

CN - Orgo Farms v. Cotts Neck Twp

2/29/84

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trial brief on behalf of Δ /Twp objecting
to builders remedies

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ROBERT W. O'HAGAN

February 29, 1984

Honorable Eugene Serpentelli
Court House
Toms River, NJ 08753

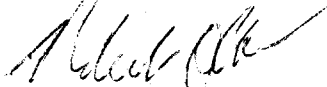
Re: Orgo Farms & Greenhouses, Inc., et al vs. Township of Colts Neck
Docket No. L-3299-78 PW
L-13769-80 PW

Dear Judge Serpentelli

Enclosed please find original and copy of the legal memorandum filed on behalf of the Township of Colts Neck.

By copy of this letter we are sending copies of the brief to each of the other attorneys in the matter.

Respectfully yours



ROBERT W. O'HAGAN

RWO:bam

enc

cc: (w/enclosure)
David J. Frizell, Esquire
Louis Locascio, Esquire
Edward C. Eastman, Jr., Esquire

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EUGENE SERPENTELLI'S CHAMBERS

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ATTORNEYS FOR DEFENDANT, TOWNSHIP OF COLTS NECK

----- :
ORG FARM & GREENHOUSES, INC., : SUPERIOR COURT OF NEW JERSEY
a New Jersey Corporation, and : LAW DIVISION
RICHARD J. BRUNELLI, : MONMOUTH COUNTY
: DOCKET NO. L-3299-78 PW

Plaintiffs, :

-vs- :

CIVIL ACTION

TOWNSHIP OF COLTS NECK, a :
Municipal Corporation, :

TRIAL BRIEF

Defendant :

----- :
ORG FARM & GREENHOUSES, INC., : DOCKET NO. L-13769-80 PW
a New Jersey Corporation, and :
RICHARD J. BRUNELLI, :

Plaintiffs, :

-vs- :

TOWNSHIP OF COLTS NECK, et als :

Defendants. :

----- :
SEA GULL LTD. BUILDERS, INC., : DOCKET NO. L-3540-84

Plaintiff, :

-vs- :

THE TOWNSHIP OF COLTS NECK, :

Defendant. :

STATEMENT OF FACTS

The Statement of Facts set forth on the part of the Township of Colts Neck will address itself to four major areas to conform to the issues identified in the Pre-trial Order. The facts will thus relate to a relocation of the S.D.G.P. line designating 262 acres as a Growth Area in the southwest corner of the Township to coincide with the Growth Line identified by the Monmouth County Planning Board in its Growth Management Guide. While it is true that a favorable decision on movement of the line will conclude the case, the facts will also address the evidence elicited at the hearings conducted by the Colts Neck Zoning Board of Adjustment. Because of the similarity of the issues, attention will be directed at that time as to the reasons why a Builder's Remedy should not be granted in favor of the plaintiff Brunelli. Finally, the facts will deal with the issue of fair share numbers for the 262 acre Growth Area of Colts Neck. Because the issue was deemed severed, no attention will be devoted at this time to the merits of granting a Builder's Remedy to the plaintiff Sea Gull.

RELOCATION OF THE GROWTH LINE

The line designating the Growth Area should coincide with the line designated by the Monmouth County Planning Board and its Growth Management Guide. The S.D.G.P. was not intended to be site specific. Rather, the State Department of Community Affairs grossly identified corridors to parallel the Garden State Parkway and Route 9 in Monmouth County. In its text, the S.D.G.P. acknowledges on pages 2 and 3 of the Preface that "the Concept Map consists of broad, generalized areas without site-specific detail or precise boundaries....". In this same context, on page 43, "Since it is not the purpose of the Guide Plan to supplant more detailed plans prepared by municipal- ities or counties, or other state departments, the categories depicted on the Concept Map are general". Finally, on pages 108 and 109,

"Regional and county plans and the local concerns they reflect are also important influences on land use. These planning activities have the potential to provide greater levels of detail to the Concept Map as well as to reinforce state policies. Regional and particularly county planning activities work in greater detail with smaller areas than does state planning, and so are able to do more defined mapping with respect to growth and conservation areas...

zoning when determining where growth should or should not occur in Monmouth County. The county, using the very same planning concepts as the S.D.G.P., located the Growth Line about one mile west of Colts Neck into Freehold Township. Clearly, only a short westward movement of the line would have relieved Colts Neck of the growth designation. It is thus obvious that municipal boundaries were not the basis for location of the line. Rather, the Growth Line was moved immediately west of a ridge line, which forms a divide between the lands draining into the Swimming River Reservoir and lands draining elsewhere. This movement of the line fulfilled the goals of the Department of Community Affairs. In this connection, it is interesting to note that the S.D.G.P. identified protection of sources of potable water as its number 1 priority, p. 21. While the G.M.G. on page 38 identified watershed areas as "Protection Areas" and contended that lands within them should never be developed. Virtually all of Colts Neck, including both the Brunelli and Sea Gull tracts are within the watershed to the reservoir. The Swimming River Reservoir supplies potable water to 250,000 consumers. The scientific basis for the county's position was testified to under oath

by General William Whipple, Jr. before the late Merritt Lane, Jr., then Judge of the Superior Court Law Division. General Whipple distinguished non-point source pollution from point source pollution. The later emanates from known industrial sites or from sewer treatment plants while non-point sources constitute the other material that gets into streams (T. Vol. IX, p. 295, l. 14-22) and consists of materials eroded from agricultural areas, things that have fallen on the street, parking lots, such as the drippings from automobiles and the exhaust from automobiles, material that falls from garbage cans, from debris around commercial establishment, drains from laundries, etc. (T. Vol IX, p. 301, l. 22-25; p. 302, l. 1-6) Studies have revealed that two-thirds of the pollutants come from non-point sources (T. Vol IX, p. 292, l. 12-18). Investigation also reveals that for the most part, the non-point pollution occurs in areas that are more densely populated. (Vol IX, p. 305, l. 6-12)

Based upon actual studies made in the field, Prof. Whipple has concluded that

"...Multiple family housing produces runoff pollution in excess of proportionate to the number of units, that is, that the certain number

of units in multi-family housing will produce more pollution than the same number of units that are widely disbursed." (T. Vol IX, p. 307, l. 24, 25; p. 308, l. 1-4)

Professor Whipple quantified the increase in pollution by comparing development of a square mile of land in two-acre lots, quarter-acre lots and multi-family at ten units of the acre, comparing the volume of pollution as follows:

	Two-Acre Devel.	Qtr.-Acre Devel.	Multi-Family Development	
B.O.D.	8 lbs.	27 lbs.	74 lbs.	T Vol IX P 321 L 9-15 P 323 L 9,10
PHOSPHORUS	6/10 lb.	1.9 lbs.	5 lbs.	T Vol IX P 323L 13-18
LEAD	.14 lb.	.34 lb.	1.0 lbs.	T Vol IX P 324 L 1-4
HYDROCARBONS	1.2 lb	11 lbs.	33 lbs.	T Vol IX P 324 L 8-11

B.O.D. means the total bio-chemical oxygen demand measured in milligrams per day (T, Vol IX, p. 322, l. 9-12). Professor Whipple indicated in response to the court's question that B.O.D. are organic materials and are bio-degradable and will use up oxygen. The pounds refer to the amount of oxygen that will be consumed (T. Vol IX, p. 322, l. 14-22).

The figures for commercial development would be even higher as it would produce 200 pounds of B.O.D., 17 pounds of phosphorus, 4 pounds of lead and 66 pounds of hydrocarbons (T. Vol IX, p. 324, l. 18-21).

The Professor stated that B.O.D. depletes the oxygen supply in streams (T. Vol IX, p. 309, l. 23-25). In an extreme situation of oxygen depletion, no fish can live in the stream (T. Vol IX, p. 310, l. 11-15).

Professor Whipple counseled that the heavy metals were poisonous in themselves. In his study of multi-family housing, he determined that the concentrations of lead in the streams was four times as high as the established levels. Lead, he advised,

"...is poisonous, it's also harmful to the fish and shellfish in quantities." (T. Vol IX, p. 310, l. 16-24)

Professor Whipple Explained further that hydrocarbons

"...are very detrimental, some of them are very toxic to fish and some of them are cosmorganic, so in a class they are very undesirable to have in streams that is to be drunk because when that water is chlorinated the hydrocarbons that have not been previously removed may become combined with the chlorine to form substances some of which are pesticides and others of which are toxic." (T. Vol IX, p. 311, l. 6-24)

Some of these hydrocarbons are among the lists of the most toxic substances issued by the E.P.A. on their critical list of toxic substances. (T. Vol IX, p. 311, l. 15-19).

Non-point pollution such as that described herein is generally detrimental to biological life (T. Vol IX, p. 340, l. 4-10).

Professor Whipple went on to state that non-point sources of pollution have an effect on human life declaring that

"...it's surely no coincidence that New Jersey, the most densely populated state in the Union, also has the highest cancer rate." (T. Vol IX, p. 340, l. 17-20)

Once again, Professor Whipple counseled us that non-point source pollution rises with the extent of development (T. Vol IX, p. 341, l. 7-25; p. 342, l. 1-9).

When questioned as to whether a retention basin would filter out the pollutants described above, Professor Whipple advised that something less than one-half of the B.O.D., C.O.D. and phosphate pollutants would be retained if they were kept for a sufficient length of time. However, there is no information as to how much time in fact would be required for this purpose. (T Vol IX p. 335, l. 12-24). There is no data which would establish the efficiency of detention basin regarding the heavy metals nor is there any data whatsoever regarding the effect of a detention basin on petroleum, hydrocarbons and coliform counts (T. Vol IX, p. 336, l. 11-18).

The Professor testified further that while some hydrocarbons are particular, they might be in a colloidal or flocculent form which will not settle in a detention basin. Therefore, he concluded it is purely speculative to say what percentage of hydrocarbon would be removed by a detention basin (T. Vol IX, p. 337, l. 9-13).

Moreover, Professor Whipple counseled that the detention basins would have virtually no effect on water soluble pollutants (T. Vol IX, p. 346, l. 23-25). Examples of water soluble pollutants are copper, sulphate, nitrates and chlorides (T. Vol IX, p. 347, l. 1-11).

In any event, Professor Whipple concluded that even for that class of pollutants that would be detained, the level of pollution would still be far greater for multi-family developments than for two-acre developments (T. Vol IX, p. 337, l. 1-17).

Secondly, the G.M.G. sought to preserve existing farm land in Monmouth County. This purpose is expressed as Goal 3 in the S.D.G.P. (p. 23). The Growth Management Guide recognized the need to preserve farms stating on page 15 that Monmouth County was one of the leading counties in the entire nation in terms of dollar value of agricultural products sold per farm acre and actually leads the State of New Jersey in horse breeding, production of wheat and potatoes and nursery acreage. The G.M.C. stated as a challenge the need to discourage residential development in productive farm land areas, (p. 32) and set forth its plans to fulfill such challenge on pages 53 and 54. Colts Neck is an intense agricultural area. Reference is again made to the testimony elicited at the first trial of this matter. Monmouth County Agricultural Agent, Donald Mohr, a witness subpoenaed to testify, advised that the farmers in Colts Neck are, "...using as much land as possible

that can be farmed...Perhaps every last bit of the land that's available for farming is being used to its best advantage." (T Vol VII p. 78, l. 6-10) Mr. Mohr went on to indicate that those who own land which has been given a farmland assessment but who don't actually farm themselves,"...will be badgered by the farmers around him to allow them to farm the land for a rental fee...(the farmers)...have to farm every last acre they can." (T. Vol VII, p. 91, l. 23-25; p. 92, l. 1-14) The competition between farmers to lease additional farmland can be described as a "land war", each offering more and more money for the use of the land to farm. Thus 99% of the land can be farmed. (T. Vol VII, l. 15-25). Mr. Mohr declared that the farmers in Colts Neck rank up at the top of the list as far as their practices and techniques and the crops they are growing (T. Vol VII, p. 77, l. 17-24).

Agricultural activities in Colts Neck include the growing of grain crops such as wheat, corn, soy beans... vegetable growing, fruit farms and the horse industry (T. Vol VII, p. 71, l. 25; p. 72, l. 1-12). The horse industry in Colts Neck has intensified and there are more horses now than in 1900 (T. Vol VII, p. 78, l. 13-18).

At the first trial, Mr. John VanZandt, who is employed by the Division of Rural Resources and is responsible for the Farmland Preservation Program of the Department of Agriculture of the State of New Jersey (T. Vol X, p. 447, l. 8-25; p. 448, l. 1-13) stated that residential neighbors living in proximity to farms have complaints about the farmers' activities (T. Vol X, p. 465, l. 14-25; p. 446, l. 1-6). While the farmer, on the other hand, has his own complaints about his new residential neighbors (T. Vol X, p. 466, l. 12-22). The Monmouth County Agricultural Agent shared Mr. VanZandt's concern in this regard, advising that on the basis of neighbors' complaints, the farmer may have to change or revise his activities as well as worry about theft and vandalism to his crops (T. Vol VII, p. 84, l. 3-25). Planner Tindall, in his report advised that high density development is encompatible with the continued maintenance of farms in Colts Neck.

There is no doubt that the agricultural industry in Colts Neck is strong. Reference in this regard is had to the reports of Planners Queale and Tindall. Thus, the number of acres in farm use in Colts Neck for the past ten years has consistently amounted to 44-46 percent

of the land mass. As the court is aware, the Federal, County and local governments have substantial land holdings in Colts Neck. If these lands are deleted, then the lands devoted to agricultural pursuits comprise 66 percent of Colts Neck's land area. Said another way, when farm uses and public uses are combined, they make up 78 percent of the Township's land mass. The acreage actually devoted to farm use in Colts Neck now totals 8,831 acres, which ranks Colts Neck 4th in Monmouth County in total farm acreage (each of the top three municipalities have greater total land area). A map will be introduced at trial which will depict the land masses devoted to the growing of grains, corn, potatoes, vegetables, soy beans, fruits, and ornamental crops in Colts Neck, as well as the lands devoted to animal husbandry. In that regard, the horse industry in Colts Neck now involves some fifty-eight farms, many of which have spent large sums in the installation and construction of barns, training tracks, various and sundry training facilities, etc. The number of horses in Colts Neck has increased significantly as reported by Planner Tindall and now the total ranges from 1,800 to 2,000 horses boarded or trained and varies daily as

animals are shipped to and from race tracks or to other farms for breeding purposes. This is contrasted with the 1970 totals of between 650 and 800 horses.

The State of New Jersey has encouraged this growth in the horse industry by various programs such as the Sire Stakes Program, Breeder's Awards, etc. Mention, of course, must be made of the state operated Meadow Lands Raceway involving both flat racing and trotters and pacers, and to nearby Monmouth Park Race Track and Freehold Raceway. Garden State Race Track is scheduled to reopen in calendar year 1985.

Colts Neck is sparsely settled at 250 persons per square mile, which is only one-third of the average density in Monmouth and Ocean Counties. In fact, only Millstone and Upper Freehold Townships in Monmouth County have lower densities. The number of dwelling units per mile in Colts Neck is only .11, which is but one-fourth of the regional average density. In deed, of the 86 municipalities in Monmouth and Ocean Counties, only a total of six have lower densities of both population and dwelling units than Colts Neck. At this point, it is necessary to note that Colts Neck has neither public sewers or water.

Thus, reference is had to the criteria established by the S.D.G.P. for an area to receive an agricultural designation. Clearly, Colts Neck fulfilled such criteria as it has low density with no public utilities. Colts Neck has very limited access to rail lines and as indicated in Planner Queale's report, the traffic volumes on Routes 18, 34 and 537 are much, much lower than those flowing on Route 9 and the Garden State Parkway and give evidence of largely local usage. An examination of the S.D.G.P. soils map and the map attached to the Planner's report reveals that a great portion of Colts Neck soils are Class I and II. When Earle and the flood plains are deleted, the overwhelming majority of Colts Neck soils are described as Class I and II.

Both the S.D.G.P. and the G.M.G. express the goals of preserving open space for a quality environment and as a reserve for future generations. Since the S.D.G.P. designated 99% of Colts Neck for Limited Growth and the county described all of Colts Neck as a Limited Growth area, it is clear that both conceive use of Colts Neck's lands for this purpose.

The S.D.G.P., page 24, and the G.M.G., pages 33 and 40 state as goals the need to cluster development

within or nearby existing infra structure, i.e. sewer and water lines, present development, major centers of employment, etc., not only to conserve energy, resources and the environment, but to encourage proper jobs/housing balance. As previously noted, there are no public water supply or sewage treatment facilities in Colts Neck or available to properties within the Township of Colts Neck. In response to one of the ingredients of the goal immediately stated, it is stated that Colts Neck has only 743 jobs which gives a density of 24 jobs per square mile and thus ranks Colts Neck as number 75 out of all the municipalities in the Monmouth/Ocean area.

The fourth goal of the S.D.G.P., page 23, i.e. the enhancement of the quality of life throughout the state, with a special priority for revitalizing older urban areas is mirrored in the G.M.G. This goal is echoed in Goal 6, page 25, S.D.G.P., which stresses the need to make use of existing factories, industrial buildings, etc. before pushing on to virgin areas to build new facilities while the old ones stand vacant. Placement of the Growth Line into Colts Neck frustrates fulfillment of each of the goals above noted.

The designation of 262 acres as growth in the southwest corner of Colts Neck has been described as error by Planner William Queale. It is to be noted that this part of the Township is virtually a mirror image of the rest as it houses a large horse farm and other agricultural uses. The area is not convenient to the Route 9 corridor. There are no utilities, and while utilities are located in adjacent Freehold Township, the sewer lines are dry and if activated, would require pumping westward on Route 537 to the Freehold Borough Treatment Plant. There are no jobs in the area, nor are there commercial services nearby. Such activity is being located some three miles to the west in Freehold Borough. The only changes that have occurred, amply justify redescription of the area as Limited Growth. In this connection, it is to be emphasized once more that the Monmouth County Planning Board in 1982 adopted the Growth Management Guide. In his deposition, Planning Director Robert Clarke also advised that at the meeting conducted between the County Planning Board and the Planners for the State, the Growth Area was reduced in Colts Neck and the line moved westward. The G.M.G. growth line is thus merely the refinement of such action.

Further evidence of changed circumstances is the enactment of the farm legislation referenced elsewhere in the memorandum which underscores the State's aim or purpose to preserve farms in New Jersey. This view is reinforced in the year by year strengthening of the horse industry in Colts Neck, both in terms of increase in number of horses and major capital investments by farmers for improvements to their farms and facilities.

Facts Relating to the Granting of a Variance or
A Builder's Remedy to the Plaintiff Brunelli

It is to be noted initially that Mr. Brunelli is a contract purchaser of the premises in question and merely has an option on the Orgo property. Such option now provides a sales price of \$2,500,000.00 which increases at the rate of \$12,500.00 for each month after September 30, 1982 until the closing. In addition, the plaintiff Brunelli or corporate entities have tied up two additional properties at a total sales price of \$318,879.00. At this posture, the plaintiff Orgo now proposes two alternatives for construction of this massive P.U.D. One alternative

provides for a 120,000 square foot office building and a 100 room hotel to be constructed on the south side of Route 18, along with a sewer and water facilities involving a package sewer treatment plant and a water distribution facility. These commercial and industrial facilities are coupled with a "midrise" 40,000 square foot office building, a ten acre off tract commercial development, which is apparently a satellite of the Brunelli proposal, and a two acre convenience center to be situated adjacent to Route 537. In this alternative, the plaintiff proposes 1,073 dwelling units proposing densities which range from 16 dwelling units per acre to single family lots.

It has been said that low income housing cannot result from this development as Mr. Brunelli will be obliged to install at great cost a tertiary sewer treatment plant, which will require a boring of collector lines under Route 18, as well as a water distribution system. The cost of same, together with the acquisition cost, are such as to make low income units merely an empty promise.

The Zoning Board of Adjustment took cognizance of the testimony elicited from Robert Halsey, a subpoenaed witness who was then Director of the Monmouth County Planning

Board, as well as from William Queale, the Township Planner. Attention is directed first to Mr. Queale's testimony. Initially, it is to be noted that he concluded that no special reasons were present to justify the granting of the requested variances, nor was this a particular case justifying the grant of a variance. Moreover, concluded Mr. Queale, the proposed development would substantially impair the intent and purpose of the zone plan and zoning ordinances and if approved and developed, would cause substantial detriment to the public good. (T. 7/29/80, p. 17, p. 18).

In this regard, Mr. Queale explained that the Orgo tract represented only one percent of the Township's land area, while the developer sought approval to increase the housing stock in Colts Neck by fifty-eight percent. The proof established that presently there are two thousand residential dwelling units in the Township while the applicant sought approval for a total of 1,137 dwelling units plus undefined commercial and industrial uses. Limiting our discussions solely to the residential aspect of the proposed development, it is mathematically simple to see that the plaintiff proposed to increase the number of housing units

by fifty-eight percent on a parcel comprising, as stated, only a tiny portion of the entire land area in the municipality. (T. 7/29/80 p. 18, l. 1-19) The very location of the Orgo tract points out the incongruity of the proposal as the southeast quadrant of Colts Neck is very sparsely settled at present. This section of the Township only contains a total of 68 dwelling units, which is equivalent to a developed character of 0.2 dwelling units per acre, or said another way, one dwelling unit for every fifty acres. (T. 7/29/80 p. 36, l. 10-15) The residential development allowed by the Colts Neck zoning ordinance at the Orgo tract is 0.5 dwelling units per acre. When reviewed in that context, the plaintiff proposes a twelve fold increase in the allowed density. But when compared against the developed character of the southeast quadrant of the Township, we find that Messer, Brunelli and Orgo propose a three hundred fold increase in density. (T. 7/29/80 p. 37, l. 2-6) As might be expected, the southeast quadrant of Colts Neck is largely developed in agricultural uses. Mr. Queale described Colts Neck's agricultural base indicating that 45% of its land area is used for farm purposes. Of that acreage, fifty-eight percent is devoted

to crop land. In addition, the number of horse farms in Colts Neck has been increasing significantly since 1970 until now there are 58 such farms in the Township. (T. 7/29/80 p. 19, l. 1-22) In this regard, if the Orgo tract were developed in the manner proposed, Mr. Queale advised that it would have a substantial detrimental impact upon the agricultural uses within the Township. (T. 7/29/80 p. 29, l. 1-18; p. 36, l. 10-12; p. 45, l. 15-20)

Mr. Queale was also troubled with the fact that the proposed development, "leap frogs" into the geographic center of the Township away from existing water and sewer utility systems. This "leap frogging" is at variance with the so-called Garden State Parkway development corridor and the Route 9 development corridor shown on both the Monmouth County Guide for Development and the State Guide for Development.

The illogical "leap frog", above described into the geographic center of the Township, away from existing utilities, frustrates a normal growth which would likely progress in an ordered and planned fashion extending out from the coastal and Route 9 corridors with all the attendant benefits of proximity to jobs, adequate shopping facilities,

highways, etc. (T. 7/29/80 p. 53, l. 20-25) This leap into the center of the Township, Mr. Queale believes, would encourage other similar developments, as approval of the proposed variance would be the rationale pointed to by subsequent developers seeking approval of high density projects in Colts Neck. (T. 7/29/80 p. 54, l. 8-12) This type of development would frustrate not only the aims of the Township, but the blue print laid out by the Monmouth County Planning Board, the State Department of Community Affairs and the Tri-State Regional Planning Commission. (T. 7/29/80 p. 20, l. 11-13) At the same time, this anticipated sequential development would drastically alter the character of the area. (T 7/29/80 p. 36)

Finally, Mr. Queale analyzed the Orgo and Brunelli project from the viewpoint of N.J.S.A. 40:55D-2, the purpose clause of the Municipal Land Use Act. Satisfaction of such purposes, Mr. Queale indicated, are required to establish the existence of a "special reason" as required by N.J.S.A. 40:55D-70d. Mr. Queale's testimony in this regard commences at page 35 of the transcript of July 29, 1980, and continues thereafter until page 48. Since each of the provisions

of the purpose clause was addressed, it is sufficient to state at this time that the testimony revealed that under such analysis, the proposed project did not establish a special reason justifying the grant of a use variance. Even those conditions which the applicant contended established a special reason, i.e. satisfaction of housing needs, proximity to Route 537 and the bus lines to Freehold and the use of innovative design standards, etc., were not unique to the subject parcel (T. 7/29/80 p. 30, l. 1-14) and could be better satisfied elsewhere in the Township. (T. 7/29/80 p. 35, l. 20; p. 36, l. 15)

Robert Halsey, then Director of the Monmouth County Planning Board, is, like Mr. Queale, a licensed planner of the State of New Jersey. Certainly, it could not be fairly said that he had a stake or interest in the outcome of this litigation. Because of his disinterest and qualifications, Mr. Halsey's testimony can be accurately used as a measuring stick against which should be gauged the testimony advanced by both proponents and opponents of the plaintiff's proposal for development. When asked, point blank by a member of the Zoning Board of Adjustment as to whether he would recommend the Orgo site for P.U.D.

containing in excess of 1,100 dwelling units in addition to commercial uses, Mr. Halsey responded that indeed he would not. The Planner Director, when questioned further about the Orgo site, advised the Zoning Board of Adjustment that no real element of the public good that could be served at the subject site could not be better served at other locations in the County. (T. 7/15/80 p. 56, l. 8-14)

The placement of this project in the geographic center of the township, Mr. Halsey advised, would contribute to urban sprawl. (T. 7/15/80 p. 66, l. 7-14) Urban sprawl leads to a situation where one section of the county would be virtually indistinguishable from all other sections. (T. 7/15/80 p. 65, l. 5-15) Mr. Halsey advised the Board that approval and development of this project would serve as the focal point for other higher density projects in the area. (T 7/15/80 p. 60, l. 11-14) This would ultimately cause more urban sprawl. (T. 7/15/80 p. 66, l. 4-14; p. 105, l. 19-25; p. 112, l. 18; p. 113, l. 10) These pressures would ultimately change the character of the area. (T. 7/15/80 p. 113, l. 3, 4)

Development of the Orgo tract in the manner proposed, Mr. Halsey advised, violates the County's plan

for orderly growth as then illustrated in the Monmouth County Guide for Development. (T. 7/15/80 p. 14, l. 17; p. 15, l. 21) The County, Mr. Halsey confirmed, wishes to channel higher density development along the Garden State Parkway corridor on the coast and the Route 9 corridor on the western side of the County. (T. 7/15/80 p. 14, l. 17-25). The County Planning Board desires that new higher density development occur in areas that are already sewered. Even in the development corridors, any proposal for development in an area that is not presently sewered would not be supported by the Monmouth County Planning Board. (T. 7/15/80 p. 45, l. 7; p. 46, l. 9) The County clearly takes the view that areas presently serviced by sewers should be developed before approval is granted to go into virgin territory. (T. 7/15/80 p. 31, l. 17; p. 32, l. 3) It is important to note that the Monmouth County Planning Board has stated residential development in Colts Neck should occur at the rate of 0.5 dwelling units per acre. (T. 7/15/80 p. 20-22) Surely, concluded Mr. Halsey, high density development in Colts Neck at the Orgo site would be on lands properly considered as virgin territory.

Another consideration addressed by the Zoning Board of Adjustment was the possibility that if approved, the Orgo project might have some detrimental impact on the Swimming River Reservoir. In this context, it is to be noted that the majority of the premises in question is located in the watershed to the Swimming River Reservoir, owned and operated by the Monmouth Consolidated Water Company. This reservoir supplies potable water to 250,000 consumers within Monmouth County. (T. 8/21/80 p. 121, l. 11, 12) The evidence established that the applicants proposal has the clear potential to effect the integrity of the reservoir by polluting and deleteriously effecting its water quality. (T. 8/21/80 p. 113, l. 4-8) Reference is had in this regard to the testimony advanced by General William Whipple, Jr. at the trial before the late Judge Lane. Similar testimony was elicited before the Zoning Board of Adjustment.

The calculations made by General Whipple, as graphically demonstrated in the chart, clearly established that higher density development within a watershed causes more pollutants to enter into the reservoir than lands developed as zoned in Colts Neck. These views have also

been espoused by the Tri-State Regional Planning Commission in their publication entitled "Regional Development Guide 1977-2000". On page 15, the Commission states its goal as follows:

"...the plan proposes careful conservation of the regions critical lands. Critical lands or inventoried vacant lands where environmental characteristics make it desirable either to prevent development or provide special safeguards if development must occur" (p. 15).

Water sheds were defined in the document to be critical lands. The report goes on to indicate,

"Pollutants generated by human activities will lower water quality and make purification expensive. It is possible that certain toxic materials can never be removed, and heavily treated water is less desirable for human consumption." (p. 17)

The Tri-State Regional Planning Commission recommended that these so-called open lands be developed at very low densities for incidental residential or non-residential uses (p. 17), recommending that

"The lowest residential densities deemed constitutional should be maintained in open land areas; 3 to 10 acres per dwelling, more if possible. In an case, local zoning should be encouraged for densities lower than 2 acres per dwelling." (p. 19)

The views of the Monmouth County Planning Board as above stated were reflected in the testimony elicited from the Planning Director, Robert Halsey. To reiterate Mr. Halsey's testimony, he indicated that as areas go from sparse development to more dense development, they cause greater and greater adverse impact on the water quality. (T. 7/15/80 p. 72)

The applicant in its reports to the Board, as well as in its testimony before the Board, apparently contended that the use of detention ponds on the property would eliminate pollutants which they apparently agree are expected to run off the land as a consequence of high density development. They apparently felt that the detention ponds would minimize the impact of pollution. After having reviewed such plans, General Whipple explained that the applicant's plan to use detention ponds would not work as retention ponds were required. (T. 8/21/80 p. 29, l. 10-15; p. 32, l. 10; p. 36; p. 37, l. 17; p. 38, l. 8) General Whipple counselled that with one exception the ponds were not designed or situated in such a manner as to settle out particulates as required to be effective for the stated purpose. (T. 8/21/80 p. 36, 37) Speaking

of the detention ponds proposed by the applicant, General Whipple declared that they would not be effective and that the proposed project would generate pollutants including hydro carbons, lead and bacteria contaminants which would ultimately flow into the Swimming River Reservoir. (T. 8/21/80 p. 40, l. 3-15; p. 41, l. 5-14) Perhaps, more importantly, the General advised that even if the ponds were all redesigned and re-engineered, they would not work in a satisfactory fashion to protect the reservoir. In this regard, it is significant to note that the maximum distillation that one could expect from a properly designed and engineered retention pond is 50-60%. (T. 8/21/80 p. 41, l. 23; p. 42, l. 24) Even with this reduction, there would be a substantial increase in the net pollution carried downstream, because the pollution resulting from the multi-family development increased so significantly over two acre development as above described. (T. 8/21/80 p. 42, l. 11-16) Thus, even if the developer were to redesign and re-engineer the project and utilize retention ponds, limiting our discussions at present to pollutants that are not water soluble, there would be at least two times the amount of pollution remaining in the stream

from the multi-family development than if the property were developed as zoned. (T. 8/21/80 p. 44, l. 5-7) When asked to quantify the net increase in pollution, General Whipple explained that it was significant and that there was no question that there would be some deterioration of the water quality if the project were approved, even if a properly designed and engineered system of retention ponds were utilized. (T. 8/21/80 p. 47, l. 3-7) As intimated above, the retention ponds would have no effect on water soluble pollutants (T. 8/21/80 p. 48, l. 12-20) which for the most part would run downstream when the water was released from the retention pond. As much as 10% of the hydro carbons are soluble, as are 40-50% of the phosphates while 40% of the copper run off is soluble. (T. 8/21/80 p. 49, l. 17; p. 50, l. 1)

When asked to comment concerning the environmental impact statement submitted by the applicant, General Whipple advised that it was deficient as it did not address itself to leads and other heavy metals, did not discuss petrochemicals or hydro carbons nor chloroform bacteria, all of which could be expected to be generated by developments of this nature. Indeed, the elements above mentioned

are three of the principal deleterious elements which form the pollutant characteristics in New Jersey. (T. 8/21/80 p. 21, l. 11-21)

Bearing in mind the fact that there would be no distillation of soluble pollutants and recognizing that there would be a net increase of 200% in the nonsoluble pollutants even if properly designed, engineered and maintained retention ponds were utilized, the Board obviously questioned as to what public purpose would be served by approving the massive project proposed by the plaintiffs within the water shed to the Swimming River Reservoir when other non-water shed land is available for higher density housing within Colts Neck.

Another concern addressed by the Zoning Board of Adjustment was the potential impact of the proposed development on the Colts Neck school systems. It appears now that the Atlantic Elementary School, which is immediately adjacent to the subject premises, will operate on a reduced scale. Such building will continue to be utilized for the education of children. If the Orgo proposal is approved and the very conservative estimates of the plaintiff as to the number of school children are fulfilled, then we

will quickly see that the Atlantic Elementary School must be utilized again to full capacity. At the hearing before the Zoning Board of Adjustment, Principal Kenneth Noland advised regarding the number of classrooms at the school and advised further that two of such classrooms faced directly out to Route 537. Because of the present proximity of the classrooms to the roadway, they are not desirable because of the noise pollution resulting from the traffic presently utilizing the road. (T. 7/24/80 p. 157-165)

It develops that the closest facade of the school is located at present approximately 80 feet from the existing curb on Route 537. If 537 were to be widened, as deemed necessary by Henry Ney, the applicant's Traffic Engineer, to accomodate the Brunelli development, it will certainly aggravate the school's existing difficulties with noise pollution.

(T. 7/24/80 p. 168) Mr. Ney advised that after widening, the Atlantic Elementary School would be between 16 to 20 feet closer to the roadway. (T 6/17/80 p. 39, l. 6-9)

Widening of the roadway will also likely result, Principal Nolan advised, in a noise problem in additional classrooms that are near the front of the building which face either to the east or the west. (T. 7/24/80 p. 169, l. 2-13)

The projected widening of the roadway will require removal of as many as five mature trees which presently serve to reduce the impact of the noise at the school. (T. 7/24/80 p. 169, l. 17; p. 170, l. 4) Widening of the roadway would cause the elimination of sixteen of the school's existing forty-eight parking spaces. If the school were to operate again at full capacity, then the reduced parking lot would be inadequate for the school's needs. (T. 7/24/80 p. 170, l. 5; p. 171, l. 11) If the roadway were in fact widened, and it was necessary to construct additional parking spaces, they would have to be constructed on the ball field with obvious consequences. (T. 7/24/80 p. 171, l. 13-22) Similarly, the required road widening would also impact bus transportation of the students at the school as it would eliminate present parking facilities used by the drivers while waiting to pick up children in the afternoon. (T. 7/24/80 p. 172, l. 5; p. 173, l. 2) In such circumstances, there would not be available land in which to put the buses which have heretofore parked in a line awaiting the dismissal of the school children.

The road widening would also require a relocation and rebuilding of the school's septic system as it would lie within the 16-20 feet distance above described. (T 6/17/80 p. 42, l. 20; p. 43, l. 8)

When speaking of existing traffic conditions on Route 537, Mr. Noland described the backup of cars at the conclusion of the school day by indicating the traffic extended from the light at the intersection past the easterly driveway of the school on Route 537 awaiting the green light to go forward. Certainly, opined Mr. Noland, the additional traffic generated by the proposed development would only increase the traffic difficulties now facing the school, the school children and the school officials. (T. 7/24/80 p. 173, l. 8; p. 174, l. 14)

In adopting its resolution, the Board also considered whether the Orgo site could be utilized as now zoned. In this regard, Robert (Sic Glenn) Gerken, the Colts Neck Township Engineer, advised that if the Orgo parcel were developed in accordance with the requirements of the A-1 zone, as many as 84 conforming lots could be developed. (T. 8/7/80 p. 8, l. 9-14) Mr. Kenneth Walker, the real estate broker who testified for the Planning

Board, indicated that such a development would be viable and that 21 lots could be sold per year at forty thousand (\$40,000.00) dollars per lot. (T 8/7/80 p. 25, l. 23; p. 26, l. 10) Mr. Walker, after making an analysis of the income and expense figures concluded the Orgo parcel was saleable as zoned. The qualifications of Mr. Walker, who holds a M.A.I. and S.R.E.A. designation among others are detailed on pages 19 through 22 of the transcript of August 7, 1980, are to be contrasted with those presented by Donald Kiefer. Mr. Kiefer testified on behalf of the applicant and it is to be noted that he has not as yet secured his brokers license and is only licensed in the State of New Jersey as a salesman. (T. 5/29/80 p. 65, l. 24, 25)

Mr. Walker testified further that the Orgo tract is not uniquely suited for the housing mixtures outlined in Judge Lane's decision. Indeed, he confirmed from a real estate viewpoint, the eastern side of the Township is better suited for this type of development. (T. 8/7/80 p. 39, l. 9-19) As a real estate expert, Mr. Walker indicated that the amenities required for high density housing include proximity to commuting, transportation facilities, shopping

facilities, sources of employment, medical facilities including hospitals, availability of sewer and water facilities, and compatibility with traffic flow. (T. 8/7/80 p. 39, l. 24; p. 40, l. 7) Mr. Walker identified several specific parcels in the eastern section of the Township that would be better suited to high density development than the Orgo tract. (T. 8/7/80 p. 48, l. 12; p. 49, l. 23) Each of these parcels has better credentials as to satisfaction of the requirements above recited and are thus more suitable for high density development.

In the first instance, it is noted they are three miles closer to public transportation, as well as the Garden State Parkway and the New York buses which serve nearby Tinton Falls, Shrewsbury and Red Bank. The parcels specified by Mr. Walker are closer to Fort Monmouth, one of the County's largest employers, as well as various industrial firms and commercial complexes. In addition, water and regional sewerage treatment are available in Tinton Falls. Moreover, there are nearby supermarkets and the Monmouth Mall is three miles closer than it is to the Orgo tract. Additionally, the eastern locations in the Township have greater access to recreational facilities such as bowling,

racquetball, river sports, ocean bathing, etc. It is to be noted further than high density development in the eastern section of the Township would be more harmonious to the existing density of housing in Tinton Falls. Higher density housing on the eastern side of Colts Neck would be served by a network of three to five Township roads that would act to disburse the traffic rather than adding it on to already heavily trafficked Route 537. Finally, the Monmouth Memorial and Riverview Hospitals are closer to the eastern side of Colts Neck than the Freehold Hospital is to the Orgo tract. (T. 8/7/80 p. 50, l. 1; p. 51, l. 22)

Finally, addressing himself to the negative criteria, Mr. Walker advised that if the Orgo tract were developed in the manner proposed by the plaintiff, such development would have a detrimental impact on the properties situated to the east. (T. 8/7/80 p. 55, l. 1423)

As to traffic problems reasonably expected if the Colts Neck Village proposal were developed, Henry Ney, a licensed traffic engineer who testified for the applicant indicated that if the plaintiff's application were approved, it would have to be accompanied by a widening

of County Route 537. The widening would occur on the southern side beginning at the intersection of Route 537 and State Highway 34 and running to the east past the proposed shopping center to be situated at the intersection, past the Atlantic Elementary School and along the entire frontage of the Orgo tract. In addition, Mr. Ney advised that the State would have to be prevailed upon to put a "leading green" on the traffic light to allow the south bound Route 34 traffic to turn left on to Route 537 in order to proceed to the east. (T. 6/12/80 p. 107, l. 6; p. 108, l. 25) The applicant's traffic engineer advised that after construction of the Orgo development, the number of cars turning left from Route 34 in a one hour period would increase from 100 at present to 364. (T. 6/12/80 p. 119, l. 25; p. 120, l. 4) It is only if the timing of the light were altered to allow the "lead green" time that the intersection could accomodate this increased traffic. (T. 6/12/80 p. 120, l. 3, 4) Moreover, if the roadway were not widened, the level of service at the intersection would decline drastically to what Mr. Ney described as a level of service D to E. (T. 6/12/80 p. 118, l. 24; p. 119, l. 9) Under this system level of

service A allows free movement of traffic while traffic conditions get progressively worse as we proceed down the alphabet.

Mr. Ney further advised that if the development were constructed, it would increase the volume of traffic in the morning peak hours by 23.6%. (T. 6/17/80 p. 43, l. 23; p. 44, l. 17) In terms of numbers, Mr. Ney predicted that during the morning peak hours, the development would add an additional 700 vehicles to the intersection. (T. 6/17/80 p. 65, l. 21)

Robert A. Nelson, a licensed traffic engineer who testified on behalf of the Planning Board advised that the intersection of Route 537 and Route 34 was designed to operate at level of service B which is a standard design able to reasonably carry 360 vehicles an hour through it. (T. 8/14/80 p. 39, l. 14-17) At present, Mr. Nelson advised, the intersection is overburdened as the level of service for east bound Route 537 traffic is between E and F (T 8/24/80 p. 42, l. 17; p. 43, l. 2) while the west bound level of service on Route 537 is E. (T. 8/14/80 p. 53, l. 10-14)

Presently, Mr. Nelson indicated there is a back up at the intersection, as during peak morning hours he

noted 19 out of the available 28 cycles of the traffic light during which one or more vehicles that had been stopped for the light did not make it through the intersection on the green phase, but had to wait for another cycle. (T 8/14/80 p. 81, l. 4-16) The Chairman of the Zoning Board of Adjustment advised that he had had the same experience on the date of this particular hearing at 4:45 p.m. as he waited for six changes in the light to make it through the intersection. (T. 8/14/80 p. 63, l. 7-9)

When questioned as to the traffic impact expected at the intersection if the development were constructed, Mr. Nelson advised that the level of service will only get worse. (T. 8/24/80 p. 103, l. 25; p. 106, l. 6) Mr. Nelson advised that if approved, the development would cause an increase in traffic of 68% (T 8/24/80 p. 107, l. 12-18) which of course will only cause a greater backup on the traffic at the intersection. (T. 8/14/80 p. 108, l. 2-5)

When commenting upon the likelihood of the State making the improvements to the intersection recommended by the applicant's traffic engineer Mr. Nelson counselled, based upon his experience, that he could not see the State

of New Jersey taking any steps to improve the intersection in a timely fashion. (T. 8/14/80 p. 106, 1. 3-6)

In his testimony, Mr. Ney advised that the County would make improvements to the intersection. His testimony in this regard, however, was refuted by Mr. Robert Halsey, who advised that the Monmouth County Planning Board has no capital program for widening Route 537 at present.

(T 7/15/80 p. 77)

FACTS RELATING TO THE FAIR SHARE OBLIGATION
OF COLTS NECK TOWNSHIP

For this section of the Statement of Facts, the Township of Colts Neck shall rely solely upon the fair share numbers determined by Township Planner William Queale. Thus, it is contended that the Township of Colts Neck has an obligation to provide for 117 low and moderate income units, using the latest population projection figures of the Department of Labor and Industry. Alternatively, using the figures previously made available by the department, Planner Queale estimates that Colts Neck has an obligation to provide for 136 dwelling units for low and moderate income people.

ARGUMENT

POINT I

THE GROWTH LINE SHOULD BE LOCATED TO COINCIDE
WITH THE LINE DEPICTED ON THE MONMOUTH COUNTY PLANNING BOARD'S
GROWTH MANAGEMENT GUIDE

The Township contends that the G.M.G. is consistent with the S.D.G.P., and thus, properly viewed as the refinement of such document. As indicated by Director Clarke in his deposition, the Department of Community Affairs moved the line westward after preliminary discussions with the Monmouth County Planning Board at a time prior to the County's adoption of the G.M.G. in calendar year 1982. Now that the County has adopted its Master Plan, the ongoing talks between the two planning groups should continue with the State accepting the County's line as merely a fine tuning of its line. (S.D.G.P. 108, 109) Certainly the State would take cognizance of the lot by lot inspection of the Monmouth County Planning Board and accept the County's statement of goals or objectives, which mirror the State's. Support for the County's desire to protect agricultural uses in Colts Neck is found in expressions made by the citizens at large, as well as through decisions made by their state wide elected officials.

The voters in New Jersey have consistently approved the expenditure of funds designed to preserve our farms and the legislature of the State of New Jersey has enacted legislation in fulfillment of such vote. The most recent expression of the will of the people are Companion Acts, namely the "Right to Farm Act", described as P.L. 1983, chapter 31, which is further described as 4:1c-1 and the "Agriculture Retention and Development Act" described as chapter 32 of P.L. 1983 and further described as 4:1c-11. In the Agriculture Retention and Development Act, the legislature declared that,

"The strengthening of the agricultural industry and the preservation of farm land are important to the present and future economy of the state and the welfare of the citizens of the state..."

Such legislation provided that "all state departments and agencies...should encourage the maintenance of agricultural production and a positive agricultural business climate" and made provision for the establishment of county organizations to coordinate the development of farm land preservation programs within identified areas. Such an agency has in fact been established within the County of Monmouth and the Township of Colts Neck was

one of the first to signify its interest to cooperate in the program. The "Right to Farm Act" recognized that,

"The retention of agricultural activities would serve the best interest of all citizens of the state by insuring the numerous social, economic and environmental benefits which accrue from one of the largest industries in the Garden State".

These legislative acts are only the last of the line of legislation evidencing a state policy to preserve farms. In that regard, see N.J.S.A. 4:1B-2 where the legislature declared

"a. That the preservation of agricultural open space and the retention of agricultural activities would serve the best interest of all citizens of this State by insuring the numerous social, economic and environmental benefits which accrue from the continuation of agriculture in the Garden State.

b. That past and present policies and efforts of this State intended to promote such preservation and retention, while beneficial and worthy of continuation, have been inadequate to insure the permanent existence of such activities, which constitute a vital and benevolent use of the land which is so rapidly disappearing in this, the most densely populated and highly urbanized state in the nation."

See also N.J.S.A. 54:4-23.1 et seq, 40:56-41.1 et seq, 40:55-39, 5:5-86 et seq and 5:5-44.

The Argument above stated stands for the proposition that the County Growth Line is merely a refined statement of the Growth Line set forth in the S.D.G.P. Addressing

the items set forth in Mt. Laurel II justifying a movement in the line, the Township contends that the only changes of consequence that have occurred in Colts Neck since adoption of the S.D.G.P. in 1980 are the adoption of the G.M.C., the legislation above noted, and the intensifying of the agricultural industry in Colts Neck. The number of horses raised on Colts Neck farms continues to increase with the prospect for continued growth as the Meadowlands Race Track grows and as the Garden State Race Track is rebuilt. The number of acres devoted to agriculture in Colts Neck has remained constant over the past ten years, which is remarkable when considered in the context of the great loss of farm land in the County of Monmouth and the State of New Jersey as a whole. Colts Neck, as stated in the Factual Statement of this Memorandum is a major producer of potatoes, vegetables, fruits, etc. On the other hand, if the issue is approached from the viewpoint of S.D.G.P. error, it must be acknowledged that the G.M.G. used the same planning concepts as the S.D.G.P. and determined that all of Colts Neck should be limited growth. It is apparent that the S.D.G.P. acknowledged the intense farm uses in Colts Neck when it stated that there were agricultural uses situated on prime soils in

central New Jersey, but did not give an agricultural designation because of development pressure. As the State Planners indicated in their text, the County Planning Board is closer to the situation and thus more familiar with the true extent of the development pressures. After adoption of the farm legislation referred to above, the County Planning Board formed an agricultural retention agency designed to assist in the effort to preserve the farms in Colts Neck and elsewhere in Monmouth County. Further, we cannot ignore that on page 71, the S.D.G.P. stated, "Agriculture in other portions of the State, no matter how they are assigned on the Concept Map - should be protected from incompatible development to the extent feasible within the context of local planning and land use regulations".

When considered in the context above stated, it must be said that resolution of this issue regarding location of the Growth Line involves the balancing of the State's need to preserve agricultural areas with the need to provide houses for low and moderate income people. Each need is legitimate and worthy of consideration by the Court. The key to solving the matter is found in the word of Chief Justice Walentz in the Mt. Laurel II decision. Mt. Laurel

II stands firmly for the proposition that henceforth sound planning concepts must form the basis for judicial decision in this area. Even if around a municipality others are developing, some towns should not yield to inevitable future residential, commercial and/or industrial growth. This is especially so if such municipalities contain prime agricultural lands, open space and areas of scenic beauty. This is particularly the case if development of a municipality would result directly or indirectly in unacceptable demands on public investment to extend the infra structure required to support such growth. (Mt. Laurel II, p. 224) To the same effect, the Court stress that unplanned growth has a price involving the destruction of natural resources, the spoiling of open spaces, the ruining of agricultural land and the settlement of people without regard to the cost of the public facilities needed to support them. (p. 236) Unplanned, illogical growth results in uncontrolled migration to anywhere anyone wants to settle, to roads leading to nowhere, and to a pattern of total neglect of sensible conservation resources. The Court stresses that not money alone is wasted, as natural and man-made physical resources are irreversably damaged by growth based soley or primarily upon the profit motives of speculators or land holders. (p. 236)

Based upon all of the above, the Court reasoned that henceforth, the Mt. Laurel obligation should be imposed in accordance with sound planning concepts and there was no reason in the Constitution to make every municipality a microcosm of the entire state in its housing pattern.

It went on to indicate, "the Constitution of the State of New Jersey does not require bad planning. It does not require suburban spread. It does not require rural municipalities to encourage large scale housing development. It does not require wasteful extension of roads and needless construction of sewer and water facilities for the out migration of the people from the cities or the suburbs". (p. 238)

Surely, it cannot be considered reasonable to require a farm community to drastically change its character when the Growth Line resulted from an uncalculated placement of the growth line of the S.D.G.P. merely to follow the Route 9 growth corridor. Proof of this position is readily found when one considers the fair share numbers generated by Planner Carl Hintz. Mr. Hintz concluded that Colts Neck has an obligation to provide 1,698 low income family units. The drastic change in the character of Colts Neck is amply illustrated when one considers that presently, the township

has only 2,200 dwelling units. If the usual multiplier is applied to Mr. Hintz's figures, then there are 6,792 additional standard units which would be required to subsidize the low and moderate income units, which would result in Colts Neck having a housing stock of 10,690 dwelling units. If we accept Mr. Hintz's estimate of 2.2 persons per household in the Brunelli tract and apply it to the new households generated by his fair share numbers, then Colts Neck's population will increase by 8,490 people or show an increase of 18,678 people.

As noted above, one of the prime concerns of the County of Monmouth in locating the Growth Line was its desire to protect the Swimming River Reservoir. If Colts Neck grows as envisioned by either the plaintiff Brunelli or the plaintiff Sea Gull, then clearly, the reservoir will be dreadfully affected. This, again, is contrary to the expressed will of the citizens of the State of New Jersey who have continually voted to approve bond issues designed to clear up the State's waterways. Time and time again, the legislature of the State of New Jersey has adopted statutes supporting the voter's will.

In a series of legislative acts, the State of New Jersey has recognized that our State's waters are in

danger of pollution as described by Professor William Whipple, Jr. In that regard, the court's attention is called to N.J.S.A. 58:12A-1 et seq.

The Legislature has found and determined,

"...It is a paramount policy of the State to protect the purity of the water we drink...The maintenance of high wality potable water is essential in order to safeguard the health and welfare of the people of the State..."

N.J.S.A. 58:12A-2.

In a companion Act, the Legislature found,

"...That the people of the State have a paramount interest in the restoration, maintenance and preservation of the quality of the waters of the State for the protection and preservation of public health and welfare, food supplies, public water supplies, propogation of fish and wildlife, agrculture and industrial uses, aesthetic satisfaction, recreation and other beneficial uses; and that the severity of water pollution problems in the State necessitates continuing water quality management planning...The Legislature further finds that water quality is dependant upon factors of topography, hydrology, and population concentration, (emphasis ours) industrial and commercial development, agricultural uses, transportation and such other factors which vary among and within water-

sheds...and that pollution abatement programs should consider these natural and manmade conditions that influence water quality. The Legislature further finds that the State's ground waters are a precious and vulnerable resource.

b. The Legislature declares that the object of this Act is wherever attainable, to restore and maintain the chemical, physical and biological integrity of the waters of the State..."

N.J.S.A. 58:11A-2

A similar expression was made in N.J.S.A. 58:10A-2

where,

"The Legislature (found) and (declared) that pollution of the ground and surface waters of this State continues to endanger public health; to threaten fish and aquatic life, scenic and ecological values..."

In recent years, our courts have come to recognize the need to protect the environment, declaring that,

"The Supreme Court has recognized that the protection of public health through the preservation of the environment is a valid, and indeed primary objective of the police power."

Hackensack Meadowlands v.
Mun Landfill Auth., 68 N.J.
451 (1975) at 473.

The court went on to state,

"We...are constantly becoming more acutely aware that the environmental resources as well as ecological and human values that have become so endangered upon this 'plundered planet', insistently demand every reasonable protection that can possibly be recruited." Supra at pp. 476, 477.

Statutes adopted for the purpose of protecting the public health and welfare, such as the three cited above, are entitled to a liberal construction for the accomplishment of their obvious beneficent objective. Lomran v. Dept. of Environmental Protection, 163 N.J. Super, 376, at 384 (App. Div. 1978); Newark v. Dept. of Health of N.J., 109 N.J. Super, 166 (App. Div. 1977) at 177; State v. Owens-Corning Fiberglass Corp., 100 N.J. Super 367 (App. Div. 1968).

When the rights of property owners conflict with measures required to protect the public health, they must

"...give way to the greater interest and good of the public. The interest in protecting the public health, safety and general welfare is paramount and includes protection of the environment as well as ecological values." 142 N.J. Super 103 (App. Div. 1976) at page 125. Aff'd O.B. 74 N.J. 312 (1977).

This concept was examined from the viewpoint of a "Mount Laurel challenge" in N.J. Builders v. Dept. of Environmental Prot., 169 N.J. Super 76 (App. Div. 1979) at page 95, where the court reaffirmed that,

"...Environmental factors can justify large-lot zoning if 'the danger and impact (on the environment) (is) substantial and very real...not simply to make weight to support exclusionary housing measures or preclude growth...(the Court) suggests that the preservation of water quality and the natural environment must be balanced against the dictates of Mt. Laurel."

Thus, the court upheld regulations that severely restricted development in the Pine Barrens notwithstanding the fact that population growth in the area had increased by 68% since 1950, while the balance of the State increased by only 35%. Indeed development pressures in the Pine Barrens indicated that future expected growth would be even more significant. Supra at page 82.

It is thus respectfully suggested that the Growth Line in the central part of Monmouth County should coincide with the Growth Line depicted by the Monmouth County Planning Board. In this regard, the court's attention is called

to the decision rendered by the Late Merritt Lane, Jr., then Judge of the Superior Court Law Division who found in the first Orgo case, that if zoning were done on a county-wide basis rather than on a municipal basis, his decision would have been different. The Township ask only that the Growth Management Guide be used for its intended purpose.

POINT II

THE PLAINTIFF BRUNELLI SHOULD BE DENIED
A VARIANCE AND BUILDER'S REMEDY

It cannot be denied that the plaintiff Brunelli seeks to develop in the most sparsely settled quadrant of the township of Colts Neck. East of the Orgo tract, farm after farm runs eastward to Swimming River Road. Surely, a housing project which increases the housing stock by over 50% which is situated on a land area measuring less than 1% of the land mass of the township can be aptly described as massive. The incongruity of the plaintiff's proposal is further demonstrated by the commercial uses now proposed for the tract. This huge project leaps away from the fringes of Colts Neck where there is presently water and sewer in nearby communities and lands not only in the middle of the Limited Growth section in Colts Neck, but in the middle of the large Limited Growth hole designated by the State Planners in central New Jersey. Significant parts of Holmdel, Marlboro, Tinton Falls, Wall and Howell make up such area. It cannot be seriously denied that the Brunelli

project will create enormous development pressures in this area. Nearby property owners, perhaps entranced with Mr. Brunelli's large profit will attempt to share in the action. It is no answer to say as Mr. Brunelli and his planners have advised, we are spending our own money for water and sewer and no one can connect to our system. Certainly, other speculators entranced by the same profit aroma will gladly agree to install their own sewer and water systems. They, too, will promise, we are the last development in town. Approve our project, and you will satisfy your obligation. It is obvious that the Brunelli project, located in the middle of the Limited Growth Area in Colts Neck frustrates the S.D.G.P. and will lead to a loss of such status for Colts Neck. (Mt. Laurel II, p. 241, 242) Thus, approval of a Builder's Remedy to Brunelli serves to frustrate the planning principals laid down in the S.D.G.P. and the G.M.G. To reiterate, time after time the Supreme Court argued that growth was targeted only for the growth areas. (Mt. Laurel II, p. 226, 227, 231, 239, 240) In the present case, while the growth

area is small, the plaintiff Sea Gull owns property in the area and promises that they can build housing to satisfy the obligations of the Township of Colts Neck. It does not make sense to award a Builder's Remedy to Brunelli when there is a property owner, not a speculator, in the Growth Area who represents that it can satisfy Colts Neck's obligation. Good planning requires that if a Builder's Remedy is to be approved, it should be in the Growth Area. This is particularly the case when there is choice between two developers.

Even a casual observation of the Brunelli project clearly demonstrates that it would harm the environment. Certainly, no one could deny that such intense residential and commercial uses are incompatible with the continued growth, or even maintenance of agricultural uses in the Township of Colts Neck. Time after time, in Monmouth County, we have seen farms fall to development and areas change from farm to suburban.

The S.D.G.P. took this approach repeatedly in its text. Even its very designation of an area as agriculture supports the proposition that high density residential development and farm uses do not mix. The S.D.G.P.

spoke of development pressures in the farm county of central New Jersey and spoke of the need to preserve farms from land speculators. The G.M.G. spoke of the same pressures and designated Colts Neck for limited growth part because of its existing farm uses. If the high density residential uses did not jeopardize continued farm use, then there would have been no reason for either the S.D.G.P. or the G.M.G. to address this problem in their respective texts.

In addition, the Brunelli project has the clear potential to damage the Swimming River Reservoir. This parcel is less than a mile from the reservoir and within its watershed. The developer proposes a system of swales and retention ponds designed to capture pollutants.

By his very use of these devices, the developer admits that the type of pollutant described by General Whipple will result from intense residential and commercial development. Mr. Brunelli contends that the swales and ponds leach out the pollutants. No one, however, has refuted General Whipple's conclusion that they will only be partially successful as to particulate pollutants

and completely unsuccessful as to water soluble pollutants. It is basic that in their testimony, the engineer for every developer fervently believes that if enough money is thrown at an environmental problem, the environment will be saved and his project can be constructed. This type of thinking has resulted in untold environmental disasters throughout the country. The engineers don't describe for us how the homeowners will shoulder the burden to clean out the swales, which meander apparently throughout the project. No description is given as to who will provide the funds to clear out the ponds after they have silted up with the concentrated pollutants running from this huge development. Experience shows that the homeowners group will quickly lose site of the promises made on their behalf by the eager developer. Certainly, the 250,000 users of the Swimming River Reservoir are entitled to protection. Thus, if there is a choice of building a massive P.U.D., either within or without a reservoir, such users should have the confidence that their interests will be protected.

It is apparently Mr. Brunelli's contention that existing farm uses in Colts Neck present a greater

threat to the reservoir than the P.U.D. he proposes. Certainly, if this were true, our waterways would have been polluted for hundreds of years, as all of New Jersey was developed for farm uses in the past. If Mr. Brunelli is accurate in his predictions, then Mr. Richard Mosier of the Monmouth Consolidated Water Company, would never have testified that the water in the reservoir at present is pure and pristine.

POINT III

COLTS NECK'S FAIR SHARE OBLIGATION TOTALS 417

The defendant Township of Colts Neck will rely upon the report of the Township of Colts Neck will rely upon the report of the Township Planner, William Queale, regarding its fair share obligation.

At the recent deposition of Mr. Carl Hintz, we learned that the plaintiff's formula for calculating Colts Neck's fair share obligation involved use of all of the land mass within the township that had not actually been physically built upon. Thus, existing farms were considered vacant land. A hypothetical was posed involving a municipality measuring 100 square miles which had only two acres in the growth area. Mr. Hintz responded that all of the farms throughout that municipality would be counted in determining such towns fair share obligation. Further, when it was pointed out to Mr. Hintz regarding Colts Neck that he did not have the accurate acreage for vacant land, regardless whether farm land was to be included or not, Mr. Hintz responded that the vacant land figures initially utilized had been derived from

the Housing Allocation Report and were utilized for all municipalities in the region and that therefore, adjustment of his figures could not be made. In the same deposition, Mr. Hintz advised that he used a municipality's economic capacity in his formula, notwithstanding that such municipality might not have any jobs.

The bias or interest of Mr. Hintz is clearly understood when we contrast his fair share number for Colts Neck, i.e., 1,698 low and moderate income dwelling units until the year 2,000, when one considers that only 262 acres are in the growth area. By way of contrast, when calculating the fair share numbers for East Brunswick, where Mr. Hintz is the Municipal Planner, he calculated the fair share number to the year 2,000 to be only 1,400 dwelling units. This, despite the fact that two-thirds of East Brunswick's twenty-three miles, are designated as Growth. In the same vein, Mr. Hintz previously worked on the recent Manalapan case and reached fair share numbers of 2,300 dwelling units until the year 2,000, notwithstanding that Manalapan has over 11,000 acres that are designated as Growth.

Respectfully submitted,

-64- ROBERT W. O'HAGAN