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ALOIS, HAUEIS, ERNA HAUEIS, JOHN OCHS and PRISCILLA OCHS, Plaintiffs, vs. THE BOROUGH OF FAR HILLS, THE PLANNING BOARD OF FAR HILLS, THE BOROUGH COUNCIL OF FAR HILLS, and THE MAYOR OF FAR HILLS, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION SOMERSET COUNTY DOCKET NO. L-73360-80

BRIEF AND APPENDIX IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT.

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On the Brief:
Thomas F. Collins, Jr.

Dated: May 14, 1982.

COUNTER-STATEMENT OF FACTS

In June 1981, Defendant Council of the Borough of Far Hills adopted a new zoning ordinance which did not permit any new multi-family, apartment, condominium or townhouse uses. The Ordinance did not provide for any least cost or low and moderate income housing, either for the residents of the Borough or the people in the region. The Ordinance continued the ten acre minimum lot size designation which had previously applied to plaintiff's 19 acre tract located adjacent to Rt. 202 and the Far Hills Railroad Station.

Within the 45 days permitted by Rule 4:69-6 for the bringing of actions in lieu of prerogative writs, Plaintiffs Mr. and Mrs. John Ochs and Mr. and Mrs. Alois Haueis, brought a complaint against the Borough of Far Hills, Planning Board of Far Hills, the Borough Council and the Mayor of Far Hills challenging the entire zoning ordinance of the Borough of Far Hills on various grounds. The First Count of the Complaint challenged the entire ordinance on the grounds that Far Hills had failed to comply with the due process and equal protection clauses of the New Jersey Constitution as interpreted in Oakwood at Madison v. Madison, 73 NJ 481 (1977), by failing to make any provision for the development of multi-family, least cost or low and moderate income housing. This ground challenged the constitutionality of the entire zoning ordinance of the Borough of Far Hills, not merely with respect to the Plaintiff's

property. The First Count also challenged the constitutionality of the 10 acre single family residential zoning district of the Borough of Far Hills.

The Second Count of Plaintiff's Complaint alleged that the Zoning Ordinance of the Borough of Far Hills, by permitting only one single family house on plaintiff's 19 acre tract, constituted an unreasonable restriction against the use and development of Plaintiff's property, thereby constituting a taking of Plaintiff's property without compensation in violation of the New Jersey Constitution, Article I, Paragraph 20.

The Third Count of the Complaint challenged the entire Zoning Ordinance of the Borough of Far Hills and the Master Plan of the Borough of Far Hills on the ground that they failed to comply with the requirements of the Municpal Land Use Law, NJSA 40:55D-1. This count also challenged the entire Zoning Ordinance and Master Plan as being violative of the New Jersey Constitution, by having the impermissible purpose or effect of excluding new multi-family least cost housing from Far Hills.

The Fourth Count challenged the definition of the phrase "single family" contained in the Far Hills Zoning Ordinance as being patently unconstitutional and in violation of the New Jersey Supreme Court's Decision in State v. Baker, 81 NJ 99 (1979). The definition impermissibly discriminates against unmarried and unrelated individuals who function as a single non-profit housekeeping unit.

In Plaintiffs' prayer for relief, plaintiffs requested,

among other things, a declaration that the entire Zoning Ordinance of the Borough of Far Hills was null and void. Plaintiff also sought specific relief with respect to their property in the form of a "builder's remedy" as justified in Oakwood at Madison, supra.

Plaintiffs are the owners of a 19 acre tract of land located at the corner of Route 202 and Sunnybranch Road directly adjacent to the train station in the Borough of Far Hills and therefore, located directly within the village center of the Borough of Far Hills. Plaintiff's property is within approximately 3 miles of Interstate Highway 287 and approximately 5 miles of Interstate Highway 78. These two Interstate Highways, in conjunction with Route 202 and 206, provide easy access to areas of significant employment concentrations such as Bridgewater Township, Bedminister Township, Somerville, New Brunswick, Clinton Township, Piscataway Township and Morristown, New Jersey. The property is located directly adjacent to the railroad station of Far Hills which provides commuting services to major employment centers.

The Somerset County Planning Board has adopted a Master Plan which includes Plaintiff's property within the village neighborhood classification calling for residential density far in excess of the 10 acre minimum lot size applied to Plaintiff's property. The New Jersey Department of Community Affairs has adopted a State Development Guide Plan which includes Plaintiff's property within "a growth area". Other

regional plans also indicate that Plaintiff's property should be permitted to develop with densities much higher than the 10 acre minimum lot size imposed by the Borough of Far Hills. (See Appendix 2, Plaintiffs' responses to interrogatory #3 and #9).

Prior to bringing this law suit, plaintiffs amde a series of requests to the Planning Board of Far Hills for rezoning to permit use of their property for townhouse development. (See the Affidavits of John Ochs, Alois Haueis and Marcia Braun); (See, also plaintiff's answer to Interrogatory No. 16). On or about December 5, 1977, plaintiffs made an oral request to the Planning Board for a rezoning of their property to permit townhouses, in accordance with a plan drawn by their Professional Planner Pat Roy. On or about December 19, 1977, John Ochs confirmed their request in writing to Mr. Todd, Chairman of the Far Hills Planning Board. (See Exhibit 1 attached to Affidavit of Alois Haueis. On December 30, 1977, Mr. Todd, on behalf of the Planning Board responded in writing to their request for rezoning and informed them that the Planning Board did not recommend rezoning of the 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 Ordinance of the Borough of Far Hills reflected any change in the zoning of Plaintiff's property and merely continued the restrictive 10 acre minimum lot size requirements. (See Exhibit 2 attached to the Affidavit of Alois Haueis).

Even though the Planning Board had refused to grant

their 1977 request for rezoning, the plaintiffs again requested a rezoning in July 1981. On July 9, 1981, their attorney, Marcia Braun of the firm of Shanley & Fisher, wrote a written request for recommendation of rezoning of their property. (See Affidavit of Marcia Braun and Exhibit 1 attached thereto). In the summer of 1981, Mr. Herold, in a telephone conversation with Ms. Braun stated that:"We don't want townhouses in Far Hills. This is not the kind of use we want in Far Hills." He also told Ms. Braun that plaintiffs were wasting their time in requesting a rezoning.

Other actions of the Borough of Far Hills and the local Boards of Far Hills indicate that it would be futile for plaintiffs to make any additional efforts before the local agencies. (See Affidavit of Alois Haueis). For example, the Board of Adjustment of Far Hills recently denied a request for a use variance for townhouse use for a 32 acre tract across Route 202 from Plaintiff's 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 to 5% to $460,000." the Mayor of Far Hills, Mr. Henry Argento, admitted that the purchase of the land with Green Acres Funds was intended to keep the developer from building on it.

It is noteworthy that in their answers to Plaintiff's Interrogatories No. 20, 21, 22 and 26, Defendants admit that they have not provided for any least cost or low and moderate income housing in the Borough Zoning Ordinance. Defendants take the position that the Borough of Far Hills is not required to zone for any multi-family or least cost housing. (See attached to Appendix and Brief, answers to plaintiff's interrogatories No. 20, 21,22 and 26).

LEGAL ARGUMENT

POINT I

PLAINTIFFS' COMPLAINT SHOULD NOT BE DISMISSED ON THE ALLEGED GROUNDS OF FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

A. Plaintiffs have already exhausted their administrative remedies and any further resort to administrative processes would be futile and would not "further the interests of justice" within the meaning of Rule 4:69-5.

Defendants have relied on R.4:69-5 in support of their Motion for Summary Judgment on the grounds that plaintiffs have failed to exhaust their administrative remedies in filing an action in lieu of prerogative writs challenging the Zoning Ordinance of the Borough of Far Hills. The case law interpreting R.4:69-5 clearly indicates that defendants reliance upon this provision is not warranted in this case. Rule 4:69-5 is a subsection of Rule 4:69 entitled "Actions in Lieu of Prerogative Writs" and it states in full:

> 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. R.4:69-5.

At the outset, it should be noted that Plaintiffs' Complaint challenges the entire Zoning Ordinance of the Borough of Far Hills and the entire R-10 Zoning District of the Borough on the grounds that the ordinance failed to comply with the

constitutional requirements set forth in Southern Burlington Cty. N.A.A.C.P. v. Mt. Laurel Township, 67 NJ 151 (1976) and Oakwood at Madison, Inc. v. Madison Township, 72 NJ 481 (1977). The Complaint also challenges the R-10 Zoning District of the Borough's Zoning Ordinance as being confiscatory of Plaintiffs' property. In addition, the Complaint challenges the definition of the term "single-family" in the Zoning Ordinance since it discriminates against unrelated, unmarried individuals, contrary to State v. Baker, 81 NJ 99 (1979). As part of their relief, plaintiffs seek specific relief in the form of a builder's remedy, as outlined in Oakwood at Madison, directing the Borough of Far Hills to take steps necessary to permit the construction of least cost housing on the property in question. See Oakwood at Madison, 72 NJ at 548-554. Specific relief in the form of a builder's remedy was also granted in the unreported case of The Allen Dean Corporation, et al v. Township of Bedminister, et al, Docket No. L-36896-70 and L-28061-71, decided by Judge Leahy in Somerset County on December 13, 1979.

It is the Plaintiffs' position that R.4:69-5 does not require plaintiffs to proceed before local boards for variance relief when plaintiffs are challenging the entire Zoning Ordinance of the Municipality in question. Defendants have not cited any cases to support any such requirements and have not cited any cases involving exclusionary zoning matters in which plaintiffs were required to proceed for variance relief either before a planning board or a board of adjustment prior to

instituting their Complaint in lieu of Prerogative Writs. Nonetheless, even if one applies R.4:69-5 to this case, it is readily apparent that the case law interpreting R.4:69-5 supports plaintiffs' position that they have sufficiently exhausted their administrative remedies and that further resort to administrative processes is not required under the Rule.

The case law interpreting R.4:69-5 indicates that it is not necessary for plaintiffs in this case exhaust their administrative remedies because (a) it is apparent that further resort to administrative processes would be fruitless; (b) the delay inherent in such processes would work a severe hardship on the 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; (e) the exhaustion of administrative remedies is not a jurisdictional requirement for adjudication of this action and (f) the interests of justice clearly do not require, in these circumstances, that administrative remedies be exhausted. See Rules Governing the Courts of New Jersey, with comments and annotations by Sylvia Pressler, page 837 (1982); See also Matawan Borough v. Monmouth County Tax Board, 51 NJ 291, 296-7 (1968); Patrolmen's Benev. Assoc. v. Montclair, 128 NJ Super 59 (1974); Supermarkets Oil v. Zollinger, 126 NJ Super 505(1974)

and Jantausch v. Verona, 24 NJ 326 (1957). The Affidavits of John Ochs, Alois Haueis and Marcia Braun, clearly indicate that plaintiffs have made at least two attempts to request a rezoning of their property to permit townhouses. The plaintifffs requested rezoning in December of 1977 and the then Chairman of the Planning Board,Mr. Todd indicated that no rezoning would be considered until the Master Plan and new Zoning Ordinance were considered in February of 1978. At the time of the consideration of the Master Plan and Zoning Ordinance in 1978, no change was made with respect to plaintiffs' property even though plaintiffs had requested a rezoning. Furthermore, in 1981, Ms. Braun, as attorney for John Ochs and Alois Haueis, requested in writing a recommendation of rezoning from the Planning Board to permit use of the property for townhouses. During the summer of 1981, in a telephone conversation with Ms. Braun, the Chairman of the Planning Board,Mr.Richard Herold indicated that:"We don't want townhouses in Far Hills. This is not the kind of use we want in Far Hills." He also told Ms. Braun that plaintiffs were wasting their time in requesting rezoning. See the Affidavits of Alois Haueis and Marcia Braun. These actions on the part of the Planning Board and the Chairman of the Planning Board and other actions on the part of the Borough of Far Hills in opposition to other townhouse developments indicate that it would be futile for plaintiffs to attempt to proceed before any local administrative bodies. These bodies are obviously predisposed and

prejudiced against the development of any townhouses or multi-family least cost housing in the Borough of Far Hills. In light of the futility of any further administrative processes and in light of the substantial attempts made to this date by the plaintiffs in seeking relief before local agencies, the dismissal of Plaintiffs' case on the grounds of alleged failure to exhaust administrative remedies is totally unwarranted.

In Patrolmen's Benev. Assoc. v. Montclair, supra 128 NJ Super at 63, the Court stated that:

> The Rule requiring the prior exhaustion of administration remedies rests on the premise that such remedy is 'certainly available clearly effective and completely adequate to right the wrong complained of'". Patrolmen's Benev. Assoc. v. Montclair, supra 128 NJ Super at 63 quoting Baldwin Const.Co. v. Essex Cty. v. Bd. of Taxation, 24 NJ Super 252, 274 (Law Div.1952) aff'd. 27 NJ Super 240 (App.Div.1953).

See also Brunetti v. Borough of New Milford, 68 NJ 576, at 589 (1975). In this case, plaintiffs are challenging the entirety of the Zoning Ordinance of the Borough of Far Hills, and it is clear that not only will the local administrative agencies be unable to provide "clearly effective and completely adequate" relief, but in addition, they do not have the jurisdiction or the authority to rule on matters of interpretation or construction of New Jersey Statutes and the New Jersey Constitution. It is apparent from New Jersey case law that matters involving challenges to zoning ordinances and

challenges to the constitutionality and statutory authorization of zoning ordinances are subject to de novo review by the Superior Court pursuant to R.4:69. The Superior Court is the body with the sole jurisdiction to review such matters. It is also clear that contrary to the requirement stated in Patrolmen's Benevolent Association, the Board of Adjustment and the Planning Board of Far Hills will be unable to provide the relief requested by plaintiffs relating to their request for an Order declaring that the Zoning Ordinance of the Borough of Far Hills be declared null and void for failing to comply with the principles established in Mt. Laurel and Oakwood at Madison. Furthermore, the local agencies will be unable to provide relief in the form of an order declaring invalid the exclusionary 10 acre minimum lot size requirements of the entire zoning ordinance of the Borough of Far Hills. These broad forms of relief requested by plaintiff are clearly set forth in the Plaintiffs' Complaint and must be heard on a prerogative writ basis by the Superior Court if the plaintiffs are to receive adequate consideration and relief for their claims. It is quite apparent, pursuant to Brunetti v. Borough of New Milford and Patrolmen's Benevolent Association v. Montclair, that this case involves matters of substantial and meritorious legal and constitutional questions appropriate for judicial resolution. Moreover, in Supermarkets Oil v. Zollinger, 126 NJ Super 505(1974), the Appellate Division found that where an interpretation of a zoning ordinance is called for, the

issue is a legal one and peculiarly suited to the judicial function, and resort need not be first had to administrative remedies. Supermarkets Oil v. Zollinger at 507. See also Shack v. Trimbull, 48 NJ Super 45 (App.Div.1957) aff'd. 28 NJ 40 (1958); Jantausch v. Verona, 41 NJ Super 89 (Law Div.1956), aff'd. 24 NJ 326 (1957).

Defendants cite Brunetti v. Borough of New Milford on page 3 of their brief in support of their argument that plaintiffs should be compelled to return to local agencies for additional review. Defendants attempt to contend that plaintiff has failed to demonstate that there are any colorable constitutional questions in this law suit and that there are additional factual questions which must be determined by administrative agencies. Defendants reliance upon Brunetti and their interpretation of Brunetti are misguided in that plaintiffs have clearly established prima facie case of exclusionary zoning by the Borough of Far Hills. Ten acre zoning in and of itself is patently exclusionary. Furthermore, defendants, in their answers to Plaintiffs' First Set of Interrogatories, have admitted that the Zoning Ordinance of the Borough of Far Hills does not provide any least cost or low and moderate income housing and that the Borough does not consider itself subject to the requirements of Mt. Laurel and Oakwood at Madison. The questions of facts which will be raised in relationship to these legal issues are not matters which will be subject to administrative review or fact finding and are not

matters within the expertise of any adminstrative agency of the Borough of Far Hills. Rather, they are clearly within the province of the Superior Court as outlined and established in the cases of Mt. Laurel and its progeny, particularly Oakwood at Madison and Allen Dean Corporation v. the Township of Bedminister.

Apparently, defendants are contending that plaintiffs should be compelled to return the Board of Adjustment to seek a use variance to permit townhouses and that this will permit the municipality to "correct any error in zoning classification". This position is unwarranted, especially in view of the decision of the Supreme Court in Oakwood at Madison. In Oakwood at Madison, the Supreme Court held that the Corporate Plaintiffs were entitled to specific relief in the form of an Order directing the issuance of permits for the development on their property of a housing project which would guarantee a percentage of housing units affordable by low or moderate income families. Similarly, in Allen Dean, et al. v. The Township of Bedminister, et al., Judge Leahy held that the plaintiff developers were entitled to specific relief relating to their property. Apparently, no administrative proceedings for use variances were required in either the Allen Dean or the Oakwood at Madison cases. There is also a significant legal question as to whether or not the Board of Adjustment of the Borough of Far Hills has the authority to grant a use variance for a 19 acre tract to permit the

construction of townhouses. See Township of Dover v. Dover Township Board of Adjustment, 158 NJ Super 401 (App.Div.1978). In the Dover case the Court held that a Board of Adjustment had acted outside of its statutory authority in a manner that constituted de facto rezoning, by granting a variance for a large tract of property to permit the classifications of one zone to apply to property located in another zoning district. The Court indicated that the size of the tract and the geographic and functional substantiality of the variance vis a vis the plan and scheme of the muncipal zoning ordinance would be taken into account in determining whether a use variance would be invalidated as de facto rezoning. In view this legal principle, it is questionable whether the Court should direct the matter back to the Board of Adjustment for review, especially in a situation which might result in a challenge of the action of the Board of Adjustment, if it were to grant a variance, by the Borough Council as occurred in the Dover case.

It is clear from the Oakwood at Madison and its progeny that specific relief is not a form of relief which will be disregarded by the Courts of New Jersey. Indeed, the Oakwood case and many authorities indicate that there is strong support for the awarding of specific relief in cases where plaintiffs have born the stress and expense of public interest litigation. See Oakwood at Madison v. Township of Madison, 72 NJ Supra at 550; Norman Williams, American Land and Planning Law, Volume V, Section 163.17; Mitelka and Mitelka "Exclusionary

Zoning: A Consideration of Remedies", 7 Seton Hall L.Rev.1,26-29 (1975); Rabinowitz Exlusionary Zoning:"A Wrong in Search of a Remedy", 6 Mich.J.L.Rev.625,668(1973).

Justice Pashman, concurring and dissenting in Oakwood at Madison, indicated the strong need for further affirmative relief in addition to the specific relief provided in the majority's opinion. In outlining the need for affirmative relief Justice Pashman indicated the many types of municipal tactics aimed at delaying and avoiding the responsibilities relating to housing needs. In illustrating the need for effective judicial supervision, Justice Pashman stated:

> "For other examples of municipal delay and subterfuge, see, Gautreaux v. Chicago Housing Authority, 342 F.Supp. 827 (N.D. Ill.1972), aff'd. 480 F.2d 210 (7 Cir.1973), cert.den.414 U.S. 1144, 94 S.Ct.895,896,39 L.Ed.2d 98(1974)(inaction by city officials aimed at subverting a court order for the construction and placement of public housing); Crow v. Brown, 475 F.2d 788(5 Cir.1972), aff'g 332 F.Supp. 382 (N.D.Ga.1971) (refusal by local officials to grant developers building permits for apartments to be occuppied by low income black tenants); Dailey v. City of Lawton, 425 F.2d 1037 (10 Cir.1970), aff'g.296 F. Supp.266 (W.D.Okla.1969)(denial of building permits for construction of low-income housing); Kennedy Park Homes Ass'n. v. Lackawanna, 318 F.Supp.669 (W.D.N.Y.1970), aff'd.436 F.2d 108 (2 Cir.1970), cert. den. 401 U.S.1010, 91 S.Ct.1256, 28 L.Ed.2d 546 (1971) (imposition of a moratorium on new subdivision); Casey v. Warwick Tp. Zoning Hearing Bd., supra, 328 A.2d 467-468 (amending zoning ordinance during litigation); G & D Holland Constr. Co. v. City of Marysville, 12 Cal.App.3d 989, 91 Cal.Rptr. 227(Ct.App. 1970)(rezoning to frustrate construction of an apartment building for lower income families).

> Thus, in the absence of effective judicial supervision, a recalcitrant community can employ a variety of techniques to forestall efforts to eliminate exclusionary zoning practices. See one Court's expressed recognition of this problem in Van Ness v. Borough of Deal, 139 N.J. Super.83, 101 (Ch. Div.1975). See generally Babcock & Bosselman, supra, at 14-17. Using these techniques, a 'bad faith municipality can play games until a developer gives up and goes elsewhere.' Mytelka & Mytelka, supra, 7 Seton Hall L.Rev. at 24. For this reason, most commentators agree that sole reliance upon the municipality to correct the exclusionary effect of its zoning scheme is insuffient and that, in the words of one authority,
>
> ...if judicial review of local zoning action is to result in anything more than a farce, the courts must be prepared to go beyond mere invalidation and grant definite relief.[emphasis supplied]
>
> Casey v. Warwick Tp.Zoning Hearing Bd., supra, 328 A.2d at 469, quoting Krasnowiecki, supra note 7, 120 U.Pa. L. Rev.at1082.

In view of the attempts by plaintiff to seek administrative relief and in view of the serious constitutional and statutory claims raised by the plaintiff, it would not be in the interest of justice to require plaintiffs to return to any local boards of the Borough of Far Hills. Such a requirement would unduly delay the relief they have long been seeking and would not result in adequate and certain relief as required by R.4:69-5. Furthermore, the Board of Adjustment does not have the authority to grant the relief requested by plaintiffs relating to

the invalidation of the entire zoning ordinance of the Borough of Far Hills on the basis that it fails to comply with the decisions of Mt. Laurel and Oakwood at Madison. Constitutional questions involving the equal protection and due process causes of the New Jersey Constitution clearly are not within the jurisdiction of local boards of adjustment.

B. Dismissal of Plaintiffs' Complaint challenging the constitutionality and statutory authority of Far Hills' Zoning Ordinance for failure to exhaust administrative remedies pursuant to Rule 4:69-5 would be contrary to R.4:69-6 and would prejudice plaintiffs' rights under R.4:69-6.

R.4:69-6(a) General Limitation. No action in lieu of prerogative writs shall be commenced later than forty-five days after the accrual of the right to review, hearing or relief claimed, except as provided by Paragraph (b) of this Rule. Plaintiffs have brought their complaint within forty-five days of the publication of the 1981 Zoning Ordinance of the Borough of Far Hills which imposed the 10 acre zoning restriction and which fails to provide for any least cost or low and moderate income housing. Plaintiffs have complied with Rule 4:69-6 and the dismissal of their case at this point, would result in severe prejudice to plaintiffs if they were unable to challenge the zoning ordinance of the Borough of Far Hills after return to any administrative bodies.

If one carefully considers the meaning of R.4:69-5 in conjunction with R.4:69-6, it is readily apparent that

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the invalidation of the entire zoning ordinance of the Borough of Far Hills on the basis that it fails to comply with the decisions of Mt. Laurel and Oakwood at Madison. Constitutional questions involving the equal protection and due process clauses of the New Jersey Constitution clearly are not within the jurisdiction of local boards of adjustment.

B. Dismissal of Plaintiffs' Complaint challenging the constitutionality and statutory authority of Far Hills' Zoning Ordinance for failure to exhuast administrative remedies pursuant to Rule 4:69-5 would be contrary to R.4:69-6 and would prejudice plaintiffs' rights under R.4:69-6.

R.4:69-6(a) states in full:

> General limitation. No action in lieu of prerogative writs shall be commenced later than forty-five days after the accrual of the right to review, hearing or relief claimed, except as provided by Paragraph (b) of this Rule.

Plaintiffs have brought their complaint within forty-five days of the publication of the 1981 Zoning Ordinance of the Borough of Far Hills which imposed the 10 acre zoning restriction and which fails to provide for any least cost or low and moderate income housing. Plaintiffs have complied with Rule 4:69-6 and the dismissal of their case at this point would result in severe prejudice to plaintiffs if they were unable to challenge the zoning ordinance of the Borough of Far Hills after return to any administrative bodies.

If one carefully considers the meaning of R.4:69-5 in conjunction with R.4:69-6, it is readily apparent that matters

matters involving challenges to municipal zoning ordinances, particularly with respect to their constitutionality and statutory authority, are properly brought before the Superior Court upon forty-five days from the time of publication of the ordinances, and that no administrative review by local boards can be required for such legal issues.

CONCLUSION

It is respectfully requested that the Court deny Defendants' Motion for Summary Judgment on the grounds of alleged failure to exhaust administrative remedies. Plaintiffs have sufficiently exhausted their administrative remedies and further resort to any local administrative agencies would be futile and are not required by R.4:69-5.

Respectfully submitted,

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BY: Thomas F. Collins Jr./dn
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DATED: May 14, 1982.

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May 17, 1982

Somerset County Clerk
110 Administration Building
Somerville, NJ 08876

Attention: Judge Gaynor

Re: Alois Haueis, et als. v. The Borough of Far Hills, et als. Docket No. L-73360-80

Dear Sir:

On Friday, May 14, 1982, I was called to the Appellate Division on an emergent matter and I was unable to proofread the last two pages of my brief in the above matter. Upon reading it I noticed a few errors and I would like to have the enclosed two pages supplemented for the last two pages of the original brief. I have also enclosed a copy of these two pages to be attached to the copy of the brief.

By a copy of this letter, I am forwarding these substitute pages to my adversaries.

Respectfully yours,

VOGEL AND CHAIT
A Professional Corporation

THOMAS F. COLLINS, JR.

TFC:dn
Encls.
cc: J. Albert Mastro, Esq.
Robert K. Hornby, Esq.