

AMG

5-25-84

Letter re:

- w/ Complaint in ~~2000~~ Lieu of Prejudicial writ
- w/ NOM for consolidation
- w/ letter brief in Support
- w/ Proposed order

PS 27

Di # 3210

AM000144C

**BRENER, WALLACK & HILL****ATTORNEYS AT LAW****2-4 CHAMBERS STREET****PRINCETON, NEW JERSEY 08540****(609) 924-0808**CABLE "PRINLAW" PRINCETON  
TELECOPIER: (609) 924-6239  
TELEX: 837652HARRY BRENER  
HENRY A. HILL  
MICHAEL D. MASANOFF\*\*  
ALAN M. WALLACK\*GULIET D. HIRSCH  
GERARD H. HANSON  
J. CHARLES SHEAK\*\*  
EDWARD D. PENN+  
NATHAN M. EDELSTEIN+  
THOMAS L. HOFSTETTER\*\*  
ROBERT W. BACSO, JR.+  
EDWARD M. BERNSTEIN^  
MARILYN S. SILVIA  
THOMAS J. HALL  
SUZANNE M. LAROBARDIER  
ROCKY L. PETERSON  
VICKI JAN ISLER  
MICHAEL J. FEEHAN\* MEMBER OF N. J. & D. C. BAR  
\*\* MEMBER OF N. J. & PA. BAR  
+ MEMBER OF N. J. & N. Y. BAR  
^ MEMBER OF N. J. & FLA. BAR

May 25, 1984

FILE NO.

**RECEIVED****MAY 26 1984**The Honorable Eugene D. Serpentelli  
Judge, Superior Court of New Jersey  
Ocean County Courthouse  
Toms River, NJ 08753Re: Shainee Corp. v. Twp. of Warren, et al.  
Docket No. L-03451-84**JUDGE SERPENTELLI'S CHAMBERS**

Dear Judge Serpentelli:

Enclosed is a copy of a filed Complaint, Notice of Motion for Consolidation, a letter Brief in Support of the Motion and Proposed Form of Order with respect to the above-captioned matter.

We are submitting the Motion for Consolidation on the papers pursuant to R.1:6-2 but will be prepared to participate in oral argument if requested.

Respectfully submitted,

Thomas J. Hall

TJH:te  
Enclosures  
cc: all attorneys on Notice of Motion**RECEIVED****MAY 26 1984****JUDGE SERPENTELLI'S CHAMBERS**

MAY 25, 1984  
filed in  
Trenton

L-034351-84

RECEIVED

MAY 29 1984

JUDGE SERPENTELLI'S CHAMBERS

BRENER, WALLACK & HILL  
Attorneys at Law  
2-4 Chambers Street  
Princeton, New Jersey 08540  
(609) 924-0808  
ATTORNEYS FOR Plaintiff

Plaintiff	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	SOMERSET COUNTY/OCEAN COUNTY
	:	( <u>Mount Laurel II</u> )
SHAINEE CORPORATION	:	
	:	DOCKET NO. L-034351-84
	:	
vs.	:	<u>CIVIL ACTION</u>
	:	
Defendants	:	COMPLAINT IN LIEU OF
	:	PREROGATIVE WRIT
	:	
TOWNSHIP OF WARREN	:	
a municipal corporation of	:	
the State of New Jersey,	:	
located in Somerset County,	:	
New Jersey, The TOWNSHIP	:	
COMMITTEE of the TOWNSHIP of	:	
WARREN, the PLANNING	:	
BOARD of the TOWNSHIP of	:	
WARREN and the SEWERAGE	:	
AUTHORITY OF THE TOWNSHIP	:	
of WARREN	:	

Plaintiff, The SHAINEE CORPORATION (hereinafter referred to as "SHAINEE"), a Corporation organized under the laws of the State of New Jersey and having an office at 2-4 Chambers Street, Princeton, New Jersey 08540, by way of Complaint against the defendants, says:

SUPERIOR COURT OF N. J.

LAW UNIT

L-034351-84 pw REC'D

MAY 25 1984

RECP-1  
JOHN M. MAYSON  
CLERK

MAY 29 1984  
SUPERIOR COURT OF N.J.  
PAID

FILED

JUN 4 1984

RECEIVED

M. DEAN HAINES, CLERK  
COUNTY OF OCEAN

JUN 5 1984

Filing Fee \$75.00

BRENER, WALLACK & HILL  
Attorneys at Law  
2-4 Chambers Street  
Princeton, New Jersey 08540  
(609) 924-0808  
ATTORNEYS FOR Plaintiff

JUDGE SERPENTELLI'S CHAMBERS

Plaintiff :  
          1 :  
          / :  
SHAINEE CORPORATION :

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY/OCEAN COUNTY  
(Mount Laurel II)

DOCKET NO.

vs.

P.W.

CIVIL ACTION

Defendants 4 :  
          / :  
TOWNSHIP OF WARREN :  
a municipal corporation of :  
the State of New Jersey, :  
located in Somerset County, :  
New Jersey, The TOWNSHIP :  
COMMITTEE of the TOWNSHIP of :  
WARREN, the PLANNING :  
BOARD of the TOWNSHIP of :  
WARREN and the SEWERAGE :  
AUTHORITY OF THE TOWNSHIP :  
of WARREN :

COMPLAINT IN LIEU OF  
PREROGATIVE WRIT

(15) 55-01

BRENER, WALLACK & HILL  
ATTORNEYS AT LAW

Plaintiff, The SHAINEE CORPORATION (hereinafter referred to as "SHAINEE"), a Corporation organized under the laws of the State of New Jersey and having an office at 2-4 Chambers Street, Princeton, New Jersey 08540, by way of Complaint against the defendants, says:

FIRST COUNT

THE PLAINTIFF

1. SHAINEE is a New Jersey Corporation engaged in land development and related activities and is the optinee-contract purchaser of approximately 55 acres of land in WARREN TOWNSHIP, Somerset County, New Jersey. The SHAINEE management is composed of sophisticated builders experienced in the construction of multi-family housing and aware of the requirements of Mt. Laurel II.

THE DEFENDANTS

2. Defendant WARREN TOWNSHIP is a municipal corporation organized and existing under the laws of the State of New Jersey.

3. Defendant TOWNSHIP COMMITTEE of the TOWNSHIP OF WARREN (hereinafter referred to as the "TOWNSHIP COMMITTEE") is the duly constituted governing body of WARREN TOWNSHIP, and enacted all of the ordinances hereinbelow complained of, including the ZONING ORDINANCE of the TOWNSHIP of WARREN, the LAND DEVELOPMENT ORDINANCE of the TOWNSHIP of WARREN ( hereinafter referred to as the "LAND DEVELOPMENT ORDINANCE" or "ORDINANCE"), the Ordinance creating the WARREN TOWNSHIP PLANNING BOARD (hereinafter referred to as PLANNING BOARD), and the ORDINANCES creating and affecting the responsibilities of the SEWERAGE AUTHORITY.

4. Defendant PLANNING BOARD was created pursuant to Municipal Land Use Law, (N.J.S.A. 40:55D-1 et seq.) and has adopted a Master Plan and recommended zoning ordinances and other ordinances regulating the nature, extent and costs of development of lands within WARREN TOWNSHIP.

5. Defendant SEWERAGE AUTHORITY was created by the TOWNSHIP COMMITTEE pursuant to the authority of N.J.S.A. 40:14A-1 et

seq., and has entered into a service contract with defendant TOWNSHIP.

#### REGIONAL SETTING

6. WARREN TOWNSHIP is located in a housing region which includes at least portions of Hunterdon, Middlesex, Somerset and Union Counties and is within the Middlesex-Somerset-Hunterdon Primary Metropolitan Statistical Area as defined by The United States Census Bureau.

6. All of WARREN TOWNSHIP is located within a Growth Area as designated by the State Development Guide Plan.

7. WARREN TOWNSHIP has access to major metropolitan areas via newly constructed Interstate Highways, specifically I-78 and I-287.

8. WARREN TOWNSHIP has undergone substantial industrial and commercial development in recent years, and nearby areas in Somerset and Morris County have also undergone substantial industrial and commercial development, adding thousands of new jobs and substantially enlarging the tax base of the area.

#### THE WARREN LITIGATION

9. In January, 1983, the New Jersey Supreme Court declared, in Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J.158, ( hereinafter, Mount Laurel II) that every community within the State of New Jersey had an obligation to provide for the construction of housing to meet its indigenous need, and that communities within areas designated as "Growth Areas" within the State Development Guide Plan had a responsibility to provide realistic opportunities for the construction of their fair share of the region's present and prospective need for housing for lower income households.

10. On December 31, 1980, AMG Realty Company filed suit against WARREN TOWNSHIP for its failure to provide, in its ZONING

ORDINANCE, realistic opportunities for the construction of housing for lower income families. Skytop Land Corporation successfully petitioned to intervene in the AMG suit.

11. AMG v. Warren Township, Docket No. L-23277-80 P.W. was tried in The Superior Court, Somerset County, and a Judgment issued on May 27, 1982, which held that the then-current zoning ordinance of the TOWNSHIP was exclusionary and in violation of Mount Laurel I.

12. As a consequence of that Judgment, Warren Township was ordered to rezone.

13. On July 23, 1981, Timber Properties, Inc. filed suit against Warren Township alleging that the TOWNSHIP'S ZONING ORDINANCE was exclusionary.

14. Timber Properties v. Warren Township, Docket No. L-67820-80 P.W., was dismissed in part, and placed on the inactive list pending the rezoning of Warren Township as ordered on May 27, 1982.

15. The rezoning adopted by WARREN TOWNSHIP in December, 1982, was not deemed satisfactory to AMG, Skytop Land Corporation, and Timber Properties, and following the Supreme Court's decision in Mount Laurel II, the cases were remanded to Judge Eugene D. Serpentelli, and consolidated as Docket No. L-23277-80 P.W.

16. Counsel for all parties reached a tentative agreement for rezoning WARREN TOWNSHIP in January, 1984, which agreement was rejected by the TOWNSHIP COMMITTEE.

17. Trial on the issues brought by plaintiffs on the issue of region and fair-share was commenced on March 15, 1984 and concluded in April, 1984. A decision has not been issued as of the date of filing of this Complaint.

PLAINTIFF'S PROPERTY

18. SHAINEE's property is located within an R-R Zone permitting single-family detached dwelling units on lots having a minimum of 65,340 square feet, or approximately one and one-half (1.5) acres in size and is contiguous with the property owned by Skytop and near lands owned by AMG Realty.

19. SHAINEE is prepared, if it were allowed reasonable densities, acceptable development standards and access to utilities, to construct a substantial quantity of low and moderate income housing on its property, as provided for in the attached certification, but is precluded from doing so by WARREN TOWNSHIP ZONING and LAND DEVELOPMENT ORDINANCES.

THE CONTROVERSY

20. SHAINEE contends that WARREN TOWNSHIP has an exclusionary ZONING ORDINANCE not in compliance with the requirements of Mt. Laurel II.

21. WARREN TOWNSHIP has an obligation to provide housing opportunities for its own indigenous low and moderate income housing and is required to provide for its fair share of reallocated excess present need and prospective need for such lower income housing. Plaintiff contends that defendant's fair share of such lower income housing is in excess of 900 units of low and moderate income housing.

22. The zoning and other development regulations of WARREN are violative of its Mount Laurel obligations, and contrary to the equal protection guarantees inherent in Article I, Section I of the New Jersey Constitution.

22. Despite the best efforts of the plaintiffs currently in the case in Docket No. L-23277-80 P.W., it is unlikely that they will be able to provide all of WARREN TOWNSHIP's lower income housing need by the year 1990.



23. SHAINEE seeks to construct housing at a minimum density of 10 dwelling units per acre, and will provide 20% of those units as housing for persons of lower income, provided that the Court order substantially the relief which SHAINEE seeks.

24. SHAINEE's 55 acres would yield at least 550 dwelling units, 20% of which, or approximately 110, would be affordable to persons of lower income.

25. These housing units would be a substantial addition to defendant WARREN TOWNSHIP's minimum fair share, and if the relief which SHAINEE seeks is provided by this Court, these units can be constructed prior to 1990.

26. WARREN TOWNSHIP has exclusionary ZONING and LAND DEVELOPMENT ORDINANCES not in compliance with the requirements of Mt. Laurel II.

27. The LAND DEVELOPMENT ORDINANCE is replete with cost generative, vague, and illegal standards which render the construction of housing for lower income persons difficult if not impossible and contains no inclusionary provisions such as mandatory set-asides, inclusionary bonuses or incentives, provisions for manufactured housing or mobile home parks or other inclusionary mechanisms required under Mount Laurel II to increase the production of lower income housing.

28. In view of the refusal of Defendant WARREN TOWNSHIP, Defendant TOWNSHIP COMMITTEE of WARREN TOWNSHIP and Defendant PLANNING BOARD to revise the Master Plan or the LAND DEVELOPMENT ORDINANCE to accomodate low and moderate income housing needs, as required by earlier action of the Superior Court, and in view of the public statements made by elected officials of WARREN TOWNSHIP that the

TOWNSHIP has no intention of rezoning additional land for low and moderate income housing voluntarily, SHAINEE believes that any petition for a rezoning of its land or pursuit of any administrative remedies would be futile.

29. Defendant's present land-use regulations fail to provide a realistic opportunity for the production of WARREN TOWNSHIP'S fair share of affordable housing for low and moderate income persons.

30. Defendant's land use regulations preclude the opportunity for construction of least cost housing within the boundaries of the TOWNSHIP.

WHEREFORE, plaintiff demands judgment against the DEFENDANTS as follows:

1. Declaring the WARREN TOWNSHIP ZONING ORDINANCE invalid in its entirety;

2. Appointing a special master to revise the WARREN TOWNSHIP ZONING 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 SHAINEE for development approvals;

3. Ordering the revision of the WARREN TOWNSHIP ZONING and LAND DEVELOPMENT ORDINANCES in order to bring them into compliance with the MOUNT LAUREL II mandate;

4. Ordering a builder's remedy for SHAINEE in the form of court approval of a Concept Plan application to be submitted by SHAINEE 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 Assessment Reports or any other type of cost-generative report, such as Community Impact Assessments or Fiscal Impact Reports, not be required for such developments;

6. Ordering that all fees, including but not limited to, application fees, inspection 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 that at a minimum, SHAINEE's property be rezoned to 10 dwelling units per acre or more, and that similar rezoning be provided for any development which includes a substantial amount of lower income housing;

9. Ordering Defendant SEWERAGE AUTHORITY to take whatever action is necessary to extend sewage lines and provide full sewage treatment to SHAINEE for all housing proposed to be constructed by SHAINEE without assessment of capital costs for the extension of such lines.

10. Ordering WARREN TOWNSHIP to plan and provide for, out of municipal tax revenues, reimbursement to developers for the construction of sewer, water, roads, other utilities and open space facilities required for developments which include a substantial amount of lower income housing;

DREGER, WALLACE & HILL  
ATTORNEYS AT LAW

11. Ordering WARREN TOWNSHIP to accept all open space, recreational facilities, roads and other infrastructure which may be dedicated in connection with development which includes a substantial amount of lower income housing;

12. Ordering that WARREN TOWNSHIP fund a nonprofit entity 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 WARREN TOWNSHIP.

13. Ordering WARREN TOWNSHIP to adopt a resolution of need and grant tax abatement where necessary;

14. Restraining Defendant PLANNING BOARD from approving any application for development of land in WARREN TOWNSHIP until a final judgment is entered which finds that WARREN TOWNSHIP has met its fair share of regional housing needs;and

15. Granting SHAINEE such further relief as the Court deems just and proper.

#### SECOND COUNT

1. Plaintiff repeats the allegations of the First Count, and incorporates them herein.

2. WARREN TOWNSHIP'S ZONING and LAND DEVELOPMENT ORDINANCES violate the substantive due process and equal protection guarantees of Article I, Section 1 of the New Jersey Constitution, and is

ATTORNEYS AT LAW

contrary to N.J.S.A. 40:55D-62 due to the failure of the TOWNSHIP to provide for a balanced community and to promote the general welfare.

3. The ZONING ORDINANCE fails to provide any opportunity to provide housing for lower income households via the construction of mobile home parks, and provides only minuscule opportunities for the construction of medium density development within WARREN TOWNSHIP.

4. The ZONING ORDINANCE provides limited opportunities for the construction of higher density developments, including garden apartments, townhouses, mid-rise buildings, and similar housing opportunities for both market housing and for persons of lower income.

5. The LAND DEVELOPMENT ORDINANCE contains a number of vague and arbitrary standards, which add to development costs in that a developer must either accept whatever the WARREN TOWNSHIP planning and construction officials set as the standard for that development or be forced to litigate over the meaning of terms, examples of which include (but are not limited to):

(a) " The subdivision shall conform to standards which will encourage good development patterns..."

(b) " The arrangement of streets ...shall be such as to provide...the easy flow of traffic..."

(c) "Desirable natural features of the land shall be preserved as much as possible."

(d) " No development application shall adversely affect ...adjoining property."

6. The LAND DEVELOPMENT ORDINANCE provides for a cost-generative Environmental Assessment Report if the planning board, or a subcommittee thereof, or the zoning board of adjustment, in their discretion,

ATTORNEYS AT LAW

require such a report.

7. The LAND DEVELOPMENT ORDINANCE vests the Planning Board with substantial opportunities to render housing development in WARREN TOWNSHIP economically unfeasible, thereby denying housing developers the opportunity to provide expanded housing opportunities for all who seek to live within WARREN TOWNSHIP, including persons of lower income.

WHEREFORE, plaintiff demands judgment against the DEFENDANTS as follows:

1. Declaring the WARREN TOWNSHIP ZONING ORDINANCE invalid in its entirety;

2. Appointing a special master to revise the WARREN TOWNSHIP ZONING 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 SHAINEE for development approvals;

3. Ordering the revision of the WARREN TOWNSHIP ZONING and LAND DEVELOPMENT ORDINANCES in order to bring them into compliance with the MOUNT LAUREL II mandate;

4. Ordering a builder's remedy for SHAINEE in the form of court approval of a Concept Plan application to be submitted by SHAINEE 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 Assessment Reports or any other type of cost-generative report, such as Community Impact Assessments or Fiscal Impact Reports, not be required for such developments;

6. Ordering that all fees, including but not limited to, application fees, inspection 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 that at a minimum, SHAINEE's property be rezoned to 10 dwelling units per acre or more, and that similar rezoning be provided for any development which includes a substantial amount of lower income housing;

9. Ordering Defendant SEWERAGE AUTHORITY to take whatever action is necessary to extend sewage lines and provide full sewage treatment to SHAINEE for all housing proposed to be constructed by SHAINEE without assessment of capital costs for the extension of such lines.

10. Ordering WARREN TOWNSHIP to plan and provide for, out of municipal tax revenues, reimbursement to developers for the construction of sewer, water, roads, other utilities and open space facilities required for developments which include a substantial amount of lower income housing;

11. Ordering WARREN TOWNSHIP to accept all open space, recreational facilities, roads and other infrastructure which may be dedicated in connection with development which includes a substantial amount of lower income housing;

12. Ordering that WARREN TOWNSHIP fund a nonprofit entity 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 WARREN TOWNSHIP.

13. Ordering WARREN TOWNSHIP to adopt a resolution of need and grant tax abatement where necessary;

14. Restraining Defendant PLANNING BOARD from approving any application for development of land in WARREN TOWNSHIP until a final judgment is entered which finds that WARREN TOWNSHIP has met its fair share of regional housing needs;and

15. Granting SHAINEE such further relief as the Court deems just and proper.

### THIRD COUNT

1. Plaintiff repeats the allegations of the First and Second Counts and incorporates them herein.

2. Defendant SEWERAGE AUTHORITY is a public body created by the TOWNSHIP COMMITTEE pursuant to N.J.S.A.40:14A-1 et seq.



3. Defendant SEWERAGE AUTHORITY has been in the process of planning, developing, constructing and reconstructing sewage treatment plants to provide additional capacity to new industrial, commercial, and residential development.

4. Defendant SEWERAGE AUTHORITY has executed contracts with various private entities to provide sewage treatment, which has led to the construction of new industrial and commercial ratables for WARREN TOWNSHIP, but has failed to provide sewage treatment for persons and entities seeking to provide additional housing opportunities for persons of low and moderate income.

5. Defendant SEWERAGE AUTHORITY has engaged, in conjunction with the TOWNSHIP COMMITTEE, in an effort to restrain residential development within WARREN TOWNSHIP, and has allocated sewage treatment capacity to a variety of non-residential developers and to others who have made no committment to assist WARREN TOWNSHIP in meeting its fair share of housing for persons of lower income.

6. Without adequate sewage treatment, no developer in WARREN TOWNSHIP can proceed with any development of sufficient size and scale to provide any meaningful contribution to WARREN TOWNSHIP'S fair share of housing opportunities for lower income households.

7. SHAINEE will require sewage treatment from the SEWERAGE AUTHORITY in order to service its proposed development, which will include a substantial amount of housing for lower income households.

8. Representatives of SHAINEE have been advised that the SEWERAGE AUTHORITY has represented to the parties in the earlier AMG Realty Corp et al v. Township of Warren, Docket No. L-23277-80 action that there is insufficient sewage capacity available to provide service for their

developments, and therefore, SHAINEE believes that any request it may make to the SEWERAGE AUTHORITY will receive the same response.

9. Defendant SEWERAGE AUTHORITY, unless ordered to do so by this Court, will undoubtedly refuse to allocate sewage treatment or extend collection lines to serve SHAINEE'S proposed development; or, if such treatment is offered and collection lines proposed, will be so costly as to render construction of residential housing with substantial lower income housing financially infeasible.

WHEREFORE, plaintiff demands judgment against the DEFENDANTS as follows:

1. Declaring the WARREN TOWNSHIP ZONING ORDINANCE invalid in its entirety;

2. Appointing a special master to revise the WARREN TOWNSHIP ZONING 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 SHAINEE for development approvals;

3. Ordering the revision of the WARREN TOWNSHIP ZONING and LAND DEVELOPMENT ORDINANCES in order to bring them into compliance with the MOUNT LAUREL II mandate;

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DREW R. WALLACE & HILL  
ATTORNEYS AT LAW

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11. Ordering WARREN TOWNSHIP to accept all open space,

recreational facilities, roads and other infrastructure which may be dedicated in connection with development which includes a substantial amount of lower income housing;

12. Ordering that WARREN TOWNSHIP fund a nonprofit entity to:

- a. Subsidize land, site improvement, construction and financing costs for lower income housing, particularly Mount Laurel II housing;
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13. Ordering WARREN TOWNSHIP to adopt a resolution of need and grant tax abatement where necessary;

14. Restraining Defendant PLANNING BOARD from approving any application for development of land in WARREN TOWNSHIP until a final judgment is entered which finds that WARREN TOWNSHIP has met its fair share of regional housing needs;and

15. Granting SHAINEE such further relief as the Court deems just and proper.

BRENER, WALLACK & HILL  
Attorneys for Plaintiff

By: 

Thomas Jay Hall

BRENER, WALLACK & HILL  
ATTORNEYS AT LAW

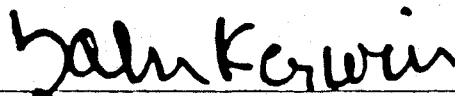
CERTIFICATION IN SUPPORT OF BUILDER'S REMEDY

1. I am President of Shainee Corporation and submit this certification in support of the Complaint in Lieu of Prerogative Writ to be filed by Shainee Corporation against the Township of Warren and other defendants.

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

3. Shainee Corporation hereby commits to providing a substantial amount of lower income housing and said commitment is accurately set forth in the First Count of its Complaint against the Township of Warren.

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.



\_\_\_\_\_  
President  
Shainee Corporation

DATED:

5-21-84

BRENER, WALLACK & HILL  
Attorneys at Law  
2-4 Chambers Street  
Princeton, New Jersey 08540  
(609) 924-0808

Plaintiff

SHAINEE CORPORATION

vs.

Defendants

WARREN TOWNSHIP, a  
municipal corporation of  
the State of New Jersey,  
located in Somerset County,  
New Jersey, The TOWNSHIP  
COMMITTEE of the TOWNSHIP of  
WARREN, the PLANNING  
BOARD of the TOWNSHIP of  
WARREN and the SEWERAGE  
AUTHORITY of the TOWNSHIP  
of WARREN

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY/OCEAN COUNTY  
(Mount Laurel II)

DOCKET NO.L-034351-84

CIVIL ACTION

NOTICE OF MOTION FOR  
CONSOLIDATION ON SHORT  
NOTICE

TO:

John E. Coley, Jr.  
Kunzman, Coley, Yospin and Bernstein, P.A.  
15 Mountain Avenue  
Warren, New Jersey 07060

Eugene W. Jacobs  
Handelman & Jacobs  
381 North Avenue  
Dunellen, New Jersey 08812

CLERKS AT LAW

J. Albert Mastro  
7 Morristown Road  
Bernardsville, N.J 07924

Joseph E. Murray  
McDonough, Murray and Korn, P.C.  
555 Westfield Avenue  
Westfield, New Jersey 07090

Raymond R. Trombadore  
Raymond R. and Ann W. Trombadore, P.C.  
33 East High Street  
Somerville, New Jersey 08876

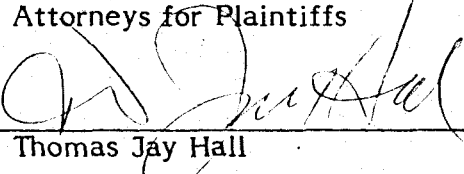
SIRS:

PLEASE TAKE NOTICE that the undersigned attorney for Shainee Corporation will apply to the Superior Court, Law Division, the Honorable Eugene D. Serpentelli at the Ocean County Court House in Toms River, New Jersey, on such date as may be set by the Court for an Order consolidating the within action with the other actions against Warren Township consolidated therewith, and for an Order requiring all discovery, pleadings and evidence in the consolidated cases of AMG Realty Corp. v. Township of Warren, Skytop Land Corp. v Township of Warren, and Timber Properties Corp. v. Township of Warren, consolidated as Docket No. L-23277-80.P.W.to be made available to Shainee Corp.

DATED: May 25, 1984

BRENER, WALLACK & HILL  
Attorneys for Plaintiffs

By:

  
Thomas Jay Hall

BRENER, WALLACK & HILL  
ATTORNEYS AT LAW

PROOF OF SERVICE

We hereby certify that copies of the complaint in the within matter, notice of motion to consolidate and letter brief in support thereof have been served upon all parties listed on the face of this motion by mailing same by regular mail on May 25, 1984.

BRENER, WALLACK & HILL  
Attorneys for Plaintiff  
(Shainee Corporation)

By: 

Thomas Jay Hall



BRENER, WALLACK & HILL

ATTORNEYS AT LAW

2-4 CHAMBERS STREET

PRINCETON, NEW JERSEY 08540

(609) 924-0808

CABLE "PRINLAW" PRINCETON  
TELECOPIER: (609) 924-6239  
TELEX: 837652

HARRY BRENER  
HENRY A. HILL  
MICHAEL D. MASANOFF\*\*  
ALAN M. WALLACK\*

GULIET D. HIRSCH  
GERARD H. HANSON  
J. CHARLES SHEAK\*\*  
EDWARD D. PENN+  
NATHAN M. EDELSTEIN+  
THOMAS L. HOFSTETTER\*\*  
ROBERT W. BACSO, JR.+  
EDWARD M. BERNSTEIN^  
MARILYN S. SILVIA  
THOMAS J. HALL  
SUZANNE M. LAROBARDIER  
ROCKY L. PETERSON  
VICKI JAN ISLER  
MICHAEL J. FEEHAN

\* MEMBER OF N. J. & D. C. BAR  
\*\* MEMBER OF N. J. & PA. BAR  
+ MEMBER OF N. J. & N. Y. BAR  
^ MEMBER OF N. J. & FLA. BAR

FILE NO.

May 25, 1984

Honorable Eugene D. Serpentelli  
Superior Court of New Jersey  
Law Division  
Somerset County/Ocean County  
Ocean City Courthouse  
Toms River, NJ 08754

Re: Shainee Corporation v. Township of Warren,  
Docket No. L-034351-84

Dear Judge Serpentelli:

Please accept the following letter-brief in support of motion to consolidate the within action with the consolidated cases of AMG Realty Co. v. Township of Warren, Docket # L-23277-80 P.W and Timber Properties Corp. v. Township of Warren, Docket # L-67820-80 P.W. It is our understanding that these two cases have been consolidated in your Court as Docket # L-23277-80 P.W.

Facts

Plaintiff Shainee Corporation filed a Mount Laurel II action against Warren Township on May 25, 1984 (Docket No. L-034351-84). Plaintiff is aware that an action is now pending, namely, the consolidated suit referred to in the first paragraph, which for convenience sake will be referred to as the AMG suit. We are aware that in that suit, a trial has been conducted on the issues of region and fair share. Plaintiff Shainee Corporation seeks to join the consolidated AMG suit with respect to the issue of what rezoning must be ordered to bring the municipality into compliance with Mt. Laurel II as well as its eligibility for a builder's remedy.

As will be shown in the attached papers, Plaintiff Shainee Corporation is the optionee-contract purchaser of 55+ acres in Warren Township, and is ready, willing and able to provide substantial housing to meet the needs of lower income persons, and thus to assist Warren Township in meeting its fair share of housing for such lower income persons.

The Honorable Eugene D. Serpentelli  
May 25, 1984  
Page Two

John Kerwin, the President of Hills Development Company, is also a President of Shainee Corporation, and is prepared to set up a mechanism to assure the continued affordability of lower income housing similar to the mechanism before the Court in the Allan-Deane (Hills Development) v. Bedminster case.

Argument

DUE TO COMMON FACTUAL ISSUES, THE CASES  
SHOULD BE CONSOLIDATED, R. 4:38-1

Plaintiff is aware of the probability that the other plaintiffs in the current case will not, in all likelihood, be able to supply all of the lower income housing needed to meet Warren Township's 1990 obligation. Shainee Corporation recognizes that the Court has either reached a decision on the issues of region, fair share, and allocation methodology or is prepared to rule on those issues imminently. Shainee is prepared to waive all its rights to contest fair share, region and all other issues which have to date been litigated. Shainee accepts this Court's determination of those issues, but seeks consolidation with the current litigation in order to be able to participate in the compliance stage of the litigation in the hope that this Court will favorably consider its property for a builder's remedy.

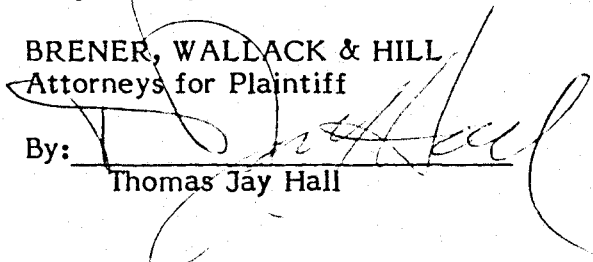
If the Court were to permit Shainee to consolidate its claim against Warren Township, this would effect substantial judicial economy, serve the interests of justice, assist Warren Township to meet its fair share of regional need of housing for lower income persons, insure that the most appropriate sites for multi-family rezoning were before the court and accelerate the prospect of providing substantial housing for lower income households.

Plaintiff Shainee Corporation further believes that it is in a position to contribute to the speedy resolution of all issues, and particularly those regarding the establishment of an appropriate mechanism to insure that the lower income housing remains affordable over time.

For these reasons, plaintiff Shainee Corporation respectfully submits that its action and the currently consolidated AMG action involve common questions of law and fact. Therefore, Shainee's action should be consolidated with the AMG suit.

Respectfully submitted,

BRENER, WALLACK & HILL  
Attorneys for Plaintiff

By:   
Thomas Jay Hall

BRENER, WALLACK & HILL  
Attorneys at Law  
2-4 Chambers Street  
Princeton, New Jersey 08540  
(609) 924-0808  
ATTORNEYS FOR Plaintiff

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Plaintiff	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	SOMERSET COUNTY/OCEAN COUNTY
	:	<u>(Mount Laurel II)</u>
SHAINEE CORPORATION	:	
a New Jersey Corporation	:	DOCKET NO.L-034351-84
	:	
	:	
vs.	:	
	:	<u>CIVIL ACTION</u>
	:	
Defendants	:	ORDER GRANTING PARTIAL
	:	CONSOLIDATION
	:	
The Township of Warren, a	:	
municipal corporation of	:	
the State of New Jersey,	:	
located in Somerset County,	:	
New Jersey, The TOWNSHIP	:	
COMMITTEE of the TOWNSHIP of	:	
WARREN, the PLANNING	:	
BOARD of the TOWNSHIP of	:	
WARREN and the SEWERAGE	:	
AUTHORITY of the TOWNSHIP	:	
of WARREN	:	

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This matter having been opened to the court by BRENER, WALLACK & HILL, attorneys for plaintiff, on an application for an order consolidating the within action with the consolidated cases of AMG Realty Corp. v. Township of Warren, Skytop Land Corp. v. Township of Warren, and Timber Properties Corp. v. Township of Warren, consolidated as Docket No. L-

23277-80 P.W and for an order requiring all discovery provided by Warren Township in the previously consolidated actions to be made available to plaintiffs, and the Court having considered the moving papers, and good cause for the entry of this Order having been shown:

IT IS on this      day of May, 1984, hereby ORDERED that:

1. The within action is hereby consolidated with AMG Realty Corp. v. Township of Warren, Skytop Land Corp. v. Township of Warren and Timber Properties Corp. v. Township of Warren, consolidated as Docket No.L-23277-80 P.W., solely for the purpose of allowing Shainee Corporation to participate in the builder's remedy portion of the law suit.
2. Said consolidation is conditioned upon Shainee Corporation being bound by any court determination or agreement regarding region and fair share for Warren Township.
3. Such consolidation is further conditioned upon Shainee Corporation not undertaking further discovery against Warren Township.
4. All parties in the previously consolidated actions shall furnish to Shainee Corp. one copy of all discovery, pleadings and evidence.

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Eugene D. Serpentelli, J.S.C.