

AM - Haueis v. Far Hills

5/14/82

Affidavit in opposition to Δ's motion for
Summary judgment - Alois Haueis
+ exhibits

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VOGEL AND CHAIT

A PROFESSIONAL CORPORATION
MAPLE AVENUE AT MILLER ROAD
MORRISTOWN, NEW JERSEY 07960
(201) 538-3800
ATTORNEYS FOR Plaintiffs

Plaintiff

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

vs.

Defendant

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
AFFIDAVIT IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT.

STATE OF NEW JERSEY)
) SS.:
COUNTY OF MORRIS)

ALOIS HAUEIS, of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I reside on Minebrook Road, R.D.1, Bernardsville, New Jersey. My wife and I and Mr. and Mrs. John Ochs are joint owners of a tract of vacant land in the Borough of Far Hills consisting of approximately 19 acres. The property is commonly known as Lot 4-7 in Block 6A on the Tax Maps of the Borough of Far Hills and is located on Route 202 and Sunnybranch Road adjacent

the train station in the center of the village section of the Borough of Far Hills. I am the owner of Colonial Nursery of Far Hills, Inc. ^{this}

2. I am writing/affidavit in opposition to defendant's motion for summary judgment. It is my understanding that the defendants are seeking to compel me to return to either the Planning Board or the Board of Adjustment for further review by those agencies. In my opinion, such return to either one of these boards would be futile and would not result in any fruitful or objective review by the local agencies. The history relating to this property and our attempts to have the property rezoned to permit some reasonable use of the property indicate that any return to local agencies would be a futile gesture and would just result in excessive and unnecessary delay.

3. Contrary to the contentions of defendants, both John Ochs and I have attempted in the past to seek relief from the municipal government on numerous occasions. As indicated in our response to interrogatory No. 16, on or about December 5, 1977, John Ochs and I made a request before the Planning Board of the Borough of Far Hills to have our property rezoned to permit townhouses. On December 19, 1977, John Ochs and I wrote to Mr. Todd, the Chairman of the Planning Board of the Borough of Far Hills and confirmed our previous request for rezoning of the property to permit townhouses. (See Exhibit 1 attached) On December 30, 1977, Mr. Todd on behalf of the Planning Board, responded in writing to our request for rezoning and informed us that the Planning Board had reviewed the proposal by our Professional Planner Mr.

he found Pat Roy and that the proposal to be extremely comprehensive in terms of material and fact. (Exhibit 2 attached) Mr. Todd also indicated in his letter of December 30, 1977 that the Planning Board would not recommend rezoning of our property at that time and that any change in zoning would be considered after the adoption of the Master Plan sometime in February of 1978. In 1978, neither the Master Plan nor the Zoning or Subdivision Ordinances of the Borough of Far Hills reflected any change in the nature of the zoning of our property and merely continued the restrictive ten acre minimum lot size requirements with respect to our property

4. Even though the Planning Board had refused to grant our 1977 request for a rezoning to permit townhouses, we again proceeded before the Planning Board in July of 1981 for another request for rezoning to permit townhouses. On July 9, 1981, our attorney, Marcia Braun of the Firm of Shanley and Fisher, wrote a written request for rezoning of the property to permit townhouses to Mr. Richard Herold the Chairman of the Far Hills Planning Board. (See exhibit No. 3) On July 15, 1981, Mr. Richard Harold, Chairman of the Far Hills Planning Board, responded to Ms. Braun's letter indicating that the Planning Board would not consider a request for rezoning unless we found a solution to the alleged problem of a lack of sewerage treatment allocation in the Bedminister Sewerage Treatment Plant. On August 13, 1981, Mr. Herold reiterated his contention that rezoning would not be considered at this time unless additional sewerage capacity was found at the Bedminister Sewerage Treatment Plant.

Mr. Herold did not indicate any attempts by the Borough of Far Hills to increase its allocation of capacity from the Bedminster Plant or to find alternative sources of sewage treatment for sewage in Far Hills. (See Exhibit No. 4). During the summer of 1981, Mr. Herold, telephone conversation with Marcia Braun, informed Ms. Braun that "We don't want townhouses in Far Hills. This is not the kind of use we want in Far Hills". He also told her that plaintiffs were wasting their time in requesting a rezoning. (See the Affidavit of Marsha Braun and See the response to Interrogatory No.16). These actions of the Planning Board and the Planning Board Chairman over the past six years clearly show that it would be futile for us to continue requesting a rezoning or to proceed before the municipal authorities for any relief.

5. Other actions of the Municipality and of Municipal Boards indicate that it would futile for us to make any additional efforts before the local agencies. For example, the Board of Adjustment of Far Hills recently denied a request for a use variance for townhouse use of a thirty-three acre tract across Route 202 from our property. After the use variance request was denied, the Borough Council approved a budget which included funds for the planned purchase of the property for which the developers^{had} sought a use variance to permit townhouses. In an article in the Courier News entitled "Far Hills increases budget 5% to \$460,000," the Mayor of Far Hills, Mr. Henry Argento, admitted explicitly that the purchase of the land with Green Acres Funds was intended to keep the developer from building on it.

The Green Acres Funds have been granted to the Municipality for this purchase and apparently the Municipality intends to proceed with condemnation proceedings.

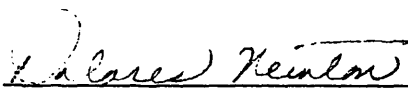
6. The actions of the Planning Board and the Borough Council indicate that the Borough of Far Hills is merely seeking to intentionally delay our efforts to obtain relief from the excessive restrictive ten acre zoning imposed in the Borough. This zoning has resulted in a situation in which we are totally unable to use our property for any reasonable economic use and this has continued for a long period of time. The delay which we are now encountering and which we would encounter if we were forced to go back to the local boards would cause us irreparable harm in the form of loss of use of our property and^a loss of the much needed least cost housing which we are proposing in our law suit. The Borough in its answers to our interrogatories has indicated that it does not "consider itself subject to Mt. Laurel" and has therefore not provided for any least cost or low and moderate income housing in its current zoning ordinance. (See Exhibit 5).

7. The claims which we are raising in our complaint relate to the constitutionality of the ten acre zoning and the constitutionality of a zoning ordinance which makes no provision for least cost or low and moderate income housing. These constitutional issues are of imperative nature and we will not receive any adequate relief from the very individuals and agencies that have imposed the unconstitutional restraints on our property. In our complaint we are also seeking damages for condemnation of

our property resulting from the excessively restrictive ten acre zoning which would permit us to build only one single family house on a property that is not suitable for single family housing. The property is located directly adjacent to Route 202 and the Far Hills Railroad Station and although not suitable for single family housing would be very suitable for townhouse development. The delay that we will encounter if we are forced to go back to any local authorities which are clearly predisposed against our request will cause irreparable harm to our constitutional rights and privileges and we request that the Court deny defendant's motion.


ALOIS HAUEIS

SWORN AND SUBSCRIBED
BEFORE ME THIS ^{14th} DAY
OF *May* 1982.



DOLGRES NEWTON
A Notary Public of New Jersey
My Commission Expires Jan. 24, 1983

ORIGINAL NURSERY
OF FAR HILLS, INC.
R.D. 1 #33 ROUTE 222
FAR HILLS, NJ 07931

Mr. J. Todd
Chairman, Planning Board
Far Hills, N.J. 07931

December 19, 1977

Dear Sir:

In reference to our proposal on the fifth of December meeting, we hereby request a reply to the matter.

We feel, we had not received an impartial hearing on this proposal and are requesting another meeting at a later date.

As you noted on the planning analysis submitted to you this was completed in August, but because of problems we encountered with our attorney we could not submit it until December the fifth.

It was under our impression to present this informally because the planning board and planner indicated they would like more resident input on this matter.

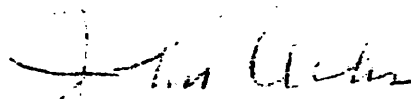
We believe this proposal is for the benefit of Far Hills and in the eyes of a professional planner this was the proper course to take.

Thanking you for your consideration.

Very truly yours,



Alois R. Hauels



John Ochs

ARH/ eh

cc: Mr. E.P. Rochat
Mayor of Far Hills Phone 766-0328

BOROUGH OF FAR HILLS

FAR HILLS, NEW JERSEY 07931

December 30, 1977

Mr. John Ochs
Mr. Alois R. Haueis
Colonial Nursery of Far Hills, Inc.
R.D.#1, #33 Route 202
Far Hills
New Jersey, 07931

Gentlemen;

Thank you for your letter of December 19 regarding your suggestions for the Master Plan of the Borough of Far Hills. All members of the Planning Board who were present at the meeting have read the formal written proposal of Mr. Roy and found it extremely comprehensive in terms of material and fact. Mayor Rochat has also reviewed the proposal.

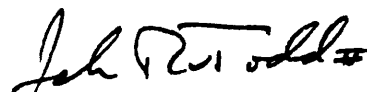
The conclusions that Mr. Roy comes to with regards these facts does not correspond to those of our Borough Planner nor those of the Planning Board so we plan to present the Master Plan as drafted at a public hearing on January 9th in the Borough Hall. You are, of course, welcome to attend that meeting.

I had a long talk with Mr. Roy on the 'phone wherein he suggested various other uses for the property in question. Some if not all of these suggestions had a lot of merit but we decided the only realistic thing to do was as follows;

If all goes as planned, the Master Plan will be adopted sometime in February followed shortly by a new Zoning and Subdivision Ordinance. When these Ordinances are adopted the Borough of Far Hills will be under a complete new set of rules and we felt it would be inappropriate to discuss your property further under the old rules.

I realize this will cause a delay of some months, but as soon as we have our new ordinances I suggest we get together again and see how they affect your original proposal and any other suggestions Mr. Roy might have.

Sincerely,


John R. Todd 2nd, Chairman
Far Hills Planning Board

JRT/as
cc: Mayor E. P. Rochat

EXHIBIT A.

July 9, 1981

Mr. Richard Herold, Chairman
Far Hills Planning Board
Municipal Building
Peapack Road
Far Hills, New Jersey 07931

Re: Haueis and Ochs
Block 6A, Lots 4-7

Dear Mr. Herold:

The undersigned represents Messrs. Alois Haueis and John Ochs, owners of Block 6A, Lots 4-7 in Far Hills Borough, located at the corner of Route 202 and Sunnybranch Road.

The owners propose that the zoning ordinance for the captioned premises be amended to permit the property to be used for townhouse development. As I am sure you are aware, this property adjoins the railroad and commercial center of the Borough and, we feel, would be a most appropriate location for this type of development.

May I please hear from you regarding a date when we may appear before your Board, together with our experts, to discuss this matter further. If we could be placed on the August agenda, this would be most appreciated.

We will submit written reports, survey, and architectural and engineering data to you as soon as you have advised us of the hearing date.

Thanking you for your attention to this matter, I remain

Sincerely, yours,

SHANLEY & FISHER

Marcia Braun

MB/cd
Certified No. 3348940
cc: Mr. Al Haueis
Mr. John Ochs

EXHIBIT A.

BOROUGH OF FAR HILLS

FAR HILLS, NEW JERSEY 07931

July 15, 1981

Messrs. Shanley & Fisher
95 Madison Avenue
Morristown, N.J. 07960
Attention Ms. Marcia Braun

Re: Haueis and Ochs Property
Sunnybranch Rd., Far Hills

Dear Ms. Braun:

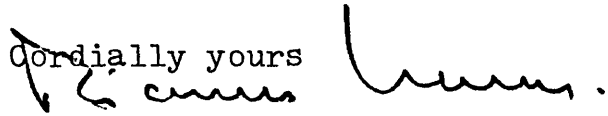
In your letter of July 9 you request that our Far Hills Planning Board consider at its August meeting an application by Messrs. Haueis and Ochs to change the zoning which currently applies to their property (ten acres zoning) so as to permit the construction of town houses in our village. I have advised you that the planning board already has a very full schedule for its August meeting, a schedule which will probably require a three hours session, i.e. until eleven pm. Thus, your clients' application cannot be considered until our September meeting.

I have, in our telephone conversation of to-day, directed your attention to correspondence exchanged earlier this year with our mayor, Mr. Henry F. Argento. He has pointed out that both the Far Hills sewers and the Far Hills sewage treatment allocation at the Beminster treatment plant are at their capacity limit and that no additional sewage can be accepted. Unless your clients have a solution to this problem which will be acceptable to the State D.E.P. as well as to our local authorities, a discussion of your clients' plans would be a waste of time for all concerned.

Our planning board meetings are held on the first monday of every month. This year, the first monday of September being Labor Day, our September meeting will be held on tuesday the 8th, at 8 pm.

cc Mayor Argento
Dr Mottern, ch'm
of zoning bd.

Cordially yours


Richard Herold, chairman

Far Hills Planning Board

EXHIBIT 4.

VOGEL AND CHAIT
A PROFESSIONAL CORPORATION
MAPLE AVENUE AT MILLER ROAD
MORRISTOWN, NEW JERSEY 07960
(201) 538-3800
ATTORNEYS FOR Plaintiffs

Plaintiff s,

ALOIS HAUEIS, ERNA HAUEIS,
JOHN OCHS and PRISCILLA OCHS

vs.

Defendant s,

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

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

SOMERSET COUNTY

Docket No. L-73360-80

CIVIL ACTION

PLAINTIFFS' FIRST SET OF
INTERROGATORIES TO THE
DEFENDANTS, THE BOROUGH OF
FAR HILLS, THE BOROUGH COUNCIL
OF FAR HILLS and THE MAYOR
OF FAR HILLS

TO: ROBERT K. HORNBY, ESQ.
Schaff, Motiuk & Hornby
96 Main Street
P. O. Box 996
Flemington, New Jersey 08822

SIRS:

PLEASE TAKE NOTICE, that the undersigned, Vogel and Chait,
A Professional Corporation, attorneys for plaintiffs, hereby demand
that you answer the following interrogatories in the manner and
within the time prescribed by the rules governing the courts of
the State of New Jersey.

1. Cont. 11.
4. Maps and photos prepared by planner and other experts and other attached documents;
 5. Maps (a) Various maps in the above reports (b) map entitled "Portion of Far Hills Borough, Existing Land Use and the Somerset County Land Use Master Land Use" prepared by Richard Coppola; (c) map entitled "Portion of Far Hills Borough, Tri-State and State Development Guide Plan" prepared by Richard Coppola; (d) aerial photo of Far Hills
 6. Maps and documents which are not attached will be made available for review on reasonable notice during regular business hours.

3. Set forth in complete detail all facts upon which you intend to rely in support of your contentions which have been set forth.

See the Complaint, forthcoming expert reports, and other Answers to these Interrogatories. See also the Somerset County Master Plan, the TriState Regional Development Guide and the State Development Guide Plan. See also the other Answers to these Interrogatories.

4. Annex copies of all correspondence, writings and other documents between the parties concerning this matter upon which you intend to rely in support of your contentions.

See attached.

5. Annex copies of all correspondence, writings and other documents between yourself and any other persons or corporations upon which you intend to rely in support of your contentions in connection with this matter.

1. Master Plan of Land Use, Somerset County, New Jersey;

2. N.J. State Development Guide Plan

3. Tri-State Regional Development Guide revised August 18, 1979;* above) (see

6. (a) Enumerate specifically all of the things you contend the party serving these interrogatories did which should not have been done.

Defendants should not have enacted a zoning ordinance and zoned the plaintiffs' property in a manner that was unconstitutional, violative of the Municipal Land Use Law and confiscatory.

6. (b) Enumerate specifically all of the things you contend the party serving these interrogatories did not do which should have been done.

The Borough of Far Hills should have enacted a zoning ordinance that is not violative of the Constitution and the Municipal Land Use Law and that does not deprive plaintiffs of their property without just compensation. Defendants should have zoned plaintiffs' property to permit the construction of least-cost housing in the form of multi-family townhouses and condominiums.

7. Attach hereto or serve with your answers to these interrogatories the answers you have received to interrogatories that you have served upon all other parties to this action.

8. Identify the names and addresses of private or public "employment concentrations" in those areas alleged in paragraph 5 of the First Count.

The names are being compiled and will be supplied in the form of expert reports.

9. Indicate in detail the factual basis for the conclusion that plaintiffs' property should be in a high density residential development as alleged in paragraph 8 of the First Count.

- (1) Conformity with State Development Guide Plan;
- (2) Conformity with the Somerset County Master Plan of Land Use;
- (3) Conformity with the Tri-State Development Plan;
- (4) Conformity with adjacent zoning in Bedminster Township;
- (5) Overzoning for 10 acres in the Borough;
- (6) Proximity to railroad and railroad station;
- (7) Proximity to retail, commercial and service use within central business district of Far Hills;
- (8) Proximity to Rt. 202, I-287, and E78,

20. In preparing the municipal zoning ordinance, or at any time, state whether an assessment was made of local and/or regional, present and/or prospective housing needs of any and/or all economic segments of the population.

a) if not, state why not;

Borough of Far Hills not subject to Mount Laurel.

b) if so, state, with particularity:

(1) the needs of which economic segments were assessed;

(2) how were local needs assessed;

(3) what region was considered and how were regional needs assessed;

(4) how were present needs assessed;

(5) how were prospective needs assessed;

(6) attach hereto any and all written materials relating to such assessments.

21. In preparing the municipal zoning ordinance or at any time, was an assessment made of the municipal fair share of the regional (including municipal) housing needs of persons of low and moderate income.

a) If not, state why not;

Borough of Far Hills not subject to Mount Laurel.

b) If so, state with particularity:

(1) definition of "low" income used;

(2) definition of "moderate" income used;

(3) region delineated;

(4) date used in assessing present need;

(5) projection date used in assessing prospective need;

(6) fair share methodology;

(7) attach hereto a copy of any such plan and/or any and all written materials relating to such fair share assessment.

22. In preparing the Borough zoning ordinance or at any time, was an assessment made of the municipal fair share of local or regional housing needs for least-cost housing.

a) If not, state why not;

Borough of Far Hills not subject ot Mount Laurel.

b) If so, state with particularity:

(1) the definition of "least-cost housing" used;

(2) the amount of least-cost housing currently needed to meet the local needs;

25. Under existing land use controls, what is the maximum number of additional residential units which could be provided under restrictions which are the minimum necessary for the protection of health and safety? (set forth the basis of your answer).

See Zoning ordinance.

26. With respect to any areas of the Borough zoned to permit least-cost housing, identify the methods of sewage treatment or disposal and water supply which are apparently available or are expected to be made available to such areas:

Not so zoned.

a) was availability of sewerage a factor in taking into account in rezoning of any areas of the Borough for supposed least-cost housing?;

b) was availability of potable water a factor taken into account in the zoning of any areas of the Borough for supposed least-cost housing?;