

Complaint in lieu of prerogative writ

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## THE DEFENDANTS

2. Defendant, the TOWNSHIP OF DENVILLE (hereinafter referred to as "DENVILLE TOWNSHIP") in the County of Morris, is a municipal corporation organized and existing under the laws of the State of New Jersey.

3. Defendant, the MUNICIPAL COUNCIL OF THE TOWNSHIP OF DENVILLE (hereinafter referred to as "COUNCIL") is the duly constituted governing body of DENVILLE TOWNSHIP which enacted all of the ordinances hereinbelow complained of, including the 1977 TOWNSHIP OF DENVILLE LAND USE ORDINANCE (hereinafter referred to as "LAND USE ORDINANCE") and the ordinance creating the PLANNING BOARD OF DENVILLE TOWNSHIP.

4. Defendant, the PLANNING BOARD OF DENVILLE TOWNSHIP (hereinafter referred to as "PLANNING BOARD") was created by the COUNCIL pursuant to N.J.S.A. 40:55D-23, and adopted the TOWNSHIP OF DENVILLE MASTER PLAN (hereinafter referred to as "MASTER PLAN") pursuant to N.J.S.A. 40:55D-28.

## PENDING MT. LAUREL II ACTIONS

5. Four Mount Laurel II actions have been filed to date against DENVILLE TOWNSHIP, including the suits filed by the Morris County Fair Housing Council, Affordable Living Corp., Siegler Associates and Maurice and Esther H. Soussa.

6. Of the three developer-plaintiffs who have filed Mount Laurel II complaints, only two have committed to building any lower income housing, and said commitments together total less than 150 lower income units.

7. In order to settle some or all of the pending Mount Laurel II suits, the COUNCIL considered rezoning twelve sites for multi-family uses with a 20% setaside for lower income families.

8. Plaintiff's site was one of the twelve sites considered for Mount Laurel II rezoning by the COUNCIL and was designated as "Franklin Avenue Site #2" by the COUNCIL.

9. The current owner of the property which plaintiff has contracted to purchase met with TOWNSHIP officials at their request on October 12, 1984 and expressed interest in the proposed Mount Laurel II rezoning of the subject property.

10. After executing an agreement of sale on the subject property, Plaintiff informed the COUNCIL and other TOWNSHIP officials by letter of November 7, 1984 of its interest in participating in the negotiations concerning the proposed Mount Laurel II rezoning of the subject property.

11. Plaintiff intended to appear at a master plan hearing scheduled for December 20, 1984 and reiterate its goal of providing multi-family housing with a substantial component of lower income units, but this hearing was cancelled.

12. Upon information and belief, plaintiff alleges that the proposed settlement will not be executed and plaintiff's site will not therefore be rezoned for multi-family uses including a lower income setaside.

#### GROWTH AND DEVELOPMENT OF THE TOWNSHIP OF DENVILLE

13. As recognized in the MASTER PLAN, DENVILLE TOWNSHIP has experienced its share of regional population influx over the last 20 years.

14. The State Development Guide Plan recognizes the appropriateness of future growth and development in DENVILLE TOWNSHIP by designating virtually all of the TOWNSHIP as a growth area.

15. Contributing to growth pressures in DENVILLE TOWNSHIP is the excellent transportation system which includes the Erie Lackawanna R.R., Interstate Route 80 and State Routes 53, 46 and 10.

16. Substantial sewage treatment capacity exists in the sewage treatment plant administered by the Rockaway Valley Regional Sewer Authority.

17. Water supplies are available from the Denville Water Department for future development in DENVILLE TOWNSHIP.

## DENVILLE TOWNSHIP LAND USE CONTROLS

18. Land use control is exercised in DENVILLE TOWNSHIP by virtue of the administration and enforcement of the LAND USE ORDINANCE and the MASTER PLAN.

19. The current LAND USE ORDINANCE of DENVILLE was declared facially invalid as in violation of Mount Laurel II.

20. The DENVILLE TOWNSHIP LAND USE ORDINANCE fails to provide any realistic opportunity for the production of the TOWNSHIP'S fair share of low and moderate income housing because there is no vacant land zoned for multi-family uses and because undeveloped land in the TOWNSHIP is predominantly zoned for single family homes on large lots and employment generating uses.

21. The DENVILLE TOWNSHIP LAND USE ORDINANCE fails to provide any realistic opportunity for the production of the TOWNSHIP'S fair share of low and moderate income housing because the ORDINANCE is replete with cost-generating provisions which are not related to public health and safety standards.

22. The following cost-generative standards illustrate the nature of the cost-generative LAND USE ORDINANCE provisions which bar the construction of low and moderate income housing on vacant land in all zones:

- a. All standards which are violative of the Municipal Land Use Law since they force developers to choose between complying with an illegal requirement and litigation over the requirement;
- b. All standards which are impermissibly vague and indefinite since they force a developer to redo designs and engineering when a standard takes on an unexpected meaning;
- c. The prohibition of mobile homes in all zones which, in conjunction with the broad mobile home definition in the ORDINANCE, violates provisions of N.J.S.A. 40:55D-104;

- d. The prohibition of "substantially alike" buildings or structures in all residential districts;
- e. Provisions applicable to development in the A-1 Garden Apartment district, including the 2 story structure limitation, building separation requirements, the requirement that at least 85% of the units be one bedroom units, that no more than 15% be two bedroom units and the prohibition of larger bedroom units, the required minimum floor area for one bedroom and two bedroom units, the requirements for a masonry exterior, for excessive storage area and excessive recreational improvements;
- f. The provisions applicable to permitted apartment development in the A-O-B zone (which is not designated on the zoning map);
- g. Development standards applicable to single family development in virtually all residential zones.

LACK OF AFFIRMATIVE INCLUSIONARY MEASURES

23. DENVILLE TOWNSHIP has failed to implement effective affirmative measures to afford a realistic opportunity for the construction of lower income housing, including at least the following affirmative measures:

- a. Requiring developers to set aside a portion of their development for lower income housing;
- b. Providing effective zoning incentives for the production of lower income housing;
- c. Zoning vacant land for mobile home development;
- d. Adopting a resolution of need for lower income housing;
- e. Adopting a resolution granting tax abatement for projects including governmentally subsidized lower income housing.

## QUALIFICATION FOR A BUILDER'S REMEDY

24. The New Jersey Supreme Court held in Mount Laurel II that a successful developer litigant is entitled to a builder's remedy for a proposed project providing a substantial amount of lower income housing unless the municipality establishes that the proposed development is contrary to sound planning principles or represents a substantial environmental hazard.

25. The allegations stated in this Count demonstrate the facial invalidity of DENVILLE TOWNSHIP'S LAND USE ORDINANCE under Mount Laurel II.

26. The DENVILLE MASTER PLAN indicates that plaintiff's site has good soils, drainage and depth to water table, has virtually no wetlands or slopes over 8% and has substantial frontage (at least 1,000 feet) on Franklin Avenue which is an arterial road.

27. The DENVILLE MASTER PLAN indicates that plaintiff's site is located contiguous to the Morris Knolls Regional High School and near a proposed school park and that a 10 inch water main exists in the contiguous Franklin Avenue right of way, with sewer lines in close proximity to the site.

28. The COUNCIL has recognized the appropriateness of high density development on plaintiff's site by suggesting it as a Mount Laurel II site.

29. Plaintiff, pursuant to the attached certification, has committed to providing a substantial amount of the housing in its development as housing which will be affordable to lower income families.

30. The development of plaintiff's property as a planned development at an overall gross density of 15 dwelling units per gross acre, including lower income housing, would contribute to the alleviation of the housing shortage in the TOWNSHIP OF DENVILLE housing region and would enable persons who cannot presently afford to buy or rent housing the TOWNSHIP OF DENVILLE to live there.

31. Housing can be constructed on plaintiff's property in an environmentally responsible manner and in price ranges affordable to all categories of people who might desire to live there, including those of lower income, if DENVILLE TOWNSHIP by its land use regulations, made such development reasonably possible.

WHEREFORE, plaintiff demands judgment as follows:

1. Declaring the DENVILLE TOWNSHIP LAND USE ORDINANCE invalid in its entirety;
2. Appointing a special master to revise the DENVILLE TOWNSHIP LAND USE ORDINANCE and to supervise the TOWNSHIP with respect to the implementation of any builder's remedy in order to insure prompt and bona-fide review by defendants of all applications by plaintiff for development approvals;
3. Ordering the revision of the DENVILLE TOWNSHIP LAND USE ORDINANCE in order to bring it into compliance with the MOUNT LAUREL II mandate;
4. Ordering a builder's remedy for Plaintiff in the form of court approval of a Concept Plan application to be submitted by plaintiff conditioned upon the provision of a substantial amount of dwelling units as housing affordable to lower income people;
5. Ordering that all development applications for development which includes a substantial amount of lower income housing be "fast tracked", that is, approved within shorter time periods than provided for in the Municipal Land Use Law and that Environmental Impact Assessments or Statements and Community Impact Statements or Fiscal Impact Reports not be required for such developments;
6. Ordering that all fees, including but not limited to application fees, inspection fees, utility fees, engineering fees, building permit and certificate of occupancy fees be waived for a sufficient and appropriate amount of housing within developments which include a substantial amount of lower income housing;



7. Ordering that only performance and maintenance guarantees essential to protect public health and safety be required for on-tract or off-tract improvements associated with developments which include a substantial amount of lower income housing;

8. Ordering DENVILLE TOWNSHIP to establish and fund an agency to:
- a. Subsidize land, site improvement, construction and financing costs for lower income housing, particularly Mount Laurel II housing;
  - b. apply for all available governmental subsidies for lower income housing; and
  - c. screen applications for and sponsor and maintain lower income housing, particularly Mount Laurel II housing in DENVILLE TOWNSHIP.

9. Ordering DENVILLE TOWNSHIP to adopt a resolution of need and grant tax abatement where necessary.

10. Ordering defendant DENVILLE TOWNSHIP to pay plaintiffs' counsel fees and costs of suit; and

11. Granting plaintiff such further relief as the Court deems just and proper.

Brener, Wallack & Hill  
Attorneys for Plaintiff

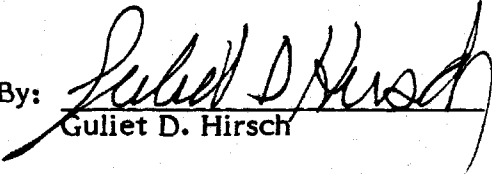
By:   
Guliet D. Hirsch

The party advancing the within pleading hereby certifies that the matter in controversy herein is not the subject of any other action pending in any court nor of a pending arbitration proceeding, and further certifies that no such action or arbitration proceeding is contemplated. I hereby certify that the foregoing

statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false that I am subject to punishment.

Brener, Wallack & Hill  
Attorneys for Plaintiff

12/31/84

By:   
Guliet D. Hirsch

CERTIFICATION IN SUPPORT  
OF BUILDER'S REMEDY

1. I am a partner in Stonehedge Associates, the contract purchaser of Lot 13 in Block 40001 in Denville Township and submit this certification in support of the Complaint in Lieu of Prerogative Writ to be filed on behalf of Stonehedge Associates against the TOWNSHIP OF DENVILLE and other defendants.

2. I have read the Complaint to be filed on Stonehedge Associate's behalf and have been advised by legal counsel of the requirement pursuant to the Mt. Laurel II case that a developer commit to providing a substantial amount of lower income housing in its proposed project in order to qualify for a Court ordered builder's remedy.

3. Stonehedge Associates hereby commits to providing 20% of the units in its development as units affordable to lower income households and said commitment is accurately set forth in the First Count of its Complaint against the TOWNSHIP OF DENVILLE.

4. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



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JACK NEUGARTEN

for Stonehedge Associates

Dated: 12/27/84