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- Far Hills (Hauer v. Far Hills)

9/7/84

memorandum of law in support of far hills
Challenge to SDGP

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ALOIS HAUEIS, et al., : SUPERIOR COURT OF NEW JERSEY
 Plaintiffs, : LAW DIVISION: SOMERSET COUNTY/
 vs. : OCEAN COUNTY
 : DOCKET NO. L-73360-80
 BOROUGH OF FAR HILLS, et al., : Civil Action
 Defendants. : (Mt. Laurel)
 :

MEMORANDUM OF LAW IN SUPPORT
 OF FAR HILLS' CHALLENGE TO THE SDGP

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PRELIMINARY STATEMENT

The issue to be decided in the present phase of this litigation is whether the Borough of Far Hills should properly be subjected to a regional Mt. Laurel zoning obligation, given the unique circumstances presented in the record. This court must decide whether the superficial form of the SDGP concept should be elevated over the substance of that planning document, given the conflict between the two in the present case. Dogmatic adherence to form will produce an arbitrary and capricious result, which may be avoided by an adjustment to the concept map based upon the substance of the SDGP.

Far Hills does not contend that it was arbitrary and capricious for a generalized concept plan such as the State Development Guide Plan ("SDGP") to show a small portion of Far Hills as being on the periphery of a much larger growth area; rather, Far Hills' basic contention is that sound land use planning requires the adjustment of the growth area boundary line based upon more detailed information when this growth area designation is used to determine the locus of the regional Mt. Laurel zoning obligation. If that were done, Far Hills would be entirely excluded from the growth area. Absent such an adjustment or refinement of the growth area boundary, the application of the SDGP to Far Hills for Mt. Laurel purposes is clearly arbitrary and capricious and contrary to the Supreme Court's overriding emphasis

and intent in Mt. Laurel II that regional Mt. Laurel zoning obligations be imposed in a manner consistent with principles of sound land use planning.

While Judge Lucas perceived the only issue to be whether as a concept plan the SDGP's designation of Far Hills was arbitrary and capricious, this Court should not interpret the applicable law so narrowly. This Court has been entrusted with considerable authority by the Supreme Court for purposes of implementing the Mt. Laurel doctrine. Implicit in that delegation of authority is the discretion, and indeed the obligation, to give due consideration to the overriding purpose and intent of the Supreme Court when interpreting and applying the Mt. Laurel II decision. Viewed from that perspective, the purpose and intent of the Supreme Court would be best effectuated by a finding that Far Hills should not be subjected to a regional Mt. Laurel obligation because of the unique planning facts.

STATEMENT OF FACTS

The relevant facts are generally summarized in Judge Lucas' findings which he submitted to the parties and this Court. A more detailed presentation of the relevant facts is contained in the proposed findings previously submitted to Judge Lucas on behalf of Far Hills, with citations to the applicable portions of the record. The relationship between these more detailed facts and Judge Lucas' findings is summarized in our letter to Judge Lucas, dated July 18, 1984. These more detailed findings are fully supported by the record, and they have not been seriously contested.

The facts reveal that the extreme western portion of Far Hills, including the compact village area, was included within the SDGP growth area when the original draft (1977) was amended to add a growth corridor along Route 206 to account for major new developments in Bedminster Township and the Borough of Peapack-Gladstone. Mr. Richard Ginman of the Department of Community Affairs ("DCA"), the drafters of the SDGP, specifically acknowledged that the specific characteristics of Far Hills were not considered when the boundary line of the Route 206 growth corridor was drawn. Thus, there was no conscious decision to include a portion of Far Hills; a line was simply drawn delineating a general growth area at some distance on both sides of Route 206. This was fully confirmed by Mr. Reuben, of the Somerset County

Planning Board ("SCPB"), who participated in the SDGP planning process. Mr. Reuben testified that there were no specific discussions concerning the inclusion of any part of Far Hills within this growth area.

The testimony of both Mr. Ginman and Mr. Reuben also provides further evidence of the significant limitations of the SDGP as a very general concept plan. Mr. Ginman testified that they anticipated that adjustments would be made at the local level based upon local conditions. Indeed, Mr. Ginman testified that the amount of land designated within growth areas contained three times the amount of vacant land needed to accommodate future growth through the year 2000. Thus, there was a significant built-in surplus of growth area in order to allow for such local adjustments. Similarly, Mr. Reuben testified that everyone involved in the SDGP planning process believed that the SDGP concept map was only a general guide which would not be literally applied in an exact and definitive manner. Furthermore, Mr. Reuben testified that it would be arbitrary and capricious to apply the SDGP boundary lines in such a manner. (Reuben, 11-9-83, T95-T96).

In short, the testimony of these impartial planners who were directly involved in the SDGP planning process reveals an absence of any consideration of the specific characteristics of Far Hills when a portion of Far Hills was included in the edge of

the Route 206 growth corridor. Such an analysis was deemed to be unnecessary, since the SDGP was viewed as merely a general concept plan which would not be literally applied to a municipality such as Far Hills. The special significance of this testimony in the present case is revealed once consideration is given to the relevant planning facts of Far Hills.

The testimony and exhibits at trial with respect to these planning facts demonstrate that the growth area boundary should be adjusted to exclude Far Hills. The planning facts show that the growth area in Far Hills consists of the following:

1. The compact and fully-developed village area, containing less than 100 residential units, housing approximately 250 persons, and limited commercial and service uses, primarily for local residents.

2. Most of the remaining area consists of undeveloped lands which are unsuited for significant development because of environmental constraints, including flood plain, steep slopes, high water table and depth to bedrock of less than one foot.

3. A public open space parcel known as the Fairgrounds property and two significant quasi-public open space parcels: Moorland Farms, with a deed restriction against development, and property owned by the Upper Raritan Watershed Association, which is held for conservation purposes.

4. Approximately one-half of plaintiffs' property, or perhaps 10 acres, is in the growth area. This is the only vacant parcel potentially available for any significant development. There is another vacant parcel which is potentially developable, but it is too small for any significant development.

In summary, the uncontested planning facts show that the portion of Far Hills shown within the fringe of the Route 206 growth corridor of the SDGP is almost entirely either unsuited or unavailable for development due to environmental constraints, public and quasi-public open space and the existing development of the village area. The only exception is approximately one-half of plaintiffs' property, which amounts to only about 10 acres. These planning facts do not indicate an area which should be targeted for significant growth and development. This is particularly true when one considers the tremendous growth-inducing impetus which would be created by the imposition of a regional Mt. Laurel zoning obligation.

The planning evidence and testimony at trial also demonstrates that the remainder of Far Hills, which is in a limited growth area, is unsuited and inappropriate for development. That portion of Far Hills is very rural in character, with a dispersed population of about 525 residents, providing an important open space resource. There are significant areas of both steep slopes and flood plains throughout this portion of Far Hills, which militate against development. Thus, the limited growth area

designation of this portion of Far Hills, which comprises the majority of the municipality, recognizes and is wholly consistent with the environmental constraints and the desirability of preserving and protecting its open space, rural character and environmental resources.

Finally, and perhaps most important of all, the planning facts show that the Far Hills growth area is physically and functionally separated from the Route 206 growth corridor by the North Branch of the Raritan River, including adjacent flood plains, and the steep slopes of the Watchung Range. These physical features form a natural boundary for the Route 206 growth corridor¹, and the SDGP boundary should accordingly be adjusted based upon this planning information. This adjustment would require the growth area boundary line to be moved only one-quarter to one-half mile to the west. This adjustment would be entirely consistent with an in furtherance of the purposes and intent of the SDGP. Without such an adjustment, the imposition of a regional Mt. Laurel zoning obligation on Far Hills might well result in the unwarranted expansion of development beyond the growth area and into the limited growth area, contrary to the planning policies of the SDGP.

1. Indeed, this natural boundary of the North Branch and the steep slope of the Watchungs is the most obvious reason why Far Hills has remained undeveloped.

ARGUMENT

IT WOULD BE ARBITRARY AND CAPRICIOUS
TO IMPOSE A REGIONAL MT. LAUREL
OBLIGATION ON FAR HILLS BASED UPON
THE SDGP CONCEPT MAP

The New Jersey Supreme Court in So. Burlington Co. NAACP v. Mt. Laurel Township, 92 N.J. 158 (1983) ("Mt. Laurel II"), substituted the State Development Guide Plan ("SDGP") for the "developing municipality" standard as the primary determinant of the locus of the regional Mt. Laurel zoning obligation. The reasons for this change were clearly articulated and emphasized by the Court. The Court recognized the significant growth-inducing effects on a municipality of the imposition of a regional Mt. Laurel obligation and concluded that this process should be guided by sound principles of regional land use planning. 92 N.J. at 224 and 238. The Court further determined that the SDGP represented a rational statewide plan which was appropriate for this purpose. 92 N.J. at 225-237.

The Supreme Court declined to make the SDGP conclusive as to the locus of the regional Mt. Laurel obligation, because the Legislature had merely authorized the SDGP as a planning guide; the Legislature did not mandate that zoning or land use decisions actually conform to the SDGP. 92 N.J. at 239. The Court accordingly enumerated three specific potential exceptions to the determinative effect of the SDGP. 92 N.J. at 240.

The first exception permits a trial court to vary the locus of the regional Mt. Laurel obligation upon a showing that the SDGP's designation of a municipality is arbitrary and capricious. A critical caveat to this exception is the requirement that the challenger "accept the premises of the SDGP." Id. That phrase is subject to two different possible interpretations, each of which has radically different consequences. First, the "premises of the SDGP" might be construed to refer to the character of the SDGP concept map as a general, statewide, concept plan; thus, a challenger would have to show that as a concept plan the SDGP's designation of a particular municipality is arbitrary and capricious. Alternatively, the "premises of the SDGP" might be construed to refer to the more detailed substantive planning policies embodied in the SDGP planning document (not just the concept map); thus, a challenger would have to show that the SDGP's designation of a particular municipality is arbitrary and capricious given the specific planning facts and the substantive planning policies of the SDGP. In effect, the former interpretation merely considers the concept plan procedure, while the latter interpretation focuses upon the substantive consequences of a given SDGP designation in light of the specific planning facts.

Judge Lucas' proposed conclusions of law show that he adopted the former interpretation of this exception in recommending that the SDGP not be found to be arbitrary and capricious

as applied to Far Hills. In support of that conclusion, Judge Lucas noted the testimony of both Mr. Ginman and Mr. Rueben. The cited testimony by Mr. Ginman was that DCA wished to avoid the duplication of planning at the county and local levels, and thus the SDGP planning effort was only directed at broad-based planning policies. Mr. Ginman further testified that, given that very general purpose of the SDGP concept map, the growth area boundary line in Far Hills was not arbitrary and capricious. Judge Lucas also noted that Mr. Reuben testified that, given the general scope of the SDGP, the growth area shown in a portion of Far Hills was not arbitrary and capricious.

The cited testimony clearly shows that Judge Lucas viewed the issue to be whether the SDGP was arbitrary and capricious as a general concept plan. When the issue is so framed, a nearly insurmountable burden is placed upon a party such as Far Hills which asserts this challenge to the SDGP. The testimony concerning the SDGP planning process and the intended use of the SDGP as a concept map unequivocally demonstrates that the resulting boundary lines were not intended to be precise and that the concept maps were not intended to be used as site specific maps or land use maps. Indeed, the SDGP (at pp. ii-iii) notes that the "Concept Map consists of broad, generalized areas without site-specific detail or precise boundaries." Given such broad and general parameters for the SDGP concept map, it would be inherent-

ly impossible to show that a growth area boundary line should be adjusted based upon specific localized planning information.

This interpretation of the arbitrary and capricious exception to the SDGP is based upon an unnecessarily literal reading of one small portion of the Mt. Laurel II opinion. A more reasonable interpretation of this exception would be one which focuses upon the substantive planning goals and policies of the SDGP, rather than merely its character as a general concept plan. These are the truly important "premises" of the SDGP with which the Surpeme Court was concerned. The Supreme Court's clear intent was that the regional Mt. Laurel obligation be imposed consistent with principles of sound land use planning. That intent can be best implemented by this court by the thoughtful and well-reasoned use and adjustment of the SDGP where necessary to avoid arbitrary and capricious results, as opposed to the rigid and dogmatic site-specific application of the generalized concept map contained in the SDGP. The testimony unequivocally demonstrates that such an application of the SDGP concept map was never intended or foreseen by the drafters of the SDGP.

The most important point is that, as testified to by Mr. Ginman, the drafters of the SDGP intended that adjustments would be made at the local level, based upon local conditions. This was also the understanding of the Somerset County Planning Board, according to Mr. Reuben's testimony. Indeed, Mr. Ginman testified

that when the SDGP was being prepared, there were substantive conversations between the Department of Environmental Protection and DCA, in which DEP argued that the SDGP map should be as detailed as possible in order to show environmentally sensitive lands. Such a more specific mapping was rejected by DCA as unnecessary because of their view that the more detailed identification of areas unsuitable for development should be left to the counties and municipalities. (Ginman, 11-2-83, T153-T156) In short, the drafters of the SDGP both intended and expected that the concept map would be adjusted and refined when applied on the municipal level.

The necessity and propriety of such an adjustment in the present case is demonstrated by consideration of relevant planning goals and policies presented in the SDGP. A dominant theme of the SDGP was the preservation of open space and natural resources and the protection of environmentally sensitive lands. The SDGP expressed this environmental concern as follows:

There is now in New Jersey a recognizable conservation-oriented action in response to the State's and Nation's diminishing resources. The State Development Guide Plan is part of this response. (SDGP at p. ii)

Goal I of the SDGP is stated as follows:

To protect the State's air, water, wildlife and land resources from the adverse affects of man's activities and to correct past misuses. (SDGP at p. 21)

Goal II of the SDGP is stated as follows:

To preserve the open space necessary for a quality environment that would be adequate for the population of the State. (SDGP at p. 22)

The SDGP specifically acknowledged that in addition to large resource areas of statewide significance, there are critical environmental features of lesser sizes to be protected throughout the state. (SDGP at p. 87) The SDGP further indicated that "in most cases such natural features have not been mapped in the Guide Plan because of the scale and/or inadequate data." Id. The SDGP emphasized the importance of protecting such critical natural areas and enumerated various policies which were appropriate to achieve that goal. These policies included restriction of development in floodways, maintaining buffers along stream corridors, strict control of development in areas of high groundwater table, control of development in headwater areas and discouraging development on steep slopes. (SDGP at pp. 88-89)

These important planning goals and policies of the SDGP have direct applicability to Far Hills. A review of the planning facts of Far Hills conclusively demonstrates that the small area of Far Hills shown within the growth area on the SDGP concept map is almost entirely inappropriate for further development according to the express policies of the SDGP concerning environmental protection and open space preservation. As previously discussed, most of this area of Far Hills is subject to environmental constraints, and the remainder is either fully developed or main-

tained as public or quasi-public open space. According to the express policies of the SDGP concerning environmental protection and preservation of open space, these areas should not be significantly developed. The only portion of this growth area which could potentially be developed without conflicting with those express policies of the SDGP is approximately 10 acres of plaintiffs' property. That small acreage does not provide any reasonable basis for designating any portion of Far Hills as part of a growth area. Thus, the adjustment and refinement of the SDGP concept map based upon localized planning information, as anticipated by the drafters of the SDGP, would necessarily result in the elimination of the small growth area in Far Hills.

Conversely, the use of the SDGP concept map without such an adjustment, to impose a regional Mt. Laurel obligation on Far Hills would be arbitrary and capricious in light of the important planning goals and policies of the SDGP, which constitute important "premises" of the SDGP. If the planning facts before this Court are simply disregarded and Far Hills is dogmatically subjected to a regional Mt. Laurel obligation, Far Hills may be compelled to rezone for considerable additional development in an area which is simply unsuited from an environmental and regional planning perspective for the bulk of such development. The incompatibility between such development and the stated policies of the SDGP far outweigh any conceivable detriment which might

arguably result from this minor reduction of the SDGP growth area. As testified to by Mr. Ginman, the SDGP growth areas contain approximately three times the vacant land needed to accommodate new development through the year 2000. Thus, there is an overwhelming surplus of developable land in the growth areas to accommodate new development and to fully implement the Mt. Laurel doctrine. There is simply no valid reason to needlessly sacrifice important environmental and planning policies by blindly applying the SDGP concept plan designation of Far Hills without any regard to the relevant planning facts.

It must be emphasized that this refinement of the SDGP to avoid an arbitrary and capricious result would not constitute the substitution of the court's judgment for that of the drafters of the SDGP, as discussed by the Supreme Court in Mt. Laurel II. See 92 N.J. at 241. To the contrary, this refinement would be fully consistent with and in furtherance of the intent of the drafters of the SDGP as set forth in the SDGP itself and as presented in Mr. Ginman's testimony. The drafters of the SDGP did not consider the detailed planning facts of Far Hills, which are now before this court, when they drew the growth area boundary line to include a portion of Far Hills. They clearly recognized, however, that such information would be essential in order to further the substantive planning goals and policies of the SDGP when making decisions with major growth and development conse-

quences on the local level. This court should therefore implement that intent of the SDGP in extreme cases such as the present one; that intent should not be summarily disregarded. There is absolutely no indication that the Supreme Court intended the Mt. Laurel doctrine to be implemented so as to produce results so inconsistent with the sound land use planning principles of the SDGP; rather, a contrary intent is clearly expressed in the Mt. Laurel II opinion.

The recognition of this interpretation of the arbitrary and capricious exception to the SDGP would not represent a radical revision of the Mt. Laurel doctrine, since the adjustment and refinement of the SDGP growth area in the present case is necessitated and justified by the unique planning facts and circumstances of Far Hills. Such unique circumstances would only be found in the rare case where a municipality on the periphery of a growth area has lands designated within the growth area which are almost entirely unsuited for additional development based upon the stated planning goals and policies of the SDGP. Thus, the important goal of certainty with respect to the locus of the regional Mt. Laurel obligation would not be materially impaired; this goal of certainty would merely be tempered under these unique circumstances by the countervailing policy of imposing the Mt. Laurel obligation in a well-reasoned and rational manner, consistent with sound land use planning. The Supreme Court clearly

intended the Mt. Laurel doctrine to be intelligently applied in this manner.

When the Supreme Court in Mt. Laurel II provided for the use of the SDGP in Mt. Laurel litigation, the Court had to present guidelines for this use of the SDGP without the benefit of prior practice and experience with this approach in the trial courts. The Court recognized that this innovative use of the SDGP might produce arbitrary and capricious results under some circumstances, but it was impossible under the circumstances for the Court to foresee in advance and provide detailed guidance with respect to all such situations. In this case this court must interpret and apply the arbitrary and capricious exception in light of the broader purposes and intent of the Supreme Court when it adopted the SDGP for use in Mt. Laurel litigation. The dominant theme of the Mt. Laurel II opinion is that sound land use planning must govern the imposition of the Mt. Laurel obligation. While that purpose may be achieved in most instances by the SDGP concept map, unique circumstances such as those in the present case necessitate the refinement of that concept map consistent with the substantive policies of the SDGP and the intent of the Supreme Court.

In conclusion, the extensive planning facts in the record demonstrate that Far Hills should not be targeted for intensive development as part of the Route 206 growth corridor. The lands in Far Hills on the fringe of the Route 206 growth corridor are simply unsuited and unavailable for such development due to environmental constraints, important environmental resources and significant public and quasi-public open space uses. More importantly, this area is physically and functionally separated from the Route 206 growth corridor by the natural boundaries of the North Branch of the Raritan River and the Watchung Mountains. Sound land use planning requires that the growth area boundary be adjusted to reflect these planning facts. If not, the growth-inducing impetus of the imposition of a regional Mt. Laurel obligation would produce arbitrary and capricious consequences for Far Hills.

This court is vested with the discretion, and indeed the obligation, under Mt. Laurel II to prevent such an unwarranted result by modifying the effect of the SDGP for Mt. Laurel purposes. This court should exercise that authority in the present case and hold that Far Hills does not have a regional Mt. Laurel zoning obligation.

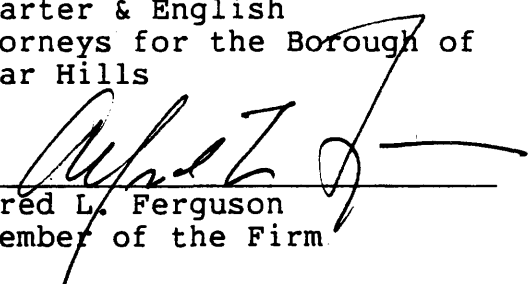
CONCLUSION

For the foregoing reasons, judgment should be entered holding that the SDGP classification of a portion of Far Hills as being within the growth area is arbitrary and capricious. This court should accordingly hold that the Borough of Far Hills has no regional Mt. Laurel obligation.

Respectfully submitted,

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Attorneys for the Borough of
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By: _____


Alfred L. Ferguson
A Member of the Firm

Dated: September 7, 1984