZ
Magistrate Judge Garber

BASIL DIAMOND, *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 TOWN OF MANALAPAN, *et al.*,)
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 Defendants,)
)
 and)
)
 DONALD SILPE, *et al.*,)
)
 Defendant-Intervenors.)
 _____)

AFFIDAVIT OF KELLY GOTTLIEB

1. My name is Kelly Gottlieb and I am one of the plaintiffs in this action.
2. I live at 45 Curlew Road in Manalapan, Florida, which is in the Point section of the Town of Manalapan, and have lived there since 1997.
3. I am a registered voter in the Town of Manalapan and have regularly voted in elections for Town Commissioners, including the March 5, 2002, election.

I state under penalty of perjury that the foregoing is true and correct. Executed on June 26, 2002.


Kelly Gottlieb

1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 CASE NO. 02-80065-Civ-Seitz

4 BASIL DIAMOND, et al.,
5 Plaintiffs,

6 -vs-

7 TOWN OF MANALAPAN, et al.,
8 Defendants.

9 DONALD SILPE, et al.
10 Defendant-Intervenors.
11 _____/

12 DEPOSITION OF LORI LAVERRIERE
13

14 Friday, June 28, 2002
15 600 South Ocean Boulevard
16 Manalapan, Florida 33462
17 11:05 - 11:35 a.m.

18 APPEARANCES:

19 On behalf of the Plaintiffs:
20 RANDALL C. MARSHALL, ESQUIRE
21 AMERICAN CIVIL LIBERTIES UNION OF FLORIDA

22 On behalf of the Defendants:
23 JOHN A. DeVAULT, III, ESQUIRE
24 BEDELL, DITTMAN, DeVAULT, PILLANS & COXE

25 TRELA J. WHITE, ESQUIRE
CORBETT AND WHITE

On behalf of the Intervenor:
SABRINA WEISS ROBINSON, ESQUIRE
ADORNO & YOSS

ESQUIRE DEPOSITION SERVICES
(561) 659-4155 (800) 330-6952

ATTACHMENT 2

2

1 APPEARANCES (continued)

2 ALSO PRESENT:

3 Janice Moore
4 Hal Prewitt

5 - - -
6 I N D E X
- - -

7 WITNESS: DIRECT CROSS REDIRECT RECROSS

8 Lori LaVerriere

9 By Mr. Marshall 3

10 By Mr. DeVault 23

11

12 - - -
13 E X H I B I T S

14 - - -
15 EXHIBIT PAGE

16 Plaintiff's Exhibit A 5

17 Plaintiff's Exhibit B 6

18 Plaintiff's Exhibit C 6

19 Plaintiff's Exhibit D 7

20 Plaintiff's Exhibit E 17

21 Plaintiff's Exhibit F 20

22

23

24

25

1 P R O C E E D I N G S

2 - - -

3 Deposition taken before RACHEL W. BRIDGE,
4 Registered Professional Reporter and Notary Public in
5 and for the State of Florida at Large, in the above
6 cause.

7 - - -

8 Thereupon,

9 (LORI LAVERRIERE)

10 having been first duly sworn or affirmed, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MARSHALL:

14 Q. Please state your name.

15 A. Lori LaVerriere.

16 Q. Ms. LaVerriere, what is your position with
17 the Town of Manalapan?

18 A. I'm not employed by the Town of Manalapan at
19 this time.

20 Q. Okay. You are here today, however, to speak
21 on behalf of the Town of Manalapan; is that correct?

22 A. Yes.

23 Q. And you've been authorized to do so?

24 A. Uh huh.

25 Q. You have to speak verbally.

4

1 A. I'm sorry, yes, I know.

2 Q. Have you had your deposition taken before?

3 A. Yes.

4 Q. Okay. I just want to make sure that you
5 answer verbally. And if you don't understand my
6 question, please tell me and I'll rephrase it, okay?

7 A. Thank you.

8 Q. And you're here today to talk about all of
9 the items in the Notice of Deposition; is that correct?

10 A. Yes.

11 Q. Okay. Now could you explain -- you were
12 present at the preliminary injunction hearing in
13 February; is that correct?

14 A. That's correct.

15 Q. Starting from that date forward through
16 today, can you tell us how many plans were considered
17 by the Town Commission for redistricting or
18 reapportionment?

19 A. From the date of the hearing?

20 Q. Yes.

21 A. That's February 21, okay.

22 I think we have, as you mentioned before, the
23 Blum petition or package or plan that was proposed to
24 the Commission and ultimately acted upon.

25 I believe we had two other commissioners

13
1 for reapportionment under consideration by the Town of
2 Manalapan until after the February preliminary
3 injunction hearing?

4 MR. DEVAULT: Well, object to the form of the
5 question.

6 THE WITNESS: Yes, I'm not comfortable with
7 that.

8 BY MR. MARSHALL:

9 Q. Let me --

10 A. Ask it again.

11 Q. Sure.

12 Ordinance 197 was defeated on second reading,
13 correct?

14 A. Right.

15 Q. So it was no longer under consideration?

16 A. Right. It was not acted upon any further at
17 that time.

18 Q. Okay. What was the staff doing of the Town
19 of Manalapan in terms of looking at, drafting any other
20 kind of a reapportionment plan after the defeat of
21 Ordinance 197?

22 A. We were too busy responding to a lawsuit, so
23 we didn't have much time to do much else, frankly.

24 Okay, let me see if I can remember our time
25 frames.

14
1 The Diamond request was due to go before the
2 Commission I think in January.

3 I don't believe so, no.

4 Q. So up until the time of the consideration of
5 the Blum petition, after the defeat of Ordinance 197,
6 no plan came before the Commission; is that correct?

7 A. Uh huh, yes.

8 Q. And no plan was being developed by Town
9 officials; is that correct?

10 A. I'm concerned -- I'm trying to remember time
11 frames of when the Diamond plan was, when Mr. Diamond
12 withdrew and at what point when the lawsuit came about,
13 because that literally stopped everything, so to speak.
14 And we were responding to that and going through that
15 and testifying and so forth.

16 So if my recollection is correct, that was a
17 very close time period. Once his petition was deemed
18 insufficient, I think he very shortly thereafter filed
19 a lawsuit.

20 So yes, I think that's correct.

21 Q. I'd like to move again after the preliminary
22 injunction hearing.

23 In the consideration of any of the plans that
24 were proposed, and as I see them, you have the Blum
25 petition, the Manfuso proposal, the Prewitt proposal

15
1 and then ultimately a modified Prewitt proposal. There
2 were four potential plans that were discussed in some
3 manner; is that correct?

4 A. Yes.

5 Q. In the discussions of those plans, could you
6 explain what role population statistics played in the
7 consideration of those plans?

8 A. No, I cannot, because I didn't develop those
9 plans. They were presented by those officials and
10 residents, what have you.

11 So I don't know what they, what their basis
12 of developing those plans are.

13 Q. Were you present at the Commission meetings
14 where these plans were discussed?

15 A. Yes.

16 Q. Was there any discussion about population
17 statistics relative to any of these plans?

18 A. There was a lot of discussion about a lot of
19 stuff. To say that specifically, not that I can
20 remember.

21 Q. At some point in time I believe your office
22 had participated in or developed what I understand is
23 being the Town of Manalapan's independent census; is
24 that correct?

25 A. Yes.

16
1 Q. Do you recall when you first undertook that
2 census?

3 A. October of -- when was the lawsuit? That was
4 2002, so October of 2001 is I believe when -- yes,
5 October/November, and then we tried to get most of the
6 data in by January/February. We weren't quite complete
7 with it.

8 Q. Has that independent census been completed at
9 all?

10 A. The collection of the data with the
11 methodology that we utilized from the start, that data
12 collection was completed, but the review of that data
13 and so forth and the analysis, no, never happened.

14 Q. Okay. The Town hired the Weiss, Serota firm
15 to advise them in regards to reapportionment; is that
16 correct?

17 A. Yes.

18 Q. Is it correct to say that the Weiss, Serota
19 firm advised the town that it should not use the
20 independent census as the basis for reapportionment?

21 A. I don't believe so. Let me, I'd like to look
22 at the memos.

23 Q. Let's go ahead and mark that as, I believe it
24 would be Exhibit E.

25 THE WITNESS: I would say the answer to that

17
1 question is no. They felt that that was a good
2 start from -- I recall what was in the letter, and
3 that they had advised the Town that the Town has
4 the right to, the Commission has the flexibility
5 to determine its population and what factors or
6 demographic categories, I guess, I don't know what
7 the word would be, to be considered, and that the
8 Commission had that flexibility.

9 And they actually recommended that we collect
10 all data about everybody. They never -- I don't
11 recall them ever saying don't use -- they just
12 remarked that ours was a good start.

13 MR. MARSHALL: Okay, if you could take a look
14 at Exhibit E.

15 MS. ROBINSON: Can you just describe what
16 Exhibit E is?

17 MR. MARSHALL: Sure. It's an opinion letter.
18 (Plaintiff's Exhibit No. E was marked for
19 identification.)

20 BY MR. MARSHALL:

21 Q. Okay.

22 A. "While collectively each of those items
23 reflect the population of the town, we are concerned
24 with the validity of the information."

25 I mean that remark, they are expressing a

18
1 concern because we had not yet had the opportunity to
2 have them analyze what we had done, but they don't say
3 don't use it. They do recommend going to an outside
4 firm to conduct a demographic type of survey. .

5 Q. Okay. Now following the February preliminary
6 injunction hearing then, is it accurate to say that the
7 Town of Manalapan no longer utilized the independent
8 census for the purpose of reapportionment?

9 A. It was not utilized.

10 Q. And have there been any additional steps to
11 complete the gathering of that kind of data?

12 A. Up until the time that I was employed as of
13 May 24th, no. And I don't know if the Town -- I don't
14 believe the town has probably done much more with it.

15 Q. Now in Exhibit E, the Weiss, Serota firm, as
16 I understand it, talks about the Town having the right
17 to determine which residents will be counted.

18 Is that an accurate statement?

19 A. "The Commission has discretion in deciding
20 who should be counted." That's verbatim out of the
21 letter. Yes.

22 Q. Do you know whether any conclusion has been
23 reached by the Town of Manalapan regarding who to count
24 for purposes of drawing election districts?

25 A. No.

19

1 Q. Are you aware of any discussion by the Town
2 of Manalapan regarding who to count?

3 A. No.

4 Q. So it's accurate to say there has been no
5 final determination made on that issue?

6 MR. DEVAULT: Object to the form.

7 THE WITNESS: I'm not aware. I'm no longer
8 employed here. I have no idea what they are
9 discussing now.

10 So to say that they aren't, I'm not aware of
11 it is the question I'm answering. I don't know.
12 I can't speculate on what they are doing.

13 MR. MARSHALL: Can we go off the record?

14 (Discussion held off the record.)

15 MR. MARSHALL: I believe that the parties are
16 willing to stipulate that there has not been any
17 conclusion reached by the Town of Manalapan
18 regarding who to count for purposes of drawing up
19 districts.

20 MR. DEVAULT: No, I don't think -- we are
21 willing to stipulate that there have been no
22 discussions since May 24 concerning the
23 representation, which was of course after
24 Ordinance 199 had been adopted.

25 MR. MARSHALL: Okay, that's fine.

20

1 I'd like to mark as Exhibit F the April 11
2 memo to Trela White from Stephen Helfman and ask
3 you to take a look at that document.

4 (Plaintiff's Exhibit No. F was marked for
5 identification.)

6 BY MR. MARSHALL:

7 Q. Could you tell us what Exhibit F is?

8 A. It's a memorandum to the Town's Interim Town
9 Attorney, Trela White, from Stephen Helfman, who is
10 special counsel hired by the Town Commission dated
11 April 11, regarding mixed at-large multimember district
12 plan.

13 Q. My understanding from your earlier
14 testimony -- pardon?

15 A. I think I was mistaken earlier on. Hold on a
16 second. "It was two-two member district" -- never
17 mind. Go ahead.

18 Q. Okay. I want to make sure I understand your
19 testimony.

20 A. Yes, I just want to be sure I'm testifying
21 accurately on -- if this is -- I think this was in
22 response to what Mr. Prewitt had proposed, and it's
23 stating that there is two two-member districts, which
24 maybe I was mistaken earlier when I said the two seats
25 on the Point were not voted on by only the Point. I

21

1 think I might have been mistaken on that. And you
2 should hopefully clear it up with Mr. Prewitt's
3 deposition.

4 So it would be two from the Ocean, two from
5 the Point, only those residents in those districts
6 voting on those total of four, and then the remainder
7 at large, so I was correct.

8 Q. My understanding from your earlier testimony
9 is that you don't recall there being any discussion
10 during the period of time after the preliminary
11 injunction hearing of the consideration of
12 reapportionment, any discussion about what population
13 statistics to use?

14 A. There was discussion. The commission went
15 back and forth on deciding whether or not to, who
16 should be counted, who should not be counted. There
17 were differing opinions on whether nonpermanent
18 residents would be counted.

19 And to go out, I think they discussed and
20 ultimately did not act on hiring an outside firm to do
21 that.

22 So to say they didn't discuss it, no, that
23 wouldn't be accurate either. I mean they had
24 discussions about the difficulty in doing that and the
25 time it would take and so forth.

22

1 Q. But would it be accurate to say that no
2 conclusions were reached?

3 A. On the use of population?

4 Q. Yes.

5 A. I believe so.

6 Q. In the consideration of reapportionment after
7 the preliminary injunction hearing, was there any
8 discussion by Town officials about reapportionment in
9 the future?

10 A. Not while I was Town Manager.

11 MR. MARSHALL: Mr. DeVault, I'm wondering if
12 we might be able to stipulate that there hasn't
13 been that discussion from May 24th on?

14 THE WITNESS: I did ask the Town Clerk that,
15 if there was any, and she said no.

16 MR. DEVAULT: If there has been, Mr. Prewitt
17 would be able to respond to that.

18 MR. MARSHALL: Okay.

19 BY MR. MARSHALL:

20 Q. And there is no policy in place that would
21 require the Town Commission to revisit reapportionment
22 at any time in the future; is that correct?

23 A. Not to my knowledge. If anything had been
24 adopted since I left, it was not prior to my leaving.

25 Q. You are not aware of anything in writing

23

1 about that issue, are you?

2 A. Uh uh, no.

3 MR. MARSHALL: That's all the questions I
4 have.

5 CROSS (LORI LAVERRIERE)

6 BY MR. DEVAULT:

7 Q. Just to clarify one point, you were asked
8 about any conclusion being reached on the use of
9 population data.

10 What is your understanding of the plan that
11 was ultimately adopted by the Commission and approved
12 by the voters, 199?

13 A. It was an at-large plan.

14 Q. Okay. So that was there discussion while you
15 were Town Manager by the Commission that if an at-large
16 plan were adopted, then the information on population
17 data would not have to be gathered?

18 A. Correct, yes.

19 MR. DEVAULT: That's all I have.

20 Do you have any?

21 MS. ROBINSON: No, I don't.

22 MR. DEVAULT: Anything further?

23 MR. MARSHALL: No. Thank you very much.

24 MR. DEVAULT: We'll waive.

25 (Thereupon, the deposition was concluded at 11:35 a.m.)

1 THE STATE OF FLORIDA
2 COUNTY OF PALM BEACH

3
4 I, the undersigned authority, certify that
5 the aforementioned witness personally appeared before
6 me and was duly sworn.

7
8 WITNESS my hand and official seal this 29th day
9 of June, 2002.

10
11
12 _____
13 RACHEL W. BRIDGE, RPR
14 Notary Public-State of Florida
15 My Commission Expires: 1-15-03
16 My Commission No.: CC784730
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C E R T I F I C A T E

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

I, RACHEL W. BRIDGE, Registered Professional Reporter, State of Florida at Large, do hereby certify that the aforementioned witness was by me first duly sworn to testify the whole truth; that I was authorized to and did report said deposition in stenotype; and that the foregoing pages, numbered from 1 to 23, inclusive, are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of June, 2002.

RACHEL W. BRIDGE, RPR
Notary Public - State of Florida
My Commission number: CC784730
My Commission Expires: 1-15-03

Weiss Serota Helfman
Pastoriza & Guedes, P.A.

Memo

To: Trela J. White, Esq.

From: Stephen J. Helfman

Date: April 11, 2002

Re: Mixed at-large/multi-member district plan

You have asked us to assist you in determining whether an apportionment plan calling for three at-large seats as well as two two-member districts validly comports with the "one person, one vote" principle required by the Fourteenth Amendment of the Constitution. We understand that the plan calls for the districts to be separated on the basis of geography, with one district comprised of the Point residents and the other comprised of the Oceanfront residents. We understand that no independent population survey supporting this plan has been done.

"One person, one vote" generally requires "substantial equality of population among the various districts, so that a vote of any citizen is approximately equal in weight to that of any other citizen." *Burns v. Richardson* 377 U.S. 533 (1964). In mixed-apportionment schemes (incorporating both at-large and districts) such as the proposed plan, the relevant inquiry is whether "the vote of any citizen is approximately equal in weight to that of any other citizen." *Board of Estimate of City of New York v. Morris*, 489 U.S. 688, 701 (1989), quoting *Reynolds v. Sims*, 377 U.S. 533, 579 (1964).

The *Morris* Court considered an apportionment plan similar to the plan you are reviewing, which called for an eight-member board comprised of three members elected at-large and the remainder elected from five single-member districts. *Id.* The single-member districts were apportioned on the basis of historical geographic divisions, but had widely disparate populations. *Id.* For example, the largest single-member district, the Brooklyn borough, had a population of 2,230,936 while the smallest single-member district, the Staten Island borough, had a population of only 352,151. *Id.* at 700 (footnote 7). Although the court stated that the at-large element of the

apportionment was not to be ignored¹, it struck down the mixed apportionment scheme as violative of "one person, one vote" because the population inequality among the single-member districts was not sufficiently cured by the at-large element. *Id.* at 702.

While the Town's population figures may not be as disparate as in the *Morris* case, a court reviewing the proposed plan would likely invalidate the mixed apportionment scheme if it cannot be justified on the basis of population equality. The 2000 Census figures, which may be deficient in a number of respects as discussed in our correspondence to the Town of March 19, 2002, currently show a substantial difference between the populations of the Point and Oceanfront areas. These figures set the Town's population at 321 total, with Point residents comprising 232 of those residents.² Based on those figures, which in the absence of an independent population study are the only figures that would guide a reviewing court, the plan's two districts would have a maximum deviation of 89%.³ Population variances of over 10% are prima facie evidence of a "one person, one vote" violation. *Chen v. City of Houston*, 532 U.S. 1036 (2001). Although the Court has never articulated what the maximum deviation allowable is, the Court has stated in dicta that a maximum deviation of 16.4% "may well approach tolerable limits. *Mahan v. Howell*, 410 U.S. 315, 329 (1973). Factoring in the at-large element of the plan, as required by *Morris*, the adjusted maximum deviation is 25.4%. Therefore, a reviewing court relying on the Census data as the only available population figures, could find that the deviation far exceeds the tolerable limits of "one person, one vote", even after adjustment for the at-large element of the plan.

Because of the lack of accurate independent population figures, there may be little basis for the court to conclude that the two multi-member districts achieve near equality of population. In fact, the only basis for apportionment in this fashion, in the absence of population data showing their populations to be nearly equal, appears to be geography. Geography, without a corresponding basis in population, is not a valid basis for apportionment. See *Burns*, 384 U.S. at 1292 (Hawaii's apportionment of state legislative districts according to natural boundaries of the islands violated Fourteenth Amendment).

Therefore, without accurate population figures, there is no basis to justify the plan's apportionment scheme. Accurate population figures are essential in guiding the Commission in deciding which apportionment plan best suits the needs of the Town and its residents. It is for this reason that we continue to recommend that a population survey be completed *before* the Town Commission considers any apportionment proposals other than a pure at-large plan.

¹ The Court factored in the at-large element by dividing the number of city-wide votes proportionately among each district. *Morris*, 489 U.S. at 702 (footnote 9). Performing this type of calculation for the Town would necessarily require an accurate population count.

² As stated in page 3 of Judge Seitz' "Order Denying Motion for Preliminary Injunction".

³ See *Morris*, 489 U.S. at 700 (footnote 7) for methodology of calculation.

1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 CASE NO. 02-80065-Civ-Seitz

4 BASIL DIAMOND, et al.,
5 Plaintiffs,

6 -vs-

7 TOWN OF MANALAPAN, et al.,
8 Defendants.

9 DONALD SILPE, et al.
10 Defendant-Intervenors.
11 _____/

12 DEPOSITION OF HAL PREWITT
13

14 Friday, June 28, 2002
15 600 South Ocean Boulevard
16 Manalapan, Florida 33462
17 11:40 - 11:55 a.m.

18 APPEARANCES:

19 On behalf of the Plaintiffs:
20 RANDALL C. MARSHALL, ESQUIRE
21 AMERICAN CIVIL LIBERTIES UNION OF FLORIDA

22 On behalf of the Defendants:
23 JOHN A. DeVAULT, III, ESQUIRE
24 BEDELL, DITTMAN, DeVAULT, PILLANS & COXE

25 TRELA J. WHITE, ESQUIRE
CORBETT AND WHITE

On behalf of the Intervenor:
SABRINA WEISS ROBINSON, ESQUIRE
ADORNO & YOSS

- - -
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I N D E X

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WITNESS: DIRECT CROSS REDIRECT RECROSS

Hall Prewitt

By Mr. Marshall 3

- - -

E X H I B I T S

- - -

1 P R O C E E D I N G S

2 - - -

3 Deposition taken before RACHEL W. BRIDGE,
4 Registered Professional Reporter and Notary Public in
5 and for the State of Florida at Large, in the above
6 cause.

7 - - -

8 Thereupon,

9 (HAL PREWITT)

10 having been first duly sworn or affirmed, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MARSHALL:

14 Q. Please state your name.

15 A. Hal Prewitt.

16 Q. Mr. Prewitt, have you ever had your
17 deposition taken before?

18 A. Yes.

19 Q. Okay. In what context?

20 A. Lawsuits, just in discovery.

21 Q. Okay. I'd only ask two things of you this
22 morning. Number one, that you answer my questions
23 verbally so the court reporter can get them down.

24 And number two, that if my question doesn't
25 make sense to you, bring it to my attention and I'll

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4

1 try and clarify it, okay?

2 A. All right.

3 Q. Mr. Prewitt, I believe you are a Town
4 Commissioner for the Town of Manalapan; is that
5 correct?

6 A. Yes.

7 Q. When were you elected?

8 A. March of this year.

9 Q. Have you served as a Town Commissioner prior
10 to?

11 A. No.

12 Q. Are you currently running for a seat for the
13 Town Commission?

14 A. Yes.

15 Q. That's one of the seats reserved for Ocean
16 residents?

17 A. In the at-large election, reserved requires
18 for a resident to live on the oceanfront.

19 Q. I understand that you had proposed a
20 reapportionment plan after the preliminary injunction
21 hearing; is that correct?

22 A. Yes. I proposed a number of them.

23 Q. Okay. Can you tell us what plans you
24 proposed?

25 A. Immediately after the defeat of Tommy

8
1 Q. Mr. Prewitt, you've been represented in the
2 newspapers as having been adamant that the system that
3 has been adopted, Ordinance 199, is biased against
4 Ocean residents.

5 Is that an accurate reflection of your view?

6 A. It's biased against Ocean residents?

7 Q. Yes.

8 A. I guess from that, you can derive that.

9 My statements were sometimes not always
10 correctly reported, as you might suspect from the
11 newspapers.

12 My statement is that the plan that the Town
13 has in fact adopted and been voted on in my opinion is
14 wrong and does not properly represent, and it's my
15 opinion, Constitutionally sound, does not provide
16 representation to all our citizens.

17 Q. In what manner?

18 A. There are people that are unrepresented.

19 Q. Are those people mostly on the ocean side of
20 town?

21 A. Yes, I believe so, based upon the population
22 count I've seen.

23 Q. Now it's also been reported in the media that
24 you would like to overturn the system that just got
25 enacted, Ordinance 199, in favor of a former district

12

1 THE STATE OF FLORIDA
2 COUNTY OF PALM BEACH

3
4 I, the undersigned authority, certify that
5 the aforementioned witness personally appeared before
6 me and was duly sworn.

7
8 WITNESS my hand and official seal this 29th day
9 of June, 2002.

10
11
12
13 _____
14 RACHEL W. BRIDGE, RPR
15 Notary Public-State of Florida
16 My Commission Expires: 1-15-03
17 My Commission No.: CC784730
18
19
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25

13

C E R T I F I C A T E

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

I, RACHEL W. BRIDGE, Registered Professional Reporter, State of Florida at Large, do hereby certify that the aforementioned witness was by me first duly sworn to testify the whole truth; that I was authorized to and did report said deposition in stenotype; and that the foregoing pages, numbered from 1 to 11, inclusive, are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of June, 2002.

RACHEL W. BRIDGE, RPR
Notary Public - State of Florida
My Commission number: CC784730
My Commission Expires: 1-15-03

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14

C E R T I F I C A T E

- - -

THE STATE OF FLORIDA

COUNTY OF PALM BEACH

I hereby certify that I have read the foregoing deposition by me given, and that the statements contained herein are true and correct to the best of my knowledge and belief, with the exception of any corrections or notations made on the errata sheet, if one was executed.

Dated this ____ day of _____,
2002.

Hal Prewitt



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Two seats out of seven contested in Manalapan

By DAVID ROGERS
Daily News Staff Writer
Thursday-Saturday, June 20-22, 2002

Some less-familiar faces will join a handful of incumbents when the new Town Commission meets next month.

As of Tuesday's noon deadline for candidates to file qualifying papers, only two seats, Nos. 3 and 5, were contested.

That means the remaining candidates -- Kelly S. Gottlieb (seat 1), Basil S. Diamond (seat 2), Peter Blum (seat 4), William Quigley (seat 6) and William Benjamin (seat 7, the mayor's position) will be deemed elected by virtue of no opposition.

Al Cohen, who lost his first bid for a commission seat to Benjamin in March, filed for Seat 5 Tuesday. His opponent in the July 9 election is Mary Ann Puhek-Kunkle. This is Puhek-Kunkle's second attempt to join the commission. She ran unsuccessfully against Quigley, the incumbent, in 2001.

Both Cohen, a retired real estate developer, and Puhek-Kunkle, a former political officer with the State Department's foreign service, supported abolishing district-based commission elections. They live on Point Manalapan, the neighborhood on the southern tip of Hypoluxo Island.

Puhek-Kunkle brought up the reapportionment issue during her short campaign to take Quigley's spot on the commission. The soon-to-end system allowed the less populous oceanside to elect four of six commissioners. Cohen was an advocate for reapportionment at many commission meetings this past year.

The two Seat 3 contestants, current commissioners Anthony Mauro and Hal Prewitt, have exchanged sharp words in the past several months over reapportionment.

Mauro joined with Mayor Benjamin, commissioner Quigley and Vice Mayor Blum this year to ensure town electors could vote on Blum's commission reapportionment plan. The plan calls for at-large elections of six commissioners

PB Daily News headlines

- First seeds from 'Rainforest'
- Signature on baseball keeps Kravis guessing
- Two seats out of seven contested in Manalapan
- Breakers sued over termination
- Tyson leaves union position
- Forum: Preparedness requires plan
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and the mayor with the condition that two commission seats be filled by oceanside residents and two by residents of Point Manalapan.

Mauro and Prewitt are running for a seat reserved for an oceanside resident.

Prewitt was a primary force behind the failed effort to de-annex the barrier island portion of town from its corporate limits.

At the board's March 26 meeting, Prewitt and others claimed Mauro did not qualify as a Manalapan resident and should be removed from the commission. Mauro, manager of an oceanfront estate, acknowledged he had a homestead exemption on a Lantana home, but said he lives in Manalapan. Soon thereafter, Mauro withdrew the exemption and wrote a check to cover back taxes for the years in question.

Prewitt, former owner of a computer software and hardware firm, said he wants to work on issues important to oceanside residents, such as beach erosion, flooding along the portion of State Road A1A, guiding the design of a new water plant, and the dredging of the town's canals and other waters.

Though residents approved Blum's charter-changing referendum establishing at-large elections by a 122-31 vote on June 11, Prewitt is still adamant that the new system is biased against oceanside residents. Prewitt wants to overturn the hybrid at-large system for the former district-based system, with a three-three split of seats between the oceanside and the Point.

"This issue is never going away," Prewitt said. Mauro has called Prewitt's single-minded focus on district-based elections ridiculous, saying that Prewitt has overstated the level of opposition on the barrier island to at-large elections. "If he can get over that, it'll be a healthy, positive competition," said Mauro.

Mauro also cited beach erosion and flooding along State Road A1A as issues of concern, and said he wants the town to examine burying power lines along A1A. "I have a lot of unfinished business with the town," he said.

Regarding the newly approved commission makeup, he added, "Bringing the town together was a big goal of mine, and it's really worked out. I think it's going to do nothing but good for the town as a whole."

Diamond and Gottlieb were two of four Point Manalapan residents who filed a lawsuit in federal court in January asking a U.S. District Court judge to force the town to switch to at-large elections.

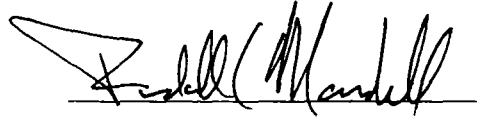
Diamond, a retired Florida lawyer, said he did not bring up his potential candidacy during the reapportionment battle out of concern that it would muddy the waters. "Until that was accomplished, I didn't want to consider running for office," Diamond said. With the matter resolved, the town has asked the judge to dismiss the lawsuit.

Commissioner John Manfuso, who is not seeking a new term, could not be reached for comment Wednesday.

The current commission will set the date of the reorganizational meeting -- July 16 or 23 -- at its regular meeting on Tuesday.

-- drogers@pbdailynews.com

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Randall C. Marshall", written over a horizontal line.

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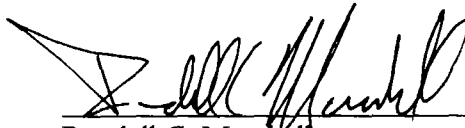
CERTIFICATE OF SERVICE

I certify that the foregoing document was night box filed for June 28, 2002, and that on the 1st day of July, 2002, I served a copy of the foregoing document by first class mail to:

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