

AMG

6-13-84

Letter re:

-w/Answer of D Twp. Sewage Twp.

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RECD. & FILED
SUPERIOR COURT
OF NEW JERSEY

JUN 14 1984

M.V. 14
JOHN M. MAYSON
CLERK

SUPERIOR COURT
MOUNT LAUREL

FILED

JUN 27 1984

RECEIVED

JUN 28 1984

M. DEAN HAINES, CLERK
COUNTY OF OCEAN

J. ALBERT MASTRO
7 MORRISTOWN ROAD
BERNARDSVILLE, N. J. 07924
(201) 766-2720

JUDGE SERPENTELLI'S CHAMBERS

ATTORNEY FOR Defendant, Warren Township Sewerage Authority

Plaintiff

SHAINEE CORPORATION

vs.

Defendant

WARREN TOWNSHIP, a municipal corporation of
the State of New Jersey, et als.

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
SOMERSET COUNTY/
OCEAN COUNTY

Docket No. L-034351-84

09

CIVIL ACTION
(Mount Laurel II)

ANSWER OF DEFENDANT
WARREN TOWNSHIP
SEWERAGE AUTHORITY

The Defendant, Warren Township Sewerage Authority, a public body politic of the State of New Jersey, having its principal office at 46 Mountain Boulevard in the Township of Warren, County of Somerset, New Jersey, by way of Answer to the Complaint of Shainee Corporation, says:

ANSWER TO FIRST COUNT

1. Defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 1.
2. Defendant admits the allegations of paragraph 2 through 5.

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6.

4. Defendant admits the allegations of the following paragraph (also mistakenly designated as paragraph 6).

5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 and 8.

6. In response to the allegations of paragraph 9, defendant makes reference to the Mount Laurel II decision for the precise language therein, meaning and intent thereof.

7. In response to the allegations of paragraphs 10 through 15, defendant makes reference to the appropriate public records of the Superior Court for the precise sequence of events, documents filed and action taken as outlined therein.

8. Defendant denies the allegations of paragraph 16.

9. Defendant admits the allegations of paragraph 17.

10. Defendant is without knowledge of information sufficient to form a belief as to the truth of the allegations of paragraphs 18 and 19.

11. Defendant denies the allegations of paragraph 20.

12. Defendant admits those portions of paragraph 21 alleging that Warren Township has an obligation to provide housing for its indigenous need and its fair share of the regional need. Defendant denies the remaining allegations of paragraph 21.

13. Defendant denies the allegations of paragraphs 22 and the following paragraph (also mistakenly designated as paragraph 22).

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 23, 24 and 25.

15. Defendant denies the allegations of paragraphs 26 through 30.

ANSWER TO SECOND COUNT

1. Defendant repeats its answers to each and every paragraph of the First Count and incorporates them herein.

2. Defendant denies the allegations of paragraphs 2, 3 and 4.

3. In response to the allegations of paragraphs 5, 6 and 7, defendant makes reference to Warren's Land Development Ordinance for the precise language therein, meaning and intent thereof.

ANSWER TO THIRD COUNT

1. Defendant repeats its answers to each and every paragraph of the First and Second Counts and incorporates them herein.

2. Defendant admits the allegations of paragraphs 2 and 3.

3. Defendant admits those allegations of paragraph 4 indicating that new sewage treatment facilities were constructed by defendant resulting in additional industrial and commercial rateables for Warren Township and denies the balance of the allegations therein.

4. Defendant denies the allegations of paragraph 5.

5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 6 and 7.

6. In response to the allegations of paragraph 8, defendant makes reference to the litigation identified therein for the meaning of any testimony or evidence related thereto regarding sewage capacity.

7. Defendant denies the allegations of paragraph 9.

FIRST SEPARATE DEFENSE

Plaintiff has no standing to bring the within action since plaintiff has

not acted in good faith in attempting to obtain relief without litigation as required under Mount Laurel II. In addition, plaintiff was not active in the Mount Laurel II litigation, accordingly, it did not vindicate the constitutional obligations anticipated by Mount Laurel II.

SECOND SEPARATE DEFENSE

The remedial approach in Mount Laurel II deprives this defendant as fiduciary and holder of the public trust and its customers of property rights contrary to Article I, Sec. I of the New Jersey Constitution (1947), Due Process of Law and Equal Protection of the Laws under the Fourteenth Amendment of the United States Constitution.

THIRD SEPARATE DEFENSE

The remedial approach in Mount Laurel II encroaches upon powers that are administrative and legislative in nature contrary to Article III of the Constitution of the State of New Jersey (1947), and deprives this defendant as fiduciary and holder of the public trust and its customers of their right to petition for redress of grievances contrary to Article I, Sec. 18 of the Constitution of the State of New Jersey (1947).

FOURTH SEPARATE DEFENSE

The utilization of density bonuses, mandatory set-asides, "builders remedy," economic incentives within zoning ordinances, extension of sewer lines and active participation by the judiciary in the municipal zoning process (or appointing a special master to do so) as articulated in Mount Laurel II and incorporated in the complaint deprive this defendant as fiduciary and hold of the public trust and its customers of Due Process of Law and Equal Protection of the Laws under the Fourteenth Amendment of the United States Constitution.

FIFTH SEPARATE DEFENSE

Preferential treatment in regard to sewers as alleged by plaintiff in its Complaint constitutes a violation of N.J.S.A. 40:14A-8 et.seq.

SIXTH SEPARATE DEFENSE

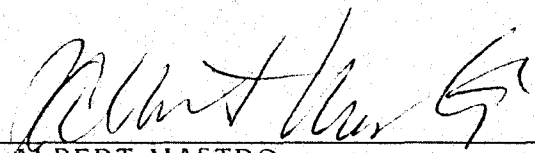
Preferential treatment in regard to sewers as alleged by plaintiff in its Complaint constitutes discrimination against other customers of this defendant and deprives them of Due Process of Law and Equal Protection of the Laws under the Fourteenth Amendment of the United States Constitution.

SEVENTH SEPARATE DEFENSE

Any contribution by defendant Sewerage Authority toward subsidizing low and moderate income housing would constitute an unfair and discriminatory burden upon the other customers of this defendant as opposed to the municipality generally.

WHEREFORE, this defendant demands judgment dismissing the Complaint.

DATED: June 13, 1984



J. ALBERT MASTRO
Attorney for Defendant,
Warren Township Sewerage Authority

CERTIFICATION

I hereby certify that a copy of the within Answer was served within the time prescribed by Rule 4:6.



J. ALBERT MASTRO
Attorney for Defendant,
Warren Township Sewerage Authority

I, JOAN M. CALELLO, a secretary with the firm of J. Albert Mastro,
mailed a copy of the within Answer to the following by regular mail on June 13, 1984.

Hon. Eugene D. Serpentelli
Superior Court of New Jersey
Ocean County Court House
CN 2191
Toms River, N.J. 08753

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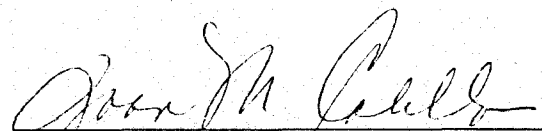
Joseph E. Murray, Esq.
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2 - 4 Chambers Street
Princeton, N.J. 08540

I 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, I am subject to punishment.

DATED: June 13, 1984


JOAN M. CALELLO, Secretary