

AM - Hauers v. Far Hills

11/15/82

letter brief in response to TB argument
that numerous legal issues (about
residential zoning in Far Hills) have not
been addressed by Δ in motion for
Summary judgment

+ exhibits

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November 15, 1982

SOMERSET COUNTY
L.R. OLSON, CLERK

Superior Court Clerk
 (Somerset County Clerk)
 110 Administration Building
 Somerville, New Jersey 07846

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

Dear Sir:

Please accept this as a letter brief in response to that of plaintiffs' dated November 12, 1982. In their Point I (page 3), plaintiffs argue that there are numerous legal issues that have not been addressed by defendants in their Motion for Summary Judgment. Specifically, plaintiffs contend that the 10 acre residential zoning in the Borough of Far Hills is not a proper use of the police power and accordingly arbitrary, capricious and unreasonable. In addition to being invalid under the Mount Laurel decision and under "more traditional tests of unconstitutionality of zoning ordinances". Presumably, plaintiffs intend to establish said invalidity through the opinion of experts. During the course of discovery, defendants were supplied with four reports by experts on behalf of plaintiffs, two of which were planning reports, one real estate report and one engineering report. The initial planning report was entitled "The Housing Obligations of Far Hills Borough" June 1982, prepared by Richard Thomas Coppola and Associates, Planners, which focuses upon the obligations of the Borough of Far Hills to provide low and moderate or "least cost" housing under the principles outlined in Mount Laurel and Madison Township. The second planning report was prepared by P. David Zimmerman, Professional Planner, dated October 5, 1982, and entitled "Housing, Planning and Zoning Report concerning Haueis and Ochs vs. Borough of Far Hills, New Jersey". In his letter attached to the report, Mr. Zimmerman indicates that "after careful analysis of the facts it is my conclusion that the zoning ordinance of Far Hills Borough is invalid and unreason-

November 15, 1982

able in that it is exclusionary". The report explores the Somerset County Master Plan Land Use, the Natural Resources Inventory for Far Hills, the Master Plan of Far Hills, the State Development Guide Plan and, in more detail, the major part of the report focuses upon criteria for higher density housing, the need for housing and suitability of the subject property for development purposes. The real estate report was prepared by Jon P. Brody, M. A. I. for the purpose of reviewing the subject property to determine the feasibility of a town house development being constructed on that site. The engineers report was prepared by Apgar Associates which concluded that natural constraints outlined in the Far Hills Master Plan related more to site suitability for development rather than minimum lot size and that plaintiffs' property was well suited for multi-family use. Thus, the discovery process as outlined in R.4:10-2 and R.4:17-4 has been completed and depositions of expert witnesses have been concluded. By this time in the course of litigation, each of the parties should have a fairly good idea of the position and the direction of the opposing party.

The equivocal positions of plaintiffs' planners in regard to the Borough of Far Hills being a "developing municipality" under the Mount Laurel decision and, accordingly, subject to its housing mandate are dispositive of the present litigation. The Coppola report indicated quite clearly "From the information presented hereinabove, it is arguable whether or not Far Hills Borough is a 'developing municipality'" (Exhibit A, attached). In addition, the Coppola report indicated that "While it is arguable whether or not Far Hills Borough is a 'developing municipality' as outlined by the State Supreme Court, it must also be emphasized that the current review by the New Jersey Supreme Court of the six (6) zoning cases concerning the Mt. Laurel theme may eliminate the distinction between 'developing', 'developed', and 'non-developing' municipalities." (Exhibit B, attached). Such speculative reasoning is hardly a sound basis for an expert's report in order to determine whether or not the Borough of Far Hills falls within the definition of a "developing municipality" under the Mount Laurel decision.

In like manner, plaintiffs' professional planner P. David Zimmerman focused primarily on the alleged exclusionary aspects of defendant Borough of Far Hills' zoning as a basis for his opinion of its invalidity. The text of that report indicated,

at page 14:

Whether a municipality is defined as developing, not developing or developed as cited in So. Burlington County NAACP v. Township of Mt. Laurel does not not (sic) affect the basic need for housing and the obligation of a community to provide the opportunity for balanced housing supply. There are two basic categories of need: 1) need generated within a community; 2: need generated by regional employment. (Exhibit C, attached).

Interestingly, Mr. Zimmerman's affidavit in regard to the within Motion in paragraph 2 appears to support the position that all municipalities have an obligation to zone for multi-family housing if there is a local and regional shortage as more fully articulated by Justice Pashman in Pascack Ass'n Ltd. v. Mayor and Council of Washington Township, 74 N.J. 470 (1977). Subsequently, Mr. Zimmerman in the remaining paragraphs of his affidavit embarks on a lengthy and detailed analysis of the six criteria outlined in Mount Laurel for "developing municipalities" and concludes that the Borough of Far Hills clearly comes within this category. One could not help but question the intellectual integrity of completely avoiding this process in his written report and thereafter appearing to supplement that report through the process of a Motion Affidavit. His affidavit conclusion in finding the Borough of Far Hills a "developing municipality" is at significant variance with his conclusion expressed during depositions when he agreed with the report of Richard T. Coppola that it is "arguable" whether or not Far Hills Borough is a developing municipality (Exhibit D, attached). Such significant inconsistency should not be accepted by the court as capable of being harmonized at a plenary trial and warrants a summary judgment in defendants' behalf.

Another issue to be addressed is Mr. Zimmerman's conclusion in paragraph 9 of his affidavit 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". First of all, such a conclusion is somewhat speculative since zoning under the Borough of Far Hills incorporates a business district, residence R-5 and R-9 districts which permit multiple family and higher residential density use. (Exhibit E, attached). Secondly,

Mr. Zimmerman's written report at page 6 indicates that the Somerset County Master Plan of Land Use provides basically for a village residential and neighborhood business area substantially where it is currently located in the Borough of Far Hills and the balance of the remaining area of the Borough is within the designation of "rural settlement" (3 acres and larger). There is a third area designated in the Plan of open space incorporating woodlands, steep slopes and flood plain areas. Mr. Zimmerman at page 7 concludes that the Somerset County Master Plan is a:

cogent and rational scheme or guide which represents an opportunity to Far Hills Borough to retain its low density, large lot zoning while it also accomodates modest development and expansion of the residential potential of the village at higher density.

In like manner, Mr. Zimmerman indicates that the State Development Guide Plan is very similar to the Somerset County Master Plan and indeed:

It appears that there is substantial conformance if not unanimity between the State Development Guide Plan and the Somerset County Master Plan.

The point to be made is that both the Somerset County Master Plan and the State Development Guide Plan designate those areas out of the flood plain and flood fringe areas and the village neighborhood business and residential districts to be reserved for low density zoning. Mr. Zimmerman found this approach to be a rational plan for Far Hills Borough. If one were to assume that instead of 10 acre residential zoning the Borough were to re-zone for predominantly 3 acre residential zoning, one might question how significantly the population of the Borough would have increased. Again, if one were to assume that the Borough were to mix its residential zoning into different types of low density zoning, one might question whether and to what degree the Borough population would have increased and, if it were, one might further question whether such circumstances would place the Borough closer to coming within the parameters of a "developing municipality" under Mount Laurel. Presumably, every municipality accused of exclusionary zoning, including Mount Laurel, is open to the same challenge that but for its exclusionary practices it would have had a greater population increase. But, the decision in

Mount Laurel anticipated an increase in spite of the exclusionary zoning. At any rate, if the Borough of Far Hills were to re-zone to some other type of low density residential use, how would this benefit plaintiffs' position. The ideal of the well balanced community, providing all kinds of housing for a cross-section of the regional population pattern, is quite obviously realizable physically only in the kind of developing municipality of sizable area identified in Mount Laurel as such. Pascack, supra., at page 486.

An additional conclusion is also quite obvious: if plaintiffs are correct and smaller lot zoning would have resulted in a larger population increase, then clearly the alleged "vacant developable land" would have diminished. Plaintiffs cannot have it both ways. The point to be made is that the nature and character of development would not have changed, i.e., village neighborhood - flood plain area - low density, rural settlement. This is exactly what Judge Conford was saying in Pascack, thus, the housing obligations of Mount Laurel and Oakwood at Madison should not apply to such a community.

If the Somerset County Master Plan and the State Development Guide Plan are reasonable approaches to sound zoning in the Borough of Far Hills as urged by Mr. Zimmerman (see Exhibit F, attached) then, whether the low density residential zoning consists of 10 acres or 3 acres becomes immaterial. The point is that the greater part of residential zoning in the Borough of Far Hills remain as "rural settlement" of 3 acres or more. The balance between the low density zoning as it exists in the Borough of Far Hills and the higher density designated in the village neighborhood business, R-5 and R-9 residence districts is a balance that establishes its character or nature of development. As pointed out in Pascack, supra., the kinds and nature of development as well as the degree of development dictate whether or not a municipality should be required to zone for multi-family housing.

One final point need be made in regard to the Motion Affidavit of P. David Zimmerman. In paragraph 9 of his affidavit Mr. Zimmerman ventures the opinion "that the ten acre zoning of 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". Mr. Zimmerman then sets out the reasons for his conclusion which substantially

relate to the details of the subject premises. The report of Apgar Associates, Engineers, as well as Jon P. Brody, Real Estate Expert, all are to the same effect. As was pointed out in Round Valley, Inc. v. Clinton Township, 173 N.J. Super. 45 (App. Div. 1980), both the Mount Laurel and Oakwood at Madison decisions were intended to address the problems of exclusionary zoning. They were not, however, intended to replace the rights and remedies afforded to landowners under the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. Thus, to use the principles enunciated in Mount Laurel and Oakwood at Madison to invalidate the zoning classification of a single isolated parcel of land without requiring a complete revision of a municipality's comprehensive zoning scheme would be to subvert the purposes for which the decisions were intended. Accordingly, if a party alleges that zoning and land use ordinances of a particular municipality are invalid as applied to his particular property, relief should be sought under N.J.S.A. 40:55D-70 (d). In the present matter before the court, the issue is not whether low density residential zoning in the Borough of Far Hills should be 10 acres, 5 acres or 3 acres - requesting the court to engage in such an academic exercise is speculative at best and places the court in a position of rendering advisory opinions. The significant issue in this case is whether the Borough of Far Hills is compelled to augment its existing zoning provisions for multiple family residential use (in general) and whether that additional multiple family residential zoning should apply to plaintiffs' property (in particular). Plaintiffs appear to be using the 10 acre residential zoning in the Borough of Far Hills as a vehicle to convert it to something less, although still low density residential zoning and, hopefully, in the process have the court act as a Board of Adjustment in granting a (d) use variance to permit multi-family zoning on its property. It is submitted that this approach is totally unwarranted.

Very truly yours,



J. Albert Mastro
Attorney for Defendant,
Planning Board of Far Hills

JAM:beo

cc: Robert K. Hornby, Esq.
Thomas F. Collins, Jr., Esq.

Far Hills Borough and has designated a limited portion of the municipality within their "Growth Areas" category. Moreover, the Somerset County Planning Board, in the 1971 Master Plan, included the same limited portion of Far Hills Borough in their "Village Neighborhood" category.

As quoted from the "State Development Guide Plan":

"The Growth Areas include those regions of New Jersey where development has already occurred to an extensive degree, as well as partially suburbanized areas where accessibility to employment and services make them particularly suitable for development. Several existing rural centers in the more peripheral regions have also been designated as locations where continuing developments would be appropriate. . . .

"To the greatest extent possible, the boundaries of the Growth Areas have been drawn to avoid areas with excessive environmental constraints to development such as steep slope areas in the northern part of the State and coastal wetland areas. In some instances, a compromise had to be made between recognized growth pressures stemming from economic and locational factors and the desirability of environmental preservation or the continuation of agricultural uses."

As quoted from the "Master Plan of Land Uses, Somerset County, N. J.":

"There are a score of Village Neighborhoods designated throughout Somerset County, but they are relatively small areas comprising approximately twelve square miles. . . . These areas are characterized by compact residential development that permit the formation of a cohesive social organism based upon an intimate pedestrian interaction between people. . . .

"The existing Villages often form a society embracing all income levels of the population, and in this respect they are microcosms of the nation. The housing ranges from modest homes to substantial residential establishments, often placed jowl to jowl. . . . Existing densities of development range over a considerable spectrum and there is no need to set up stringent density definitions. Density is also dependent upon the amount of open space preserved, but the compact areas of development may well approximate five to fifteen families per acre. . . ."

HOUSING OBLIGATIONS FOR FAR HILLS BOROUGH

From the information presented hereinabove, it is arguable whether or not Far Hills Borough is a "developing municipality". Far Hills Borough does not have a very large gross acreage; has not lost its rural characteristics; and has not experienced nor currently is experiencing great population increases. However, Far Hills Borough clearly is located outside the central city and built-up suburbs; is not substantially developed; has significant parcels of vacant developable lands remaining; and is located within the path of inevitable future growth.

The unique attributes of Far Hills Borough have been considered by the State Department of Community Affairs in their "State Development Guide Plan" and by the Somerset County Planning Board in their "Master Plan of Land Use". In both documents, only a small portion of the municipality is recognized as appropriate for relatively dense residential and intense non-residential development, while the remaining and predominant acreage of the Borough has been earmarked for low density development.

The limited portion of the Borough which has been earmarked for relatively dense and intense development is part of the Route 202/206 corridor area north of the Interstate Route 287/78 interchange in Pluckemin Village, which extends north and east to encompass the villages of Bedminster and Far Hills.

While it is arguable whether or not Far Hills Borough is a "developing municipality" as outlined by the State Supreme Court, it must also be emphasized that the current review by the New Jersey Supreme Court of the six (6) zoning cases concerning the Mt. Laurel theme may eliminate the distinction between "developing", "developed", and "non-developing" municipalities. Thereafter, there would be no question whether or not a municipality such as Far Hills Borough has an obligation to provide a diversity of housing types within its bounds. Moreover, the New Jersey Courts increasingly have been recognizing the importance of county and regional planning and the need for municipal master plans and implementing ordinances to be consistent with the planning done at the county and regional levels. As an example, Judge Leahy of the Somerset County Superior Court, in his December 13, 1979 opinion regarding "The Allan-Deane Corporation vs. The Township of Bedminster", stated the following:

"Prior to the enactment of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., it was recognized that the legislature had required that land use planning be done on a comprehensive basis, not on a compartmentalized municipal basis . . .

"Clearly, the legislature recognized the wisdom of that suggestion and took the logical and desirable next step. It enacted the Municipal Land Use Law. Since 1976 it has been required that the municipalities must adopt land use elements of their master plans before a zoning ordinance may be adopted and such ordinances must be "substantially consistent" with the master plan. Any inconsistency must be justified. N.J.S.A. 40:55D-62a.

"The municipal master plan must indicate its relationship to the master plan of contiguous municipalities, to the county master plan and to any comprehensive guide plan adopted pursuant to N.J.S.A. 13:1B-15.52. N.J.S.A. 40:55D-28d.

"If municipal zoning provisions must comply with master plans and the master plans must be consistent with county plans, it follows with indisputable syllogistic logic that municipal zoning must be consistent with county, and thus state and regional, planning.

"By enacting this requirement the legislature has provided the courts with an objective standard against which to measure the provisions of a municipal zoning ordinance. The courts need no longer attempt to resolve the complex political issues inherent in zoning and planning. So long as the general legislative program is effectuated through county, state and regional planning which adheres to the general constitutional principals recognized and elucidated in judicial decisions such as Mt. Laurel and Oakwood, the courts can confidently judge the constitutional legitimacy of municipal zoning and planning by measuring it against

9. Need for Housing

Whether a municipality is defined as developing, not developing or developed as cited in So. Burlington County NAACP vs. Township of Mt. Laurel does not affect the basic need for housing and the obligation of a community to provide the opportunity for balanced housing supply. There are two basic categories of need: 1) need generated within a community; 2) need generated by regional employment.

According to two State Department of Community Affairs documents: An Analysis of Low and Moderate Income Housing Need in New Jersey, 1973 and A Revised Statewide Housing Allocation Report for New Jersey, 1978 Far Hills is identified as having an existing physical housing need of between 14 and 32 units. These units include ones which are generally substandard or in which there is an inter-balance between housing costs and ability to pay for housing.

Approximately 27 percent of the existing population is 62 years or over according to the 1980 Census. This is an unusually high percentage compared with other communities. For example, slightly over 18 percent of the county population is 62 years or over.

Many elderly or mature citizens who have raised families in large homes find the upkeep, heating costs, taxes, etc. burdensome. Indeed their space needs are much more modest and they consequently seek out smaller sized dwellings: aptments, townhouses, duplexes, etc.

Similarly, young couples usually cannot afford nor have the space need for a large single family home. Again, a multi-family unit matches up house type with space needs and budget.

Although Far Hills has maintained that "the total region itself has little reason for growth" (Far Hills Master Plan, 1977), data with respect to employment indicates substantial regional growth. The following table illustrates the employment growth in 1970 and 1980 in Somerset County, Far Hills and adjacent communities.

TABLE OF COVERED EMPLOYMENT IN SOMERSET COUNTY AND SOMERSET HILLS MUNICIPALITIES FOR 1970 AND 1980

	<u>1970</u>	<u>1980</u>	<u>Percent Change</u>
Somerset County	46,498	79,324	+70.6
Far Hills Borough	242	463	+91.3
Bernards Township	375	5,346	+1,325.6
Bedminster Township	347	4,642	+1,237.7
Peapack Gladstone	363	848	+133.6
Bernardsville	1,371	2,020	+47.3

1 rural characteristics?

2 A It has not in my opinion lost its rural country
3 characteristics using country as a definition of rural
4 as opposed to agriculture.

5 Q Mr. Coppola concludes, "It is clear that
6 Far Hills Borough is not experiencing significant pop-
7 ulation increases." Would you agree with that?

8 A That one I agree with.

9 Q Mr. Coppola also concludes, "It is argu-
10 able whether or not Far Hills Borough is a developing
11 municipality." He has "developing municipality" in
12 quotes. Do you agree with that?

13 A Yes, I do.

14 Q Let me ask you again. In your opinion
15 does Far Hills fit within the standards of a developing
16 municipality as outlined in Mt. Laurel?

17 A I don't think that question can be answered in
18 a yes or no fashion.

19 Q Could you expand again on page 14, second
20 paragraph? Would you expand on the State-wide Housing
21 Allocation Report 1978 identifying an existing physical
22 need of between 14 and 32 units?

23 A I think the next paragraph generally talks about
24 what would characterize those -- the next sentence, I'm
25 sorry -- would characterize those units as being one which

ARTICLE 4 -- REGULATIONS CONTROLLING RESIDENCE ZONES .

4.1 STATEMENT OF PURPOSE.

Owners of land and buildings within the Borough who wish to improve residential buildings or develop their land residentially should consider the following:

1. Since few tracts are the same size, shape and area, and since no two have the same physical characteristics, the layout and treatment of all construction and site development (other than single-family, free-standing dwellings on lots that are not part of a development) are subject to the review and approval of the Planning Board within the dimensional rights established on the Schedule, Diagrams, and Zoning Map, Standards and other provisions of this Ordinance and the Subdivision Regulations.

2. With respect to buildings, no distinctions are made in this Ordinance between dwelling types, required parking spaces, or auxiliary or agricultural buildings within the overall density control of the Floor Area Ratio. Other controls include front yard setbacks to separate structures from traffic, side yard setbacks to aid neighborly privacy, height restrictions to protect the skyline, a minimum sky exposure to furnish light to the windows of habitable rooms, and minimum room and unit sizes to protect the permanent usability of dwellings. These dimensional provisions are set forth on the Schedules and Diagrams contained in this Ordinance.

3. With respect to water supply, stream pollution and flood control, livestock and people have much in common. In principle there is no difference in the run-off from a roof or pavement whether it serves an elderly widow, a family, or horse or car.

4.2 PRINCIPAL USES AND STRUCTURES PERMITTED.

4.2.1 Single-Family Detached Dwellings on separate lots in RS-10.

4.2.2 Manufactured or Modular housing complying with the State Construction Code but not fixed or mobile house trailers in R-9 and R-5.

4.2.3 Single-Family Dwellings. Two-Family side by side (Twin) Dwellings. Multiple Dwelling and common open spaces situated within the bounds of the Village in R-9 and R-5.

4.2.4 Conversions -- Single-family houses existing as of May 9, 1932 and conforming to all provisions of this Ordinance may be converted to two or multi-family houses provided all other provisions of this Ordinance are met by each dwelling, except for yards between dwellings and provided sewage disposal is found adequate by the Board of Health.

4.2.5 Farm and agricultural uses, including crops, nursery, horticulture, floriculture, silviculture, poultry, small animals and livestock raising.

4.2.6 Parks and playgrounds.

4.2.7 One identification sign for each dwelling unit.

4.2.8 Home occupations.

4.2.9 Off-street parking of boats and house trailers belonging to the owner or tenant of the premises, provided the same are fully screened on three sides.

4.2.10 Underground utilities.

4.2.11 Fences and walls not over seven (7) feet in height, except that no hedge, fence, or wall planting exceeding 12 inches in height shall be permitted within fifty (50) feet of any intersection of street right-of-way lines. No landscaping exceeding 12 inches in height is permitted within 10 feet of any street right-of-way line within 50 feet of any driveway.

Excerpt from Far Hill Zoning Ordinance
(Adopted 6/8/81)

EXHIBIT E1

ARTICLE 8 -- REGULATIONS CONTROLLING DENSITY, SETBACKS, HEIGHT, SKY EXPOSURE AND STREET FRONTAGE.

8.1 The maximum floor area ratio, lot size, setbacks, height and frontage requirements for each Zone and for conditional uses shall be as set forth in the table designated Schedule "A" which is hereto attached and made a part hereof. The minimum sky exposure requirement is set forth in Schedule "B" also attached and made a part hereof.

8.2 The aggregate "net habitable floor area" (see Definitions) in any dwelling unit shall not be less than shown below.

8.2.1 Number of Full Bedrooms	Minimum Net Habitable Floor Area
1	600 sq. ft.
2	900 sq. ft.
3	1,200 sq. ft.
4	1,600 sq. ft.
5	2,000 sq. ft.

8.2.2 In all dwelling units there shall be at least one bedroom of at least 150 sq. ft.

8.2.3 Additional floor area shall be required for related purposes such as (but not limited to) dead storage, utilities, service, and recreation but excluding parking. This related space must be located next to habitable floor areas or in basements, attics, and accessory buildings adequately equipped for the intended purpose, and within 100 ft. of the dwelling unit served. It is recognized that families in single-family houses require more such related space than families in multiple housing. Accordingly, the minimum floor area required by 8.2.1 shall be increased as follows:

Single-Family houses	plus 20%
Multi-dwelling units	plus 10%

SCHEDULE A: Table of Dimensions

Zones	R -10	R-9	R-5	B
Maximum Floor Area Ratio on Gross Site Area, %	1%			
Minimum Lot Size (1)	500 ft.	60 ft.	50 ft.	50 ft.
Minimum Lot Area	10 Ac	9000 sf.	5000 sf.	5000 sf.
Minimum Setback from street lines (2)	200 ft.	25 ft.	25 ft.	25 ft.
Minimum Setback from other property lines	100 ft.	10 ft.	10 ft.	5 ft.
Maximum Height (3)	35 ft.	35 ft.	35 ft.	35 ft.

- (1) The diameter of the circle which can be inscribed within the lot lines.
- (2) Includes each street on corner lots.
- (3) Except for agricultural buildings which may not exceed 40 feet.

* * *

8.2.4. Standards of the New Jersey Housing Finance Agency may be followed in any development of that Agency.

In 1966 a new zoning ordinance was adopted by the Borough. The zoning ordinance established for residential zones with the following minimum lot sizes. Residence A - 10 acres, Residence B-1 - 1 acre, Residence B-2 - 9,000 square feet, Residence B-3 - 5,000 square feet. The village area was basically put into three residential categories from 5,000 square feet to one acre. Most existing residential lots were either 5,000 or 9,000 square feet in size. A sub-division characterized by the streets Schley, Ludlow and Far Hills was in the 9,000 square foot zone category.

SOMERSET COUNTY MASTER PLAN OF LAND USE

In 1970 the Somerset County Planning Board adopted and published the Somerset County Master Plan of Land Use Towards The Year 2000. As the Plan states, "The goal of this Master Plan will be to provide a frame of reference for all future development by all levels of government, as well as private development, so that Somerset County will develop rationally in an economic and aesthetic manner," The Plan contains a map entitled Somerset County Master Plan of Land Use which places property in the Borough of Far Hills in three categories: village neighborhood, rural settlement and open space.

The Plan recognizes that there are a score of village neighborhoods designated throughout Somerset County. These are relatively small areas which have a long history as places of residences, but also include institutions, commercial facilities and even some small industrial establishments. Most importantly, however, these areas are characterized by compact residential development that comprise a neighborhood. Usually this neighborhood contains housing ranging from modest homes to substantial residential establishments. The more compact areas of development may have densities approximately five (5) to fifteen (15) families per acre, and the size of the village may vary from 1 to 10,000 persons.

The village neighborhood for Far Hills as outlined in the County Master Plan includes three areas. The first is the housing, commercial and railroad uses located between Route 202, Peapack-Far Hills Road and the Delaware Lackawanna Railroad Line. Further to the north is the second area, a single family sub-division defined by Far Hills Avenue, Schley Road and Ludlow Avenue. Lastly, a third area of property on the east side of the Delaware Lackawanna Railroad up to approximately Sunnybranch Road is also included in the County's village neighborhood designation. The total area is approximately 165 acres in size. The only sizeable parcel that is vacant in that area is the nineteen (19)

acre subject property located at the intersection of Sunnybranch Road and Route 202. At the present time, there are approximately seventy-nine (79) residential structures in the area designated village residential which contain approximately 222 persons or about thirty-three percent (33%) of the Borough population.

The Master Plan proposes guidelines for both preserving the charm and attractiveness of the villages and accommodation for new development; "The new housing development in the vicinity of the village should endeavor to replicate both the compact development and the open space settings. In this process, apartment development may be an optimum form of development to the smaller lots which also would be valid in this context. The large tracts of garden apartments or single family housing often present a monotonous uniformity that would clash with the architectural style of the village. The technique of a variety of different stylings with varying numbers and groupings of townhouses intermingled with detached houses, is worthy of consideration." (Page 47). Further on, the Plan also states: "No municipality has been excluded from proposals for a higher density of residential development located in areas suitable for such development. Areas where public utilities are, or can be readily available, and where the road networks warrant, have been designated as village neighborhood and community development. The implementation of this phase of the County Land Use Plan will reinforce this balanced development of land." (Page 52). Indeed, the Plan envisions growth in all the Somerset Hills communities, "The Somerset Hills municipalities of Bedminster, Far Hills, Peapack and Gladstone, and Bernardsville, our forecasts have increased from 25,000 in 1970 to 35,000 in 1980 and to 54,000 in your year 2000." (Page 52). Specifically, Far Hills Borough is shown as having a population of 2,000 by the year 1990. (Page 41).

Most of the remaining Far Hills Borough area, not village residential, falls in the designation rural settlement. Areas in Somerset County with large acreage zoning (3 acres and larger) are designated rural settlements. The reasons buttressing this large lot type of land use designation relate to open space, aesthetics and preservation of environmentally sensitive areas. The Plan also points out that there is a valid need to limit sprawl and together with concentrating development in more suitable areas such as the village neighborhoods, residential neighborhoods and community development areas, the gross numbers of population and housing units expected can be accommodated in Somerset County and in the municipalities of the County. Essentially the Plan states, "The Somerset County Master Plan of Land Use would

distribute the growth in population by providing a greater variety of housing, including apartment development and community and neighborhood centers, and emphasize low density characteristics of the rural settlement areas." (Page 52).

The third land use category presented in the Somerset County Plan for Far Hills Borough is open space. This designation characterizes the northern most properties in the Borough as well as flood plain area on either side of the North Branch of the Raritan River. The designation of open space as it pertains to Far Hills Borough characterizes steep slopes and heavily wooded areas, and the flood plain areas astride the North Branch of the Raritan River.

In summary, the Somerset County Master Plan presents a rational plan for Far Hills Borough. First, to accommodate growth, the village neighborhood area is identified. This area will incorporate both existing higher density housing and opportunities for modest expansion of the village to accommodate, hopefully, a variety of housing consistent with the architecture and ambience of the village. Second, the rural settlement area will remain as low density residential recognizing its open space quality, aesthetic features, environmental characteristics and land use traditions. The third area is open space which characterizes woodlands, steep slopes and flood plain areas. The Somerset County Master Plan presented is a cogent and rational scheme or guide which represents an opportunity to Far Hills Borough to retain its low density, large lot zoning while it also accommodates modest development and expansion of the residential potential of the village at higher densities.

Indeed, the Somerset County Plan indicates that, "The expectation of extensive demands on the land by both residential and industrial development is balanced off by the preservation of about forty percent (40%) of the land in the open space or rural settlement pattern of development." (Page 8).

A substantial cause element for the industrial development in Somerset County is the highway system and the new interstate highways in particular, "The interstate freeways have developed their own momentum of industrial development pressures with only a tenuous relationship to the older centers. I-287 and now I-278 and the forthcoming I-95 are undoubtedly major factors in the location patterns of industry." (Page 13).

Lastly, in the area housing, the Plan makes several significant statements, "It indicated that under present federal housing programs the vast majority of wage and salary employees, not just lower income or minority groups, are being priced out of the housing market." (Page 39).

Also, "On the local level the County Planning Board has advocated greater attention be given to providing a variety of community development and of housing types, including a range of housing to meet needs of all segments of the population." (Page 39).

NATURAL RESOURCES INVENTORY

The Natural Resources Inventory of Far Hills dated October 1975, recommended that "Far Hills needs a Master Plan based on environmental factors, which would provide growth in appropriate areas (emphasis added). It should control stream corridors and flood plains, regulate use of steep slopes and protect wetlands, and consider aquifers on site and regionally as a framework for density determination. Far Hills must recognize environmental values and protect them in a framework of reasonable land use controls." (Page X, Vol.1)

The Natural Resources Inventory (NRI) in 1975 recognized "that the construction of I-287 in 1967 has brought development pressures on Far Hills, despite no direct access. The coming of A T & T to neighboring Bedminster is seen as a harbinger of growth pressure... Future needs can be met by wise management through careful regulation and use of available resources." (Page 43, Vol. 1).

STATE DEVELOPMENT GUIDE PLAN

In May 1980, the New Jersey Department of Community Affairs, Division of Planning, published the State Development Guide Plan Revised Draft. In that Plan, specifically on page 133 is a map of Somerset County which shows all areas of the County divided into four land use designations. The Borough of Far Hills is shown in two categories: growth area and limited growth area.

More specifically, the Plan identifies the growth area category as "growth area - areas marked by existing development with existing infrastructure which can accommodate further growth without endangering vital natural resources, incurring massive new public investments, or contributing to inefficient uses of energy or land resources." In summary, the growth areas are, as the name implies, sections of Far Hills where development, new housing, etc. is recommended. The map shows the western portion of the Borough in this category which includes the existing Far Hills village and most of the subject property. It compares to the village neighborhood designation found in the Somerset County Master Plan.

The remaining and majority area of Far Hills is categorized limited growth area which is defined in the State Development Guide Plan as "areas not yet intensively developed nor of major environmental significance which may grow at a moderate pace and may serve as a reserve for future development."

There are two other categories shown on the State's Plan map of Somerset County: agriculture area and conservation area. Neither of those two categories define any property in Far Hills Borough.

It appears that there is substantial conformance if not unanimity between the State Development Guide Plan and the Somerset County Master Plan. They both identify the Far Hills Village and adjacent and contiguous properties as areas for reasonable expansion to accommodate present and future development. Interestingly, both plans also identify significant areas in Far Hill Borough as low density or limited growth. In this sense, the Plans recognize the principle that growth can be accommodated in well chosen sites while low density areas are retained.

CRITERIA FOR HIGHER DENSITY HOUSING

Municipal land use decisions in New Jersey have been based upon many considerations. In terms of planning, these considerations include location suitability criteria, environmental capabilities and judicial directives. In addition, land use factors such as maintaining a certain character or "image" of a community can be an important community goal.

The location of higher density housing like multi-family dwellings is an essential element in the municipal planning process. Normally, land can be evaluated