

ML - Green Village 139 Corp
v. Chatham

May 1979

Transcript of ~~§~~ Otto W. Vopelius 's examination

pg. 26

notes: unsure of case, no cover page but was in
a box containing solely Green Village v. Chatham
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INDEX

Witness

Direct

Otto W. Vopelius

2

EXHIBITS

For Id.

P-14

Letter dated 5-3-79

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P-15

Letter dated 6-4-79

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O T T O W. V O P E L I U S, having been duly sworn according to law by the officer, testifies as follows:

DIRECT EXAMINATION BY MR. KLEIN:

Q Mr. Vopelius, my name is Norman Klein. I'm an attorney, and I represent Messrs. Weir and Giovannoli and Green Village 139 Corp., the plaintiffs in an action against the Township of Chatham, the Planning Board of the Township of Chatham.

I don't know if you've ever been involved in a deposition before, but what's going to happen is I'm going to ask you a series of questions. You have been put under oath. If for some reason either a question is unintelligible to you or for some reason you can't hear it, or I'm speaking too quickly, or if you have any problem whatsoever with the question, please don't hesitate to ask me to repeat the question or to explain it if you don't understand it.

Should Mr. Bernstein for any reason object to a question that I ask, please don't answer the question until he's had an opportunity to state his objection and until he has given you permission to answer the question.

Do you understand that, sir?

A Yes, I do.

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2 Q You are employed by the Township of Chatham?

3 A Yes.

4 Q In what capacity?

5 A Superintendent of Public Works.

6 Q And as superintendent of Public Works what
7 are your duties?

8 A I run the Public Works Department and have five
9 divisions under me.

10 Q What are those divisions?

11 A Streets and Roads, the shop, buildings and grounds,
12 utilities, water pollution control.

13 Q Are there subdivisions under utilities and
14 water pollution control?

15 A Now, I don't know what you mean by subdivision.
16 Separate divisions, yes. Both separate divisions. Water
17 pollution and utilities are separate.

18 Q Under utilities what functions do you
19 administer?

20 A They maintain the parks and grounds, recreation
21 areas; sanitary sewer lines; traffic control signs and
22 traffic lights.

23 Q What about water pollution control? What is
24 that? What does that entail?

25 A That's the operation of the water pollution control

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2 plant, sewerage treatment plant.

3 Q That's the sewerage treatment plant?

4 A Yes.

5 Q And I take it from what you've said, that that
6 is distinguished from the maintenance of sanitary sewer
7 lines?

8 A Yes, it's a different crew.

9 Q Now, I understand that the township owns its
10 own sewerage treatment plant at this time?

11 A I believe that's right, yeah.

12 Q And where is that plant located?

13 A At the foot of Tanglewood Lane.

14 Q Where is Tanglewood Lane?

15 A Off Fairmount Avenue.

16 Q Fairmount Avenue is right out here?

17 A Uh-huh.

18 Q And Tanglewood is--

19 A [The witness points.]

20 Q In a northerly direction?

21 A Southerly. Well, Fairmount runs north to south,
22 so westerly. Tanglewood runs off.

23 Q What is the capacity of that sewer system?

24 A 750,000 gallons per day.

25 Q What kind of treatment is that?

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2 A I can't give you the exact title of it because
3 there's different type treatments, and I'm--when it comes
4 to this I'm a layman, not licensed. It's a trickling
5 type treatment.

6 Q Does the sewer plant contain provisions for
7 tertiary treatment, or is it only what they call
8 secondary treatment?

9 A No. There is tertiary treatment there.

10 Q And where does the water after the effluent
11 is treated, where does the water go to?

12 A It enters what is known as the Mosquito Control
13 drainage canal into the Black Brook in the upper Passaic
14 River.

15 Q When was this plant built?

16 A I think it went on the line or on stream, started
17 operations August of 1967.

18 Q Now, has it been in any way expanded or
19 modified since August of '67?

20 A To my knowledge, no.

21 Q Now, there are various interceptor lines
22 running from that plant, are there not?

23 A Yeah. There's--uh-huh. To the plant you mean?
24 Not from, but to.

25 Q To the plant.

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2 What areas of the town does the plant
3 presently service?

4 A I'm trying to think how I can answer that.

5 Q Well, let me show you and see if this can
6 help you in some way. The sanitary sewers system map
7 prepared on--I don't know who it's prepared by. Robert
8 Catlin Associates, which is part of the Master Plan
9 adopted by the Town in 1978 and has been already marked
10 P-2 in evidence.

11 Off the record.

12 [There is a discussion off the record.]

13 A The map isn't that easy to read, but the entire
14 town as you well know is not serviced by sanitary sewers.
15 Sections of River Road, for example, that are not covered,
16 and other sections of town that are kind of hard to dis-
17 tinguish here.

18 Q Well, could you tell me generally what
19 sections along River Road, for example, are not serviced?

20 A Well, approximately from--approximately I say
21 because there is a section approximately from Roosevelt
22 Road towards the Chatham Borough which is not, and this
23 other section at the other end of River Road that is not.
24 This looks very close to it.

25 I can't tell you because the map isn't enlarged

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2 that much, but it looks very close.

3 [There is a phone call.]

4 MR. KLEIN: Would you please read back
5 the last question and answer?

6 [The pending question and answer are
7 read back by the reporter.]

8 Q Do you have maps in your office which would
9 better define the exact area of where the collector and
10 interceptor lines run into the township?

11 A Yes.

12 Q Does that map have a special name?

13 A I'm not sure.

14 Q How would I refer to it for you to know what
15 I'm talking about?

16 A I'm trying to think of the title of the map. I
17 can't really think of it. What does that one say?

18 Q Sanitary Sewer System, and the source of it
19 is Township Engineer and Elson T. Killam Associates.

20 A I can't think of the name of the map. There is one
21 I think Mr. Kirkpatrick or the municipal engineer or Elson
22 T. Killam designed which designates the area. It's on a
23 much larger scale.

24 Q Is any portion of the River Road area that
25 you were referring to that is not serviced by your plant,

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2 is that serviced by the Madison/Chatham joint meetings?
3 The River Road area?

4 A Yes--not to my knowledge, no.

5 Q Is that a septic area then?

6 A Yeah, as far as I know then, yes.

7 Q To your knowledge in 1967 has the town been
8 involved in making of any applications relative to either
9 expanding its sewer system or building a new sewer system?

10 A Was your question had they made any applications?

11 Q Well, have they been involved in the process
12 of making any applications?

13 A Yes. From what I understand, yes. I don't get
14 involved in that, no. I'm just in charge of maintenance.

15 Q Who to your knowledge would have the information
16 relative to whatever applications the town had made con-
17 cerning the expansion of its sewer system?

18 A Elson T. Killam and John Miller, our attorney, as
19 far as I know.

20 Q Have you attended any meetings relative to
21 the expansion of the sewer system?

22 A Not to my knowledge. I haven't, no. Not directly.

23 Q Have you prepared any reports or do you
24 provide any input for either Elson T. Killam or the Township
25 Committee relative to the expansion of the sewer system?

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2 A Not that I'm aware of. We make monthly reports,
3 and there may be a report periodically that asks of the
4 operation of the plant which I receive from the sewer
5 plant operator or chief operator I should say.

6 Q What is the substance of these monthly
7 reports?

8 A The daily flow, State-required flow, chemical
9 oxygen, suspended solids. This is a comparison. What
10 the land is operating at and what the State requires.

11 Then it goes through the routine job performed
12 each month at the plant site. Killam receives a copy of
13 that also.

14 Q To your knowledge have there been any
15 applications made by the Township prior to 1979 for the
16 expansion of its sewer system?

17 A I believe so. It's only hearsay though because I
18 don't get involved in that.

19 Q I show you this statement which was marked
20 Exhibit P-13 at a prior deposition. That's the Mayor's
21 statement. You can hold on to it.

22 A What's your question?

23 Q Are you familiar with that?

24 A I know of the meeting, yes.

25 Q In fact you attended the March meeting, didn't

1 Direct 10

2 you?

3 A I probably did. There's been several. I know I
4 attended one. I don't know which meeting I attended, but
5 I know I attended one.

6 Q You had several? Were there other meetings
7 with developers?

8 A From what I understand.

9 MR. KLEIN: Off the record.

10 [There is a discussion off the record.]

11 Q I show you this letter of Mayor Willis dated
12 May 3 to Stephen Nieswand. Can you identify that letter?

13 A You say can I identify it? You mean have I seen it
14 before?

15 Q Yes.

16 A Yes.

17 MR. KLEIN: Why don't we mark this
18 and we can continue with the numbering.

19 [The letter dated May 3, 1979, is
20 received and marked P-14 for identification.]

21 Q Mr. Vopelius, I now show you a letter dated
22 June 4, 1979, from a Paul C. Curisko to Mayor Willis, and
23 I ask you if you have ever seen that before?

24 A Yes.

25 MR. KLEIN: Could we mark that, too,

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2 please?

3 [The letter dated June 4, 1979,
4 consisting of two pages is received and marked
5 P-15 for identification.]

6 Q Refer for a moment to P-15 for identification.

7 In what connection did you see that letter?

8 A Quite obvious, a copy was forwarded to me from the
9 Town Hall apparently.

10 Q When it was forwarded to you, were you asked
11 to do anything in connection with it?

12 A No.

13 Q It was just forwarded to you for informational
14 purposes?

15 A Apparently so, yes.

16 Q Subsequent to that letter to your knowledge
17 has there been any contact between the town or DEP or
18 developers concerning the subject matter of P-13, P-14
19 and P-15?

20 A I don't really understand your question.

21 Q Has there been any contact between any
22 meetings at which you attended or participated involving
23 township officials and/or land owners in Chatham Township,
24 so-called developer land owners, relative to the subject
25 matter of that letter? Namely, the possible interim

1 Direct 12
2 expansion of the sewer plant?

3 A Are you speaking of P-15?

4 Q All three of them together.

5 A Again I attend very many meetings. I know I did
6 attend one meeting. There might have been more. Really
7 to be honest with you.

8 Q Do you have any idea when that meeting was?

9 A No. I really don't.

10 Q Aside from the meeting which was held on
11 March 23, which I know you attended because I attended,
12 to your knowledge were there any subsequent meetings?

13 A I don't know. I honestly don't know. There may
14 very well have been, but I'm not really--

15 Q Assuming there's an application for a
16 residential development of one sort or another within the
17 township, would, as part of your requirements of approval,
18 would a tie-in to the sewer system be a necessary con-
19 dition of approval?

20 MR. BERNSTEIN: Are you talking
21 about here, Mr. Klein, subdivision approval
22 or site plan approval, or some other type of
23 approval, first?

24 Secondly, if you could ask the witness
25 if he knows the regular procedure. I'm not

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2 sure if he does or doesn't, but I'd like
3 to have some clarification.

4 MR. KLEIN: All right. I'll do that.

5 Q Do you receive any communications from the
6 planning board relative to applications for subdivision
7 or site plan approval?

8 A No, not to my knowledge. I'm a member of the
9 planning board, but I--at any time there's any discussion
10 of a subdivision or something, that may just go on at
11 the regular meetings, but officially I can't recall ever
12 being sent something directly from the planning board.

13 Q Well, for example, if the plan would show a
14 proposed connection or tie-in to an interceptor line,
15 which is not now existing, as a member of the planning
16 board and as director of public works from your own
17 knowledge and background, how would that be handled?

18 Is there any approval required by any
19 department of the town relative to that?

20 A Well, there's--I don't know if there's an ordinance
21 that you cannot extend the sanitary sewer lines. I'm
22 very much aware of that because our plant is at capacity.
23 There is an ordinance that covers that.

24 Now, if there was something done beyond that, I
25 would not get that. It would either be Killam's office

1 Direct 14
2 or Robert Kirkpatrick or John Miller. There's been times
3 that Catlin's handled something and times Kirkpatrick did.

4 Q Is there actually an ordinance to your
5 knowledge?

6 A About extension of the sanitary sewer lines?

7 Q Yes.

8 A Yes, there is.

9 MR. BERNSTEIN: You'd be looking
10 for a copy of it I assume from your facial
11 expression?

12 MR. KLEIN: Yes.

13 A The only time I would get involved with a sanitary
14 sewer connection is an existing one, a street opening
15 permit. Just be mainly for street opening. The physical
16 connection and fees would be paid to the town hall, and
17 Mr. Kirkpatrick's office would inspect the connection.

18 My approval would only be the street and repairing
19 of the street.

20 MR. BERNSTEIN: Off the record.

21 [There is a discussion off the record.]

22 Q Mr. Kirkpatrick is in association with you?

23 A He's our municipal engineer.

24 MR. BERNSTEIN: It's Keller,
25 Kirkpatrick in I believe Florham Park.

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2 Nothing to do with Killam. Killam is a
3 special sanitary sewer consultant for the
4 town.

5 MR. BERNSTEIN: Not only this town.

6 MR. KLEIN: For a number of towns.

7 MR. BERNSTEIN: Many towns.

8 Q And Kirkpatrick is what?

9 A I don't know the exact title. Something, municipal
10 engineer on a consulting basis I believe.

11 Q To your knowledge has the planning board
12 ever--well, not ever, but has the planning board let's say
13 in 1978 or '79 approved a residential subdivision which
14 involved a request for a waiver of the ordinance relative
15 to tie-in sewer line?

16 MR. BERNSTEIN: Wait, Mr. Klein. I'm
17 not sure I understand the question. Are
18 you saying have there been any applications
19 for residential subdivisions where there's
20 been an application--strike that. Where the
21 application is considering septic tanks
22 other than sanitary sewers, or is the
23 question has there been a request that the
24 ordinance be waived and the developer be
25 permitted to extend the sanitary sewers?

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2 Q That the ordinance be waived and the
3 developer be permitted to extend the sanitary source?

4 A I believe we've had some inquiries, but to my
5 knowledge nothing official, and I don't believe the
6 planning board could waiver that.

7 Q You said that you believed that the sewer
8 plant is operating at capacity?

9 A At capacity or above capacity I believe.

10 Q Do you know what the Madison/Chatham
11 joint meeting is?

12 A What their function is?

13 Q Yes.

14 A Yes. Basically, yes.

15 Q What is that?

16 A Treat the sewerage from Chatham and Madison,
17 sanitary sewerage, waste.

18 Q Well, what is the Madison/Chatham Joint
19 Meeting? Is it an association of some sort or--

20 A I don't really know what their official title was.

21 A sewer authority or what. I don't know.

22 Q Do they go into the Chatham Township sewerage
23 treatment plant?

24 A No.

25 Q So you don't treat any Madison or Chatham

1 Direct

2 sewerage?

3 A Not to my knowledge.

4 Q Does Madison or Chatham treat any township
5 of Madison sewerage?

6 A Township of Madison?

7 Q Township of Madison?

8 A I believe a very small area. Only a few homes I
9 believe.

10 Q From what area of town would that be?

11 A I think it's off Shunpike Road, which is the
12 northerly section of town. A few homes in there.

13 MR. KLEIN: Off the record.

14 [There is a discussion off the record.]

15 MR. BERNSTEIN: I've concluded with
16 Mr. Klein's depositions, and it appears that
17 Mr. Volpelius is finished; therefore, Mr.
18 Klein has deposed three of the municipal
19 officials, and I haven't deposed any of the
20 plaintiffs, and I indicated I would like to
21 hold both the papers which he's requested,
22 and I have most of them in my office, as
23 well as the municipal clerk, Mrs. Lundt,
24 in abeyance until I can interrogate some
25 of the plaintiffs' witnesses.

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However, in order to move this along, I believe Mr. Klein has a request for additional paperwork and documentation, and I can have the municipal officials--I assume it would be the municipal clerk making copies so that once I've had a chance to depose some of the plaintiffs' witnesses, we could give these to Mr. Klein with a minimal amount of fuss or time.

Do you want to tell us the documents you want so that we can make a list, and I have most of--I assume all of what you requested at the last series of depositions.

MR. KLEIN: That would be all the planning board material and some of Mr. O'Grady's material.

MR. BERNSTEIN: Most of it.

MR. KLEIN: Right. What I would be interested in are the--

MR. BERNSTEIN: Formal applications?

MR. KLEIN: The copies of formal applications and any correspondence relative thereto. That is since August of 1967 when the existing plant opened.

2 MRS. LUNDT: Are you talking about
3 extension or expansion?

4 MR. KLEIN: Both.

5 MR. BERNSTEIN: Is there a problem
6 with the extension? Would that result in
7 a lot of paperwork, Mrs. Lundt?

8 MRS. LUNDT: It would. I don't know
9 how many files.

10 MR. BERNSTEIN: Apparently there's a
11 file with sewer extensions, and what we would
12 allow you to do, Mrs. Lundt has indicated
13 there are a number of files on the extensions.
14 If you want to examine those files personally,
15 we have no problem. As to the sewer
16 expansion, I assume that's limited documenta-
17 tion.

18 MR. KLEIN: When you say extensions,
19 you're talking about simple extensions of
20 lines?

21 MRS. LUNDT: I guess so. I think
22 extensions of lines. Interceptors.

23 MR. KLEIN: All right. Well, I'll
24 make an appointment subject to your
25 approval to examine that.

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MR. BERNSTEIN: You could examine that after these depositions. You may have a little time.

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MR. KLEIN: I do.

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MR. BERNSTEIN: We can do that.

7

I'm interested in your efficient use of time. After this colloquy which is on the record, I'll go upstairs with you, and Mrs. Lundt will show you the file, and if there are copies you want, at a reasonable rate we'll have copies made for you. That's no problem at all.

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MR. KLEIN: That will be fine.

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MR. BERNSTEIN: Now, first we have the formal applications to the DEP and correspondence to the DEP. Is there other items you want Mrs. Lundt to be researching?

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MR. KLEIN: Well, I'm not sure. You said to the DEP. I'm not sure it's limited to the DEP because there may have been some Federal applications involving EPA, requests to the EPA as well.

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The other area of documentation which is in Miss Lundt's jurisdiction would be very

1 Direct

2 similar to what I requested from Mr. Alpaugh,
3 which is the minutes of meetings relating
4 to introduction and adoption of zoning
5 ordinances.

6 MR. BERNSTEIN: Now, you're
7 interested in the meetings where the zoning
8 ordinance, the present zoning ordinance,
9 was adopted?

10 MR. KLEIN: Well, was--the meeting at
11 which the zoning ordinance was adopted took
12 2.7 seconds.

13 MR. BERNSTEIN: You were late. I
14 understand by hearsay, Mr. Klein, you were
15 late to the meeting, therefore you didn't get
16 your two cents in.

17 MR. KLEIN: Well, I got my two cents
18 in.

19 MR. BERNSTEIN: After it was adopted.

20 MR. KLEIN: Because I have a way of
21 being outspoken sometimes, but I think I
22 got there at about ten after 8, and it had
23 already been adopted, and that portion of
24 the meeting was over, but what I'm also
25 interested in are the minutes of the meetings

2 of the township committee involving dis-
3 cussion of the zoning ordinance.

4 MR. BERNSTEIN: Well, this is the
5 same problem, even though this young lady
6 wasn't the court reporter, it's the same
7 problem we had the last time. I have no
8 problem if there was one meeting. Let me
9 ask Mrs. Lundt.

10 Was there a single meeting where the
11 ordinance was discussed, or would it be over
12 a period of time because the problem is if it
13 was discussed over a period of two years,
14 then we'd have Mrs. Lundt who's got a lot
15 of other things to do besides this litigation.
16 In fact she's more than the town clerk. She
17 has a number of functions.

18 I don't feel it's fair for her to
19 review minutes for two years. I'd like to
20 know, though, is there any one meeting where
21 this was discussed or two meetings?

22 MRS. LUNDT: It would be very difficult
23 to say because we have what we call two
24 regular meetings a month, the first one being
25 what was normally a conference, so it's kind

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of an informal--

MR. BERNSTEIN: Do you have a minute book?

MRS. LUNDT: It's not indexed by subject.

MR. BERNSTEIN: What I'm thinking--

MRS. LUNDT: We have a minute book.

MR. BERNSTEIN: Can you get the minutes of the meeting where the ordinance was adopted? We could show Mr. Klein the minute book when we go upstairs, and he can look through it for the past year or two. He can pick out those pages that he feels are pertinent to his case.

MR. KLEIN: Let me ask it another way. Were there any special meetings of the township committee devoted exclusively to, or substantially exclusively to discussions of the master plan and/or the zoning ordinance?

MRS. LUNDT: I do not recall that there were.

MR. BERNSTEIN: They would be in the minutes though, I assume, if there were meetings? One could read through?

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2 MRS. LUNDT: I do not recall any
3 special meetings in '78 on that subject.
4 I do not recall.

5 MR. KLEIN: Do you maintain copies
6 of your sunshine notices?

7 MRS. LUNDT: We have a notice at the
8 beginning of the year that outlines all of
9 the meetings that are set forth, and if
10 there's any deviation, of course there's a
11 notice. Yes, we do keep copies.

12 MR. KLEIN: Do you also maintain a
13 copy of your agenda for each meeting?

14 MRS. LUNDT: Uh-huh.

15 MR. KLEIN: Because that might be a
16 quicker way to go through it.

17 MRS. LUNDT: Regular meeting. Not
18 the conference meeting.

19 MR. BERNSTEIN: The only problem I
20 can tell you is we've had moderate amount of
21 municipal work that sometimes discussions
22 drift a wee bit from the agenda, and I have
23 no problem with you trying to shortcut. I
24 mean none of us have an infinite amount of
25 time, but sometimes things are under titles

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under different titles that we suppose them
to be.

All right.

MR. BERNSTEIN: Do you want to go
upstairs?

MR. KLEIN: Yes.


[Conclusion of proceedings.]

C E R T I F I C A T E

I, LINDA A. BOTTONE, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, hereby certify that prior to the commencement of the examination the witness, OTTO W. VOPELIUS, was sworn by me to testify the truth, the whole truth and nothing but the truth.

I FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I FURTHER CERTIFY that I am neither a relative nor employee nor attorney or counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.


Linda A. Bottone, C. S. R.

A Notary Public of the State of
New Jersey

My commission expires January 30, 1980

Dated: