

- Notice of Motion (Sec. 16 FHA Transfer)
- Certification of J. Albert Mastro
- Supporting letter Brief
- cover letter

Pg. 14

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J. ALBERT MASTRO
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BERNARDSVILLE, N. J. 07924
(201) 766-2720
ATTORNEY FOR Defendants

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.

SUPERIOR COURT
OF NEW JERSEY
LAW DIVISION
SOMERSET COUNTY/
OCEAN COUNTY

Docket No. L - 7 3 3 6 0 - 8 0

CIVIL ACTION

(MOUNT LAUREL II)

NOTICE OF MOTION
(Sec. 16 FHA TRANSFER)

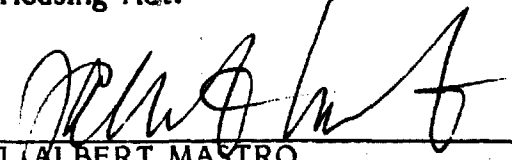
TO: HERBERT A. VOGEL, ESQ.
Vogel, Chait, Schwartz & Collins
Maple Avenue at Miller Road
Morristown, New Jersey 07960

PLEASE TAKE NOTICE that on Friday, July 25 , 1986, at 9:00
in the forenoon or as soon thereafter as counsel may be heard, the undersigned,
attorney for defendants, The Borough of Far Hills, et als, shall apply to the
Honorable Eugene D. Serpentelli, Ocean County Court House, Toms River, New
Jersey, for an Order for Transfer of the within matter to the Council on Affordable

Housing pursuant to the Fair Housing Act, Chapter 222, P.L. 1985, Section 16.

PLEASE TAKE FURTHER NOTICE, that in the event it is judicially determined the within matter not be transferred to the Council on Affordable Housing, the undersigned hereby applies for an order fixing a plenary hearing on the issue of fair share allocation for the Borough of Far Hills pursuant to criteria and guidelines adopted pursuant to the Fair Housing Act.

DATED: July 8, 1986



J. ALBERT MASTRO
Attorney for Defendants

CERTIFICATION

I hereby certify that the within Notice of Motion and supporting documents were served and filed in the manner and with in the time prescribed by the Rules of Court.

DATED: July 8, 1986



J. ALBERT MASTRO
Attorney for Defendants

J. ALBERT MASTRO
7 MORRISTOWN ROAD
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SUPERIOR COURT
OF NEW JERSEY
LAW DIVISION
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Docket No. L - 7 3 3 6 0 - 8 0

CIVIL ACTION

(MOUNT LAUREL II)

**CERTIFICATION OF
J. ALBERT MASTRO**

J. ALBERT MASTRO CERTIFIES AS FOLLOWS:

1. I am an attorney at law with offices at 7 Morristown Road, Bernardsville, New Jersey 07924 and am the trial attorney representing the interests of the defendants in the above entitled matter.

2. In the latter part May, 1986, defendant Borough of Far Hills was notified by the Council on Affordable Housing of its proposed fair share allocation and forwarded a copy of the proposed criteria and guidelines formulated by said agency.

3. Shortly thereafter, the Governing Body of defendant Borough of Far Hills notified plaintiffs of what they considered to be a substantial fewer

number of new lower income units that it would be obligated to construct under the proposed criteria and guidelines and indicated its intent to transfer the pending litigation to the Council on Affordable Housing. The Governing Body of defendant Borough of Far Hills also indicated its willingness to negotiate with plaintiffs for a lower fair share allocation.

4. During the course of examining the criteria and guidelines proposed by the Council on Affordable Housing, the Governing Body of defendant Borough of Far Hills requested its professional planner to recalculate its fair share based upon the standards utilized by the Council and more accurate covered employment data utilized by the Special Master in his report of June 11, 1985. (see attached Calculations of Dresdner Assoc., Professional Planners)

5. The results of the recalculation of fair share allocation prepared by the professional planner for defendant Borough resulted in a maximum number of new lower income units of 14 to 15 rather than the 25 negotiated and incorporated in the interim order of settlement entered on December 31, 1984.

6. To date, plaintiffs have expended funds for architectural and engineering services, legal fees, partial payment to Bedminster Township for a sewer feasibility study and made application for preliminary site plan approval before the Planning Board of defendant Borough of Far Hills.

7. The recitation outlined in the statement of facts in defendants' letter brief submitted with this certification is the result of exhibits and testimony presented during the trial of within matter before the Hon. David G. Lucas.

8. I certify that the foregoing statements made by me are true. I am aware that if any of such statements made by me are willfully false, I am subject to punishment.



ALBERT MASTRO
An Attorney at law of New Jersey

DATED: July 8, 1986

CALCULATION OF FAIR SHARE HOUSING
FAR HILLS, NEW JERSEY

Introduction

This determination of the Borough of Far Hills' fair share housing allocation is based on the methodology described in Chapter 92, Substantive Rules of the New Jersey Council on Affordable Housing, (N.J.A.C. 5:92).

The Borough's fair share housing consists of (i) present need and (ii) prospective need, described below.

Present Need

Present need consists of Indigenous Need and Reallocated Present Need described below.

1. Indigenous Need

$$\begin{array}{r} 7 \\ \div \quad 834 \end{array}$$

$$\begin{array}{r} .0084 \\ \times \quad 655 \end{array}$$

$$\begin{array}{r} 5.5, \text{ say} \\ \underline{6} \end{array}$$

Factor

Munic. single index need
Subreg. single index need

Far Hills' share of region's need
Subreg. multi index need

Far Hills' indigenous need

2. Reallocated Present Need

$$\begin{array}{r} 0.150 \\ \div \quad 100 \end{array}$$

$$\begin{array}{r} 0.0015 \\ \times \quad 1.631 \end{array}$$

$$\begin{array}{r} 2.44, \text{ say} \\ \underline{2} \end{array}$$

Pres. need alloc. factor

Subreg. excess def. hous. units

Reallocated present need

3. Present Need

$$\begin{array}{r} 6 \\ + \quad 2 \end{array}$$

$$\underline{8}$$

Indigenous need
Reallocated present need

Total present (1987) need

Prospective Need

Prospective need is the average of the following:

- % of Far Hills' share of the regional growth area (0.095)
- % of Far Hills' share of the regional covered employment (0.177);
- % of Far Hills' share of the regional and aggregate income (0.175);
- % of Far Hills' regional employment change (0.290).

Based on the data developed in N.J.A.C. 5:92, the average of the above four factors is 0.184 with a resultant prospective need of 25 low and moderate income units for Far Hills.

We are of the opinion, however, that upon closer examination of the base municipal data, two of the four factors averaged above are overstated. Specifically, Far Hills employment data is substantially overstated because companies in surrounding communities use Fair Hills' post office as a mailing address. In the Master's Report, Re: Ochs & Haueis, vs. Borough of Far Hills, dated June 11, 1985, George Raymond (the zoning master) concluded that employment in Far Hills actually accounted for only 59.93% of the published total of covered employees in Far Hills in 1985.

Thus, the % of Far Hills share of regional covered employment is not 0.177, but 0.106 based on the following calculation.

616	Reported covered employment
x 0.5993	% in Far Hills
369.168, say	
369	Actual Far Hills employment
÷ 347.443	Regional employment
<u>0.106</u>	Far Hills' share of regional covered employment

Similarly, the average annual % change in employment between 1977 and 1984 is actually 18.142 and not 30.285 resulting in a lower share of the region's employment growth, as follows:

18.142	Far Hills' annual average employment growth
÷ 10.622	Region's annual average employment growth
<u>0.171</u>	Far Hills' share of region's annual employment growth.

The change in the average of the four factors, therefore, is 0.137 and not 0.185, as described below.

<u>Factor</u>	<u>Current</u>	<u>N.J.A.C. 5:92</u>
% of regional growth area	0.095	0.095
% of covered employment	0.106	0.177
% of regional income	0.175	0.175
% of regional employment change	0.171	0.290
Present need allocation factor	0.137	0.185

We would also note that N.J.A.C. 5:92 uses a lower factor for Growth Area than would result from using the Master's Growth Area:

	<u>Growth Area Acres</u>	<u>% of Region</u>
N.J.A.C. 5:92	266	0.095
Masters Report	433	0.150

Using the Master's Report growth factor of 0.150 instead of the N.J.A.C. 5:92 figure of 0.095, the resultant current Present Need Allocation Factor would be 0.150.

Using the Present Need Allocation Factors of 0.137 and 0.150, the actual prospective need for low and moderate income units in Far Hills ranges from 19 to 20 units, as follows:

	<u>Allocation</u>	<u>Factor</u>
Present need allocation factor	0.137	0.150
1993 regional prospective need	x <u>13,661</u>	x <u>13,661</u>
Far Hills prospective need	<u>19</u>	<u>20</u>

Total Need, 1987 - 1993

The total need for low and moderate income units is 27, as follows:

6	Indigenous need
2	Reallocated need
<u>19</u> (20)	Prospective need
27 (28)	Total Need

Pre-Credited Need

Pre-credited need is the sum of total need minus reductions for filtering, conversion and spontaneous rehabilitation. For Far Hills the pre-credited needs low and moderate income units, as follows:

27 (28)	Total need
0	Demolitions
-5	Filtration
-1	Conversions
<u>-1</u>	Rehabilitation
20 (21)	Pre-credited need

Of the 20 to 21 units, 6 are indigenous need and can be addressed by rehabilitation, conversion or other techniques. The remaining 14 to 15 units are the maximum number of new low and moderate income units needed to achieve the pre-credited need of 20 to 21 units.

* * *

J. ALBERT MASTRO
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7 MORRISTOWN ROAD
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(201) 766-2720

July 7, 1986

Honorable Eugene D. Serpentelli
Superior Court of New Jersey
Ocean County Court House
CN 2191
Toms River, New Jersey 08753

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

Dear Judge Serpentelli:

Please accept this as a letter brief in support of defendants' motion in the within matter.

Brief Procedural History

Plaintiffs filed a complaint in lieu of prerogative writ against the defendant Borough and its Planning Board on or about August 18, 1981. Answers were filed on behalf of both parties in due course. A pretrial hearing was held before the Hon. Robert E. Gaynor, J.S.C., and a pretrial order was entered on December 11, 1981. The matter was tried before the Hon. David G. Lucas, J.S.C., during the months of December 1982 and January 1983 and prior to the conclusion thereof was temporarily suspended as result of Mount Laurel II, 92 N.J. 158 (1983). The matter was then transferred to this Court in accordance with the mechanism established in Mount Laurel II and during the summer of 1983 an order entered returning same to the Hon. David G. Lucas for purpose of completing trial and thereafter making proposed findings of fact and recommendation as to conclusions of law. During October and November, 1983, the trial was concluded before the Hon. David G. Lucas and thereafter proposed findings of fact and conclusion of law forwarded to this Court. On or about September 26, 1984, this Court confirmed the proposed findings of fact and conclusions of law of the Hon. David G. Lucas as the same related to the growth area boundary line in the State Development Guide Plan affecting defendant Borough. On or about December 31, 1984, an interim order of settlement was entered into by the parties awarding plaintiffs a builder's remedy permitting them to construct 125 dwelling units upon their 19.2 acres located in defendant Borough of which 25 would be affordable to lower income households. In addition, among other things, said order provided for the designation of a Special Master to assist the parties toward formulating a suitable compliance package. The Master undertook his duties and submitted a report to the Court dated June 11, 1985. A compliance hearing was held before this Court on September 4, 1985, and an order of compliance subject to conditions was entered on October 4, 1985.

Re. Haueis vs Borough of Far Hills

The Fair Housing Act, N.J.S.A. 52:27D-301 et.seq., became effective on July 2, 1985, and during the latter part of May, 1986, the Council on Affordable Housing notified municipalities of their anticipated pre-credited fair share allocation obligations.

Statement of Facts

The Borough of Far Hills is located within the "Somerset Hills" area of the County which is generally characterized by low density rural development. Its land area is 4.9 sq.mi. and its population according to the 1980 census was 677. Approximately 250 of the Borough's residents live in a compact and fully developed village area which has approximately 100 housing units. As a result of a rather modest population and minimal non-residential tax rates, the Borough provides very few municipal services. It has no full time administration, no road department, a three man police department and no schools.

The village area of Far Hills is predominantly residential containing a small business area with limited commercial and services facilities for local residents. The village area has an established "character" as a village which is distinct from the surrounding rural areas. The balance of the Borough is largely developed with low density residential use. In both the northern and southern portions of Far Hills there are substantial areas characterized by steep topography and largely wooded. There are also significant flood plain area adjacent to the North Branch of the Raritan River and various stream corridors.

The Borough has never encouraged zoning for industrial purposes nor does it have any such major non-residential uses. There is a rather small area of the Borough that is zoned for commercial purposes which services primarily local needs. The Borough has long followed a policy of protecting the environmentally sensitive land and the rural character of the areas outside the village. The mechanism to accomplish such a purpose is through low density residential zoning of single detached houses upon minimum lot sizes of 10 acres. The Borough has not, as distinguished from neighboring municipalities, undergone any significant non-residential development and employment within the community has not significantly changed over the past 10 years. The State's reported increase in employment statistics is based on entities which, although located outside of Far Hills, have used Far Hills as a mailing address. This practice was verified by the Special Master and the impact upon formulaic approaches to its fair share can be seen by reference to the Special Master's report.

On or about May 5, 1986, the Council on Affordable Housing prepared its proposed fair share housing criteria and guidelines and forwarded same to municipalities. The Borough of Far Hills is located within the West Central region under those guidelines, consisting of Hunterdon, Middlesex, Somerset and Warren Counties. The criteria and guidelines outline in detail the methodology

Re: Haueis vs Borough of Far Hills

to be utilized by municipalities in their determination of present and prospective need. Proposed N.J.A.C. 5:92-1.1, et. seq. Subchapters 5 and 6 provide for credits to be allocated to municipalities because of filtering, residential conversions and spontaneous rehabilitation. The end result was for the Council on Affordable Housing to determine a "pre-credited" need for each municipality calculated pursuant to the proposed criteria and guidelines. In the case of Far Hills it was determined that there was a total of 6 indigenous need, 2 reallocated with a total of 8 present need. It was further calculated that Far Hills had a prospective need (1987 to 1993) of 25 for a total fair share of 33 for that period. Against the 33, 7 units were credited as the result of filtering, residential conversion and spontaneous rehabilitation for a net, pre-credited need of 26.* In an appendix attached to the proposed criteria and guidelines, appear four standards for the distribution of low and moderate income housing need. Of the four standards, two relate to covered employment, i.e., covered employment growth within a municipality over the period 1977-84 as a percentage of regional covered employment growth for the same period, and covered employment for a municipality as a percentage of regional covered employment (1984). In addition, the proposed criteria and guidelines provide, in Subchapter 8, municipal adjustments for adequate conservation and open space area, vacant and developable sites, adequate public facilities and infrastructure capacities and the costs of such infrastructure. Finally, Subchapter 10 addresses phasing of present and prospective need.

Point I

Section 16 of the Fair Housing Act mandates transfer of a pending action such as the within matter to the Council on Affordable Housing upon application by any party.

In the Hills Development Company vs the Township of Bernards, et als, N.J. Supreme Court, Docket Nos. A-122 - A-133, decided February 20, 1986, the Court concluded that §16a means transfer must be granted unless it would result in manifest injustice to any party to the litigation. The meaning of "manifest injustice" was confined to only those pending Mount Laurel cases where transfer would result in unforeseen and exceptional unfairness. The balancing of equities between those that prevail if there is a transfer against those that prevail if there is not a transfer is not the test. The sole standard is to measure only the injustice caused by transfer and precludes same only if it is unforeseen and exceptional. In this respect it should be observed that the burden of establishing the unforeseen and exceptional circumstances is upon the party opposing the motion to transfer. Thus, absent a showing of "manifest injustice," every pending Mount Laurel action was intended by the

* The Council documented a pre-credit need of 27 units which most likely results from rounding off fractions during the calculation process.

Re: Haueis vs Borough of Far Hills

Legislature to be transferred to the Council. It was the Court's conclusion that the injustice referred to related to the Legislature's concern that in some particular case there might be combination of circumstances, unforeseen but nevertheless possible, that render transfer so unjust as to overcome the Legislature's clear wish to transfer all cases. And indeed, it was emphasized that such factors as loss of expected profits, loss of the builder's remedy, substantial expenditure of funds for litigation purposes, permit application, on-site and off-site tract improvements, purchase of property or options at an inflated price or contractual commitments - all were undoubtedly foreseen by the Legislature and not intended to constitute "manifest injustice." In footnote 18 (Slip Op. at 77), the Court further emphasized that it would be "most unlikely that 'manifest injustice' will ever be proven in any of these cases."

It should be noted in passing that §9 related to the adoption of a resolution of participation is prospective in its thrust and intended to apply to municipalities not then faced with pending Mount Laurel litigation. If such were not the construction, §9b would make no sense whatsoever. Thus, §16a is applicable to those municipalities with long standing pending Mount Laurel litigation with the sole condition of filing a housing element as provided therein. In effect, the motion to transfer has the same impact for a municipality faced with pending Mount Laurel litigation as resolution of participation for a municipality with no pending litigation but filing within a period of 4 months of the effective date of the Fair Housing Act.

Point II

The proposed criteria and guidelines of the Council on Affordable Housing allow a municipality to seek credits and/or adjustments to its proposed fair share allocation.

Proposed N.J.A.C. 5:92-5.1(c) provides that the data forming the basis for the Council's calculations shall be used unless it can be demonstrated that more appropriate data exists to justify a substitution. Appendix A attached to the criteria and guidelines outlines the four factors that are averaged in the process of calculating fair share. Two of those factors deal with covered employment. In the case of Far Hills, it was demonstrated by the Special Master that the data utilized was grossly exaggerated. As can be observed from the certification submitted with the moving documents, a recalculation of pre-credited need utilizing covered employment data that is somewhat more realistic results in a pre-credited need of new units of 14 to 15. In addition, credits and/or adjustments may very well be likely because of existing qualifying units pursuant to proposed N.J.A.C. 5:92-6.1 and N.J.A.C. 5:92-8.1, et seq.

Hon. Eugene D. Serpentelli

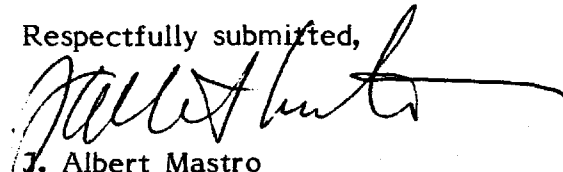
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Re: Haueis vs Borough of Far Hills

At any rate, an opportunity should be afforded to defendant Borough to appear before the Council on Affordable Housing and present its case relative to fair share allocation.

In the event it is determined judicially that a transfer to the Council is inappropriate in the within matter it is respectfully urged that defendants be afforded an opportunity to address the issue of fair share in the context of the Council's criteria and guidelines.

Respectfully submitted,



J. Albert Mastro
Attorney for Defendants

JAM/jc

J. ALBERT MASTRO
ATTORNEY AT LAW
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(201) 766-2720

RECEIVED

JUL 27 1986

July 8, 1986

JUDGE SERPENTELLI'S CHAMBERS

Handwritten notes:
Return to me
J. Albert Mastro
8/1 at 9:30
J. Albert Mastro
7-14
ke
com
at
adr

Hon. Eugene D. Serpentelli
Superior Court of New Jersey
Ocean County Court House
CN 2191
Toms River, New Jersey 08753

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

Dear Judge Serpentelli:

I am enclosing the following documents with regard to the above entitled matter:

1. Notice of Motion to Transfer
2. Supporting Letter Brief
3. Certification of J. Albert Mastro
4. Proposed form of Order

The Motion has been made returnable July 25, 1986 at 9:00 a.m.

Respectfully submitted,

J. Albert Mastro

J. Albert Mastro
Attorney for Defendants

JAM/jc
encs.
cc:

Herbert A. Vogel, Esq.
Borough of Far Hills
Robert K. Hornby, Esq.