

SUPREME COURT
COUNTY OF STEUBEN : STATE OF NEW YORK

In the Matter of the Application of
MICHAEL T. BEACH and NANCY C. BEACH,
Petitioners,

-----vs-----

THE TOWN OF FREMONT, STEUBEN COUNTY, NEW
YORK, THE ZONING BOARD OF APPEALS OF THE
TOWN OF FREMONT, STEUBEN COUNTY, NEW YORK,
DEAN KIEFER, CHAIRMAN, JACK HENDEE, JEAN
SALWACHTER, BARBARA FAIRBANKS and FRITZ
QUACKENBUSH,

Respondents.

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For Your Information

DECISION
Index #67580

This matter came before the court on Decemberr 14, 1992
as an application pursuant to Article 78 of the Civil
Practice Law and Rules for an order to vacate the decision
of the Town of Fremont Zoning Board of Appeals denying the
petitioners a special permit.

Petitioner Michael T. Beach appealed to the Zoning
Board of Appeals the denial of a special permit under
Section 7.8.1 of the Land Use Regulations. Section 7.8.1
prohibits the housing of farm animals within 200 feet of a
side or rear lot or 300 feet from an existing dwelling. Mr.
Beach sought a special permit for two existing buildings to
be converted into a finishing barn and a barn to house
livestock. The Board issued a decision granting the special
permit for the finishing barn, but denied the application as
regards the smaller building. The Board held that due to
the proximity of the barn to the adjacent property, the
public health and safety would not be protected. The Board
relied upon Agriculture and Markets Law Section 305(2)(a)
and Section 4.2.4 of the Town's Land Use Regulations which

provide that "Facilities and areas for solid waste handling, parking exterior lighting and other service functions shall be located and designed so that other properties and passers-by will be protected from unsightly conditions, dust and trash, fumes and odors, glare and noise".

The petitioners seek to vacate the decision on the basis that there was no evidence that the use proposed by the petitioners posed any risk to the public health and safety of residential property owners. The petitioners contend that the Board's decision was arbitrary and capricious.

As the Board did not state the basis of its holding, the court reserved decision in order that the Board would have the opportunity to state the grounds on which its decision was based. The Board has declined to do so.

The petitioners' farm is located in an agricultural district. The Agriculture and Markets Law Section 305(2) prohibits local governments from regulating or restricting farm structures or farm practices unless such restrictions bear a direct relationship to the public health or safety. Therefore, as there is no credible evidence that the public health and safety are at risk, the court finds that so much of the decision of the Board that denied the petitioner a special permit shall be vacated. The Board is hereby ordered to issue the special use permit as it pertains to the smaller barn.

Submit Order Accordingly.

Dated: February 11th, 1993.

5/ Henry J. Scudder
HON. HENRY J. SCUDDER
Acting Supreme Court Justice