COLTS Neck 1986

Judge's Decision upholding Ordinances adopted by the Twp
Attch: Cover Letter

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May 8, 1986

Mr. Robert Clark & Mr. David Morris
Monmouth County Planning Board
Hall of Records Annex
Freehold, New Jersey 07728

RE: Colts Neck - Abbatiello
Our File: CN-A(08)

Dear Bob & Dave,

I think by now you know that Judge Farren upheld the ordinances adopted by the Township of Colts Neck such ordinances being consistent with the Growth Management Guide.

Thinking that perhaps it would be of interest to you, I am forwarding herewith a photocopy of the Judge's Decision announced from the Bench on April 29, 1986.

I thank each of you for testifying in the matter.

Thanking you, I am

Very truly yours,

ROBERT W. O'HAGAN
RWO/ls

encl.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MONMOUTH COUNTY
DOCKET NO. L-76679-84 P.W.

ANTHONY ABBATIELLO,

Plaintiff,

vs.

COLTS NECK BOARD OF ADJUSTMENT,

Defendant.

Transcript of Proceedings

JUDGE'S DECISION

April 29, 1986
Freehold, New Jersey

B E F O R E:

HONORABLE MICHAEL D. FARREN, J.S.C.

A P P E A R A N C E S:

KERRY HIGGINS, ESQUIRE
Attorney for Plaintiff

ROBERT O'HAGAN, ESQUIRE
Attorney for Defendant

JILL K. MIKRUT, C.S.R.
OFFICIAL COURT REPORTER
MONMOUTH COUNTY COURTHOUSE
FREEHOLD, NEW JERSEY 07728

THE COURT: This is in the matter of Mr. Abbatiello, et als, vs. the Township of Colts Neck.

This is an action in lieu of prerogative writ, wherein the plaintiffs seek to set aside the 1984 amendment to the Colts Neck Zoning Ordinance as it affects their property for the following reasons.

Number one. The decision of the Township Committee in adopting the ordinance was arbitrary, capricious, and unreasonable.

Number two. The State of New Jersey has preempted the field of farmland preservation.

Number three. The zoning ordinance of Colts Neck is tantamount to the acquisition of land for public use without just compenation.

Number four. The provision of the zoning ordinance for the transfer of developmen credits is ultra vires.

Number five. The provision of the zoning ordinance requiring the dedication of lands for agricultural purposes is ultra vires.

Plaintiffs also allege that the defendant violated the Civil Rights of the

plaintiffs and seeks damages.

From the testimony it appears Colts Neck is situated near the center of Monmouth County and is 31.6 or 20,224 acres in total land area. It is traversed by Route 18, Highway 34 and County Roads 520 and 537. It is in close proximity to the Garden State Parkway to the east, Routes 9 and 79 to the west, and Route 33 to the south. According to the 1980 census, the population of Colts Neck was 7,888. Up from 5,819 in 1970 and 2,177 in 1960. According to the Monmouth County Growth Management Guide, dated October of 1982, the medium income in the Township was $39,832. There are 2,067 dwelling units in the town, representing 13 percent of the Township's land map. The predominant land use is agriculture with over nine thousand acres receiving the farmland exception, pursuant to statute.

The zoning ordinance of 1972 provided for the following districts, which had the corresponding acreage therein. A-1 Residential, 19,141 acres. A-2 Residential, 459 acres. A-3 Residential, 274 acres. B-Business,

278 acres. D-Light Industrial, 202 acres.

In 1984, this ordinance was amended to provide for the following districts and corresponding acreage. A-1 Residential, 6,654 acres. A-2 Residential, 515 acres. A-3 Residential, 274 acres. A-4 Residential, 165 acres. B-Business, 248 acres. D-Light Industrial, 25 acres. Agricultural Receiving District, 252 acres. AG-Agricultural, 12,221 acres.

Prior to the 1984 ordinance, plaintiffs' lands were in the A-1 Residential Zone, which permitted development of single family residences on one and two acre lots. With the 1984 amendment, plaintiffs' lands were rezoned into the AG-Agricultural District.

In this district, residential development may be accomplished in three ways. One, ten acre farm lots (either with regular street frontage or as flag lots). Two, under a density concept of .2 units per acre provided the dwellings are placed on lots clustered to 55,000 square feet with at least 65 percent of the original farm dedicated to agriculture. Three, under a density of .3 units per acre,

where the entire original farm is dedicated to agricultural use and the proposed units are transferred to and built on a tract in the Agricultural Receiving District.

It is the position of the defendant Township that the rezoning in the Agricultural Zone was necessary to preserve agricultural land and necessary space, prevent urban sprawl, preserve the reservoir and water shed areas and to reframe the ordinance in keeping with the County Growth Management Guide, the State Grass Roots Report, the State Development Guide, and the Tri-State Plan of New Jersey, New York, and Connecticut.

The intent of the design plans set forth above was to add flexibility to the number of design options available so some additional development can take place while minimizing the impact on agricultural uses, maximizing the preservation of prime agricultural soils and the industry of agriculture directing higher density development away from the reservoir, encouraging the conservation of energy, and maximizing opportunity to use renewal energy sources.

As I have indicated, the initial question to be decided is whether the action of the Township of Colts Neck in amending the zoning ordinance was arbitrary, capricious or unreasonable.

The zoning ordinances are presumed to be reasonable, valid, and constitutional, which presumption continues until it is proven that they are arbitrary, capricious, or unreasonable. Shell Oil Company v. The Board of Adjustment of Hanover Township, 35 N.J. 403 (1962). Harvard Enterprise, Inc. v. The Board of Adjustment of Madison Township, 50 N.J. 362 (1970).

Subject to the rule of reason, the type of community to be achieved by zoning is exclusively a matter for local legislation. Newark Milk and Cream Company v. Parsippany-Troy Hills Township, 47 N.J. Super 306 (L.D. 1957).

It is not the function of the Court to rewrite or annul a particular zoning scheme duly adopted by a governing body merely because the Court would have done it differently or because the preponderance of the weight of the

expert testimony adduced at trial is at variance with the local legislative judgment. If the latter is at least debatable, it is to be sustained. Bow and Arrow Manor, Inc. v. The Town of West Orange, 63 N.J. 335 (1973).

As long as the municipal legislative body's judgment establishing classification of a district under a zoning ordinance is based upon substantial factors relevant to proper zoning, that judgment must be sustained. Bogert v. Washington Township, 25 N.J. 57 (1957)

The zoning objective under our law is not necessarily to encourage the most appropriat use of one's property, but rather to consider among other things the character of the district and its peculiar suitability for particular uses and with a view towards conserving the value of property and encouraging the most appropriate use of the land throughout the municipality. Cable Close Farm v. The Board of Adjustment of Middletown Township, 10 N.J. 442, 452-453 (;952). Bow and Arrow Manor v. The Town of West Orange, supra, at 346 (1973).

It has also been said that the essence

of zoning is a territorial decision in consonance with the character of the land and structures and peculiar suitability for particular uses with a general uniformity of restraints and uses within a division or classification. Bogert vs. Washington Township Supra, at 61.

In support of its allegation, the plaintiff introduced the testimony of four plaintiff property owners, two planners, and a realtor.

The initial witness, Mr. Flock, testified that he has been a resident of Colts Neck for sixty-one years and was engaged in farming 386 acres where his products were potatoes, milk, and grain. The farming operations have been croppable over the last five years and he has been able to make certain capital improvements to his farming operation over the last ten years without the necessity of a mortgage. He noted that there had been a loss of truck, dairy, and potato farmers over this period of time, but that horse farms had replaced most of them and they now flourish. In January 1986, Mr. Flock sold

a 136 acre tract previously used as a farm under the following terms. If one acre zoning is allowed, $25,000 per acre. If two acre zoning is permitted, $22,000 per acre. And if the zoning remains unchanged, $18,000 per acre.

Mr. Abbatiello testified following Mr. Flock. He testified that he has lived in Colts Neck since 1946 and presently farms one hundred acres, with an additional ten acres for his residence. He owns twenty-four horses and keeps eight on his farm. In addition, he raises crops which were profitable in 1985. Mr. Abbatiello stated it is difficult to farm ten acres because of the difficulty in maneuvering a combine but finds a distinct advantage in horse farming because of the close proximity to the race tracks. In fact, he added the horse population in Colts Neck had increased over the last ten years to the point where Colts Neck is the center of the horse industry in Monmouth County. He added that he has made substantial capital improvement to his property despite a problem in getting help. He recently received offers to purchase.

his property for a price of $22,000 per acre. However, he would like to get $30,000 per acre for the sale. He characterized his farm as successful.

Mr. DiFedele testified he had lived in Colts Neck since 1953 and owns a truck farm of 109 acres, employing twenty-seven people seasonally, which has been profitable for him over the last five years. In his opinion, ten acres is not enough to survive on.

The last plaintiff property owner to testify was David Barcley. He was born in Colts Neck in 1949 and owns 90 acres of orchard lands, renting an additional twenty acres. Most of his products are sold to Delicious Orchards. Although his farm has been profitable over the last five years, he sustained a retail loss in 1985. In his opinion, he could not operate on a ten acre parcel.

Next, the plaintiffs produced James Casey, a realtor. Mr. Casey did a study on the effects of the 1984 zoning ordinance on a marketability and land values in Colts Neck.

In his opinion, the ordinance had no impact or little impact on the above and in some instances lowered the market value 25 to 35 percent, requiring some landowners to reduce their sales price 25 to 35 percent to be competitive. He admitted he did not consider the concomintant reduction in development costs by the use of cluster zoning nor the corresponding costs of improvement in smaller lot subdivision and their effect on lot values.

John Chadwick, a professional planner, testified for the plaintiffs that the 1984 zoning ordinance does not preserve agriculture, does not protect the reservoir, and is not rational nor logical. He added that it is sound planning to channel development where there is existing water and sewer and the preservation of agriculture is a worthy goal. He further added that Colts Neck is in a limited growth area under the County Growth Management Guide and is in compliance with the exception of the Mt. Laurel Zone and also complies with the Tri-State Plan.

The next planner was John Ritter.

Mr. Ritter was of the opinion that ten acre zoning did not preserve farms and was wasteful. It did not prevent sprawl and does little to produce road problems. In his opinion, the only basis for such zoning is to lower density. He felt Colts Neck conformed to the County Guide and the Tri-State Plan, but these two plans are not rational for Colts Neck. In touching on the Agricultural Receiving District, Mr. Ritter opined that this district has no other use other than to receive credits. He stated if you can't find credits to transfer you cannot develop and that there was not enough land in the Receiving District to build all credits that could be received from the Agricultural District. He added that there could be no construction in the district without water and sewer and that none exist.

In support of the ordinance, the defense presented John Magerski, the construction and building official and building inspector of Colts Neck. He testified that since 1972, 502,000 square feet of farm, stables, stalls, et cetera, have been constructed in the Township, and 1574 horse stalls have been

constructed in that period of time.

Robert Clark, the Director of the County Planning Board, next testified that the County Growth Management Guide was seven years in the making and is similar to a local master plan. He pointed out that the aim of the County Planning Board is to channel the growth in Monmouth County to two group corridors. That is the coastal and Route 9, for which there is room for 1.3 million people, which is more than double the present population of Monmouth County. In between these corridors and the western sector of the County, the Board is seeking to preserve the agricultural land and other environmentally sensitive areas. Colts Neck is located in this limited growth area. In his opinion, the Colts Neck Master Plan and Zoning Ordinance meet the Growth Management Guide proposals.

Next, Mr. Morris, a licensed planner, testified that the budget of Monmouth County contains $11,700,000 to purchase development rights on agricultural lands in the County.

The Chairman of the Colts Neck Planning Board, Mr. Sessler, testified that the goal of

the 1984 Zoning Ordinance was to protect and preserve agricultural lands and the reservoir and to bring the ordinance in line with the County Guide and State plans. He added that there had been three applications in the AC Zone for development since the enactment of the 1984 zoning amendment.

Kenneth Walker, Jr., as real estate appraiser, considered the effect of the 1984 Zoning Ordinance on market values in the Township and concluded that was still market activity in the AC Agricultural Zone with some reduction in value. He placed this reduction at between 13.4 percent and 18.6 percent, depending on the size of the parcel.

It was testified to by George Handzo that a Citizens' Advisory Committee was instrumental in the formulation of the 1984 Zoning Ordinance Amendment, whose meetings were private, no notes were kept, but two formal presentations were made to the Township Committee.

Romeo Cascaes, the Clerk of Freehold Township, testified that there had been no applications to that Township for the extensio

of water or sewer to Colts Neck.

The Colts Neck planner, William Queale, Jr., testified that Colts Neck is fourth in farmland in the Monmouth/Ocean Region and is smaller than the first three. Since 1972, farms occupy 42 to 48 percent of Colts Neck and if the Earle Naval Ammunition Base is excluded, the figure rises to 65 percent. The average overall town density is 6.9 acres per unit, or .15 dwelling units per acre. He added that the average size farm in the AG District in Colts Neck is 44 acres. Mr. Queale testified that the 1984 Zoning Ordinance addressed the following. One, County Growth Management Guide. Two, the State Development Guide Plan. Three, the Tri-State Plan. Four, an interest in preserving agricultural lands. Five, Judge Lane's decision in Orgo Farms vs. Colts Neck, requiring rezoning. Six, Judge Serpentelli's decision mandating Mt. Laurel housing in Colts Neck. In his opinion, the Colts Neck Master Plan and Zoning Ordinance stop suburban sprawl, avoid extension of intra-structure, reduce impact on existing agriculture, preserve agriculture, allow design

compatible with housing and farming, aid in regional growth. They comply with Mt. Laurel. And they are consistent with the County and State plan. He admitted that there was a flaw in the Agricultural Receiving District. That is, you cannot develop without a transfer credit. He advised the intent was to include this District in the Agricultural Zone and he would recommend a change in the ordinance to effectuate this.

The Monmouth County Growth Management Guide, dated October 1982, which was introduced into evidence, provides in part: "Agriculture/ Conservation areas, generally coincide with the limited growth areas designated on the Growth Management Guide Map. Those areas consist primarily of farmlands and woodlands and are important for wildlife as well as agriculture. Residential growth should be channeled to those areas designated as town centers, town development areas, and villages. Agriculture/ Conservation areas could be protected by innovative land conservation techniques, such as agricultural clustering and/or districting, density transfers, and purchase of development

easements. While traditionally large lot zoning can be used to support these techniques, by controlling overall density, it has been largely ineffective as a deterrent to rural development when used alone." Monmouth County Growth Management Guide, October 1982, Section 3.4.5, Page 53.

In May, 1980, the New Jersey Department of Community Affairs found that farmlands located in suburbanizing areas is under great pressure for development because land values and tax rates rise with increasing development. The Farmland Assessment Act of 1964 has moderated some of the tax pressure on farming by reducing tax costs. This program, however, is not effective in long-term preservation. Farm properties are frequently sold when development pressures have become intense and the value of land has risen significantly. Additional methods of farmland preservation need to be developed as current techniques are of limited utility in developing areas. State Development Guide Plan, May, 1980, Page 89.

From the aforesaid evidence, this Court finds farming is the predominant use in Colts

Neck and is a profitable business. There has been a transition over the past ten years to horse farming, although food and fiber are still viable endeavors. The reasons for this transition appear to be the unavailability of help and the close proximity of Colts Neck to the local race tracks. This Court can take judicial notice of the fact that Colts Neck is within driving distance of Monmouth Park, Freehold Raceway, the Meadowlands, Garden State Park, Philadelphia Park, Yonkers Raceway, Belmont, and others. It has also been established that the former plaintiffs who testified made substantial capital improvements to their farms over the last five years, further evidencing a viable business in farming. Both sides introduced testimony that rezoning has caused a loss in property value and this Court finds that a moderate loss has occurred. This is also borne out by the terms of the Flock sale. Under present zoning, $18,000 per acre. Two acre zoning, $22,000 per acre. One acre zoning, $25,000 per acre.

I further find that it is sound planning to channel development where there is existing

intra-structure and that the preservation of agricultural lands is a worthwhile goal.

In addition, I find that Colts Neck is in a limited growth area under the County Growth Management Guide. And that it's Master Plan and Zoning Ordinance comply with the County, State, and Tri-State plans, with the exception of the Mt. Laurel Zone.

I further find from all the evidence that the Agriculture Zones preserve agriculture and protect reservoir and water shed, will limit suburban agriculture and will reduce impact on existing agriculture, avoid the existence of intra-structure, provide the compatibility between housing and farming, and is in conformity between the County and State and Tri-State plans.

I don't accept the testimony of plaintiffs' planners, that ten acre zoning is wasteful, illogical, and will not protect agricultural lands and the reservoir. There was no basis for this opinion. As Judge Lane stated in Orgo Farms v. the Township of Colts Neck, Superior Court of New Jersey, Law Division, Docket No. L-3299-78 PW, July 3, 1979,

Page 9, "If the town truly wanted to protect agriculture, it would zone a portion of the land for no less than five acres." This, Colts Neck has done, and as it was condemned for having two acre zoning in Orgo Farms, so too, it is condemned for having ten acre zoning in this particular case.

Accordingly, I find the establishment of the Agricultural District in the 1984 Zoning Ordinance was not arbitrary, capricious, or unreasonable, but was founded upon sound planning principles and is in conformity with the County, State, and Tri-State plans.

The second issue raised by the plaintiffs is that the State of New Jersey has preempted the field of farmland preservation.

When a State statute has preempted a field by supplying a complete system of law on a subject, an ordinance dealing with the same subject is void. Ringley vs. Parsippany-Troy Hills Township, 55 N.J. 348 (1971) (State Regulation of Solid Waste Disposal). Summer vs Teaneck, 53 N.J. 548 (1969) (Ordinance Designed to Prevent Blockbusting). Magalefsky vs. Shoem 50 N.J. 588 (1967) (Licensing of Real Estate

Brokers).

A legislative attempt to preempt the field need not be expressly stated. Where a legislative enactment either expressly or impliedly is intended to be exclusive in the field, preemption will be found. Borden State Farms, Inc. vs. Mayor Louis Boy, II, 70 N.J. 439, 450 (1978).

However, Article IV, Section 7, Paragraph 11 of the New Jersey Constitution mandates a liberal construction of legislation in favor of local authority. Therefore, a legislative intent to supersede local powers must clearly be present. Kennedy vs. The City of Newark, 29 N.J. 178, 187 (1959).

As explained by former Chief Justice Weintraub, "The ultimate question is whether upon a survey of all the interests involved in the subject, it can be said with confidence that the Legislature intended to immobilize the municipalities from dealing with local aspects otherwise within their power to act." Summer vs. Teaneck, Supra, 53 N.J. at 555.

The New Jersey Supreme Court has established a three-part analysis for

determining the propriety of an exercise of legislative authority by municipality. The first question is whether the State Constitution prohibits delegation of municipal power on a particular subject because of the need for uniformity of regulation throughout the State. The second question is whether the Legislature has in fact done so. And lastly, whether any delegation of power to municipalities has been preempted by other State statutes dealing with the same subject matter. Dome Realty, Inc. vs. Patterson, 83 N.J. 212, 225-226 (1980).

Plaintiffs contend that the Farmland Assessment Act, the Right to Farm Act, and the Agricultural Retention and Development Act, together with the Grass Roots Study, evidence a legislative intent to preempt. This Court does not agree, and in fact, the opposite is true. As previously stated, N.J.S.A. 40:55D-2 states that the intent and purpose of the Municipal Land Use Act is to provide sufficient space in appropriate locations for agricultural lands. See also Kinnelon vs. South Gate Associates, 172 N.J. Super 216 (App. Div. 1980)

It is obvious that the Legislature

intended to leave to the various municipalities the power to zone agricultural lands. This Colts Neck has done. And properly so.

The next point raised by the plaintiffs is that the zoning ordinance of Colts Neck is tantamount to the acquisition of land for public use without just compensation.

Private property may not be taken for public use without just compensation. New Jersey Constitution, Article I, Page 20.

A taking may as well occur indirectly through excessive regulation under the police power. Morris County Land Improvement Co. vs. Parsippany Troy-Hills Township, 40 N.J. 539, 554 (1963).

That a restraint against all use is confiscatory and beyond police power and statutory authorization is too apparent to require discussion. The same result ordinarily follows where the ordinance so restricts the use that the land cannot practicably be utilized for any reasonable purpose or when the only permitted uses are those to which the property is not adapted or which are economical infeasible. Morris County Land Improvement Co.

vs. Parsippany Troy-Hills Township, 40 N.J. at 557.

In the instant case, the lands of the plaintiffs have been zoned agricultural. This land has historically been utilized for such and in fact, is a profitable use as testified to by the plaintiff property owners. Certainly it cannot be said that this property has been zoned into inutility and contrary to the dictates of Morris County Land Improvement Company, Supra.

The next point raised by the plaintiffs is that the zoning ordinance provision for the transfer of development rights is illegal and void. That portion of the ordinance of which plaintiffs complain states as follows: "Except for development in that portion of the AG District, identified as the Agricultural Receiving District, the development of residences shall be based on one of the following three choices. At a density of .3 residential units per acre (3.33 acres per home), the residential development rights may be transferred to another property owner in the Agricultural Receiving District if the

transfer or property be dedicated to agricultural use."

The testimony in this case indicates that no property owner in the Agricultural Receiving District may develop his property without the benefit of a development credit. Additionally, there is insufficient land in this district to accommodate all development credits that could be transferred from the Agriculture District. Conceivably the property of an owner in the Receiving District who cannot obtain a development credit is zoned into oblivion. This the law cannot condone.

It is the opinion of this Court that this is the essence of arbitrary, capricious, and unreasonable conduct, albeit it was done according to Mr. Queale as an oversight.

In Gentex Homes of New Jersey, Inc. vs. the Mayor & Council of the Township of East Windsor, Superior Court of New Jersey, Appellate Division, Docket No. A-5144-82-T.I., decided April 13th, 1984, the Appellate Division struck down a similar concept, stating "...the uses permitted in the R.E.A.P. (the Receiving Zone) are made to depend upon the

entirely fortuitous circumstances of whether landowners in the AG Zone are willing to relinquish their development rights and on the possibility that prospective developers and farmland owners will arrive at a selling price agreeable to both. Thus, the owners of the property in one zone are entitled to determine the extent and development which may take place in another."

So too, in the instant case.

As previously stated, no development can take place in the Receiving District without a development credit. This is not a concept provided for in the Municipal Land Use Law and it is firmly settled that municipalities have no power to zone except as delegated to them by the Legislature. Taxpayers Association of Waymouth Township vs. Waymouth Township, 71 N.J. 249, 263 (1976).

Accordingly, those sections of the ordinance providing for the development under the theory of transfer development credits and establishing the Agricultural Receiving District will be stricken. Until the Township has had the opportunity to resume the

Agricultural Receiving District, the zoning ordinance in effect prior to that amendment is to govern. See Grand Land Corporation vs. The Township of Bethlehem, 196 N.J. Super, 547, 553 (App. Div. 1984).

The next point raised by the plaintiffs is that the zoning ordinance requirements of dedication of land for agricultural purposes is ultra vires and void. Plaintiffs attack Section 707.2(F)4(B)N(C), which authorized development by cluster for transfer of development credits on the grounds that each proviso requires the dedication of property for agriculturnl purposes.

This very same issue was recently decided in Grand Land Company vs. The Township of Bethlehem, Supra.

In that case, "For each one and one-hal acre building lot in the A-25 Zone, at least twenty-five or more acres of land devoted to farming or agricultural use shall remain."

In striking down this provision, the Court stated at page 552, "That zoning restriction is palpably indefensible and without authority in the Municipal Land Use La

or decisional law. In this State, a municipali is barred from conditioning subdivision approval upon an involuntary reservation of land within a subdivision for a public purpose such as a school or park," Middletown Properties, Inc. vs. Madison Township, 68 N.J. Super 197, 210 (L.D. 1961). Aff'd at Page 78 N.J. Super, 471 (App. Div. 1983).

A fortiori in our view, subdivision approval for residential building lot may not be conditioned upon reservation of adjoining or nearby land for a private house. As in the A-25 Zone under challenge before us, precluding any other use permitted by ordinanc or it appears by variance. N.J.S.A. 40:55D-70 "We conclude that the restriction on residenti use in the A-25 Zone is invalid zoning beyond the powers delegated to the municipalities under the Municipal Land Use law."

For the reasons set forth in Grand Land Company, so too must Section 707.2(F)4(B)N(C) be stricken as ultra vires and void.

Lastly, the plaintiffs contend that the defendants violated their Civil Rights. Section 1983 of Title 42 of the United States

Code, states "Every person who under color of any statute, ordinance, regulation, custom or usage of any State or territory subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the parties injured in an action at law, suit in equity, or other proper proceeding for redress."

There is no evidence before this Court that the defendant Colts Neck deprived the plaintiffs of their Civil Rights pursuant to the aforesaid statute.

Additionally, the plaintiffs failed to establish cognizable damages as a result of the alleged violation. Since the adoption of the 1984 zoning amendment, the property continued in agricultural use, clearly a reasonable use, to which it was adopted and which was not economically infeasible. Grand Land Company vs Township of Bethlehem, Supra, at Page 552.

In summary, this Court finds that the creation of the ten acre Agricultural Zone was

legal. However, the cluster zoning requiring lands be dedicated for agricultural purposes and the transfer development credit concept with similar dedication requirements was contrary to law of this State and must be stricken.

Mr. O'Hagan, you will submit an order in conformity with the terms of this opinion.

MR. O'HAGAN: Thank you.

(Conclusion of proceedings.)

C E R T I F I C A T E

I, JILL K. MIKRUT, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken by me at the time, place, and on the date hereinbefore set forth.

JILL K. MIKRUT, C.S.R.
OFFICIAL COURT REPORTER

Dated: July 3, 1991