

# LANCIANO & ASSOCIATES, L.L.C.

COUNSELORS AT LAW

2 Route 31 North

Pennington, New Jersey 08534

Telephone (609) 452-7100 Facsimile (609) 452-7778

wslover@lancianolaw.com

Gaetano C. Lanciano \*◇

Matthew T. Kelley

Larry E. Hardcastle, II \*

Of Counsel

William A. Slover ✦✧

◇ L.L.M. Taxation

\* Also Admitted in Pennsylvania

● Also Admitted in Virginia

✧ Also Admitted in the District of Columbia

February 7, 2020

Via Ecourt Filing

Morris County Superior Court

Attn: Deputy Clerk Civil Division

**Re: IMO Application of the Township of Chatham, County of Morris**

**Docket No: MRS-L-001659-15**

Dear Sir/Madam:

Please accept this letter, with our apologies, in lieu of a Motion to Intervene in the above-referenced matter.

This firm represents Betsie Haar, the owner of Dixiedale, a/k/a/ Block 66, Lot 1, Chatham Township. Dixiedale is the 30-acre parcel on which Sterling/Sun at Chatham, LLC has obtained approval to build 53 market-rate units in conjunction with the construction of 24 affordable housing units on a different site now owned by Chatham Township. Part of the relief that Fair Share Housing Center is seeking in its Cross-Motion is an injunction preventing the development of Dixiedale, despite the Township's approval.

Enclosed please find: (1) Mrs. Haar's Brief in Limited Opposition to Cross-Motion of Fair Share Housing Center to Terminate, Immunity of Chatham Township to Builder's Remedy Suits and to Enforce Litigant's Rights; (2) Certification of Larry E. Hardcastle, II, Esq. in support of the Limited Opposition; and (3) Certification of Mailing.

Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



William A. Slover

WAS/dl  
Enclosures

**IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF CHATHAM,  
COUNTY OF MORRIS:**

**Docket No: MRS-L-1659-15**

**ORDER**

---

The Court having reviewed the papers submitted on behalf of Betsie Haar, asking to intervene in this matter, and the Court having considered the papers and the Opposition thereto, if any, and the Court finding that the intervener is an interested party in this litigation.

IT IS HEREBY ORDERED, that the Motion of Betsie Haar to Intervene is hereby GRANTED on this \_\_\_\_\_ day of February 2020.

Dated: February \_\_, 2020

\_\_\_\_\_  
Michael C. Gaus, J.S.C.

Opposed \_\_\_\_\_

Unopposed \_\_\_\_\_

**LANCIANO & ASSOCIATES, L.L.C.**

William A. Slover, Esq. – Id No.: 001201987  
Larry E. Hardcastle, II, Esq. – Id No.: 025742010  
2 Route 31 North  
Pennington, New Jersey 08534  
(609) 452-7100

*Counsel for Betsie Haar*

In the Matter of the Application of the  
Township of Chatham, County of  
Morris..

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MORRIS COUNTY

DOCKET NO.: MRS-L-001659-15

**Civil Action**

**CERTIFICATION OF LARRY E.  
HARDCASTLE, II, ESQ.**

Larry E. Hardcastle, II, Esq., of full age and upon his certification, does hereby  
say:

1. I am an Attorney-at-law of the State of New Jersey and a partner with  
Lanciano & Associates, L.L.C.
2. As such, I have full knowledge of all things certified hereto.
3. Attached hereto as Exhibit A is a true and correct copy of a news article I  
located via search.
4. Attached hereto as Exhibit B is a true and correct copy of a news article I  
located via search.

5. Attached hereto as Exhibit C is a true and correct copy of a news article I located via search.

**LANCIANO & ASSOCIATES, L.L.C.**  
*Counsel to Betsie Haar*



By: \_\_\_\_\_  
Larry E. Hardcastle, II

Dated: February 7, 2020

**EXHIBIT A**

# Look to local farms to find your perfect holiday tree

Correspondent Published 2:27 a.m. ET Dec. 4, 2014 | Updated 12:28 p.m. ET Dec. 4, 2014



(Photo: Eva Abreu/Staff Photo)

Christmas is just a few weeks away, and that special spot in your house is calling for this year's adorned evergreen tree. If you are intent on supporting a local business this holiday season, you just might be able to find that perfect Christmas tree without straying too far from home.

A visit to Dixiedale Farm in Chatham has been a yearly family tradition for the Keane family of Randolph. The picturesque family-owned and operated farm offers 10 acres of cut-your-own Norway spruce trees as well as a selection of pre-cut Douglas firs that are delivered weekly from Pennsylvania.

"You get a great selection without traveling so far," said Ann Keane as she scans Dixiedale's thousands of trees with her family. "And they smell so great."

Buy Photo



Dixiedale Farm in Chatham offers 10 acres of cut-your-own Norway spruce trees and a selection of pre-cut Douglas firs. (Photo: Eva Abreu/Staff Photos)

John Sweeney, landscape manager at Dixiedale for over 20 years, tends to the three fields of trees all year to ensure that families are happy with their selection. From the springtime planting of up to 1500 saplings to mowing the fields and pruning the mature trees, all the hard work is evident by late fall when customers start wandering through the rolling hills to choose their Christmas treasure.

SEI

[.co/1CJcLVF](#)

2 free articles left.  
99¢ per month for 3 months. Save 90%.

"We get a lot of return customers, and a lot of people from cities," Sweeney says. "This is a day in the country to walk around. It's only a 50 minute ride from New York City."

[Buy Photo](#)



Dixiedale Farm in Chatham offers 10 acres of cut-your-own Norway spruce trees and a selection of pre-cut Douglas firs. (Photo: Eva Abreu/Staff Photo)

The experience at Dixiedale has become a tradition for many people. Sweeney said customers have the option of cutting the tree themselves or calling upon one of the "helper elves" that will assist in cutting, baling, and loading the tree onto the car. And he suggests taking a break with a treat of cookies and hot apple cider — made from farm owner Betsie Haar's secret recipe — by the warmth of a pitfire. Dogs are also welcome to join in the fun at this pet-friendly farm, and canine treats are on hand to keep them happy too.

The Keane family, with their dog Maggie in tow, examines pre-cut Douglas fir trees with a measuring stick in hand, provided by Dixiedale. Hannah, 11, says she finds a lot of trees that she likes, but with three other family members it's not easy finding one that everyone agrees is the best.

[Buy Photo](#)



The Keane family: Shane (left), Brian, Hannah and Ann, of Randolph, with their dog Maggie, visit Dixiedale Tree Farm in Chatham. (Photo: Eva Abreu/Staff Photo)

One decision that has been easy for the family during the last six years of visiting Dixiedale is to make an ornament from the tree "cookie" — a half-inch diameter disc. They write their names and the date on the memento and drill a hole in the top to hang on a string. Hannah picks up the "cookie" to count the rings. "It's 22 years old," she discovers

2 free articles left.  
99¢ per month for 3 months. Save 90%.

about their Christmas tree.

ADVERTISING



The Keane family has much success with keeping their tree healthy once it's home. "These trees seem to last longer," Brian claims. The secret? "We just water it," he responds simply.

And the National Christmas Tree Association agrees, advising that submerging the cut end of a fresh tree in water (and only water) will help prevent needle loss, since more than half of the tree's weight is water. Other tips they provide include:

[Buy Photo](#)



**The National Christmas Tree Association says to place a freshly cut tree in water within eight hours to help prevent needle loss.** (Photo: Staff photos by Eva Abreu)

- Wait no longer than eight hours after cutting the end of a tree before placing it in a water-filled stand: after that amount of time, air gets into the plant tissues and less water is absorbed.
- Use the general rule of one quart of water per inch of stem diameter.
- Keep trees away from heat sources and lower the heat setting of the room: this will slow down the drying process and less water will be required to hydrate the tree.
- Turn off tree lights when you leave the house or go to bed, and if the tree becomes too dry, remove it from the house: although less than .0004 percent of real Christmas trees are set ablaze in house fires, better safe than sorry.
- Never burn any part of the tree in a fireplace: they burn hot and the inferno may be hard to control because of the sap content, causing creosote build-up and chimney fires.

Ready to pick out that Christmas tree? Divideda is just one of the many options for cutting a New Jersey-grown Christmas tree.

2 free articles left.  
99¢ per month for 3 months. Save 90%.



**Dixiedale Tree Farm in Chatham.** (Photo: Eva Abreu/Staff Photo)

According to the 2012 US Census of Agriculture, there are 700 operations in the state that sell trees, ranking us sixth in the nation. So you are sure to find your family's holiday tree somewhere on the 4,611 acres of land dedicated to Christmas trees in New Jersey.

Share your sustainability story; email [eabreu@dailyrecord.com](mailto:eabreu@dailyrecord.com)

IF YOU GO: (Do you have a favorite farm that is not on the list? Let us know!)

**NJ Christmas Tree Farms**

**Dixiedale Farm**

347 Hillside Ave. & River Road

Chatham

973-507-4344

Friday-Sunday 9am-3:30pm

Cut-your-own and pre-cut

**Hidden Pond Christmas Tree Farm**

4 West Field Rd.

Mendham

973-865-6362

Tuesday-Sunday 9am-5pm

Cut-your-own and pre-cut

**Brookhollow Christmas Tree Farm**

425 Powerville Road

Boonton Township

201-400-4505

Saturday-Sunday 9am-4pm

Cut-your-own

**Rolling Green Farm LLC**

61 Hacklebarney Road

Long Valley

908-879-7457

Saturday-Sunday 10am-5pm

Cut-your-own

**Wy**

2 free articles left.

24¢ 99¢ per month for 3 months. Save 90%.

Belvidere

908-475-4508

Open daily 9am-4:30pm

Cut-your-own and pre-cut

Read or Share this story: <http://dailyre.co/1zTwFHx>

**EXHIBIT B**

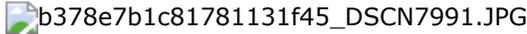


## [Real Estate](#)

# Owner Who is Selling Dixiedale Farm to Developer: "I wanted to keep it as a farm"

By ED BARMAKIAN

October 17, 2017 at 7:38 AM



By ED BARMAKIAN

October 17, 2017 at 7:38 AM

CHATHAM, NJ - **Betsie Holt Haar**, the owner of the Dixiedale Farm property, was an anonymous spectator at the Chatham Township Planning Board meeting on Monday night, listening to the talk of the pending sale to Sterling Properties - the hot topic of discussion.

"I loved it," Haar said after the meeting. "I loved the civic discussion and hearing what people had to say."

The deal to sell the Christmas Tree farm located between Hillside Avenue and River Road to developer Sterling Properties, in partnership with Sun Homes, would call for 25 duplexes to be built on the 30-plus acre property, preserve the mansion, add four other units and a clubhouse. The duplexes planned are projected to sell for \$1.2 to \$1.5 million each.

Sign Up for Chatham Newsletter

Our newsletter delivers the local news that you can trust.

The planning board voted, 8-0, to recommend that the Chatham Township Committee rezone the Dixiedale property from single-family to multi-family use. While the residents of Hillside Avenue and Chatham Glen/Sutton Woods townhomes voiced concern about traffic and density that will come from the development, Haar offered that it could be a lot worse.

"Toll Brothers kept calling me," Haar said. "They wanted to build 500 houses. One developer said 500 houses, builders remedy. I couldn't do that to Chatham. I wanted to keep it as a farm, but I couldn't do it."

Haar, who now lives in Pennington, was born in Summit's Overlook Hospital and lived in Chatham until she was one. She inherited the property from her uncle, **Sam Averett**, when he died in 2012.

"We didn't want to have a big development," **Matthew Haar**, her husband, said. "What we wanted was a classic development with a lot of open space. People objecting and saying it will become a high density area don't understand that if single-family homes were built, the density would be much worse.

"This developer plants mature trees. It's going to be beautiful."

# **EXHIBIT C**

**MINUTES OF THE REGULAR MEETING  
MORRIS COUNTY PLANNING BOARD**

30 Schuyler Place  
March 21, 2019

Morristown  
New Jersey

Ms. Olcott called the Regular Meeting to order at 7:13 p.m.

**OPEN PUBLIC MEETINGS LAW**

Ms. Olcott stated that the Secretary of the Board provided public notice of this meeting in a legal notice dated February 3, 2019 and invited members to join in the Pledge of Allegiance to the Flag.

**ROLL CALL**

Those present were:

Isobel Olcott, Vice Chair	Christine Marion, Planning Director
Stephen Shaw, Freeholder Liaison	Greg Perry, Supervising Planner
Chris Vitz, County Engineer	Joe Barilla, Principal Planner
Everton Scott, Member	Staci L. Santucci, Esq., Planning Board Attorney
Nita Galate, Member (7:25)	Anthony Soriano, Supervising Planner

**REVIEW OF MINUTES**

Mr. Shaw moved the minutes of the February 21, 2019 Planning Board meeting. Ms. Galate seconded the motion and the motion was approved by voice vote.

**DIRECTOR'S REPORT**

Ms. Marion provided a written report and stated that she will report on topics under each of the items.

**REPORT OF FUNDS RECEIVED**

Funds received for February, 2019 totaled \$8,090.

**FUTURE MEETINGS**

Ms. Marion reported that she received an invitation for a regional meeting on the Route 24 Freeway coordinated by Madison. She stated that the meeting will be held on Thursday, April 18 at 9 a.m. in Madison and that Congresswoman Mikey Sherrill and a number of New Jersey Legislators were invited to attend.

## COMMITTEE REPORTS

### Environmental and Watershed

*County Wastewater Management Plan-* Ms. Marion reported that the NJDEP has scheduled a meeting with Mine Hill and Morris County Planning staff on April 12 to discuss the Mine Hill chapter of the Wastewater Management Plan. She reported that the deadline to submit a completed plan to NJDEP is fast approaching.

*Watershed-* Ms. Marion reported that the Rockaway River Watershed Cabinet met on March 20 and that the Cabinet is in the process of developing projects. She stated that Denville is considering the use of drones to study stream corridors and that government use of drones will be the subject of a upcoming webinar.

### Land Subdivision and Zoning

*Developments Reviewed* – Ms. Olcott reported on the Land Development Review Committee meeting held on March 21, 2019. She noted the following:

Chatham Township, Arbor Green at Chatham (County Route 646) - This application concerns a site plan and minor subdivision for a 24-unit multi-family affordable housing project located on the grounds of the Chatham Township Police and Department of Public Works complex. The applicant is proposing to subdivide a 3.8-acre lot out of the 14.56-acre property and create two apartment buildings, including: four single-bedroom, 14 two- bedroom and six three-bedroom units, all designated for low and moderate income tenants. There will be a new driveway connection to the county road, even though there is an existing driveway, which serves the complex. Staff has concerns about the new driveway connection and the overall layout of the project. Approval is being withheld at this time due to grading, driveway connection and other issues to be resolved.

Chatham Township, Dixiedale Residential (Hillside Avenue) - This application concerns a site plan for a 53-unity townhouse development on the Dixiedale Farm property totaling 30.38 acres on a site containing very steep slopes. The existing large home on site will be converted to a clubhouse with three three-bedroom units in addition to 50 proposed townhomes broken up into groupings of two to four, three bedroom structures. There is one proposed access driveway to Hillside Avenue and two emergency access driveways at either end of the property to Hillside Avenue. A county culvert is situated within the River Road right-of-way and that a maintenance easement will be required. The application is conditionally approved.

Jefferson Township, ARC Properties, (Route 15) - This site plan is for a change of use and site improvements at the former Pathmark Supermarket on Route 15. A medical office facility is proposed for the site and there will be a slight reduction in impervious coverage. County Engineering will review the stormwater report.

Madison, 49 Park Avenue (County Route 623) - This application concerns a two-lot minor subdivision of a .684-acre property. The existing residential structure is being used as a rooming house and will be converted back to a single family home while a new two-family residential

structure will be constructed on the new lot. Access for the single-family home will be from a new driveway connection to Park Avenue utilizing an existing curb cut and the two-family structure will utilize the existing common driveway with the adjacent property. The new driveway will need to meet county driveway standards, including sight distance.

Mine Hill, Sunshine Ridge (5<sup>th</sup> Avenue) - This application concerns a subdivision that will create three single-family residential lots from two parcels (5.03 acres). The existing home will remain, and two new residences will be constructed. Access to the lots will be provided by the extension of 5th Avenue.

Mount Olive, Fratelli Beretta USA (Clark Drive) - This application concerns a site plan for two warehouse additions to an existing office/warehouse structure. A subsurface infiltration/detention basin is proposed. County Engineering will review for stormwater management.

Mount Olive, Waterloo Road Development (Continental Drive) - This site plan is for a 63,440 square foot office/warehouse structure with 124 parking spaces on an 11.13 acre parcel within the Mount Olive Foreign Trade Zone. A number of NJDEP permits and approvals will be needed for this application. County Engineering will review for stormwater management. The project is conditionally approved.

Roxbury, Heritage Lenel, LLC (Lenel Road) - This site plan is for 21,000 square foot office/warehouse structure. County Engineering will review the stormwater management plan.

Victory Gardens, Pack Mentality (County Route 665) - This site plan is for the adaptive reuse of a former bank into a dog daycare and boarding facility on Salem Street that includes a drive-through for pet drop-off. The application is conditionally approved pending review of the existing driveway connection to South Salem Street.

Ms. Galate made a motion to approve the Report of Actions Taken on Development Plans for February 2019. Mr. Scott seconded the motion and it was approved by roll call vote.

## ROLL CALL

VOTE	Aye	Nay	Abs.
Douglas R. Cabana, Freeholder Dir.	-		
Ted Eppel, Secretary	-		
Stephen Shaw, Freeholder	x		
Isobel Olcott, Vice Chair	x		
Annabel Pierce	-		
Everton Scott	x		
Christopher Vitz, County Engineer	x		
Deborah Smith, Freeholder Alt.	-		
Nita Galate	x		
Christian Francioli ( Alt. #1)	-		
Roslyn Khurdan, (Eng. Alt.)	-		
Steve Rattner, Chairman	-		

## **Legislative and Municipal**

**Recent Legislation** – Mr. Soriano reported on recent legislative activity. Senate Bill S3560 imposes a moratorium on affordable housing litigation through November 2020. Assembly Bill A5119 would amend the Municipal Land Use law to identify manufactured home communities as an inherently beneficial use, so long as it provides workforce housing for 15 years or more.

Assembly Bill 5092 would establish a personal vehicle-sharing program to facilitate car sharing through a special insurance program that would provide insurance with coverage for all authorized to drive a vehicle pursuant to the requirements of the program, even though there is only one owner. He stated that the Circulation Element of the Morris County Master Plan notes that fewer people are buying cars and that this is related to the growth in car sharing.

Finally, Mr. Soriano reported that Governor Murphy signed into law Senate Bill S1073 on March 18, 2010, authorizing municipalities and counties to establish stormwater utilities to reduce flooding. He stated that the bill was approved as P.L.2019 c.42 and is called “The Clean Storm Water and Flood Reduction Act.”

He summarized the bill, which permits the creation of storm water utilities by counties, municipalities or water/sewer authorities, funded by user fees or issuance of bonds. The law is permissive, not mandatory, providing an local option for creation of such authorities. Fees are not specified, but that the DEP must create a Storm Water Utility Guidance Manual within 18 months addressing the establishment of these authorities and the means and methods of computing rates. The fees would be based on how much impervious coverage there is on a property and other conditions to be determined. In addition, the fees must directly relate to the cost of the utility and must be based on a fair and equitable approximation of the proportional contribution of the storm water runoff of any real property.

He stated that if a county or municipality were to set-up one of these utilities, they would also be required to provide a partial fee reduction in the form of credit, for any property that has installed, is operating or maintaining storm water best management practices, such as rain gardens. The failure to pay fees would subject a landowner to the same enforcement mechanisms that water and sewer authorities now have, and land actively devoted to agriculture/horticulture would be exempt from fees. He stated that municipalities have the option to enter into shared service agreements to create and operate such an authority, or municipalities might enter into a shared service agreement with the county and that entities may contract with a private firm to operate such a utility. He stated that areas with combined sewer overflow (CSOs) issues are most likely to consider this option, and there are no CSO areas in Morris County.

Mr. Shaw stated that the criticism of the legislation is that it is not very specific and that it was the hope of the development community that these authorities would take over maintenance of private stormwater basins. Mr. Scott asked whether the legislation mandated the use of the fees for the authorities and Mr. Soriano informed him that 90% must go to the utility, while 5% can go to the DEP for administrative purposes and 5% can go to a municipality or county. Ms. Marion stated that tax-exempt properties could also be charged under this program.

***Master Plan & Land Use Ordinance Monthly Report*** – Mr. Soriano reported that no master plan amendments were submitted in this period. He reported that in February, the County received eleven introduced ordinances and three adopted ordinances and that several of the ordinances concerned redevelopment plans. He noted a proposed Jefferson ordinance concerning the development of two sites: one with medical offices and the other with a 35-unit multifamily project. He described a redevelopment ordinance proposed in Mine Hill that would permit the development of a 390-unit multifamily inclusionary development. Finally, he noted two ordinances in Randolph designed to implement proposals in the 2017 Mount Freedom Planning Report.

### **Long Range Planning**

Ms. Galate reported that staff continues to compile data for the new Land Use Element. Mr. Soriano reported that one of the tasks is to review MODIV tax data to develop an existing land use map. He informed the Board that 3,300 unmatched parcels were identified in the database, and that staff has corrected 1,400 of these. Other work conducted includes creation of charts, updating the zoning database, and development of certain preliminary text. He stated that he will have more time to devote to the land use plan effort now that the municipal profiles are complete.

### **LIAISON REPORTS**

#### **Lake Musconetcong Regional Planning Board**

There was no report.

#### **Lake Hopatcong Commission**

There was no report.

#### **Morris County Open Space Trust Fund**

Ms. Galate reported that the first meeting of the year was held on March 19 and that the Committee agenda included orientation, election of officers, and discussion of the grant application process. Ms. Marion stated that applications are due on June 14. She stated that a workshop will be held on March 28 to review the grant application process and to go over application rules, including changes, such as allowing demolition costs to be included in the grant application. She reported that the workshop will also provide a review of the application process.

#### **Trail Construction Trust Fund Committee**

Ms. Olcott reported that the Committee discussed changes in the rules and reviewed the performance of last year's process. She stated that changes have been codified and that they will be presented to the Freeholders at their March 27 meeting. She stated that staff is in process of revising 2019 application materials for release in April and that grant agreements for 2018 grantees are being completed and distributed. She reported that staff will host a workshop at the Cultural Center on April 23 to review program changes for potential applicants.

## **CORRESPONDENCE AND REPORTS RECEIVED**

Ms. Marion reported that she received correspondence from the Highlands Council announcing the availability of funding in the Highlands Open Space Partnership Program, which offers up to a 50% match for eligible projects in the Highlands Region. The deadline for applications is Tuesday, April 30 and eligible applicants include charitable conservancies, non-profits, the State of NJ and the 88 municipalities in the Highlands Region.

## **REPORT OF MEETINGS**

Ms. Marion had nothing to report.

## **OTHER BUSINESS**

Ms. Marion reported that she received a number of requests from municipalities and from the Morris County Park Commission for letters of support for their Green Acres Stewardship grant applications. She reported that letters were drafted and send on behalf of Planning Board indicating the consistency of these applications with the Morris County Master Plan. She reported that these letters supported applications from: 1) the Morris County Park Commission, which is proposing to upgrade trail networks at the Frelinghuysen Arboretum; 2) Mendham Township, which is proposing open space improvements to the Pitney Farm site and; 3) the Harding Land Trust, which is proposing to develop a low-maintenance naturalistic landscape at the Gatehouse property. She also reported that Parsippany-Troy Hills is proposing to construct an artificial turf cricket field on south of Smith Field Park and that she is waiting for further information concerning this application and will generate a letter of support when the information is received.

Ms. Galate asked about a report she read concerning Boonton Town's loss of their urbanized municipality designation. Ms. Marion explained that NJDEP modified its determination of an urbanized municipality for wastewater management planning purposes the Town no longer qualifies. To determine future wastewater flows, only population projections are needed for urbanized municipalities. For non-urbanized municipalities, a buildout analysis is required, which is based on an analysis of the development potential of vacant land. She stated that the change of Boonton's status will mean significantly more work on the part of staff.

## **Legal Update**

Ms. Santucci had nothing to report.

Ms. Olcott asked Freeholder Shaw if he would like to report on any Freeholder activity. Mr. Shaw stated that the Freeholders plan adopt the budget at their next meeting and that discussions concerning the Courthouse will commence after the budget is resolved. He attended a roundtable discussion concerning development trends and millennial housing preferences at the Morris County Economic Development Corporation. He stated that some developers believe that millennials will return to the suburban market, but that at this time, there appears to be an almost unlimited demand for multi-family rental housing. He also reported that another millennial trend may be a desire to rent, rather than own a single family home. He reported that developers are

focusing on redevelopment projects, and that redevelopment of golf courses is a current trend as many country clubs in the state are going bankrupt.

Ms. Marion asked if Mr. Shaw if there had been any analysis concerning the occupants of the rental units. Mr. Shaw reported that both millennials and empty nesters are moving into these apartments. He also stated that there is a high turnover rate during the first year, but that renters are typically moving to other rental housing. He stated that Morris County remains an attractive location to live due to its good fundamentals, infrastructure and amenities.

**COMMENTS FROM THE PUBLIC.**

None.

**NEXT MEETING**

Ms. Olcott stated that the next meeting is scheduled for April 18, 2019, at 7:00 p.m.

**ADJOURNMENT**

At 8:03 p.m., Mr. Vitz moved to adjourn the meeting, Mr. Scott seconded, and all approved by voice vote.

Respectfully submitted,

Christine Marion, P.P./AICP  
Planning Director

*Original was signed and is on file at the office of the Morris County Planning Board.*

**LANCIANO & ASSOCIATES, L.L.C.**

William A. Slover, Esq. – Id No.: 001201987  
Larry E. Hardcastle, II, Esq. – Id No.: 025742010  
2 Route 31 North  
Pennington, New Jersey 08534  
(609) 452-7100

*Counsel for Betsie Haar*

In the Matter of the Application of the  
Township of Chatham, County of  
Morris..

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MORRIS COUNTY

DOCKET NO.: MRS-L-001659-15

Civil Action

---

**BRIEF OF BETSIE HAAR, OWNER OF DIXIEDALE FARM, IN LIMITED  
OPPOSITION TO FAIR SHARE HOUSING CENTER'S CROSS-MOTION TO  
TERMINATE THE TOWNSHIP OF CHATHAM'S IMMUNITY FROM BUILDER'S  
REMEDY SUITS AND TO ENFORCE LITIGANT'S RIGHTS**

---

Of Counsel and on the Brief:

William A. Slover, Esq.

On the Brief:

Larry E. Hardcastle, II, Esq.

### PRELIMINARY STATEMENT

Fair Share Housing Center's ("FSHC") cross-motion seeks to vindicate the right of low-and-moderate income residents to affordable housing by blocking the development of affordable housing for low-and-moderate income residents. The developments of Dixiedale Farm and Arbor Green at Chatham (collectively, the "Development") are shovel-ready projects that will bring online *nearly a quarter* of the number of affordable housing units that FSHC agrees Chatham must provide. Yet FSHC seeks to halt the Developments based on the future prospect of a potentially denser development on the sites. In other words, FSHC's cross-motion would lead not to housing but to process, paper, and indefinite delay. For that reason, the Court should deny the cross-motion or exclude the Development from any relief granted.

Dixiedale's owner, Betsie Haar, has been in negotiations for its sale or development for nearly five years. Every development proposal Mrs. Haar has considered has included affordable housing. But the Dixiedale site is not particularly well suited for overly dense development owing to steep slopes. For that reason and others, the sale or development of Dixiedale stalled.

At long last, in conjunction with Sterling/Sun at Chatham, LLC and its affiliate, Southern Boulevard Urban Renewal, LLC, Dixiedale Farm will be developed in a manner that will bring credit for 48 affordable housing units to Chatham. If the Court stays the progress of the Development, it could be another five years or more before Dixiedale brings online *any* affordable housing. Alternatively, if the stay

causes the sale to Sterling/Sun to fall through, the property will be relisted, and Dixiedale might be sold to an individual who intends to use it as a single-family home. That outcome clearly would reduce the number of affordable housing units.

Against this backdrop, the only argument FSHC marshals in support of stopping the Development is that there may be some future need to increase the density on the Dixiedale site. However, that argument is undermined by the December 13, 2018 settlement agreement in two ways. First, **Exhibits B and C** of that agreement show that there is adequate space for Chatham to meet its affordable housing requirement. Second, the Development is producing as much affordable housing as one would expect from a much denser development. Using the 20% set-aside benchmark, a builder would have to construct 120 units to gain 24 affordable units. The result of such a development at Dixiedale would be a much denser cluster of market rate units. There is no justification for FSHC request to stay the Developments.

By asking this Court to permit the Development to proceed, Mrs. Haar is acting against her financial interest. An order stripping Chatham of its immunity from Builders' Remedy Litigation would result increase the value of Dixiedale. Nevertheless Mrs. Haar comes before this Court asking that the Development be exempted from any relief granted to FSHC, because the Dixiedale plan represents a rational expansion of Chatham's housing stock that significantly increases affordable housing. Mrs. Haar requests that the Court exclude the Development

from any relief granted to FSHC so that Chatham can start delivering on its obligation to provide affordable housing.

### **FACTUAL BACKGROUND**

Much of the factual background has been thoroughly covered by other briefs. We adopt those recitations, and write separately only to provide background on Dixiedale.

Dixiedale has been in Mrs. Haar's family since 1911, when her maternal grandfather, Elliott Averitt, purchased the land and built the existing house. Mr. Averitt died in 1940, and his wife, who died in 1973, devised Dixiedale to one of Mrs. Haar's uncles. The uncle conveyed Dixiedale to himself and his wife in 1982, in order to create a tenancy by the entirety. Mrs. Haar's aunt and uncle devised the property to her upon their deaths in 2012. Mrs. Haar remains the sole owner.

For decades prior to Mrs. Haar's ownership, Dixiedale Farm operated as a Christmas tree farm. (Certification of Larry E. Hardcastle, II, Esq. ("Hardcastle Cert.") ¶ 3, **Ex. A**). Although Mrs. Haar wanted to keep operating it as a farm, she simply was unable to do so. (Hardcastle Cert. ¶ 4, **Ex. B**). When Mrs. Haar began marketing Dixiedale Farm, there was immediate interest. For example, one large developer suggested using Builders' Remedy Litigation to cram 500 units onto the property. (*Id.*). Although that was an overly optimistic suggestion given Dixiedale Farm's "very steep slopes," (*id.* at ¶ 5, **Ex. C**), it does demonstrate the level of interest in the property.

Mrs. Haar’s goal, however, was not to maximize her personal profit. Instead, she sought a developer interested in a “classic development with a lot of open space.” (Id. at ¶ 4, Ex. B). She found that in the Development approved by Judge Nygaard, the Township of Chatham, and FSHC. She now asks this Court to deny FSHC’s motion and permit the long-awaited vision to become a reality.

### **LEGAL ARGUMENT**

FSHC argues for injunctive relief against the Developments in Section III(D)(2) of its brief. It is well established that courts may impose scarce resource constraints on townships. (FSHC Br. p. 17 (citing Hills Development Co. v. Bernards, 103 N.J. 1, 62-63 (1986); Tocco v. N.J. Council on Affordable Hous., 242 N.J. Super. 218 (App. Div. 1990)). It is likewise well established that injunctive relief may be granted to a party and the grounds on which such injunctive relief may be granted. (FSHC Br. p. 18-19 (citations omitted)). From those unremarkable propositions, FSHC concludes that the Court should enjoin the Developments because “it is important to ensure that the Dixiedale site and other such sites that may have approvals that have yet to vest are potentially subject to challenge in order to, for example, increase density in exchange for additional affordable housing.” (FSHC Br. p. 20).

There are at least three problems with FSHC’s reasoning. First, it ignores three facts: (1) Mrs. Haar continues to have a say in how her land is developed; (2), the Development is slated to provide as many affordable housing units as a denser development; and (3) it asks this Court to engage in speculation about a future event at the expense of developing affordable housing now. Any of the foregoing

reasons would be sufficient to deny FSHC's requested injunctive relief against the construction of the Development.

A typical landowner would rejoice at the prospect of a Builders' Remedy Lawsuit that could increase their property's value by upping its permitted density. Mrs. Haar, however, is not a typical landowner. Her family's 100-plus-year history at Dixiedale causes her to calculate differently. To her, elements such as open space and preservation of Dixiedale's historic characteristics (including the preservation and repurposing of the magnificent three-story brick dwelling) are far more important than maximizing the value of her land. For that reason, she has consistently rejected offers to cram a high-density development onto Dixiedale. (See Hardcastle Cert. ¶ 4, Ex. B). FSHC does not have Mrs. Haar's support for building a high-density development at Dixiedale, but her lack of support does not justify enjoining the Developments.

Even if Mrs. Haar were interested in maximizing her personal profit, it is not clear that developing Dixiedale in a different manner would significantly increase Chatham's affordable housing stock. If a Builders' Remedy Lawsuit resulted in a density of ten units per acre with a twenty percent set-aside, Chatham's affordable housing stock would increase by sixty units. Currently, the Development is slated to deliver 48 units, including the bonus. The potential increase of twelve units in the future hardly seems worth depriving low-and-moderate income families access to affordable housing now.

The two proceeding sections highlight why the injunction against the Developments is improper: It sacrifices tangible development that will directly address Chatham's affordable housing obligation in favor of a speculative development that the property owner does not want. Given Mrs. Haar's prior statements, it is entirely feasible that Mrs. Haar would sell Dixiedale to a private individual for use as a single-family home rather than see it turned into a high-density development. What is more, FSHC does not even substantiate its claim that Dixiedale is suitable for denser development. As noted by the Morris County Planning Board, Dixiedale has "very steep slopes." (Hardcastle Cert. ¶ 5, Ex. C). The increased cost of development on those slopes is likely to make such a development uneconomical. Given the highly speculative nature of FSHC's claims, the Court should not enjoin the Developments.

### CONCLUSION

For all the foregoing reasons, Betsie Haar respectfully requests that this Court deny Fair Share Housing Center's requested injunction against the development of the Dixiedale Farm and Arbor Green at Chatham.

**LANCIANO & ASSOCIATES, L.L.C.**  
*Counsel to Betsie Haar*



By: \_\_\_\_\_  
William A. Slover

Dated: February 7, 2020

**IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF CHATHAM,  
COUNTY OF MORRIS:**

**Docket No: MRS-L-1659-15**

**CERTIFICATION OF MAILING**

---

I, William A. Slover, of full age and upon my certification, do hereby say:

1. I am an Attorney-at-Law of the State of New Jersey and Of Counsel with the law firm of Lanciano & Associates, LLC.
2. On this date, I served:
  - a) Limited Opposition to Cross-Motion of Fairshare Housing Center to Terminate Immunity of Chatham Township to Builder's Remedy Suits and to Enforce Litigant's Rights.
  - b) Certification of Larry E. Hardcastle, II. Esq. in support of the limited Opposition.
  - c) Certification of Mailing.
- 3) I further served said documents on The Honorable Michael C. Geus, J.S.C. via NJ Lawyer's Service, and via ECourts filing to Bassam F. Gergi, Esq., Robert A. Kasuba, Esq. and Albert E. Cruz, Esq.

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 willfully false, I am subject to punishment.



Dated: February 7, 2020

\_\_\_\_\_  
WILLIAM A. SLOVER, ESQ.