

ML - Mount Olive
- Chatham

June 6, 1984

- Pretrial Memorandums of Plaintiffs
- Witnesses to be called by Plaintiffs

pgs. 6

ML 000679D

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Attorney for Plaintiffs

CHESTER AND VAN DALEN ASSOCIATES, INC., etc., et al,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiffs,	:	MORRIS COUNTY/MIDDLESEX COUNTY
	:	DOCKET NO. L-065604-83PW
v.	:	Civil Action
	:	(Mount Laurel)
MOUNT OLIVE TOWNSHIP, etc.,	:	<u>PRETRIAL MEMORANDUM OF PLAINTIFFS</u>
Defendant.	:	

1. NATURE OF ACTION: This is an action in lieu of prerogative writs under Mount Laurel II seeking declaratory and injunctive relief, including evaluation of region and fair share and the compliance by the defendant. Plaintiffs are seeking the appointment of a master to review its plans for the construction of a residential development containing low and moderate income housing.

2. ADMISSIONS AND STIPULATIONS: None

3. and 4. FACTUAL AND LEGAL CONTENTIONS: See attached.

5. DAMAGES AND INJURY CLAIMS: None - see No. 8 below.

6. AMENDMENTS: None

7. ISSUES AND EVIDENCE PROBLEMS: Region; present and prospective regional need; indigenous need; fair share allocation; compliance of the municipal land use plan under Mount Laurel II; builder's remedy.

8. LEGAL ISSUES ABANDONED: None

9. EXHIBITS: Zoning Ordinance; Master Plan; State Development Guide Plan; expert reports; land use map; zoning map; 1981 SDGP Comments; aerial photos; other exhibits to be determined.

10. EXPERT WITNESSES: Alan Mallah (SDGP and compliance); Geoffrey Weiner (fair share and compliance); Gregory Ploussas (compliance) and John Chester (site specific relief).

11. BRIEFS: As determined by the court.

12. ORDER OF OPENING AND CLOSING: As determined by the court.

13. ANY OTHER MATTERS AGREED UPON: None

14. TRIAL COUNSEL: Carl S. Bisgaier, Esquire.

15. ESTIMATED LENGTH OF TRIAL: One week.

16. WEEKLY CALL OR TRIAL DATE:

17. ATTORNEYS FOR PARTIES CONFERRED ON MATTERS THEN AGREED UPON: Attorneys for the parties have periodically met at status conferences with the court. There has been no agreement among counsel as to any issue.

18. IT IS HEREBY CERTIFIED THAT ALL PRETRIAL DISCOVERY HAS BEEN COMPLETED EXCEPT: Complete

19. PARTIES WHO HAVE NOT BEEN SERVED: None

20. PARTIES WHO HAVE DEFAULTED: None

CARL S. BISGAIER
Attorney for Plaintiffs

Dated: June 6, 1984

ATTACHMENT

3. and 4. FACTUAL AND LEGAL CONTENTIONS: Plaintiffs are the owners of approximately 110 acres of land in the defendant Mount Olive Township. Plaintiffs wish to develop these lands for residential uses (1100 dwellings) and to provide a substantial percentage (20%) of units for low and moderate income persons. The defendant's land use plan and zoning ordinance places plaintiffs' lands in a zone on which residential units can be built at one unit for every two acres. Plaintiffs contend that said zoning and planning is arbitrary and capricious, and is inimical to the construction of low and moderate income housing. Defendant's land use plan and zoning ordinance as otherwise approved does not provide for defendant's provision of a realistic opportunity for the construction of its fair share of its region's low and moderate income housing needs. The SDGP designations are arbitrary and capricious and/or, in light of changed circumstances, presently unreasonable and should be changed to greatly extend the growth area. Defendant has zoned an insufficient amount of land for higher density uses subject to a zoning scheme which will not produce low and moderate income housing. With regard to the aforementioned claims, plaintiffs seek declaratory and injunctive relief, invalidating the land use plan and zoning ordinance of the defendant, appointing a master to facilitate the adoption of appropriate land use ordinances and providing plaintiffs with a builder's remedy.

KLEIN & GIAMPAPA, P.A.

A PROFESSIONAL CORPORATION

1135 CLIFTON AVENUE

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(201) 778-3200

ATTORNEYS FOR Plaintiffs

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
(Stephen Skillman, J.S.C.)

Designated Mt. Laurel II
Judge)

Plaintiff

GREEN VILLAGE 139 CORP., GERALD WEIR
and JOSEPH GIOVANNOLI

vs.

Docket No. L-29276-78

Defendant

TOWNSHIP OF CHATHAM, THE TOWNSHIP
COMMITTEE OF CHATHAM and THE PLANNING
BOARD OF THE TOWNSHIP OF CHATHAM

CIVIL ACTION

EXHIBITS OF PLAINTIFFS

Annexed hereto are the exhibits marked on the trial herein which commenced in March, 1980. In addition thereto, the plaintiffs intend to offer the following exhibits which are being prepared by Mr. Chadwick:

<u>Designation</u>	<u>Identification of Exhibit</u>	<u>Admitted in Evidence</u>
T-14	Map showing existing zoning	
T-15	Overlay on map showing existing zoning evidencing U.S.D.A. soil survey	
T-16	Map of Chatham Township indicating what land, boundaries	
T-17	Map of Chatham Township, master plan showing the Green Village area.	

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LAW DIVISION

MORRIS COUNTY

Plaintiff

GREEN VLLAGE 139 CORP., GERALD WEIR,
and JOSEPH GIOVANNOLI,

(Stephen Skillman, J.S.C.
Designated Mt. Laurel
II Judge)

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EXHIBITS MARKED ON TRIAL

<u>Designation</u>	<u>Identification of Exhibit</u>	<u>Admitted in Evidence</u>
J-1	1979 Zoning Ordinance of Chatham Township.	x
J-2	1978 Master Plan of Chatham Township	x
J-3	Zoning Map of Township of Chatham	x
P-1	1978 Land Uae Map of Chatham Township	
P-2	Minutes of the Planning Board of Chatham Township dated November 27, 1978	x

<u>Designation</u>	<u>Identification of Exhibit</u>	<u>Admitted in Evidence</u>
P-3	Minutes of the Township Council of Chatham Township dated January 30, 1979	x
P-4	Letter of Norman I. Klein sent to Planning Board of Chatham Township dated November 24, 1978	.
P-5	Letter of Norman I. Klein sent to Township Council dated January 28, 1979	
P-6	Letter of E. Eugene Cross Associates dated January 9, 1979	x
P-7	Supplementary Report of E. Eugene Cross Associates	
P-8	Letter of Mayor Willis dated March 12, 1979	x
P-9	Letter of Norman I. Klein dated April 12, 1979	
P-10A	Letter of Mayor Willis to the Department of Environmental Protection dated May 3, 1979	x
P-10B	Letter of Department of Environmental Protection to Mayor Willis dated June 4, 1979	x
P-10C	Letter of Department of Environmental Protection to Mayor Willis dated October 4, 1979	x
P-10D	Letter of the Department of Environmental Protection to Mr. Fletcher dated December 4, 1979	x
P-11	Letter from G. Weir to Chairman of the Planning Board of Chatham Township dated June 28, 1972	
P-12	Letter from E. Weir to Chatham Township Council dated August 30, 1972	
P-13	1972 Master Plan	x

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WITNESSES TO BE CALLED BY THE PLAINTIFFS

1. Plaintiffs intend to recall John T. Chadwick to testify with respect to region, regional need and fair share based upon his participation in the development in the consensus which resulted in the Carla Lerman report as augmented by his report dated May, 1984.

Mr. Chadwick will also testify in the mini trial to follow the consolidated trial with respect to the soil's water table and suitability of the property being questioned for development augmenting his prior testimony in March, 1980 in the

same subject. In essence, his testimony will deal with all of the environmental restraints claimed by the defendants that hereunto exist with respect to the property in question, and to prevent its development as contemplated by the plaintiff.

2. Plaintiffs also intend to rely on the testimony of Carla Lerman. Her reports and analysis have previously been submitted to the court and to counsel.

3. Robert Lawrence of Schoor, DePalma & Gillen, 356 Main Street, Matawan, New Jersey 07747.

Mr. Lawrence is preparing and will have available prior to the pretrial conference, a feasibility study with respect to the development of a package plant in Chatham Township for purposes of treating the effluent created in connection with the proposed development of the property in question, and providing a scheme for the location of sanitary sewers all along the Green Village Road area.

4. Gerald Weir, 555 Broad Hollow Road, Milville, N.Y. 11747. Mr. Weir is one of the plaintiffs herein. He originally testified in this matter in March, 1980. His testimony however has never been transcribed and seems to have been misplaced. As a result, Mr. Weir will testify with respect to his acquisition and ownership of that property owned by Green Village 139 Corp., an additional plaintiff herein.

He will testify with respect to his efforts to have suitable zoning effected on the subject property and the response thereto by the Planning Board and Township Committee of Chatham.

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PRETRIAL MEMORANDUM ON
BEHALF OF PLAINTIFFS

This Pretrial Memorandum is intended to supplement the Pretrial Order made by The Honorable Jacques H. Gascoyne, J.S.C. on June 26, 1979, as the same was supplemented by a Rider filed on August 13, 1979, and the Pretrial Order entered herein by the Honorable Stephen Skillman, on February 24, 1984, and the provisions of the said Pretrial Orders are as amended are incorporated herein by reference.

1. NATURE OF ACTION:

Proceeding in lieu of prerogative writ seeking to have the zoning ordinance of Chatham Township declared invalid insofar as

it has failed to provide for the Township's appropriate share of low and moderate income housing.

2. ADMISSIONS AND STIPULATIONS:

Reference is made to Pretrial Order of June 26, 1979 as supplemented on August 13, 1979.

3-4. FACTUAL AND LEGAL CONTENTIONS:

See report of Eugene Cross Associates dated May, 1984 annexed.

5. DAMAGE AND INJURY CLAIMS

Reference is made to Pretrial Order of June 26, 1979 as supplemented on August 13, 1979.

6. AMENDMENTS:

Reference is made to Pretrial Order of June 26, 1979 as supplemented in August 13, 1979.

7. ISSUES AND EVIDENCE PROBLEMS:

- (a) Is Chatham Township in a "growth" area?
- (b) What is the region in which Chatham is located?
- (c) What is the low and moderate income family need for that region?
- (d) What is the share of Chatham Township of the low and moderate income family need of the region?
- (e) Does the zoning ordinance of Chatham Township meet the Township's need to provide its share of low and moderate income housing for the region?
- (f) What remedies, including builders remedies, if any, are plaintiffs entitled to and how should they be fashioned?

8. LEGAL ISSUES ABANDONED:

None

9. EXHIBITS:

Unlimited

10. EXPERT WITNESSES:

Unlimited.

11. BRIEFS:

As directed by the Court.

12. ORDER OF OPENING AND CLOSING:

Usual.

13. ANY OTHER MATTERS AGREED UPON:

None.

14. TRIAL COUNSEL:

Norman I. Klein, Esq.

15. ESTIMATED LENGTH OF TRIAL:

The trial has now been bifurcated and consolidated with the Morris County Fair Housing Council, et al v. Boonton Township law suit, Docket No. L-6001-78 PW, for the purpose of determining reaching regional need and fair share. It has been estimated by court that the trial of that portion of the suit will take approximately one month.

It is anticipated that thereafter the balance of the trial with respect to the issues specifically raised herein should not exceed two weeks.

16. WEEKLY CALL OR TRIAL DATE:

July 2, 1984 for that portion of the suit which is consolidated with the Morris County Fair Housing Council suit. The trial relating solely to the issues between

plaintiff and defendant herein shall be set as determined
by the court.

17. ATTORNEYS FOR PARTIES CONFERRED FROM time to time,
matters agrees upon, none.

18. IT IS HEREBY CERTIFIED THAT ALL PRETRIAL DISCOVERY HAS
BEEN COMPLETED except for the conclusion of the depositions
of experts of the parties.

19. PARTIES WHO HAVE NOT BEEN SERVED:

None

PARTIES WHO HAVE DEFAULTED:

None.

KLEIN & GIAMPAPA, P.A.
Attorneys for Plaintiffs

By: 

NORMAN I. KLEIN