

AM - Hauers v. Fer Hills

9/8/81

Amended complaint in lieu of prerogative writ - TIS

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5-8611

FILED

SEP 20 1980
COUNTY CLERK

FILED

SEP 10 1980

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M. Ann Pantano
Clerk

Entered Indexed

VOGEL AND CHAIT
A PROFESSIONAL CORPORATION
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ATTORNEYS FOR Plaintiff

Plaintiffs

ALOIS HAUEIS, ERNA HAUEIS,
JOHN OCHS and PRISCILLA OCHS,

vs.

Defendants

THE BOROUGH OF FAR HILLS,
THE PLANNING BOARD OF FAR
HILLS, THE BOROUGH COUNCIL
OF FAR HILLS, and HENRY
ARGENTO, THE MAYOR OF
FAR HILLS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY

Docket No. L-73360-80

CIVIL ACTION

AMENDED
COMPLAINT IN LIEU OF
PREROGATIVE WRIT

The plaintiffs, Alois Haueis and Erna Haueis, residing in the Borough of Bernardsville, New Jersey, and the plaintiffs, John Ochs and Priscilla Ochs, residing in the Borough of Far Hills, New Jersey, complaining of the defendants, say:

FIRST COUNT

1. Plaintiffs are the owners of certain lands in the Borough of Far Hills (hereinafter referred to as "Far Hills"),

COPY

County of Somerset, known as Lot 4-7 in Block 6A as shown on the tax map of said Borough (hereafter referred to as "plaintiffs' property").

2. The defendant Planning Board of the Borough of Far Hills is a Planning Board purportedly appointed and acting under the provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., but it has adopted a Master Plan for Far Hills which does not comport with the requirements of the Municipal Land Use Law.

3. The Mayor of Far Hills and the Borough Council of Far Hills have the power and duty to enact a legal, constitutional zoning ordinance for Far Hills, but have failed or refused to do so.

4. Plaintiffs' property is located within the commercial, residential, and transportation center of Far Hills, wherein the existing development is at a density of greater than approximately four units per acre.

5. Plaintiffs' property is located immediately adjacent to the Conrail, New Jersey Transit railroad station in Far Hills, which provides rail service to areas of significant employment concentrations such as Summit and Newark, New Jersey and New York City, New York.

6. Plaintiffs' property is located immediately adjacent to United States Highway 202 which provides access to areas of

significant employment concentrations such as Morristown, New Jersey, which is within approximately 12 miles of plaintiffs' property, and such as American Telephone & Telegraph, Bedminster, which is within approximately 3 miles of plaintiffs' property.

7. Plaintiffs' property is within approximately 3 miles of access to Interstate Highway 287, and within approximately 5 miles of access to Interstate Highway 78, which, with United States Highways 202 and 206 and other roads, provide access to areas of significant employment concentrations such as Bridgewater Township, the Borough of Somerville, the City of New Brunswick, Clinton Township, Piscataway Township, and Morristown, New Jersey, all of which municipalities are within approximately 25 miles of Far Hills.

8. From the standpoint of sound local and regional planning, on which zoning is required to be based, plaintiffs' property should be zoned to allow high density residential development, including multi-family, least cost housing such as condominiums and townhouses.

9. Far Hills is a developing municipality in Somerset County and within a region in which there is currently a large unmet demand for multi-family, least cost housing. It has a sizeable land area, has substantially shed its rural or agricultural characteristics, lies outside the central cities

and older built-up suburbs, is not completely developed, and lies in the path of inevitable growth. But for its exclusionary zoning ordinance requiring a minimum of 10-acre lot size for most new residential development, Far Hills would have undergone great population increase since World War II.

10. There is currently in force in Far Hills a zoning ordinance which severely limits all new multi-family and least cost housing development, and prohibits all such development on plaintiffs' property.

11. The zoning ordinance of Far Hills requires that, on over 90% of the vacant developable land in Far Hills, single family homes be built on lots of at least 10 acres. The zoning ordinance subjects plaintiffs' property to this 10 acre minimum lot size requirement for new single family residential development, and proscribes development of plaintiffs' property for multi-family, least cost housing such as townhouses or condominiums.

12. Given its enactment of this zoning ordinance, Far Hills has breached its constitutional and statutory duty to enact a zoning ordinance which does not unreasonably restrict the demand for housing in Far Hills by virtue of unjustifiable cost-generating measures that prevent the development of a mix of housing suitable for people within the State of New Jersey who may desire

to live in Far Hills.

13. Far Hills' zoning ordinance unconstitutionally fails to provide the opportunity for development of its fair share of the regional need for multi-family, least cost housing.

14. Plaintiffs or their attorneys have, on several occasions, requested of the defendants that they be allowed to pursue their multi-family development plans on their property. Defendants have, however, without justification, refused to allow plaintiffs to proceed, and have communicated to plaintiffs that the Planning Board or Board of Adjustment of Far Hills would deny their formal application for permission to develop multi-family housing on their property.

15. Since at least as early as 1977 when the New Jersey Supreme Court issued its decision in Oakwood at Madison v. Madison 72 N.J. 481 (1977), defendants have been on notice that the Far Hills zoning ordinance is unconstitutional, but they have nevertheless ignored their constitutional obligations, as they have continued to enforce this patently unconstitutional zoning ordinance.

16. In these circumstances, it is not necessary that plaintiffs exhaust their remedy of application for a variance because (a) it is apparent that further resort to administrative processes would be fruitless; (b) the delay inherent in such

processes would work severe economic hardship on these plaintiffs;
(c) the public interest would be well served by rapid adjudication of this case, leading to the creation of much needed housing;
(d) this matter principally involves only substantial and meritorious, legal and constitutional questions appropriate for judicial resolution; (d) the exhaustion of administrative remedies is not a jurisdictional requirement for the adjudication of this action; and because (f) the interests of justice clearly do not require, in these circumstances, that administrative remedies be exhausted.

17. Plaintiffs plan to develop their property in Far Hills with the only uses or the most appropriate uses for which it is suited, from the standpoint of zoning and planning, i.e. multi-family, least cost housing in the form of condominium or townhouse development, but are prevented from doing so by the Far Hills zoning ordinance. Plaintiffs' planned use of their property would serve the public interest and promote the fulfillment of Far Hills' constitutional and statutory obligation to provide the opportunity for the development of least cost housing.

18. Far Hills zoning ordinance is illegal, unconstitutional, and null and void for the reasons that it:

- a. is violative of the due process and equal protection provisions of the New Jersey Constitution, Article I, paragraphs 1 and 5; and
- b. is arbitrary, unreasonable and not in furtherance of the general welfare.

SECOND COUNT

19. Plaintiffs reallege and incorporate by reference herein the allegations recited in paragraphs 1 through 18.

20. By virtue of allowing the development of only one single family residence on plaintiffs' approximately 19-acre tract, the Far Hills zoning ordinance is so restrictive as to allow nothing but economically unfeasible or otherwise inappropriate uses of plaintiffs' land.

21. The Far Hills zoning ordinance forbids practical utilization of plaintiffs' land.

22. zoning ordinance deprives the plaintiffs of the economic use of their property, in that it is an unreasonable restriction against the use and development of the plaintiffs' property, thereby constituting a taking of plaintiffs' property, without compensation in violation of the New Jersey Constitution, Article I, paragraph 20.

THIRD COUNT

23. Plaintiffs reallege and incorporate by reference herein the allegations of paragraphs 1 through 22.

24. The Far Hills zoning ordinance has not been drawn to encourage the most appropriate use of land, and does not reasonably take into consideration the character of the zoning districts created by the ordinance and their suitability for particular land uses.

25. Neither the Far Hills zoning ordinance, nor the Land Use Plan element of the Far Hills Master Plan, are based on sound land use planning which sets reasonable standards for population density and development intensity.

26. Neither the Far Hills zoning ordinance nor the Housing Plan element of the Far Hills Master Plan are based upon, or set forth, reasonable standards for the construction of housing

27. The Far Hills zoning ordinance and Master Plan have the impermissible purpose or effect of excluding new multi-family least cost housing from Far Hills, and are not based upon the sound planning principles and purposes set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.

28. The Far Hills zoning ordinance is therefore illegal, unconstitutional, and null and void in that it:

- a. is violative of the New Jersey Constitution, Article IV, §6, paragraph 2; and
- b. is violative of the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

FOURTH COUNT

29. Plaintiff realleges and incorporates by reference herein the allegations of paragraphs 1 through 28.

30. The only residential development allowed on plaintiffs property by the Far Hills zoning ordinance is "single-family" detached residential dwellings. The ordinance further defines

"family" as "[a]ny member of individuals related by blood or marriage and their full-time servants who have no other employment, boarders, and guests, all of whom reside together as a single housekeeping unit. More than five persons exclusive of domestic servants, not related by blood, marriage, adoption, or approved foster care arrangements, but living on the same premises shall not be deemed to be a 'family.'" Far Hills Zoning Ordinance, Article 4.2.1, and Article 16.2.

31. The Far Hills zoning ordinance is therefore patently unconstitutional and in violation of the New Jersey Supreme Court's decision in State v. Baker, 81 N.J. 99 (1979), in that it impermissibly discriminates against unmarried and unrelated individuals who function as a single nonprofit housekeeping unit.

32. The Far Hills zoning ordinance therefore unconstitutionally infringes on the rights of the plaintiffs, in that it unconstitutionally prevents unrelated individuals, functioning as a single nonprofit housekeeping unit, from purchasing housing developed by plaintiffs, as it unconstitutionally restricts plaintiffs' rights to market their property.

33. In light of their position as prospective developers of the property in Far Hills for the purpose of building multi-family housing, plaintiffs have standing to assert the constitutional rights of unrelated individuals who function as

single nonprofit housekeeping units, and who would not otherwise be in a position to challenge the validity of this zoning ordinance unless they subjected themselves to penalties for the violation of this ordinance.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court grant judgment against the defendants:

1. Declaring the Far Hills zoning ordinance unconstitutional, illegal, and null and void, insofar as it unlawfully prevents plaintiffs from developing their property with multi-family residential uses; and insofar as it discriminates against unrelated and unmarried individuals who function as a single nonprofit housekeeping unit;
2. Enjoining the defendants, their officers, agents and employees, from engaging in any land use policy or practice which is intended to or has the effect of preventing the plaintiffs from proceeding with their plans for multi-family residential development on their property in Far Hills;
3. Ordering the defendants to rezone plaintiffs' property to permit development thereon of multi-family, least cost housing, such as condominiums or townhouses;
4. Ordering the defendants to issue building permits for any multi-family, least cost condominium or townhouse development proposed by plaintiffs on their property in Far Hills, and found by the Court to be consistent with standards for the protection

of the public health, safety, and general welfare;

5. Declaring that the Far Hills zoning ordinance constitutes an unlawful taking of plaintiffs' property, without just compensation;

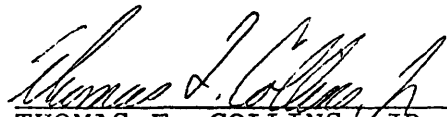
6. Awarding to plaintiffs damages for the value of their property taken without just compensation;

7. Awarding costs of suit, including attorneys fees, to the plaintiffs, in light of the patent unconstitutionality of the Far Hills zoning ordinance; and

8. Granting such other relief as the Court may deem just and equitable in the circumstances.

Dated: September 8, 1981

VOGEL and CHAIT
A Professional Corporation
Attorneys for Plaintiff


THOMAS F. COLLINS, JR.

I hereby certify that the original of the within pleading was mailed to the Clerk of the Superior Court in Trenton, a copy of same was mailed to the attorney for the defendants within the time prescribed by the rules of Court.


THOMAS F. COLLINS, JR.