

~~AM~~ - Home's v. Far Hills

9/3/85

AM

letter in lieu of memorandum of law in conjunction  
w/ opposition to Compliance Agreement proposed by  
Borough of Far Hills

P5

AM 000 <sup>30</sup> ~~AM~~ 5 D

**WEINBERG & SCHWARTZ**  
ATTORNEYS AT LAW

DAVID M. WEINBERG  
MEMBER OF N. J. AND N. Y. BAR  
BRIAN D. SCHWARTZ

310 PARK AVENUE  
SCOTCH PLAINS, NEW JERSEY 07076  
(201) 322-8770

September 3, 1985

Honorable Eugene D. Serpentelli, J.S.C.  
Ocean County Court House  
Toms River, N. J. 08753

Re: Ochs and Haueis v. Borough of Far Hills  
Docket No. L-73360-80

Dear Judge Serpentelli:

As you know from previous correspondence, this office represents Timber Properties, Inc., equitable owner of property located at Route 206 and Lamington Road, Bedminster, New Jersey (designated as sites J and K in the Bedminster Mt. Laurel II compliance package) and Timber Properties of Far Hills Inc., owner of 32 acres of property on Route 202 in Far Hills, New Jersey. I am submitting this letter memorandum of law in conjunction with our opposition to the Compliance Agreement proposed by the Borough of Far Hills which is the subject of a compliance hearing on September 4, 1985.

We submit that the Borough of Far Hills is not entitled to a reduction in its Mt. Laurel II fair share obligation from 117 units as determined under the "consensus methodology" accepted by this Court in the case of AMG and Timber Properties v. Warren Township to approximately 32 units as proposed by Far Hills and the court appointed master, George Raymond. Our reasons are, in summary, as follows:

(1) The overwhelming reduction in number is not merited under the standards enunciated by this court in its opinion in The Allan-Deane Corporation v. Township of Bedminster, et als., Docket Number L-36896-70 and L-28061-71;

(2) Far Hills erred in not taking into account lands otherwise available and suitable for Mt. Laurel development lying within the Borough but outside of the growth area designated by the State Development Guide Plan (SDGP); and

(3) Far Hills should not be permitted to rely upon the proposed technical upgrading of the "BFH" sewer plant since substantially all of the increased capacity from that plant to be generated by the upgrading has been committed by Bedminster pursuant to its Mt. Laurel II Compliance Agreement to development of the Timber Properties property in Bedminster, New Jersey.

RECEIVED

SEP - 4 1985

SERPENTELLI'S CHAMBERS

(1) Far Hills has justified the reduction in its fair share obligation from 117 units to approximately 32 units by citing limited commercial and service facilities and, most significantly, absence of alternate developable property "within the growth area of Far Hills" for Mt. Laurel purposes. It is submitted that this reduction is not appropriate under guide lines of the Allan-Deane case cited above.

On page 6 of the Court's Allan-Deane opinion dated May 1, 1985, this Court noted that a municipality is entitled to a reduction in fair share numbers where there is "voluntary compliance." However, in that case, this Court noted that there had been protracted litigation and that the settlement came about only after the Court directed that if a settlement did not take place immediately then two additional plaintiffs might be intervened. Under those circumstances, this Court stated that "while it cannot be denied that the parties ultimately managed to resolve this case, the settlement was "voluntary" only in the sense that it did not result from a court imposed judgment."

It is submitted that in the present case, Far Hills has done nothing to merit a reduction in its fair share obligation that was not present in the Bedminster case. The Ochs case was instituted in 1980. A lengthy trial was held prior to the Mt. Laurel II decision being published, and even then, Far Hills did nothing to settle with the plaintiff. Far Hills has attempted to condemn the substantial property owned by Timber Properties of Far Hills which otherwise would be available for Mt. Laurel housing in order to avoid development of that property. Even now, Far Hills proposes development of the plaintiff's property only at a moderate density, rather than attempting to accommodate a greater number of units or a higher percentage of Mt. Laurel units in order to increase the likelihood of its total fair share number of Mt. Laurel units to be built. Under these circumstances, it is submitted that Far Hills has not proven its entitlement to such a drastic reduction in its fair share obligation.

Furthermore, in the Allan-Deane case, this Court permitted the phasing of a portion of Bedminster's fair share obligation to avoid sudden and radical transformation within the Township. Far Hills does not seek permission to phase its fair share obligation, nor does it invoke "radical transformation" as a reason its fair share number should be decreased. It is submitted that if Far Hills is concerned about the impact of Mt. Laurel compliance upon its limited commercial and service facilities, it should provide for phasing by including other properties in its compliance package which may be developed for Mt. Laurel housing even after the year 1990.

(2) Both Far Hills and George Raymond rely heavily upon the theory that there are no vacant developable lands other than

Honorable Eugene D. Serpentelli, J.S.C.

September 3, 1985

Page 3

plaintiff's in justifying the greatly reduced fair share number. Conspicuously, both Far Hills and Mr. Raymond refer only to the portion of Far Hills lying in the growth area, and completely ignores and discounts any property lying within Far Hills but outside the growth area which is developable. This of course includes the 32 acres on Route 202 owned by Timber Properties of Far Hills Inc.

Far Hills and Mr. Raymond have agreed that even the portion of plaintiff's property which lies outside of the growth area should be included as part of plaintiff's builder's remedy and as part of Far Hills' compliance package. Furthermore, Far Hills and Mr. Raymond agree that Far Hills has a fair share obligation as a growth area municipality. Yet, inconsistently, Far Hills claims that construction of Mt. Laurel housing outside the growth area would in affect expand the growth area.

This reasoning is totally inconsistent with both the Mt. Laurel II decision and this Court's opinion in Orgo Farms and Greenhouses, Inc. v. Township of Colts Neck, et als., Docket numbers L-13769-80 and L-3299-78, decided October 7, 1983. In that opinion, this Court held that, in a municipality where only a portion of the town is located within the growth area, a developer whose property lies outside the growth area is not precluded from obtaining a builder's remedy as a matter of law. This Court noted on page 8 of its opinion that even towns which lie entirely within the limited growth area still have a Mt. Laurel obligation and therefore must zone for at least some Mt. Laurel development. On page 7 of this Court's opinion, it states that "it is important to reserve all appropriately usable sites for potential development. The SDGP does not contemplate the limited growth area will never accommodate growth under any circumstances."

Far Hills' proposed compliance agreement is totally contradictory to the Orgo Farms decision that the feasibility for development of properties lying outside the growth area are not even considered but rather are ignored and dismissed as being unavailable for development without the slightest scrutiny. It is submitted that since Far Hills is seeking such a large percentage reduction of its fair share obligation largely based upon unavailability of developable land, its compliance package should not be accepted without compelling proof that no property outside the growth area can be developed for Mt. Laurel housing.

(3) In paragraph 8 of the Interim Order dated December 3, 1984, and George Raymond's report dated June 11, 1985 at page 13, it is stated that there will be significant gallonage of sewer capacity in the Bedminster Far Hills (BFH) plant for the proposed development of the plaintiff herein once the BFH plant

Honorable Eugene D. Serpentelli, J.S.C.  
September 3, 1985

Page 4

is "upgraded" to increase its capacity by 50,000 gpd. Such a statement ignores two facts, one being the settlement between Timber Properties and Bedminster Township, and the other being the limitations of the sewer contract between Bedminster and Far Hills.

On page 15 of his report, Mr. Raymond calculated the amount of sewer capacity required by the proposed office building on the "J" site (the Timber site). Mr. Raymond was apparently unaware of the settlement agreement reached during the compliance hearing in the Allan-Dean case, which provided in paragraph 2 that Bedminster would reserve and allocate capacity in the BFH "sufficient to accommodate effluent from the proposed Mt. Laurel II senior citizen housing complex and the commercial and residential development as more particularly set forth in this agreement." That development will include a 260,000 square foot office building together with at least twenty single family houses on the "K Tract" along with the proposed senior citizen housing. Therefore, the actual gallonage to be reserved and allocated for the Timber development in Bedminster out of the BFH plant will be an additional 4,375 gpd for the office building and between 6,000 and 7,000 gpd for the single family housing, depending upon the number of persons living in each house. In reality, then, the maximum amount of gallonage which is unallocated from the technical upgrading of the BFH plant would be 2,000 gpd, even assuming that the upgrading does result in a 50,000 gpd increase in capacity.

Furthermore, the sewer agreement between Bedminster and Far Hills which is attached to Mr. Raymond's report as Appendix E provides only that Bedminster shall reserve in the BFH plant sufficient capacity "to provide for an average flow from the Borough of 35,000 gallons per day, and the Borough agrees not to exceed this average over any consecutive seven day period." Since Far Hills is already exceeding 35,000 gpd, Far Hills would have to re-write its agreement with Bedminster in order to obtain any additional capacity out of the BFH plant.

Not only is it unlikely that Bedminster would sacrifice gallonage from its plant for the benefit of Far Hills where Bedminster has already committed itself to reserving most if not all of additional capacity, but to do so would severely jeopardize the Bedminster compliance agreement previously accepted by this Court. It is submitted that this Court should not assume that any significant portion of the additional 50,000 gpd in the BFH plant will be available for Far Hills' use in view of the realities of the Bedminster situation.

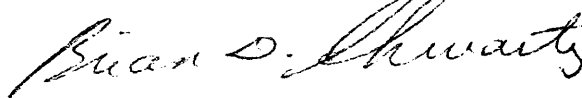
In conclusion, it is submitted that the Far Hills compliance agreement should not be approved since the Borough is not

Honorable Eugene D. Serpentelli, J.S.C.  
September 3, 1985

Page 5

entitled to such a drastic reduction in its fair share obligation, and that Far Hills should be ordered to consider alternate sites, including those lying outside of the growth area, in order to better satisfy the Borough's fair share obligation. Furthermore, it is submitted that Far Hills should not be permitted to rely upon any portion of the "technical upgrading" of the BFH plant nor should the Court consider such upgrading to be supportive of the proposed compliance agreement.

Respectfully submitted,



BRIAN D. SCHWARTZ

BDS:rb

cc: Albert Mastro, Esq.  
Robert K. Hornby, Esq.  
Herbert Vogel, Esq.

1985  
9/4/85  
Opposing Compliance  
Dept. (11/10/85)