

CN - Origo Farms + Greenhouses, Inc v. Two of Colts Neck 6/24/85

As letter memorandum ⁱⁿ ~~as~~ a response to brief submitted by ITs noting errors in the brief. re: builder's remedy

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JUN 26 1985

JUDGE SERPENTELLI'S CHAMBERS
~~JUDGE SERPENTELLI'S CHAMBERS~~RICHARD W. STOUT (1917-1969)
WILLIAM J. O'HAGAN (1920-1967)
SIDNEY HERTZ (1935-1974)
RICHARD R. STOUT
WILLIAM J. O'HAGAN, JR.
ROBERT W. O'HAGAN

June 24, 1985

The Honorable Eugene D. Serpentelli, J.S.C.
Superior Court of New Jersey
Ocean County Court House
CN-2191
Toms River, NJ 08753Re: Orgo Farms & Greenhouses, Inc.
and Richard J. Brunelli, v.
Township of Colts Neck
Seagull Builders Ltd., Inc., v.
Township of Colts Neck
Docket Nos. L-3299-78 P.W.; L-113769-80 P.W.

Dear Judge Serpentelli:

Please accept this letter memorandum as a response to the Brief belatedly submitted by the Plaintiff, Orgo Farms and Greenhouses, Inc., and Richard J. Brunelli. There are numerous factual errors in the Orgo Brief. There will be no attempt made in this letter to call the Court's attention to all of such errors.

It is to be noted initially that the New Jersey Supreme Court reversed the Decision of the late Merritt Lane, Jr., and remanded the Orgo case to the Superior Court, Law Division, for findings consistent with Mt. Laurel II. Contrary to the naked assertions of Orgo, the Township never invited Seagull Builders Ltd., Inc., into the litigation. Certainly the Township moved to consolidate the Seagull case with the Orgo case after it received notice of Seagull's Complaint. However, the Court will recall that promptly after making such Motion to Consolidate, the Township moved for a "relocation" of the growth line, so as to require that the S.D.G.P. growth line coincide with the Monmouth County Planning Board's designation. The Court required testimony

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in this regard, and after an extended hearing involving a substantial number of witnesses on the Township's behalf, the Court ruled that the S.D.G.P. growth line should not be relocated, but rather, should provide for a small sliver of growth area in the Southwest corner of the Township of Colts Neck. Such growth area coincides with the Seagull property. It is to be underscored that both Seagull and Orgo participated vigorously in the first Hearing. The Court made no ruling at the conclusion of such Hearing in 1984 regarding the adequacy of the Township's zoning. Before any such ruling was made, Colts Neck rezoned, so as to recognize the S.D.G.P. growth designation and in compliance with the fair share number ruled upon by the Court. A copy of such amendatory Zoning Ordinance and Amended Master Plan were provided the Court and all counsel in a timely fashion in the early Fall of 1984. The Township consistently maintained a position that the new Zoning Ordinance and Master Plan controlled citing application of the time of decision rule. The Court ruled against this position, but as yet, has not ruled upon the adequacy of the pre-September, 1984, zoning of the Township of Colts Neck; although, it is conceded that the Township's proof of compliance related solely to the new Zoning Ordinance. This history is offered to underscore the fact that both Seagull Builders Ltd., Inc., and Orgo participated in any action by the Court pertaining to the validity of Colts Neck zoning, insofar as Mt. Laurel housing is concerned. Clearly, Orgo cannot maintain that it alone satisfied the first prong of the test to entitle it to a builder's remedy. As yet, neither plaintiff has satisfied such requirement.

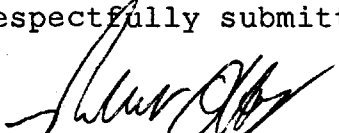
If Orgo's position were seriously considered, one would conclude that there was no point in conducting the trial. Certainly, no one can deny the fact that Orgo instituted the suit against the Township of Colts Neck and tried its case in 1979 before Judge Merritt Lane, Jr., and then waited with the Township for several years, while the Supreme Court decided Mt. Laurel II. If only an early start is required so as to entitle a builder to a remedy, then certainly there is no inducement or reward that could prompt other land holders to press for satisfaction of the Mt. Laurel obligation. Certainly, the overwhelming force of the credible evidence establishes that Orgo is not entitled to a builder's remedy. Orgo asked the Court to ignore the testimony of the Master Planner, Philip Caton, the Monmouth County Planning Director, Robert Clark, and William Queale, the Colts Neck Township Planner, all of whom concluded that the Orgo site was not suitable for the grant of a builder's remedy. It is to be noted that Orgo offered no testimony by any expert witness refuting these conclusions drawn by qualified expert planners. The testimony of Messrs. Caton, Clark and Queale were grounded upon sound planning principals, the State Development Guide Plan, the Tri-State Regional Planning Commission reports, and the Monmouth County Growth Management Guide.

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It is respectfully concluded that the plaintiffs, Orgo Farms and Greenhouses, Inc., and Richard J. Brunelli, are not entitled to a builder's remedy.

Respectfully submitted,



ROBERT W. O'HAGAN

RWO:vc

cc: David J. Frizell, Esq.
Louis F. Locascio, Esq.