

CN - Origo Farms + Greenhouses, Inc

5/1985

v.
Top of Colts Neck

Appendix to Brief to Δ objecting to granting
a builders remedy to Origo, ITs

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ORGO FARMS AND GREENHOUSES, INC.,

Plaintiff,

vs.

TOWNSHIP OF COLTS NECK,

Defendant

:
: SUPERIOR COURT OF
: NEW JERSEY
: LAW DIVISION
: OCEAN COUNTY
:
: Docket No. L-5299-78
: L-13769-80
:
: CIVIL ACTION

APPENDIX

Brunelli - direct

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1 you executed the contract with Orgo in April, Mr.
2 Frizell advised you that there was a possibility
3 you'd have delays with the town?

4 A. Well, he had advised me long before that
5 contract was executed. I guess I was working --
6 that's why I wanted to look at that. I had the
7 property tied up on an exclusive brokerage basis
8 for at least six months prior to that contract
9 being signed.

10 And I know that while I was working on it
11 as a broker, I had Mr. Frizell's advice. So I
12 would say that I probably got his advice six
13 months to a year before that contract was signed.

14 Q. Okay. What did he tell you?

15 A. What did he tell me about what?

16 Q. As to how long it would take.

17 A. Like I said, I guess we figured that there
18 was going to be -- depending on whether the
19 township received us warmly or not, it would take
20 anywhere from a year to three years.

21 Q. Now, you had what you conceived to
22 be bad treatment by the planning board concerning
23 your Water Street property; isn't that correct?

24 A. That's right.

25 Q. Did you ever give any consideration

Brunelli - direct

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1 to developing this large project in a town other
2 than Colts Neck?

3 A. No.

4 Q. So your -- your efforts at
5 development were honed in or centralized as to
6 Colts Neck itself, isn't that correct, for
7 development of this scale?

8 A. Yes.

9 Q. Did you examine other municipalities
10 to determine whether a development such as you've
11 proposed in Colts Neck would be suitable in such
12 municipalities?

13 A. You mean as an alternative to Colts Neck?

14 Q. Yes.

15 A. I recall taking a look at Holmdel.

16 Q. When was that?

17 A. Around the same time.

18 Q. What did you do?

19 A. I looked at the zoning map, and in my
20 opinion I felt that they were exclusionary also.

21 Q. Did you try to tie up property in
22 Holmdel?

23 A. No, I didn't.

24 Q. So your efforts were confined to
25 Colts Neck Township; is that correct?

Brunelli - cross

1 A. Well, Mr. Halsey may have given his honest
2 opinion, but he was probably not informed. I
3 talked to Mr. Halsey. His big gripe was the
4 storm water runoff. He didn't know we had
5 planned for that. That we had put devices into
6 our development which were extraordinary in terms
7 of today's technology.

8 Q. Let speak of Mr. Halsey now. You, a
9 moment ago, you said he did what the towns told
10 him to do.

11 Are you saying in terms of his
12 participation at the zoning board of adjustment
13 level he didn't testify honestly?

14 A. No, I can't say he didn't testify honestly.
15 I could say he --

16 Q. Are you saying?

17 A. I'm saying he testified without having full
18 knowledge of the facts of what we were presenting
19 and because of that I think he made -- he may
20 have made an error.

21 Q. You spoke with Mr. Halsey you just
22 advised you us; is that correct?

23 A. Right.

24 Q. And frequently you discussed with
25 him prior to the Judge Lane suit, did you not?

Brunelli - cross

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1 When I say "the Judge Lane suit," of course, I
2 mean the Superior Court, Law Division action.

3 A. I did.

4 Q. You spoke --

5 A. I didn't have frequent discussions with him.
6 I spoke to him about our project.

7 Q. How many times did you speak to him?

8 A. Once or twice.

9 Q. Now, after the judge, I'm speaking
10 of Judge Lane rendering his decision, how many
11 times did you speak with him?

12 A. I don't believe I spoke to him at all,
13 maybe -- I don't recall at all speaking to him.

14 Q. What was your purpose for discussing
15 the matter with Mr. Halsey initially?

16 A. I believe I was in a very preliminary stage
17 at that point of deliberating as to whether I was
18 going to go ahead with this whole venture or not.

19 Q. Didn't you want to get the views of
20 the Monmouth County Planning Board?

21 A. Yeah, that's why I talked to him.

22 Q. Didn't you want to get a favorable
23 report from the Monmouth County Planning Board?

24 MS. DONATO: I object to the
25 question, it's argumentative.

Brunelli - cross

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1 BY MR. O'HAGAN:

2 Q. Well, Mr. Brunelli, wasn't that --

3 A. We submitted a report to the Monmouth
4 County Planning Board at some point in time, an
5 extensive report that I had -- I have been trying
6 to recall why we were, you know, at what point we
7 were -- I think the Tri-State Commission was --
8 they were in the -- that's right.

9 They were in the process of doing their
10 plan at that point. They were in the process of
11 redoing their Monmouth County Plan and at that
12 point we submitted a report on what we were
13 proposing to see if we could coordinate their
14 revised plan with what we wanted to do.

15 Q. And you thought that the approval of
16 your plan by the Monmouth County Planning Board
17 would be important in terms of what the Tri-State
18 Regional Planning Board did?

19 A. We felt that the -- if the revised Monmouth
20 County Plan showed that area of Colts Neck as a
21 high density area for our specific property, they
22 saw fit, that would certainly help our cause, yes.

23 Q. You were trying to persuade the
24 Monmouth County Planning Board to show the Orgo
25 property so as to be developed for higher density

Brunelli - cross

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1 zoning; is that correct?

2 A. Yes.

3 MS. DONATO: Can you give him
4 a time frame on that place?

5 MR. O'HAGAN: Well, he's the
6 one that told us he met with Mr. Halsey.

7 Q. Why don't you give us a time frame?

8 A. I met with Mr. Halsey probably prior to the
9 1978 meeting, the first meeting and then there
10 was probably another. I don't know if I met with
11 him when we submitted the report or not. I think --
12 I think he kind of stayed away from me because he
13 felt it was in litigation and that was his
14 attitude.

15 Q. You were seeking to persuade the
16 planning board to recommend zoning at the Orgo
17 location so as to permit your development; isn't
18 that correct?

19 A. The county plan -- the county master plan
20 showed different densities, they --

21 Q. Mr. Brunelli, I asked a question
22 that calls for a yes or no. Can you do me the
23 courtesy of answering the question?

24 A. It doesn't call for a yes or no because the
25 county planning board doesn't recommend zoning.

Brunelli - cross

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1 It just recommends master plan, general density,
2 as I understand it.

3 Q. Then I will rephrase the question.

4 Was your purpose in meeting with Mr.
5 Halsey so that the Monmouth County Planning Board
6 would make a recommendation so as to ultimately
7 allow the development of your project at the Orgo
8 location?

9 A. My meeting with Mr. Halsey?

10 Q. Yes, was that the purpose of it?

11 A. No.

12 Q. What was the purpose?

13 A. My meeting -- first meeting with Mr. Halsey
14 was to get his views, his personal views, not the
15 board's views, as to the Mount Laurel concept and
16 Colts Neck's liability under the Mt. Laurel
17 concept or obligations under the Mt. Laurel
18 concept and as to the locational aspects of
19 higher density in Colts Neck.

20 I had a very short meeting with him.

21 Q. And didn't Mr. Halsey tell you that
22 as far as he was concerned Colts Neck was not
23 subject to the Mt. Laurel decision as it was not
24 a developing municipality; isn't that what he
25 said?

Brunelli - cross

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1 MS. DONATO: I object to the
2 question. It's very vague.

3 A. He really didn't have much of an opinion on
4 Mt. Laurel. His biggest -- his greatest
5 objection, and I will never forget it, was that
6 he said to me - and excuse me because there's a
7 lady in the room - but he didn't want everybody's
8 piss going down into the resevoir.

9 Q. There's two ladies in the room.

10 A. Excuse me. I'm sorry.

11 That is what he said to me. There's more
12 concern about urban runoff and putting in sewer
13 plants than anything else.

14 Q. Now, you met with him on a second
15 occasion?

16 A. I don't recall a second meeting.

17 Q. You don't?

18 A. No.

19 Q. Okay. So you're saying then you
20 never were looking to get Mr. Halsey's approval
21 of your project in terms of the development in
22 Colts Neck; isn't that correct?

23 A. No, I was always looking to it get, but
24 after the trial, I believe the response was we
25 were in litigation and that we really couldn't

Brunelli - direct

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1 A. Yes.

2 Q. Where was that?

3 A. In Monmouth County.

4 Q. Is that back when you were with
5 Colao?

6 A. Yes.

7 Q. That's the last of it; isn't that
8 correct?

9 A. One or two homes in Middlesex County.

10 Q. Any other ingredients in the mix?

11 A. You mean the residential mix?

12 Q. Yes.

13 A. Let's see. We've got the patio homes.
14 We've got the condominium flats. We've got the
15 fee simple town houses. We've got the
16 single-family detached on the large lot and the
17 small lot. I think we talked about all the
18 different kinds of housing.

19 Q. Who helped you prepare this exhibit?
20 You advised us that you received input from Mr.
21 Guivari, Elson Killam, Abbington and Ney. And
22 who else?

23 A. John Rahenkamp, Pizzo and Pizzo, and Ney.

24 Q. Okay. So, Mr. Brunelli, if
25 everything went well, you expected you would

Brunelli - direct

1 derive a profit from his development of ✓
2 \$9,762,650; isn't that correct?

3 A. Well, that figure next to that figure that
4 you just read, there's a detailed explanation of
5 that being -- that's a gross figure and many,
6 many things have to be deducted from that. And
7 the -- the -- the projected sales prices on the
8 houses were not developed by me based on a market
9 approach, but on more of a cost plus approach.

10 Q. What do you mean by that?

11 A. Well, we tried to figure out what the costs
12 would be -- Pizzo really had to do a great deal
13 with the estimation of the -- of the sales prices
14 that we could come in at in Colts Neck.

15 Q. How did you come to get connected
16 with Mr. Pizzo or Pizzo and Pizzo?

17 A. I was involved -- I did an appraisal for
18 him for a bank. He had a 300 unit condominium
19 job in Hillsborough and he wanted to go to a bank
20 for financing. And I appraised his land and
21 prospective profits.

22 Q. Where is he based?

23 A. He's out of Somerset County.

24 Q. You've advised us that you had a
25 loss of income on your money. When did you

Brunelli - direct

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1 remember what started when any more.

2 Q. At any rate suit was started in
3 August of 1980; isn't that correct?

4 A. You mean this suit?

5 Q. Yes.

6 A. The one we're here for today, August of
7 1980, if you say so, I don't remember.

8 Q. Well, it was marked filed August
9 13th, 1980. At that point were the zoning board
10 of adjustment hearings still in process? Were
11 they still ongoing? Put it another way.

12 A. I think so. I think the last one was in
13 September.

14 Q. Did you give any direction to Mr.
15 Frizell regarding the summons and complaint?

16 A. Did I give him any direction?

17 Q. Yes.

18 A. I think I was pushing him to get it out. I
19 was getting sick of getting kicked around.

20 Q. Did you direct Mr. Frizell to send
21 Mr. Marks a copy of this complaint and by Mr.
22 Marks I mean Jerry Marks, attorney for the
23 planning board?

24 A. I know there were some problems with
25 servicing Mr. Fessler. There was a federal

1 marshall running around and he couldn't catch up
2 with him.

3 Q. Did you give direction to Mr.
4 Frizell to send a copy of the complaint --

5 A. I remember talking about that with Mr. *p 26.*
6 Frizell. You know, I don't think I told him to
7 do that. I wanted to get going with it. I
8 wanted Mr. Fessler to know that we were doing
9 this.

10 MISS DONATO: Off the record
11 a moment.

12 (Whereupon there is a
13 discussion off the record.)

14 BY MR. O'HAGAN:

15 Q. Now, Mr. Brunelli, with reference to
16 the interrogatories that you signed, sir, on May
17 3th, 1981, or perhaps that's May 18th, I can't
18 really tell, I direct your attention, Mr.
19 Brunelli, to interrogatory 15 which inquires as
20 to whether you contend that the chairman of the
21 zoning board of adjustment spoke with other
22 members of the zoning board of adjustment
23 following his discussion with Mr. Fessler as you
24 describe him.

25 Please refer to your answer there.



II. WATER DEMAND

A. Water Consumption

Water consumption requirements for the development were estimated utilizing the wastewater flow projections noted in the previous section of the report, as a base. The flows generated for sewage does not include water uses such as lawn sprinkling; car washing; heating and air conditioning systems; sprinkling and cleaning streets; filling swimming and wading pools; display in fountains and cascades; for protecting life and property against fire; and leakage in the distribution system "unaccounted for" water.

The preliminary water consumption projection estimated for the development is predicated on the assumption that the wastewater works collect approximately 85% of the water supplied on an annual average basis. Discounting the allowance for infiltration and inflow the annual average daily use for the development is estimated at 280,000 gallons per day. This figure has been used as the basis for the preliminary evaluation of the water system.

B. Variations in Use

The following variations in demand are estimated for this :

<u>Annual Average Daily Demand</u>	280,000 GPD	(195 GPM)
<u>Maximum Daily Demand</u>	560,000 GPD	(390 GPM)
<u>Peak Hourly Demand</u>	1,400,000 GPD	(975 GPM)

In the mid 1960's, the Federal Housing Administration sponsored one of the most extensive studies undertaken in the United States on residential water use. The following excerpt is taken from the FHA study entitled "A Study of Residential Water Use"³.

3. "A Study of Residential Water Use", Federal Housing Administration, HUD TS-12 February, 1967.

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and near the intersection of County Road 537 and Route 34. The property extends to the Route 18 intersection, and its western boundary parallels the business zone, with existing retail and service uses. These would all be within walking distance of the proposed development. It may be a matter of the amount of development (i.e., number of units and density), but certainly the location of a planned development at this location is consistent with the county plan for concentrating development at the Colts Neck village center.

In summary, the SDGP designates limited growth for Colts Neck since the plan did not recommend spending additional dollars for infrastructure (roads, sewer and water) needs in limited growth areas. This did not preclude development from occurring in these areas, but to reduce the amount of growth. (Page 7. Judge Serpentelli, "The purpose of the Plan is to control growth - not to eliminate it.") The proposal made by Orgo Farms is not to extend sewer and water from Freehold or other areas, opening up Colts Neck to new development pressure. And it does not propose to build these facilities at township, county, state or federal expense; these costs will be borne by the developer. The sewer and water facilities will only handle the development of Orgo Farms and not encourage "leap frog" or further development to occur inconsistent with the limited growth policy. But it will build development to accommodate "Mount Laurel II" households.

Rahenkamp - direct

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1 Q. Let's do it your way then. South of
2 Route 18 it's fair to say that there is virtually
3 no development in Colts Neck; isn't that right?

4 A. I don't know, but fine.

5 Q. Let's use Route 18 as a boundary to
6 the south.

7 You're right, the Atlantic
8 Elementary School is situated just to the west of
9 your tract.

10 Taking those facts into
11 consideration and bearing in mind the density
12 that I've just described, in your opinion is it
13 consistent with good planning to locate the
14 project that you've proposed in that area?

15 A. Very. The point is that by clustering the
16 development in an area like this you can leave
17 the bucolic landscape and farm areas and you can
18 justify keeping them open. If you don't allow
19 some cluster somewhere, somewhere you're going to
20 end up with minor subdivisions. That's the worse
21 kind of sprawl. If you get around the
22 interchange and around the Village, you make good
23 planning sense. You take the pressure off the
24 50-acre, whatever the intensity is. In fact,
25 this is consistent with planning as it was done

Rahenkamp - direct

1 in the 17th and 18th century, before you got into
2 subdivisions. This is more consistent with sound
3 logical planning from day one.

4 Q. You mentioned pressures. Do I
5 understand you to say that this development would
6 take the pressure off Colts Neck for housing like
7 this?

8 A. It certainly moves toward your fair share
9 and, therefore, relieves the burden.

10 Q. You're concluding if Colts Neck
11 allowed this development their pressures would
12 diminish and perhaps reduce to nothing?

13 A. In proportion to that number that the
14 township is responsible for, certainly it affects
15 that number.

16 Q. Wouldn't this development, itself
17 create pressure?

18 A. In terms of?

19 Q. Development, more development?

20 A. No. I think that's a strange paradox. A
21 free-standing planned development will not
22 necessarily just generate additional sprawl. And
23 the town, if they plan properly, can very well
24 manage that process. I don't think in and of
25 itself it will be a gross generator. In fact, if

Rahenkamp - cross/Higgins

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1 designing it right.

2 Q. If the two-acre subdivision were to
3 be put in this area using your type system of
4 roads with no gutters and curbing, then that
5 would foster more infiltration?

6 A. Yes, would mitigate the difference.

7 Q. Okay. You indicated that you have a
8 free-standing, self-contained community. And I
9 wasn't sure exactly what you meant by that?

10 A. What I mean by that is that if you put a
11 development like this it could theoretically be
12 growth inducing. If you had to run a two mile
13 sewer line from here to the treatment plant
14 against which other users would all of a sudden
15 join on, that potentially could be growth
16 inducing. By having our own sewer plant and our
17 own water and not having a regional trunk line
18 going anywhere, it's very difficult or at least
19 more problematic for anybody else to get into the
20 system except ourselves. So we're not growth
21 inducing. We're basically clustering the
22 development in the town; it should absorb in one
23 place; servicing it ourselves. That's the least
24 growth inducing. It ought to take pressure off
25 the lands around it to keep them open.