

AM - Howe's v. Far Hills

11/12/82

affidavit of P. David Zimmerman in opposition
to Δ's motion for summary judgment + in
support of Π's motion for summary judgment

P16

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SOMERSET COUNTY
L.R. OLSON, CLERK

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.

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

SUPERIOR COURT OF NEW
JERSEY
LAW DIVISION
SOMERSET COUNTY

Docket No. L 73360-80

CIVIL ACTION

AFFIDAVIT OF P.DAVID
ZIMMERMAN
IN OPPOSITION TO DEFENDANTS
MOTION FOR SUMMARY JUDGMENT
AND IN SUPPORT OF PLAINTIFFS
MOTION FOR SUMMARY JUDGMENT.

P. David Zimmerman, of full age, being duly sworn according
to law, upon his oath deposes and says:

1. I have prepared this Affidavit in opposition to the
motion of Defendant Planning Board of the Borough of Far Hills
for Summary Judgment and in support the Plaintiff's Motion
for Summary Judgment.

2. As a Professional Planner, it is my opinion that the Borough of Far Hills bears an obligation under the constitution of the State of New Jersey to provide, through its zoning and land use requirements, an opportunity for the development of least cost and low and moderate income housing in order to promote the general welfare by meeting a portion of the local and regional needs for least cost and low and moderate income housing. Considering the location of Far Hills, the history of the zoning of Far Hills, the physical, social and economic characteristics of the Borough, it is my opinion that the Borough of Far Hills is not exempt from the requirement that it provide through its zoning ordinance the **opportunity to build homes** for a mix of income levels. It is my opinion that the Borough of Far Hills is one of the types of municipalities which is subject to the housing obligation set forth by the New Jersey Supreme Court in the Mt. Laurel and Oakwood at Madison cases.

3. In its motion for Summary Judgment, the Planning Board of the Borough of Far Hills ignores the clear intent and purpose of the Mt. Laurel case and attempts to improperly and very technically apply the words of the Mt. Laurel decision relating to the criteria for a developing municipality. The application of these criteria to the Borough of Far Hills requires a careful analysis of the nature of the Borough itself and its location in the region and the State as well as a careful analysis of the prior zoning and land use regulation practices of the Municipality. With respect to the first criteria, the Borough

of Far Hills clearly has sizeable land area in view of the fact that the Borough has a substantial area of developable property. This is due to the fact that over ninety percent of the Borough of Far Hills is zoned for minimum lot size single family residential development on ten acre lots. Substantial/ numbers of these tracts in the square mile municipality remain vacant or undeveloped. Most of this property is not actively used for agricultural purposes, but rather is used merely for large prestigious estates. Obviously, the five square mile area of the Borough of Far Hills is less than the twenty-one square mile size of Mt. Laurel, but this five square mile area of largely vacant developable land can certainly be considered a sizeable land area within the meaning and intent of Mt. Laurel. The Mt. Laurel decision and its progeny have not set any specific threshold level for size of the municipality and such a threshold level would not necessarily be reasonable considering the basic objective of the Supreme Court in insuring that municipalities provide this opportunity for balanced housing through their zoning and land use regulatory schemes.

4. With respect to the criteria of Mt. Laurel regarding municipalities being outside of the central cities or older built-up suburbs, it is clear that the Borough of Far Hills is located outside central cities and is also located outside the older built-up suburbs of the area. It is nonetheless located in close proximity to the employment centers in the Morristown, Somerville, Bedminster and New Brunswick areas and could hardly be considered remote from the employment centers in the central

cities and older built-up suburbs.

5. With regard to the criteria of whether Far Hills has substantially ~~shed~~ its rural characteristics, as I pointed out in my deposition, there is a critical distinction between municipalities which are rural in character because of their agricultural use as opposed to municipalities which appear rural because of their prestigious estate country like character. Very few of the estates in Far Hills are utilized for agricultural purposes and indeed the State Development Guide Plan prepared by the Department of Community Affairs does not designate any

portion of Far Hills for agriculture but rather designates the Borough as growth area and limited growth area categories. The property owned by the plaintiffs is specifically designated by the Development Guide Plan as being in the growth area. Franklin Township ~~on the other hand, located in Hunterdon County,~~ which in a recent trial court decision was found to be a non-developing municipality is designated primarily agricultural in the State Development Guide Plan. Indeed, a substantial portion of that municipality is, in fact, utilized for agricultural purposes. It is the agricultural rural municipality which bears less of a responsibility for providing least cost and low and moderate income housing than the country or estate like rural municipality such as the Borough of Far Hills. The Borough of Far Hills clearly shed its agricultural rural nature many years ago when it was developed by real estate developers as an exclusive estate community. See Page 2 of my report entitled "Housing, Planning and Zoning Reports regarding Haueis and Ochs v. Borough of Far Hills." Said report is attached to this Affidavit. In my

opinion the Borough of Far Hills has clearly shed its rural characteristics within the intent and spirit and the definition of that concept as outlined in the Supreme Court decision in Mt. Laurel.

6. The Supreme Court in Mt. Laurel also indicated that Mt. Laurel was a municipality which had experienced population increase since World War II. The Borough of Far Hills has not experienced the same magnitude of growth in population experienced by Mt. Laurel but it is readily apparent that the limited population growth is directly related to the exclusionary nature of the Zoning Ordinance of the Borough of Far Hills. Indeed, but for the exclusionary zoning of Far Hills, it is highly probable that the Borough of Far Hills would have experienced much more significant population increases than the thirteen percent increase which it encountered between 1950 and 1980. Indeed, as illustrated on page 3 of my report, the Borough of Far Hills has in the past recognized and admitted that its limited growth is the result of its highly restrictive zoning. In 1964, a sub-committee on long range planning of the Far Hills Planning Board prepared a report which stated "Far Hills currently enjoys the unique position of stability in Somerset County. We have a low tax rate and a low rate of population growth and turnover. We owe our good position in part to a highly restrictive ordinance but also to our relative inaccessibility to major highways and industrial centers and to the disinclination of the large landowners to accept subdivision of their holdings ... " Later in the document the report indicates

that: "With the coming of two new highways our inaccessibility shield is destroyed and we are exposed to new pressures." In my opinion, because of the restrictive ten acre minimum lot size imposed on more than ninety percent of the Borough of Far Hills since 1932, the Borough of Far Hills has not experienced the population increases that it would have experienced if the zoning restrictions had been less severe. For example, even if only twenty acres of the Borough of Far Hills were rezoned to permit garden apartments or townhouses at a density of ten units per acre, the population would have increased ^{by} approximately 500 people based on a standard of 2.5 persons per household. This would have resulted in a population increase of approximately **ninety six percent (96%)** since World War II. Thus, in my opinion the technical language of the criteria of population increases since World War II must be viewed in light of the restrictiveness of the zoning of the Borough of Far Hills and cannot be viewed in vacuum.

7. In my opinion the Borough of Far Hills is clearly not a completely developed municipality. The Borough contains substantial areas of vacant developable land. It cannot be contended that the Borough of Far Hills is in any way fully developed especially considering the large underdeveloped estates and the substantial areas currently utilized for only one single family house on ten acre or larger tracts. I disagree with the conclusion of Alan Dresdner, the Planner for the Borough of Far Hills, with regard to his definition of "undeveloped land"

and with his conclusion that the Borough of Far Hills is a developed municipality. Mr. Dresdner has not provided any consideration for potential subdivision of the substantial areas of the Borough of Far Hills which are utilized for only one single family house on large estates. Nonetheless, even using Mr. Dresdner's figure of thirty percent of the Borough being undeveloped lands, it can clearly be concluded that the Borough of Far Hills contains areas of undeveloped property and cannot be characterized as a developed municipality.

8. The Borough of Far Hills is definitely within the path of inevitable future development within the meaning of the Supreme Court in Mt. Laurel. Its location in close proximity to Interstate Route 287 and Interstate Route 78. Their intersections with local roads and arterials is a key growth factor in the area which is in part responsible for current development pressures on Far Hills and surrounding communities. Growth has been experienced in many of the communities surrounding Far Hills, including Bedminister, Bernards Township, Peapack-Gladstone, Warren and other Townships. I disagree with the conclusion of Mr. Dresdner that the municipality is not in the path of inevitable growth and do not agree that the Borough has been passed by urban development because of geologic or topographic reasons. On the contrary, the restrictive ten acre zoning of the Borough of Far Hills is the primary reason for the Borough's limited growth.

The Borough clearly lies within the 287-78 development corridor and the Route 202 corridor identified generally by the village neighborhood destination in the Somerset County Master Plan and the growth area designation in the DCA State Development Plan. Both plans indicate the inevitable path of likely future development and also indicates the policies of the County Planning Board and the State Department of Community Affairs to direct growth towards certain portions of the Borough of Far Hills. The property of the plaintiffs is located directly within the growth area of the State Development Guide Plan and the Village Neighborhood designation of the Somerset County Master Plan.

9. In summary, it is my conclusion that but for the exclusionary zoning practices and policies of the Borough of Far Hills the Borough of Far Hills would meet all of the six criteria outlined by the Supreme Court in Mt. Laurel. In view of the fact that it was clearly not the intent of the Supreme Court to reward exclusionary municipalities such as the Borough of Far Hills, it is my opinion that the Borough is not excluded from the Mt. Laurel mandate that it provide the opportunity for satisfaction of a portion of the local and regional housing needs for low and moderate and least cost housing.

Under the circumstances, in considering the facts relating to the

Borough of Far Hills, it is my opinion that the ten acre zoning of the plaintiffs' property is unconstitutional in that it is unreasonable, arbitrary and capricious and is not directly related to any legitimate purposes of the police power. This conclusion is supported by the following facts:

(a) the New Jersey Department of Community Affairs specifically designated the majority of plaintiffs' property within the growth area designation recommending that state, regional and local policies target growth towards this property;

(b) the Somerset County's Master Plan has specifically designated the majority of plaintiffs' property within the Village Neighborhood designation recommending residential densities ranging from five to fifteen dwelling units per acre;

(c) the Borough and the property in question are located close within/proximity to Route 287 and Route 78 and directly accessible to major employment centers and other facilities;

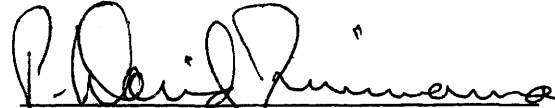
(d) the property in question is located directly adjacent to the community railroad station in the Borough of Far Hills which provides commuter service to New York City;

(e) the property fronts directly on Route 202 which provides access to Route 287 and to Morristown and other areas;

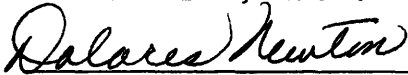
(f) the property is adjacent to the existing village area of the Borough of Far Hills and is integrally related to that village area;

(g) rezoning the property for multi-family housing consistent with State and County plans would promote the general welfare of the Borough and the region; and

(h) the ten acre zoning of the property in question is exclusionary and unreasonable and the history of the zoning of Far Hills clearly indicates that the ten acre zoning was intended to be exclusionary and has had an exclusionary effect.


P. DAVID ZIMMERMAN

SWORN AND SUBSCRIBED TO
BEFORE ME THIS 12th DAY
OF NOVEMBER, 1982.


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DOLORES NEWTON
1000 ... Jersey
... 24, 1984