AM - Hanes v. Fox Hills 4/13/82

Brief + appendix in support of Δ's motion for summary judgment

↳ appendix → certification of Richard Herold

p 17/18 (should be 18/18)

* missing p12 → part of certification

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET COUNTY

DOCKET NO. L-73360-80

Plaintiffs ALOIS HAUEIS, ERNA HAUEIS, JOHN OCHS and PRISCILLA OCHS,	:	
v.	:	CIVIL ACTION
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	:	

BRIEF AND APPENDIX IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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DATED: April 13, 1982

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STATEMENT OF FACTS

For purposes of the within motion the facts will be summarized briefly. Plaintiffs are the owners of certain lands in the Borough of Far Hills known as Lot 4-7, Block 6A on the tax map consisting of approximately 19 acres in area. Said premises are located adjacent to US Route 202, a railroad station and in the proximity of the more developed portion of the Borough (both residential and non-residential). The Borough of Far Hills is located within what is commonly known as the Somerset Hills area having predominantly rural characteristics and varying topography. Indeed certain portions of the Borough are environmentally sensitive and unsuitable for any type of development both because of sharp topographic inclines and flood prone areas. The jurisdiction of the Borough of Far Hills encompasses approximately four square miles which is zoned primarily for one-family residential purposes upon minimum parcels of ten acres, a substantial portion of which has already been so developed.

The configuration of the Borough resembles roughly the state of New Hampshire, i.e., elongated in a north-south direction, wider at its southerly base and narrowing as one proceeds in a northerly direction. Its westerly boundary follows substantially the North Branch of the Raritan River a portion of which becomes

Ravine Lake at the northwesterly border of the Borough. Far Hills is bordered by rural municipalities, particularly low density one-family residential zoning of the Borough of Peapack and Gladstone, the Borough of Bernardsville, the Township of Bernards and the Township of Bedminster. Interstate Route 287 runs along the southerly boundary of the municipality. Traversing in an east-west direction and in close proximity to each other are US Route 202, Mine Brook (flowing in a westerly direction into the North Branch of the Raritan River) and what was formerly the Erie-Lackawanna Railroad.

Plaintiffs' tract of land has approximately 1200 feet of frontage along Sunnybranch Road is bounded on the southeast by US Route 202 (somewhat less than 200 feet), abuts the railroad right-of-way along its southwesterly border and abuts substantially developed one-family residential parcels on ten acres fronting along Sunnybranch Road on the northwest (also abutting the railroad right-of-way to the rear) and the northeast.

The limited size of the Borough (dictated by topographic and environmental constraints) as well as its historical pattern of slow, low density residential growth have resulted in the minimum availability of municipal services. The Borough has no schools and few full time employees, The more densely utilized area of the community is serviced by a sanitary sewerage system which is currently at capacity and being treated at a plant located in Bedminster Township of which Far Hills is merely a customer.

POINT 1

UNDER THE CIRCUMSTANCES OF THE PRESENT CASE, PLAINTIFFS SHOULD HAVE EXHAUSTED THEIR ADMINISTRATIVE REMEDIES.

In their complaint, plaintiffs allege (par. 14) that on "several occasions" they requested that they be allowed to pursue their multi-family development plans on their property; however, applications to either defendant Planning Board or the Board of Adjustment of Far Hills would have been "futile". Even if one were to assume such circumstances to be correct, such would not constitute justification for eliminating the administrative process. The prospects of success or failure before an administrative agency has no relevancy to the necessity for exhausting that remedy. A formal application before a local administrative board would have provided the forum for documentary and testimonial evidence in order to address intelligently plaintiffs' alleged grievances. An opinion by any official as to the merits of a particular development plan has absolutely no bearing upon the obligation of an applicant to proceed before an administrative agency. It is the act of presenting evidence at a public hearing before an administrative agency during which a record is established that gives meaning to the rule of exhaustion of administrative remedies. R. 4:69-5 provides that:

> Except where it is manifest that the interest of justice requires otherwise, actions under R. 4:69 shall not be maintainable as long as there is available a right of review before an administrative agency which has not been exhausted.

Our courts have recognized that the exhaustion of remedies requirement is a rule of practice designed to allow administrative bodies to perform their statutory functions in an orderly manner without preliminary interference from the courts. Brunetti v. Borough of New Milford, 68 N.J. 576 (1975). While neither jurisdictional nor an absolute requirement, there is nonetheless a strong presumption favoring the requirement of exhaustion of remedies. Ordinarily the wholesome policy favoring resort to administrative remedies should not be lightly disregarded and indeed a detour of same has been characterized as an "extraordinary course" to pursue. Patrolmen's Benevolent Association v. Montclair, 128 N.J. Super. 59 (Ch. Div. 1974), aff'd 131 N.J. Super. 505 (App. Div. 1974).

In their complaint, plaintiffs make reference to defendant Borough's "patently unconstitutional zoning ordinance" (par. 15) and cites Oakwood at Madison, Inc. v. Township of Madison, 72 N.J. 481 (1977) to support their position. However, neither that case nor S. Burlington Cty. N.A.A.C.P. v. Twp. of Mt. Laurel, 67 N.J. 151, cert. den. 423 U.S. 808 (1975) denounced predominent low

density residential zoning within a municipality as unconstitutional under all circumstances - the target of those decisions was misuse of planning and zoning for purposes of accomplishing exclusionary objectives. Clearly, a mere allegation of unconstitutionality is not sufficient. Neither Mt. Laurel nor Oakwood at Madison were decided in a vacuum - both required an intense factual context. As was pointed out by Justice Pashman in Brunnetti v. Borough of New Milford, supra, at p. 590;

> The mere allegation that a constitutional issue is involved does not relieve plaintiffs of the exhaustion requirement. To avoid this requirement, plaintiffs must demonstrate not only that the constitutional question is colorable, but that the matter contains no factual questions which require administrative determination.

It cannot be concluded that defendant Borough's zoning ordinance is facially defective as applied to plaintiffs' tract of land absent a factual context. This factual context should be developed in the proper forum, i.e., an administrative agency having the expertise to determine such an issue and the authority to correct any defect in the event it is demonstrated. In fact, one of the very reasons for the exhaustion of administrative remedies rule is to give to the local authorities an opportunity to correct any error in the zoning classification or to remedy any unreasonable hardships imposed thereby before the aggrieved party enters into litigation.

8 A McQuillin, Municipal Corporations (3rd ed., rev. 1976) Sec. 25.283, p. 321.

Plaintiffs attempt to envelop themselves within Procrustean molds in order to come within exceptions to the exhaustion of administrative remedies rule and thereby insulate themselves from the obligations thereunder. In par. 16 of their complaint, the plaintiffs appear to be tracking the exceptions outlined in Brunetti v. Borough of New Milford, supra, at p. 589, i.e., by asserting that administrative review will be futile, there is a need for prompt decision in the public interest, the issues do not involve administrative expertise or discretion, only questions of law are involved and delay will result in irreparable harm. The exceptions are more thoroughly examined in the following cases: Baldwin Const. Co. v. Essex County Bd. of Taxation, 24 N.J. Super. 252 (Law Div. 1952), aff'd 27 N.J. Super. 240 (App. Div. 1953); Schwartz v. Essex Co. Board of Taxation, 130 N.J.L. 177 (E. & A. 1943); Lane v. Bigelow, 135 N.J.L. 195 (E. & A. 1947); Conway v. Atlantic City, 107 N.J.L. 404 (Sup. Ct. 1931), and State v. Betts, 24 N.J.L. 555 (Sup. Ct. 1854). Needless to say, plaintiffs' casual dismissal of further administrative pursuit as "fruitless" is hardly dispositive of that issue. To date, neither defendants nor any other municipal agency has had an opportunity to become fully informed of plaintiffs' grievances

nor the various alternatives proposed. Both should be presented before some municipal agency in order to determine the factual basis for such grievances and potential corrective or remedial measures that may be warranted. Secondly, there is nothing to suggest that any delay in pursuing an administrative remedy would be any more burdensome upon plaintiffs than any other applicant with similar objectives. N.J.S.A. 40:55D-1, et. seq., confers upon municipal governing bodies the authority to zone. That statute outlines respective powers over subdivision, site plans, conditional uses, master plans, and variances in both the Planning Board and Board of Adjustment. All three agencies lend their authority and expertise to matters within their respective jurisdictions. Strict time limitations are currently imposed upon both the Planning Board and Board of Adjustment when addressing applications before them. There is nothing within the statutory scheme to suggest that either Board could unduly delay a matter beyond the time outlined by the Legislature, thereby imposing an undue financial burden upon an applicant. Plaintiffs have owned this property for a substantial period of time, thereby negating any allegation of immediacy. Thirdly, prompt adjudication of the within matter would contribute very little to the housing shortage in New Jersey. Plaintiffs' allegations of immediacy related to this particular parcel of property appear rather meaningless

when balanced against the potential harm to the community if the issues involved were not initially reviewed and addressed by the appropriate agency. Finally, plaintiffs' allegation that the present case "principally involves" legal and constitutional issues is simply unfounded. A casual reading of defendants' statement of facts commands a detailed and thorough factual context in order to provide the forum for meaningful agency review and, if necessary, judicial review.

POINT II

IN THE ABSENCE OF AN ADMINISTRATIVE DETERMINATION, JUDICIAL RELIEF WOULD BE PREMATURE; ACCORDINGLY PLAINTIFFS' COMPLAINT SHOULD BE DISMISSED.

In their complaint, plaintiffs allege that they plan to develop their property with 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" (par. 17). In their second count plaintiffs allege that defendants' zoning ordinance deprives them of an economic use of their land. In their third count plaintiffs allege that the Far Hills Zoning ordinance does not take into consideration the character of the zoning districts created by the ordinance and their suitability for particular land uses. Plaintiffs further allege

lack of reasonable standards for population density, development intensity and construction of housing in both the zoning ordinance and Master Plan. Plaintiffs' fourth count alleges unwarranted discrimination against unmarried and unrelated individuals who function as a single non profit housekeeping unit.

Presumably, plaintiffs would present before this Court evidence in order to substantiate their factual allegations. Clearly, a factual context would have to be developed by plaintiffs in order to provide a meaningful forum for review. Question arises as to whether plaintiffs are before the Court prematurely. In this respect it should be noted that the doctrine of exhaustion of administrative remedies serves three primary goals: (1) the rule insures that grievances will be heard, as a preliminary matter, by a body possessing expertise in the area involved, (2) it allows the parties to create a factual record necessary for meaningful appellate review, and (3) the agency decision may satisfy the parties and thus obviate resort to the courts. City of Atlantic City v. Laezza, 80 N.J. 255 (1979). Obviously, administrative agencies must be permitted to perform their functions without anticipatory interference by the courts in view of the competency of those agencies to make findings of fact. As long as factual questions remain which require administrative determination, review of the merits would be

premature. East Paterson v. Civil Service Dept., 47 N.J. Super. 55 (App. Div. 1957); City of New Brunswick v. Speights, 157 N.J. Super. 9 (County Ct. 1978).

In an appropriate factual context plaintiffs have a number of alternatives available to them. In the event their concern is an economic burden of utilizing a 19 acre tract for one family residential purposes, an appeal to the Planning Board for subdivision coupled with requests for area variances could lead to a division of said property into two parcels for residential purposes. In the event plaintiffs concluded that their property was totally unsuited for a single family residential development, an appeal could lie to the Board of Adjustment for a use variance providing appropriate relief from restrictions of the zoning ordinance. Lastly, in the event plaintiffs were to conclude and could demonstrate that their property was inappropriately zoned, they could seek a recommendation from the Planning Board and appeal to the governing body, with an appropriate presentation, for a change in zoning to a more appropriate use. The point to be emphasized is that the alternatives available to plaintiffs should, in the first instance, be presented to the board or body charged by statute with the obligation of enacting appropriate zoning for the municipality. Prior to accepting jurisdiction, a court should evaluate the following matters; (1) the

necessity for taking evidence and making factual determinations thereon, (2) the nature of the administrative agency and the extent of judgment, discretion and expertise involved, and (3) such other pertinent factors as may fairly serve to aid in determining whether, on balance, the interests of justice dictate the extraordinary course of bypassing the administrative remedies made available by the legislature. Roadway Express, Inc. v. Kingsley, 37 N.J. 136 (1962); as to the interests of justice requiring detour from an administrative agency (plaintiffs reverse this concept in par. 16 of their complaint), see Nolan v. Fitzpatrick, 9 N.J. 477 (1952).

CONCLUSION

To allow plaintiffs judicial relief at the present time would place this court in the role of the governing body or Planning Board of defendant municipality or Board of Adjustment. It is submitted that such roles are inappropriate for the judicial branch of government and accordingly the matter should be summarily dismissed. It is further submitted that no prejudice will result to plaintiffs since, should their pursuit of administrative remedies prove to be unsatisfactory, judicial review is then readily available.

Respectfully submitted,

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Dated: April 13, 1982

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Plaintiffs
ALOIS HAUEIS, ERNA HAUEIS,
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SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
SOMERSET COUNTY

Docket No. L-73360-80

CIVIL ACTION

CERTIFICATION OF
RICHARD HEROLD

RICHARD HEROLD certifies as follows:

1. I reside on Lake Road in the Borough of Far Hills, County of Somerset, State of New Jersey, and have resided at that address for 21 years.

2. I am a member of the Planning Board of the Borough of Far Hills and have been its Chairman since January 1, 1979.

5. The Borough of Far Hills has a compact village area designed primarily to accommodate local needs, has substantially few non-residential ratables, and has a minimum of municipal services.

6. Historically, the growth pattern of the Borough has been rather slow and the predominant development has been that of one-family residential use upon minimum ten-acre parcels.

7. Both U.S. Route 202 and Interstate Route 287 traverse the Borough in an east-west direction, however, neither artery has had any significant impact upon the community.

8. To the best of my knowledge, none of the plaintiffs in the present litigation have ever made any meaningful application to any municipal agency either to ventilate their grievances or to present alternatives to existing zoning of their premises.

9. I certify that the foregoing statements 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.

RICHARD HEROLD

Dated: April 14, 1982