

- Notice of Motion to Enforce Interim Order of Settlement and Order of Compliance Subject to Conditions
- Letter Brief w/proposed order
- Certification of Thomas F. Collins, Jr.
- Certification of Bruce Bocina
- cover notice to clerk

Pg. 39

AM000319N

SUPERIOR COURT OF N.J.  
REC'D

JUL 11 1986

RECP-1  
JOHN M. MAYSON  
CLERK

FILED

JUL 16 1986

M. DEAN HAINES, CLERK  
COUNTY OF OCEAN

VOGEL, CHAIT, SCHWARTZ AND COLLINS  
A PROFESSIONAL CORPORATION  
Maple Avenue at Miller Road  
Morristown, New Jersey 07960  
(201) 538-3800

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JUL 17 1986

Attorney for Plaintiffs

ALOIS HAUEIS, ERNA HAUEIS, JOHN OCHS  
and PRISCILLA OCHS,  
Plaintiffs,

THE BOROUGH OF FAR HILLS, THE  
PLANNING BOARD OF FAR HILLS, THE  
BOROUGH COUNCIL OF FAR HILLS and  
THE MAYOR OF FAR HILLS

Defendants.

JUDGE SERPENTELLI'S CHAMBERS

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY/  
OCEAN COUNTY-MT. LAUREL

DOCKET NO. L-73360-80

CIVIL ACTION

NOTICE OF MOTION TO ENFORCE  
INTERIM ORDER OF SETTLEMENT  
AND ORDER OF COMPLIANCE  
SUBJECT TO CONDITIONS

TO: J. Albert Mastro, Esq.  
7 Morristown Road  
Bernardsville, NJ 07924  
Attorney for Defendants

SIR:

PLEASE TAKE NOTICE that on the 25th day of July, 1986 at 9:00  
a.m. in the forenoon, or as soon thereafter as counsel may be heard,  
the undersigned, Vogel, Chait, Schwartz and Collins, attorneys for  
plaintiffs, Alois Haueis, Erna Haueis, John Ochs and Priscilla Ochs,  
will apply to The Honorable Eugene D. Serpentelli, A.J.S.C., Law  
Division, Somerset/Ocean County for an Order granting the following  
relief:

1. Enforcing the terms of the Interim Order of Settlement dated December 31, 1984, which was consented to by the parties and executed by the Court, and enforcing the terms of the Order of Compliance Subject to Conditions dated October 4, 1985, which was executed and ~~was~~ entered by the Court based upon the Interim Order of Settlement and a contested hearing before the Court.

2. Temporarily and permanently enjoining and restraining all defendants and all agents and employees of defendants from taking any actions contrary to the Interim Order of Settlement and the Order of Compliance Subject to Conditions including but not limited to:

a. Enjoining defendants from proceeding before the Affordable Housing Council for a reduction in the Court established Fair Share of Low and Moderate Income Housing for the Borough of Far Hills.

b. Enjoining defendants from taking any action which in any way delays or hinders the construction of 125 units including 25 low and moderate income housing units on plaintiffs' property in accordance with the terms of the Interim Order of Settlement and the Order of Compliance Subject to Conditions.

3. An Order determining that as a matter of law the Borough of Far Hills, the Planning Board of the Borough of Far Hills and the employees and agents of the Borough of Far Hills are permanently barred from violating the Interim Order of Settlement and the Order of Compliance subject to conditions.

4. An Order determining that as a matter of law the Defendants are barred from proceeding before the Affordable Housing Council because the Defendant Borough Council of the Borough of Far Hills failed to adopt a resolution pursuant to the Fair Housing Act prior to November 2, 1985 setting forth its intent to participate in the proceedings before the Affordable Housing Council.

5. An Order determining the defendants have violated the Interim Order of Settlement and the Order of Compliance subject to conditions and directing the Special Master, George Raymond, Professional Planner, to review within 30 days plaintiffs' preliminary site plans, recommend any reasonable planning modifications to the Court within said 30 day period and upon approval by the Court, order the issuance of building permits for 125 units including 25 low and moderate income units on the plaintiffs' property subject to reasonable conditions to be established by the Court.

6. An Order determining that plaintiffs are entitled to a Builder's Remedy for 125 units pursuant to the voluntary Interim Order of Settlement and Order of Compliance Subject to Conditions.

PLEASE TAKE FURTHER NOTICE, that in support thereof, the undersigned shall rely upon the Affidavits of Casper Bocina and Bruce Bocina and the Certification of Attorneys' for Plaintiffs, Thomas F.

Collins and Herbert A. Vogel. In accordance with R:6-2, plaintiffs' respectfully request oral argument with respect to this motion.

VOGEL, CHAIT, SCHWARTZ AND COLLINS  
A PROFESSIONAL CORPORATION  
Attorneys for Plaintiffs  
ALOIS HAUEIS, ERNA HAUEIS, JOHN OCHS,  
AND PRISCILLA OCHS

By: 

THOMAS F. COLLINS, JR.  
A Member of the Firm

Dated: July <sup>11</sup>7, 1986

I hereby certify that the original of this Motion has been forwarded to the Clerk of the Superior Court on this date for filing and that true copies thereof have been forwarded to Judge Serpentelli. I further certify that true copies of the Motion and Supporting Affidavits and Brief and Proposed Form of Order have been forwarded to J. Albert Mastro, Attorney for Defendants, at his address listed above.

Dated: July <sup>11</sup>7, 1986

  
THOMAS F. COLLINS, JR.



RECEIVED

JUL 14 1986

VOGEL, CHAIT, SCHWARTZ AND COLLINS

A PROFESSIONAL CORPORATION

*Attorneys at Law*

HERBERT A. VOGEL  
ARNOLD H. CHAIT  
ARON M. SCHWARTZ  
THOMAS F. COLLINS, JR.  
LORRAINE C. STAPLES\*

OF COUNSEL  
HAROLD KOLOVSKY  
HAROLD GUREVITZ

\*MEMBER OF THE N.J. AND PA. BARS

JUDGE SERPENTELLI'S CHAMBERS

MAPLE AVENUE AT MILLER ROAD  
MORRISTOWN, NEW JERSEY 07960

(201) 538-3800

July 11, 1986

Honorable Eugene D. Serpentelli  
Superior Court of New Jersey  
Courthouse  
CN 2191  
Toms River, NJ 08754

RE: HAUELIS, ET ALS V. THE BOROUGH OF FAR HILLS, ET ALS—DOCKET  
NO. L-73360-80

Dear Judge Serpentelli:

Please accept this short letter brief in lieu of a more formal brief in support of plaintiff's motion to enforce the settlement agreement and order of compliance subject to conditions in this matter.

The defendants are barred from violating the settlement agreement and from pursuing any transfer to the Affordable Housing Council. The legal principles barring the defendants are clear, overwhelming and undisputable. The following are three of the applicable legal principles barring the defendants:

1. Defendants entered into a voluntary settlement agreement approved by the court after a contested hearing and said settlement agreement constitutes a final determination in this matter which is binding upon the parties. See 15A AmJur 2nd, Section 25 compliance and settlement and Bartholdi v. Dumbeky, 37 N.J. Super. 418 (App. Div. 1955).

2. The Fair Housing Act does not and cannot constitutionally impair settlement agreements entered into voluntarily by the parties. The New Jersey Constitution protects parties to contracts from deprivation of their rights by statute. See New Jersey Constitution Article 4, Section 7, Paragraph 3.

3. Defendants are barred from seeking a transfer of plaintiffs builders remedy settlement since defendants failed to adopt a resolution prior to November 2 and elected instead to proceed with the settlement.

We request that Your Honor schedule this motion for July 25, 1986 and we would request oral argument at that time.

Respectfully,

  
Thomas F. Collins, Jr.

J. Albert Mastro, Esq.

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PLANNING BOARD OF FAR HILLS, THE )  
BOROUGH COUNCIL OF FAR HILLS and )  
THE MAYOR OF FAR HILLS )  
Defendants.

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LAW DIVISION  
SOMERSET COUNTY/  
OCEAN COUNTY-MT. LAUREL  
DOCKET NO.L-73360-80  
CIVIL ACTION  
ORDER ENFORCING THE INTERIM  
ORDER OF SETTLEMENT SUBJECT  
TO CONDITIONS AND GRANTING  
TEMPORARY AND PERMANENT  
INJUNCTIVE RELIEF

THIS MATTER having been opened to the Court by Notice of Motion of Vogel, Chait, Schwartz and Collins, Attorneys for Plaintiff, Alois Haueis, Erna Haueis, John Ochs and Priscilla Ochs, for an Order Enforcing the Terms of the Interim Order of Settlement dated December 31, 1984 and the Order of Compliance Subject to Conditions dated October 4, 1985; and the Court having reviewed the Affidavits of Bruce Bocina and Casper Bocina, the Certifications of Thomas F. Collins, Jr. and Herbert A. Vogel, Attorneys for Plaintiffs, and the Brief submitted in support of said Motion and the Court having reviewed the pleadings and documents submitted in opposition, and for good cause shown;

IT IS on this            day of July, 1986 ORDERED:

1. Defendants are hereby ordered and directed to comply with all of the terms of the Interim Order of Settlement in this matter dated December 31, 1984 consented to by the parties and executed by



the Court as well as the Order of Compliance Subject to Conditions executed by the Court based upon the contested hearing on the compliance package voluntarily submitted by the Defendants.

2. Defendants are permanently enjoined and restrained from taking any actions contrary to the Interim Order of Settlement and the Order of Compliance Subject to Conditions; in this regard, Defendants are hereby enjoined from proceeding before the Affordable Housing Council for a reduction in the Court established fair share low and moderate income housing need for the Borough of Far Hills and enjoined from taking any actions which in any way delay or hinder the construction of 125 units including 25 low and moderate income housing units on plaintiffs' property.

3. The Court hereby determines as a matter of law that the defendants are barred from violating the Interim Order of Settlement and the Order of Compliance Subject to Conditions.

4. The Court hereby determines as a matter of law that the Borough of Far Hills is barred from proceeding before the Affordable Housing Council because the Council of the Borough of Far Hills failed to adopt a resolution pursuant to the Fair Housing Act prior to November 2, 1985 stating its intent to participate in the proceedings before the Affordable Housing Council.

5. The Court determines as a matter of law that Defendants have violated the terms of the Interim Order of Settlement and the Order of Compliance subject to conditions in this matter and, therefore, the Court directs the Special Master, George Raymond, to review within 30 days of the date of this Order the preliminary site plan of the plaintiffs' contract purchaser, Far Hills Development Co.,

Inc. (Bruce Bocina and Casper Bocina) , recommend any reasonable planning modifications to the Court within said 30 day period and upon approval by the Court building permits shall be issued for 125 units including 25 low and moderate income units subject to reasonable conditions to be determined by the Court.

6. The Court hereby determines that plaintiffs are entitled to a Builder's Remedy for 125 units pursuant to the voluntary Interim Order of Settlement and Order of Compliance Subject to Conditions.

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IT IS on this                    day of July, 1986 ORDERED:

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the Court as well as the Order of Compliance Subject to Conditions executed by the Court based upon the contested hearing on the compliance package voluntarily submitted by the Defendants.

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OCEAN COUNTY-MT. LAUREL  
  
DOCKET NO.L-73360-80  
  
CIVIL ACTION  
  
CERTIFICATION OF  
THOMAS F. COLLINS, JR.

**FILED** **RECEIVED**  
JUL 16 1986 JUL 17 1986  
M. DEAN HAINES, CLERK  
COUNTY OF OCEAN  
JUDGE SERPENTELLI'S CHAMBERS

I, THOMAS F. COLLINS, JR., certify that the following statements are true to the best of my knowledge:

1. I am an Attorney at Law and a Member of the Firm of Vogel, Chait, Schwartz and Collins. I have represented the plaintiffs in this matter along with my Partner, Herbert A. Vogel, since the inception of this case in 1981. On August 18, 1981, plaintiffs filed a complaint in lieu of prerogative writs against the defendants challenging the Zoning Ordinance of the Borough of Far Hills in general as violative of the Constitution pursuant to Mt. Laurel 1. The Complaint also challenged the 10 acre zoning of the Borough of Far Hills which applies to nearly 95% of the land area within the Borough and which formerly applied to plaintiffs' property. The Complaint challenged the ordinance based upon various other grounds. Plaintiffs' successfully defended against two Motions for Summary Judgment filed by the Borough of Far Hills. Plaintiffs' tried this

matter before the Honorable David G. Lucas, Superior Court, Law Division, Somerset County for a period of nearly seven weeks during December 1982 and January 1983 prior to the decision of the Supreme Court in Mt. Laurel II. The Trial was approximately one to two days from completion when the decision in Mt. Laurel II was rendered by the New Jersey Supreme Court and the Trial was adjourned to determine the impact of the new Supreme Court Decision.

2. The Court's file in the matter was transferred to the Honorable Eugene D. Serpentelli, Superior Court, Law Division, Ocean County and on July 25, 1983 an Order was entered by Judge Serpentelli remanding the matter to Judge David G. Lucas for completion of the trial and preparation of findings of fact and recommended findings of law. Upon completion of the findings of fact and recommended findings of law they were to be forwarded to Judge Serpentelli for the purpose of rendering a final order and/or judgment in the case. See the July 25, 1983 Order of Judge Serpentelli attached hereto as Exhibit A.

3. Pursuant to the Order of Judge Serpentelli the parties proceeded before Judge Lucas on or about October 25 through November 9, 1983 with a second trial as to the Mt. Laurel II issues. In particular, among other issues, the Court reviewed the issue of whether the Borough of Far Hills and the property in question are located within the State Development Guide Plan Growth Area and whether the Growth Area line is arbitrary and capricious as alleged by the Borough of Far Hills. After a lengthy second trial,



Judge Lucas entered proposed findings of fact and proposed conclusions of law. The proposed conclusions of law of Judge Lucas demonstrate that the entire Village Area of the Borough of Far Hills is located within the Growth Area and designated on the State Development Guide Plan and that at least 50% of plaintiffs' property is within the Growth Area as designated by the State Development Guide Plan. Judge Lucas also recommended the conclusion of law that the Growth Area in Far Hills and the Growth Area line are not arbitrary, capricious and unreasonable and that said Growth Area is reasonable. See, Proposed Conclusions of Law. Judge Lucas also found as a matter of fact that there is only one property potentially suitable and available for Mt. Laurel II type development within the Growth Area of Far Hills and that is the plaintiffs' property. The Borough of Far Hills obtained additional counsel, Alfred Ferguson of McCarter and English to assist in the defense of the Municipality but the arguments of defendants' attorneys, J. Albert Mastro and Alfred Ferguson were rejected by Judge Lucas and Judge Serpentelli. On or about September 26, 1984, the Honorable Eugene D. Serpentelli entered an Order rejecting the defenses of the Borough of Far Hills and ordering and adjudging that the State Development Guide Plan Growth Area boundary line as it intersects the Borough of Far Hills and the plaintiffs' premises shall remain as indicated therein for the reasons set forth in the Court's Oral Opinion on September 26, 1984.

4. After the Court's Opinion and Order, the parties continued settlement discussions which culminated in a settlement agreement voluntarily entered by both parties, approved by the Borough of Far Hills and executed by The Honorable Eugene D. Serpentelli, J.S.C. See the "Interim Order of Settlement" dated December 31, 1984 which is attached hereto as Exhibit B. The Interim Order of Settlement states in its preface that the matter came before the Court:

"on the joint application of the parties for the entry of a Consent Judgement in which the parties have reached agreement on the nature of the Builder's Remedy to be incorporated herein."

The first paragraph of the Order specifically states:

"...notwithstanding any land use or zoning regulation to the contrary, plaintiffs be and are hereby granted a builder's remedy by which they may lawfully develop the lands and premises described in the complaint...for multi-family purposes and in a manner consistent with the terms and conditions of this Judgment". The second paragraph of the agreement specifically states:

"The Builder's Remedy awarded to Plaintiffs by this Judgment is the right to build multi-family housing units at a gross density of 6.5 units per gross acre which equals 125 units. Twenty-percent of the units (25) to be constructed will be affordable to lower income households, all of which shall be sale rather than rental units."

5. The Interim Settlement Order also stated in paragraph 6 page

3:

"As a result of these findings, the Court concludes that the Borough's fair share of the region's present and prospective housing needs shall be limited to seven (7) indigenous and twenty-five (25) present (reallocated) and prospective new units. The Borough of Far Hills shall be given a period of ninety (90) days from

the date of this Order to submit to the Court for its review and approval revised zoning ordinances and land use regulations providing for its fair share allocation as indicated herein. Said reduced fair share allocation from the AMG formula shall be reviewed and approved by the Master as warranted because of peculiar circumstances in Far Hills and unavailability of developed or undeveloped property for such purposes."

6. As part of the Interim Order of Settlement the plaintiffs' agreed to contribute the cost of the enlargement or expansion of the Bedminister Township Sewage Treatment Plant to help service the Borough of Far Hills and the property in question. In compliance with this provision of the Interim Order of Settlement, Plaintiffs' contract purchasers, Far Hills Development Co. (Casper Bocina and Bruce Bocina) paid a check in the amount of \$10,000 to the Borough of Far Hills for payment to the Township of Bedminister for the design engineering studies necessary to provide for the expansion of the sewage treatment plant.

7. Pursuant to the Interim Order of Settlement the Borough of Far Hills adopted a Zoning Ordinance rezoning plaintiffs' property for multi-family housing at a density of 6.5 dwelling units per acre.

8. A Special Master reviewed the proposed ordinance and recommended various changes. The ordinance was reviewed and approved by the Honorable Eugene D. Serpentelli by Order of Compliance Subject to Conditions after a contested hearing. See the Order of Compliance Subject to Conditions which is attached hereto as Exhibit C. The hearing was held on or about September 6, 1985 and the Order of Compliance Subject to Conditions was entered by the Court on October

4, 1985. An objecting party, Timber Properties appeared at the hearing and was represented by counsel, Brian D. Schwartz. Said objecting party challenged the fair share allocation calculation approved by the Special Master and approved by the respective parties. The plaintiffs and their contract purchaser, Far Hills Development Co., Bruce and Casper Bocina participated in the hearing on the Order of Compliance and recommended that the Court approve the Far Hills Zoning Ordinance and the fair share obligation of **twenty-five (25) new units with the indigenous responsibility as identified by the Borough as seven (7)**. This fair share number of thirty-two (32) units was substantially lower than the fair share number calculated by means of the AMG formula approved by the Court. Said AMG formula would have resulted in a fair share number of over 100 units. Nonetheless, the plaintiff and defendant argued and the Court agreed that the unique circumstances of the property and the limited availability of other developable properties within the Growth Area of the Borough of Far Hills justified the significant reduction in the Far Hills. Bruce Bocina, a principle of the contract purchaser from plaintiff testified before the Court at the Compliance Hearing and informed the Court that as the builder of the townhouses his company was prepared to proceed with construction of 125 units on the site with 25 units for low and moderate income households. The objecting party, Timber Properties contended that the reduction in fair share number was inappropriate and that a number higher than 32 should be ordered and that Timber Properties' property outside of the Growth Area should be permitted for development for Mt. Laurel housing.

9. On October 4, 1985, the Court entered the Order of Compliance Subject to Conditions indicating that the Court was approving the compliance package submitted by the parties. The Order of Compliance Subject to Conditions includes various specific conditions and expressly states that:

"Upon compliance with the above conditions, the defendants may submit a Judgment of Compliance to the court for its review and approval. Interim repose from any further Mt. Laurel litigation heretofore granted shall continue until further order of the court."

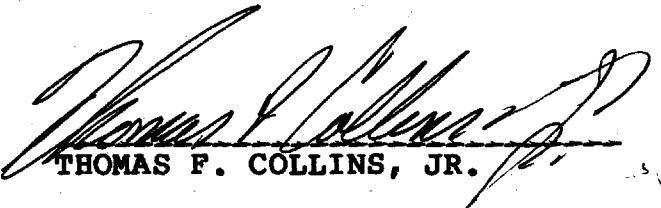
10. The hearing on the compliance package of the Borough of Far Hills was held on or about September 6 after the effective date of the Fair Housing Act at a time when the Borough of Far Hills had full knowledge of the adoption of the Fair Housing Act and the likelihood for creation of the Affordable Housing Council established by the Statute. Nonetheless, the Borough of Far Hills directed its attorney, Al Mastro and in the presence of its Mayor, Mr. Harry Hoffman, to proceed before Judge Serpentelli requesting approval of the Compliance package and Settlement Agreement of the Borough of Far Hills.

11 The Borough of Far Hills did not adopt a resolution prior to November 2, 1985 indicating its intent to participate in the Affordable Housing Council's program.

12. In reasonable reliance upon the Order of Compliance Subject to Conditions and the Settlement Agreement between the parties, the plaintiffs contract purchaser hired numerous experts to begin

preparation of preliminary site plan and architectural renderings for the proposed 125 unit townhouse/condominium development of which 25 units would be affordable to low and moderate income persons. The contract purchaser, Far Hills Development Co. also contributed \$10,000 to the Borough of Far Hills to be paid to the Township of Bedminster for design engineering studies to provide for the expansion of the Bedminster-Far Hills Treatment Plant to service plaintiffs' property. In an attempt to cooperate with the Planning Board of the Borough of Far Hills the contract purchaser prepared concept plans which were presented to the Planning Board pursuant to the concept plan guidelines of the Municipal Land Use Law. In addition, Far Hills Development Co. revised the concept plans and preliminary plans numerous times and in various way in order to accomplish some of the recommendations and requests of the Borough of Far Hills, the Planning Board of the Borough of Far Hills and the professionals of the Planning Board of the Borough of Far Hills. Far Hills Development Co., Inc. filed an application for preliminary site plan approval for the property in question for 125 units in accordance with the Settlement Agreement and Zoning Ordinance established pursuant to the Settlement Agreement. The application was filed on or about February 13, 1986. See, Exhibit C. Far Hills Development Co. has continued to attempt to cooperate with the Borough of Far Hills and the Planning Board of the Borough of Far Hills in revising its plans since the submission of the application and has met with the Planning Board on a number of occasions to discuss revisions to the preliminary site plans.

13. On or about June 23, 1986, the Council of the Borough of Far Hills over the objection of the plaintiffs and plaintiffs contract purchaser, Far Hills Development Co., Inc. proceeded to adopt a resolution of intent to participate in the Affordable Housing Council program and to seek to reduce the fair share for the Borough of Far Hills. The Borough of Far Hills also directed the Planning Board Attorney, J. Albert Mastro, to proceed before the Court on a motion to transfer the matter to the Affordable Housing Council. This action is a clear and direct breach of the Interim Order of Settlement and the Order of Compliance Subject to Conditions.

  
THOMAS F. COLLINS, JR.

*July 10, 1986*

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MT. LAUREL

DOCKET NO. L-73360-80

CIVIL ACTION

CERTIFICATION OF  
BRUCE BOCINA

I, BRUCE BOCINA, certify that the following statements are true to the best of my knowledge.

1. I am one of the principal stockholders of Far Hills Development Co., Inc., the Contract Purchasers of the Ochs and Haeuis Tract on the Borough of Far Hills. We entered into the contract in direct and reasonable reliance upon the explicit terms of the Interim Order of Settlement dated December 31, 1985 signed by the Borough of



Far Hills and approved by the Court. Under the contract with the sellers we paid sellers a deposit of \$500,000.00. We are experienced builders of single family, multi-family, apartment/condominiums and townhouses. We have numerous projects in Morris and Somerset Counties and were very familiar with the Far Hills-Bedminster Area. We proceeded with the contract with the plaintiffs Ochs and Haueis in direct reliance upon the settlement agreement reached between the Borough of Far Hills and the Plaintiffs which clearly indicated the intent, commitment and agreement by the Borough of Far Hills to move forward expeditiously to permit and cooperate in the construction of 125 units on the property, including 25 low and moderate income units.

2. Based upon the settlement agreement and our agreement with the sellers we immediately entered into a contract with the Berkus Group of Washington, D.C., Architects and Land Planners, to complete and conceptual land use plan, a land use design plan and architectural design for the proposed units. Even prior to the adoption of the zoning ordinance by the Borough of Far Hills rezoning the property for townhouses and condominiums we directed our architect to prepare the architectural design and conceptual land use plans and to assist the Town in reviewing the possible ordinances. Along with our architect, David Cobey and our attorneys, we were directly involved with the Borough of Far Hills in the review and preparation of various drafts of the proposed rezoning ordinance. We worked very hard to get a good ordinance because it was essential for a high quality project. On numerous occasions the proposed

ordinances were reviewed with the Special Master, George Raymond, the Council of the Borough of Far Hills and the Attorneys for both ourselves and the Borough of Far Hills. These meetings and this work was ongoing during February, March, April and May of 1985 and the work culminated in the adoption on May 13, 1985 of a new zoning ordinance rezoning the property in question for 125 housing units of which 25 units were required to be low and moderate income condominium units.

3. During the same time period, we retained Killam Associates, Millburn, New Jersey, experts in sewage treatment matters, to work with us in reviewing the possible expansion of the Bedminster-Far Hills sewage treatment plant to provide sufficient capacity to serve the project. Dick Jeske, P.E., reviewed the plant and the possible expansion of the plant and advised us and the Borough and the Township of Bedminster with respect to certain modifications that could be made in the plant to achieve sufficient gallonage for the proposed project. In that regard, on November 18, 1985 Mayor Hoffman of the Borough of Far Hills wrote to our attorneys and requested that we pay \$10,272.00 toward the cost of the feasibility study for the Bedminster-Far Hills Sewage Plant. See Exhibit A and B attached hereto. Shortly thereafter we paid to the Borough of Far Hills a check in the amount of \$10,272.00 toward the Feasibility Study. This payment was made in direct reliance upon the settlement agreement executed by the Borough of Far Hills.

4. After the ordinance was passed by the Borough of Far Hills we hired our consultant engineers, Keller and Kirkpatrick to assist us in preparation of site plans for development of the 125 units. Keller and Kirkpatrick worked with our consultant architects, the Berkus Group to prepare plans based directly upon the ordinance adopted by the Borough of Far Hills. Our engineer and architect prepared a conceptual land plan along with architectural elevation and floor plans for submission to the Planning Board of the Borough of Far Hills and on August 5, 1985 we attended the Far Hills Planning Board meeting and presented a revised concept plan for the development.

5. On or about September 4, 1985, Bruce Bocina appeared at the hearing on the compliance package presented by the Borough of Far Hills to Judge Serpentelli. Bruce Bocina testified in support of the proposed ordinance of the Borough of Far Hills and indicated his company's ability to proceed with development of the 25 low and moderate income units based upon the terms of the ordinance. Mr. Bocina explained his background and experience in development in the area and with townhouse and condominium style of construction. Bruce Bocina testified that there was a realistic opportunity for the construction of the proposed Mt. Laurel project and thereby assisted the Borough of Far Hills in obtaining approval by the Courts of its compliance package. We also assisted the Borough in justifying a very significant reduction in the fair share need substantially less than of 50% of the AMG formula. The Compliance Hearing

culminated in the October 4, 1985 Compliance Order of Judge Serpentelli. After the Order we continued with planning, engineering and sewage related work in an attempt to obtain full approval of the proposed development in reliance on both the Settlement Agreement and the Order of Compliance along with the Town Committee's words and deed..

6. Based upon the positive response which we received from the Planning Board of the Borough of Far Hills at the August 5, 1985 meeting on the concept plans that we had presented, we directed our engineers and architects to prepare final engineering site plan and architectural building plans for the proposed development in accordance with the ordinance and the concept plan. This work was continuous for the next two or three months along with meetings with our experts, our attorneys and countless hours of direct involvement by ourselves in the project. The work culminated in the preparation of complete site engineering site plans and architectural building plans which were submitted to the Borough of Far Hills in December, 1985 for a meeting with the Planning Board in January, 1986. We submitted to the Planning Board all documents required for site plan approval. During the month of January, 1986 the Borough of Far Hills and its professional planner, Alan Dresdner, prepared a site plan application which did not previously exist. We immediately completed the site plan application and submitted it to the Planning Board on February 14, 1986. Based upon the January meeting we revised the site plans to incorporate various changes which

addressed most of the concerns raised by the planning board. The revised plans were submitted prior to the March meeting of the Planning Board and included detailed drainage work to provide a detention basin on the northwest portion of the property which could address not only the anticipated drainage from the project but also presently existing drainage currently causing a flooding condition within the Borough itself. This drainage work was designed to achieve and will achieve the objective of alleviating some of the flooding within some of the Borough streets. This work was done in direct compliance upon the settlement agreement between the Borough of Far Hills and the plaintiffs dated October 31, 1984.

7. Along with the application forms which were filed in February 14, 1986 a check in the amount of \$2,775.00 was submitted to the Borough of Far Hills for application fees in connection with the proposed project.

8. We met with the Planning Board at their March 3, 1986 and presented our revised plans. Full drainage and engineering plans were reviewed at that time. The Planning Board directed the plans to its experts, its professional planner, Alan Dresdner, and engineer A.J. Murphy. The engineer and planner for the Borough prepared reports reviewing the plans. Our consultant engineers and architect made revisions in the plans and wrote lengthy responses to the Township experts questions and concerns. These responses and plans were sent for review to the Borough Engineer and the Borough Planner. The plans constitute a full and complete site plan application. Attached hereto as Exhibit C and D are copies of the

site plan diagrams and the architectural renderings.

9. In response to the concerns of the Borough with regard to the size of the detention basin proposed to alleviate the present flooding that occurs within the Village area, we retained a consultant engineer to do a complete drainage study of the Village area of the Borough itself well beyond the area of our property and other alternatives to the detention basin proposed. / As a result of the drainage study which was submitted to the Borough on May 27, 1986, our engineers had determined that it will be possible to significantly reduce the size of the proposed drainage basin preventing a need for condemnation of property on the adjacent single family lot to the north of the property and allow for discharge of the stormwater primarily across Route 202 directly to an existing tributary known as Mine Brook. Thus will provide a very significant benefit to the Borough of Far Hills and eliminate the flooding problem currently existing in the Borough and eliminate the need expected by the settlement agreement for potential condemnation or purchase of the property adjacent to our property for the detention basin. Without this drainage study and drainage plan the Borough would have been obligated under the settlement agreement to purchase or condemn any additional property necessary for the detention basin to alleviate the pre-existing drainage condition. This drainage study and our proposed drainage techniques will eliminate the

existing flooding problem.

10. During the course of our involvement in this project we have already expended over \$150,000.00 for engineering and other professional fees in connection with the site plan work. We have expended numerous manhours of our own time and we have attempted in all respects to cooperate fully with the Borough of Far Hills in achieving full compliance with the settlement agreement and the Borough ordinance and we have gone beyond our legal obligations in an attempt to ensure that the project proceeds in a manner which is in keeping with our expectations and with the demands of the Borough of Far Hills. The Borough of Far Hills is now breaching the settlement agreement and the Order of Compliance which it voluntarily executed and requested approval from the Court. All of the work we have done has been in direct reliance upon the settlement agreement and the Order of Compliance and that reliance was reasonable. We have done our best, worked very hard and have gone out of our way to help the Borough of Far Hills to get the type of project that we all can be proud of. We have done all the work necessary to start construction and build one of the finest townhouse projects in the state and to provide Far Hills with their agreed to Mt. Laurel obligation. The Borough of Far Hills is now breaching not only its agreement but also its moral obligation and obligation of good faith which it owes to us and to the Court to ensure that this project and the 25 units of low and moderate income housing are constructed. In view of this clear

and direct breach of all of the Borough's legal and moral obligations, we request that the Court order that the plans be reviewed by the Special Master George Raymond and that he recommend any changes to the Court. We request that the plans be approved by the Court that site plan approval and all governmental approvals required from the Borough of Far Hills be granted immediately, subject to any conditions ordered by the Court.

Sworn and Subscribed  
before me this 2<sup>nd</sup> day  
of July, 1986.



**DOLores NEWTON**  
A Notary Public of New Jersey  
My Commission Expires March 16, 1989



**BRUCE BOCINA**



VOGEL, CHAIT, SCHWARTZ AND COLLINS  
A PROFESSIONAL CORPORATION  
Maple Avenue at Miller Road  
Morristown, New Jersey 07960  
(201)538-3800

Attorneys for Plaintiffs

ALOIS HAUEIS, ERNA HAEUIS, JOHN OCHS )  
AND PRISCILLA OCHS, )

Plaintiffs, )

THE BOROUGH OF FAR HILLS, THE )  
PLANNING BOARD OF FAR HILLS, THE )  
BOROUGH COUNCIL OF FAR HILLS and )  
THE MAYOR OF FAR HILLS )

Defendants. )

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY/OCEAN COUNTY  
MT. LAUREL

DOCKET NO. L-73360-80

CIVIL ACTION

CERTIFICATION OF  
BRUCE BOCINA

I, BRUCE BOCINA, certify that the following statements are true to the best of my knowledge.

1. I am one of the principal stockholders of Far Hills Development Co., Inc., the Contract Purchasers of the Ochs and Haueis Tract on the Borough of Far Hills. We entered into the contract in direct and reasonable reliance upon the explicit terms of the Interim Order of Settlement dated December 31, 1985 signed by the Borough of

Far Hills and approved by the Court. Under the contract with the sellers we paid sellers a deposit of \$500,000.00. We are experienced builders of single family, multi-family, apartment/condominiums and townhouses. We have numerous projects in Morris and Somerset Counties and were very familiar with the Far Hills-Bedminister Area. We proceeded with the contract with the plaintiffs Ochs and Haueis in direct reliance upon the settlement agreement reached between the Borough of Far Hills and the Plaintiffs which clearly indicated the intent, commitment and agreement by the Borough of Far Hills to move forward expeditiously to permit and cooperate in the construction of 125 units on the property, including 25 low and moderate income units.

2. Based upon the settlement agreement and our agreement with the sellers we immediately entered into a contract with the Berkus Group of Washington, D.C., Architects and Land Planners, to complete and conceptual land use plan, a land use design plan and architectural design for the proposed units. Even prior to the adoption of the zoning ordinance by the Borough of Far Hills rezoning the property for townhouses and condominiums we directed our architect to prepare the architectural design and conceptual land use plans and to assist the Town in reviewing the possible ordinances. Along with our architect, David Cobey and our attorneys, we were directly involved with the Borough of Far Hills in the review and preparation of various drafts of the proposed rezoning ordinance. We worked very hard to get a good ordinance because it was essential for a high quality project. On numerous occasions the proposed

ordinances were reviewed with the Special Master, George Raymond, the Council of the Borough of Far Hills and the Attorneys for both ourselves and the Borough of Far Hills. These meetings and this work was ongoing during February, March, April and May of 1985 and the work culminated in the adoption on May 13, 1985 of a new zoning ordinance rezoning the property in question for 125 housing units of which 25 units were required to be low and moderate income condominium units.

3. During the same time period, we retained Killam Associates, Millburn, New Jersey, experts in sewage treatment matters, to work with us in reviewing the possible expansion of the Bedminister-Far Hills sewage treatment plant to provide sufficient capacity to serve the project. Dick Jeske, P.E., reviewed the plant and the possible expansion of the plant and advised us and the Borough and the Township of Bedminister with respect to certain modifications that could be made in the plant to achieve sufficient gallonage for the proposed project. In that regard, on November 18, 1985 Mayor Hoffman of the Borough of Far Hills wrote to our attorneys and requested that we pay \$10,272.00 toward the cost of the feasibility study for the Bedminister-Far Hills Sewage Plant. See Exhibit A and B attached hereto. Shortly thereafter we paid to the Borough of Far Hills a check in the amount of \$10,272.00 toward the Feasibility Study. This payment was made in direct reliance upon the settlement agreement executed by the Borough of Far Hills.

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Sworn and Subscribed  
before me this 2<sup>nd</sup> day  
of July, 1986.

  
\_\_\_\_\_

**DOLORES NEWTON**  
A Notary Public of New Jersey  
My Commission Expires March 16, 1989

  
\_\_\_\_\_

**BRUCE BOCINA**

RECEIVED

VOGEL, CHAIT, ~~KIMMEL~~ SCHWARTZ AND COLLINS

A PROFESSIONAL CORPORATION

*Attorneys at Law*

JUL 14 1986

HERBERT A. VOGEL  
ARNOLD H. CHAIT  
ANDREW M. KIMMEL  
ARON M. SCHWARTZ  
THOMAS F. COLLINS, JR.  
SHEILA M. HAGERTY\*

OF COUNSEL  
HAROLD KOLOVSKY  
HAROLD GUREVITZ  
LORRAINE C. STAPLES\*

\*MEMBERS OF THE N.J. AND PA. BARS

JUDGE SERPENTELLI'S CHAMBERS

MAPLE AVENUE AT MILLER ROAD  
MORRISTOWN, NEW JERSEY 07960

(201) 538-3800

Superior Court Clerk  
Justice Complex  
CN 971  
Trenton, NJ 08625

Re: HAUEIS, ET ALS V. THE BOROUGH OF FAR HILLS, ET ALS-DOCKET NO. L-73360-80

Dear Sir:

Enclosed are the following for filing:

- |  |  |
|--|--|
| <input type="checkbox"/> Complaint   | <input type="checkbox"/> Answer                    |
| <input type="checkbox"/> Counterclaim  | <input type="checkbox"/> Demand for Jury Trial     |
| <input type="checkbox"/> Cross Claim   | <input type="checkbox"/> Third Party Complaint     |
| <input type="checkbox"/> Affidavit   | <input type="checkbox"/> Proof of Service          |
| <input type="checkbox"/> Affidavit of Proof of Default   | <input type="checkbox"/> Proposed Default Judgment |
| <input type="checkbox"/> Warrant to Satisfy Judgment   | <input type="checkbox"/> Stipulation of Dismissal  |
| <input checked="" type="checkbox"/> Motion   |  |
| <input checked="" type="checkbox"/> Order  |  |
| <input type="checkbox"/> Motion for <u>Answers</u> to Interrogatories  | CERTIFICATION OF THOMAS F. COLLINS, JR.            |
| <input checked="" type="checkbox"/> Kindly charge our account for the lawful fee.  |  |
| <input type="checkbox"/> Enclosed is our check in the amount of \$   |  |
| <input type="checkbox"/> Enclosed is our check in blank amount to cover the cost. Kindly fill in the amount and advise us of the amount. |  |
| <input checked="" type="checkbox"/> Return one copy marked "FILED" in the enclosed stamped, self-addressed envelope.                     |  |

Respectfully yours,

VOGEL CHAIT ~~KIMMEL~~ SCHWARTZ AND COLLINS  
A Professional Corporation

THOMAS F. COLLINS, JR.

Enclosures

CC Hon. Eugene D. Serpentelli  
SOMERSET County Clerk  
Ocean County Clerk  
J. Albert Mastro, Esq.