

IN THE
SUPREME COURT OF OHIO

B.J. ALAN COMPANY, DBA
PHANTOM FIREWORKS, et al.,

Plaintiffs-Appellees,

v.

CONGRESS TOWNSHIP BOARD OF
ZONING APPEALS, et al.,

Defendants-Appellants.

Case No. 08-0306

ON APPEAL FROM THE WAYNE
COUNTY COURT OF APPEALS,
NINTH APPELLATE DISTRICT

COURT OF APPEALS
C. A. NO. 07CA0051

REPLY BRIEF OF CONGRESS TOWNSHIP
BOARD OF ZONING APPEALS, ET AL.

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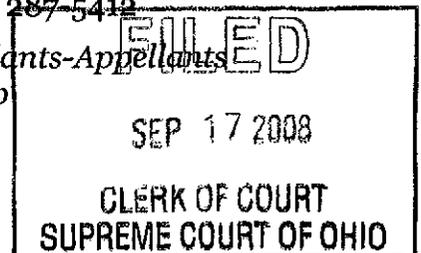
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III. Introduction

The central question before the Court is whether the Congress Township Zoning Resolution was adopted “in accordance with a comprehensive plan” as required by R.C. 519.02(A). Congress Township, with its significant farm-based Amish population, pursuant to R.C. 519.02(A), and in reliance on the Wayne County comprehensive plan, enacted a zoning resolution designed to preserve its productive farmland. But recognizing the potential for commercial growth in the Township, the Congress Township Rural Zoning Commission, considering the Wayne County comprehensive plan, drafted a zoning resolution that recognized the possibility of commercial use. The Zoning Resolution deliberately maintains Congress Township’s current farm-based land use and lifestyle by zoning all of Congress Township “A-Agricultural,” and with presence of forethought, the Zoning Resolution allows for Congress Township’s Board of Zoning Appeals to authorize “variations” to allow non-agricultural land use, if called upon, to adapt to the times and as the need arises, rather than haphazardly and arbitrarily designating areas of the Township for commercial use.

Appellees B.J. Alan Company, d/b/a Phantom Fireworks, et al. (hereinafter “Phantom”) offer three arguments against the Township Zoning Resolution. First, Phantom argues that Congress Township failed to follow a comprehensive plan by failing to designate land under the “B-Business/Industry” zoning classification on the zoning map. (B.J. Alan Co. Merit Brief p. 14.) Second, Phantom argues the Township’s enforcement of the 1994 Zoning Resolution against Phantom was arbitrary, capricious, and unreasonable, violating R.C. 2506.04. (B.J. Alan Co. Merit Brief p. 29.) And third, Phantom argues Congress Township’s enforcement of the 1994 Zoning Resolution against Phantom wrongfully prohibits the lawful sale of commercial fireworks that are

regulated and licensed by the State Fire Marshall under State law. (B.J. Alan Co. Merit Brief p. 30.) While only Phantom’s first argument addresses the central question before the Court, this Reply considers the three arguments in turn.

IV. Argument

a. Following a Comprehensive Plan Does Not Require a Township to Designate Land for All Possible Classifications

This appeal turns on whether the Congress Township Zoning Resolution was adopted “in accordance with a comprehensive plan,” which is the limiting language of the statute that enables townships to enact zoning resolutions, R.C. 519.02(A). Phantom argues that the Zoning Resolution was not adopted “in accordance with a comprehensive plan” because it established two zoning classifications in the text of the Zoning Resolution but designated only A-Agricultural use on the zoning map. (B.J. Alan Co. Merit Brief p. 10.) By failing to designate an area for B-Business/Industry on the zoning map, Phantom argues, the Township’s zoning scheme violates R.C. 519.02. (B.J. Alan Co. Merit Brief p. 26.) For a zoning resolution and map to be “in accordance with a comprehensive plan,” according to Phantom, a zoning resolution must designate specific areas on the zoning map for every zoning classification established by the text of the resolution, regardless of whether a township has an immediate need to designate such an area.

Phantom urges this Court to affirm the decision of the Ninth District Court of Appeals below, in which the appeals court held, “Because the zoning resolution does not regulate the use of unincorporated township land in accordance with a comprehensive

plan, the resolution is invalid.”¹ As the Ninth District’s opinion did not specify on which fact it based its holding, a review of the appeals court’s reasoning is relevant to assess what exactly Phantom urges this Court to affirm.

In the absence of a statutory definition of comprehensive plan, the Ninth District searched for a definition, finding the following to be the essential characteristics of a comprehensive plan:²

The essential characteristics of a plan are that it is comprehensive, general and long range. “Comprehensive” means that the plan encompasses all geographical parts of the community and integrates all functional elements. “General” means that the plan summarizes policies and proposals and does not, in contrast with a zoning ordinance, provide detailed regulations for building and development. “Long range” means the plan looks beyond the foreground of pressing current issues to the perspective of problems and possibilities ten to twenty years into the future.³

Under this definition, a comprehensive plan need not be extensive and detailed. Rather, it only must consider and be useful for the whole of the community, and it must broadly put forward policies to benefit the community for now and in the long term.

The Ninth District then considered whether Congress Township had a comprehensive plan, and the court noted the testimony of Bill Cletzer, a Township Trustee who was the chairperson of the Zoning Commission that drafted the Zoning Resolution, that the Zoning Resolution was drafted “based on” Wayne County’s comprehensive plan.⁴ Neither the Ninth District nor Phantom contends that Congress Township failed to use a comprehensive plan. Instead, both argue that “in accordance

¹ *B.J. Alan Co. v. Congress Township Board of Zoning* (Dec. 28, 2007), Wayne County App. No. 07CA0051, 2007-Ohio-7023, at ¶ 16.

² *Id.* at ¶ 13 (citing Stuart Meck and Kenneth Pearlman, *Oh. Plan. & Zoning L. Section 4:31* (2007)).

³ Stuart Meck and Kenneth Pearlman, *Oh. Plan. & Zoning L. Section 4:31* (2007).

⁴ *Id.* at ¶ 14.

with a comprehensive plan” imposes on townships additional requirements in drafting zoning resolutions beyond identifying and following a comprehensive plan.

In rendering its holding, the Ninth District cited precedent from this Court and determined that this Court has held (1) R.C. 519.02 requires that “a township board of trustees draft zoning regulations in accordance with a comprehensive plan,” and (2) “that a zoning resolution has not been properly adopted pursuant to the enabling statute where it fails to delineate which specific areas may be used for specific uses, when the township has established various types of districts.”⁵ It is on the Ninth District’s second finding of law that Phantom bases its first argument.

Both the Ninth District and Phantom misconstrued the Court’s holding in *Cassell*. The Court in *Cassell* held that:

A township zoning regulation, which provides merely that a section of a township, one square mile in area, shall be zoned for farming, residential, commercial and recreational uses, and which does not specify therein which portions of said section may be used for any or all of such purposes or is not accompanied by a map designating such use areas, is not adopted in accordance with a comprehensive plan.⁶

Specifically in *Cassell*, Lexington Township failed to designate what portions of a single section would be for which zone, farming, residential, commercial, or recreational.⁷

This Court held that a township fails to follow a comprehensive plan when it fails to designate which of any of four possible zones applies in a section that is one square mile in area.⁸ To draw from *Cassell* that a township must designate an area for every possible zoning classification is not consistent with the Court’s language. Because the

⁵ *Id.* at ¶ 15 (citing *Cassell v. Lexington Twp. Bd of Zoning Appeals* (1955), 163 Ohio St. 340).

⁶ *Cassell v. Lexington Twp. Bd of Zoning Appeals* (1955), 163 Ohio St. 340, paragraph two of the syllabus.

⁷ *Id.* at 345.

⁸ *Id.*

land in *Cassell* could have been anything, the Court feared that any purchaser of property in that area could not predict to what use the property could be put.⁹ Furthermore, the Court feared that a zoning regulation that failed to designate use areas could be susceptible to arbitrary administration.

Congress Township's Zoning Resolution is clearly distinguishable from the facts of *Cassell*. Unlike Lexington Township, Congress Township's 1994 Zoning Resolution designated all of its land for A-Agricultural zoning, which includes residential uses. A purchaser of property in Congress Township would know, after the 1994 Zoning Resolution, that the property was zoned for agriculture. Moreover, the concerns the Court raised in *Cassell* regarding Lexington Township are inapplicable to Congress Township. In *Cassell*, the Court said, "And, in the absence of any designation in the plan of the uses to which a particular area could be put, it is equally difficult for this court to see how there could be any uniform administration of the regulation within the section."¹⁰ When all of one section that is one square mile in area could be any of four zones, a Board of Zoning Appeals could allow for a hodge-podge of different land uses, defeating the purpose of zoning.

In Congress Township, all land is zoned A-Agricultural. Purchasers have certainty not only for what use their land is designated but also about how to rezone the land to commercial. Unlike in Lexington Township in *Cassell*, purchasers of property in Congress Township know when they buy property that their property and their neighbors' property are zoned agricultural, because of Congress Township's desire to maintain a farm-based land use and lifestyle. Congress Township provides uniform

⁹ *Id.*

¹⁰ *Id.*

administration within its Zoning Resolution. All land is one zone and will remain that zone unless a property owner petitions the Trustees to change it or seeks a variance from the Board of Zoning Appeals. Either the Board of Trustees following the legislative process mandated for considering a zoning change, or the Board of Zoning Appeals following the administrative process for a variance, will determine whether changing the zone or granting a variance is in the best interest of Congress Township.

Under the Ninth District and Phantom's interpretation of *Cassell*, to follow a comprehensive plan, every township would have to designate land for all of the township's possible zoning classifications, no matter the township's purpose in having the zoning classification. This interpretation creates bad public policy for locations like Congress Township. In essence, Phantom's requirement would force Congress Township to use every arrow in its quiver despite the Township's already hitting the target. Congress Township enacted its Zoning Resolution to retain its farm-based land use while allowing for future change, and it accomplished that goal without using the B-Business/Industry designation on the zoning map. If the Ninth District and Phantom's interpretation of *Cassell* is affirmed, then Congress Township—and other small townships like it—would have two choices: designate land B-Business/Industry on the zoning map, contravening its vision of retaining its farm-based land use, or to maintain its farm-based land use, draft a zoning regulation with only an agricultural classification—a more stringent means of maintaining its land use that would cost the Township the flexibility to adapt quickly.

Rather, this Court should adopt the policy inherent in R.C. 519.02, the policy that empowers townships to control their zoning fully and only designate certain areas when it fits with the township's vision, not merely because the zoning possibility is in a zoning

resolution. To adopt Phantom’s argument would be to impose unnecessary hurdles on small townships like Congress Township that merely wish—as R.C. 519.02 empowers them to do—to control their character without closing the door on change.

b. Congress Township’s Enforcement of 1994 Zoning Resolution Against Phantom was Reasonable

The Zoning Inspector and the Board of Zoning Appeals are required to uphold local laws, including the Resolution. Both are charged with preserving the agricultural nature of the area.

The United States Supreme Court has spoken to the issue of zoning regulations in *Euclid v. Amber Realty Co.*,¹¹ wherein the Court found that a valid purpose for zoning restrictions is to preserve the character of the neighborhood. Ohio courts have agreed.

Placing an industrial area in the center of an agricultural district would be an arbitrary and unreasonable decision. The zoning resolution is in the interest of the public health, safety, and general welfare because it segregates potentially harmful industrial areas from agricultural and residential areas.¹²

Considering the widely accepted importance of zoning regulations, courts should give due deference to the decisions of the Board of Township Trustees in adopting the Zoning Resolution and of the Board of Zoning Appeals interpreting the Resolution, and presume the validity of their decisions.¹³ “In the absence of evidence to the contrary, it

¹¹ (1926), 272 U.S. 365.

¹² *Wood’s Carriers, Inc. v. Board of Trustees of Pleasant Twp.* (Dec. 11, 1987), Marion County App. No. 98632, unreported, 1987 Ohio App. LEXIS 10094 at *7-8.

¹³ *See Village of Hudson v. Albrecht* (1984), 9 Ohio St.3d 69, 71-72 (“[A] strong presumption exists in favor of the validity of the ordinance. It is firmly established that a party challenging a legislative enactment bears the burden of demonstrating its unconstitutionality. As long as the validity of the legislation is ‘fairly debatable,’ the legislative judgment in enacting it is permitted to control. The basis for this presumption is that the local legislative body is familiar with local conditions and is therefore better able than the courts to determine the character and degree of regulation required.”) (citations omitted).

will be presumed that public officers have performed their duties, and the decision of the board . . . is regarded as presumptively fair.”¹⁴

Phantom has not demonstrated that the Board of Zoning Appeals has abused its discretion or acted in an arbitrary, capricious, or unreasonable manner. The Board of Zoning Appeals noted concerns at the hearing that the presence of an 11,866 square foot building engaged in retail sales and warehousing, in this particular location, would increase traffic significantly; that storm water drainage would be a problem; that there is no sewer or water service available at this location; and that deep well drilling has a potentially devastating impact on the surrounding residences’ water supply.

(Administrative Record 0088-89, 0101-02, 0105-06.) All of these concerns represent a legitimate governmental purpose, just as does the preservation of the agricultural heritage and land use of Congress Township.¹⁵ All of these matters show the consideration by the Board of Zoning Appeals of the public health, safety, public convenience, comfort, prosperity, and general welfare. Such consideration must guide their ultimate decision, which was to not approve the zoning certificate and variance request.

Therefore, the Court should find that the Board of Zoning Appeals acted reasonably and not arbitrarily, capriciously, or unreasonably.

¹⁴ *McCauley v. Ash* (1955), 97 Ohio App. 208, 209, 124 N.E.2d 739.

¹⁵ *See* Ohio Constitution, Section 2o(A), Article VIII. The Ohio Constitution specifically states that the preservation of farmland and other lands devoted to agriculture “are proper public purposes of the state and local governmental entities and are necessary and appropriate means to improve the quality of life and the general economic well-being of the people of this state.” *See also Village of Hudson v. Albrecht* (1984), 9 Ohio St.3d 69, paragraph one of the syllabus (“There is a legitimate governmental interest in maintaining the aesthetics of the community and, as such, aesthetic considerations may be taken into account by the legislative body in enacting zoning legislation.”).

c. Congress Township's Enforcement of 1994 Zoning Resolution Against Phantom Did Not Wrongfully Prohibit the Lawful Sale of Fireworks

The Resolution does not prohibit Phantom from conducting its business because it is a fireworks business. In fact, the current location of Phantom's fireworks store is located in Congress Township. Neither the Township nor the Board of Zoning Appeals through its Resolution has any interest in prohibiting the lawful sale of commercial fireworks that are regulated, authorized, and licensed by the state of Ohio.

Phantom argues that the Township, the Resolution, or both do not permit the retail sale of fireworks otherwise authorized by state law. In fact, the Township expressly permits the Phantom to operate its current business located in the unincorporated territory of the Township. The Resolution was specifically drafted to allow businesses existing at the time of the Resolution's enactment to continue operating, including the fireworks store.

"When a statute or ordinance facially establishes classification but no suspect class or fundamental right is involved, unequal treatment of classes or persons may be upheld where a rational basis exists to support the inequality."¹⁶

Phantom finds the location at issue more commercially desirable than its current location. But Phantom is already established and running without interference in Congress Township. Phantom is claiming that the Township is trying to impede its business by not giving in to its demands for a variance that would eliminate productive farmland and replace it with a fireworks store, albeit at a highly visible location. The Court should find that the Township's enforcement of the 1994 Zoning Resolution does

¹⁶ *Cincinnati City School Dist. Bd. of Edu. v. Walter* (1979), 58 Ohio St.2d 368, 373.

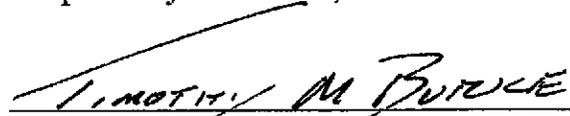
not prohibit the lawful sale of commercial fireworks and is therefore not preempted by state law.

V. Conclusion

Congress Township, with deliberation and forethought, and in accordance with the comprehensive plan of Wayne County to retain the area's farmland-based land use and lifestyle, enacted the 1994 Zoning Resolution to protect the Township's character while allowing for it to adapt. Requiring, as Phantom prays, townships to designate its land using all possible classifications in order to be deemed "in accordance with a comprehensive plan" creates bad policy that would encourage small townships, like Congress Township, to enact more stringent zoning codes to preserve their character that would make it harder for them to adapt. Such a ruling would lessen the power granted to townships by R.C. 519.02 to control the zoning of their land.

Appellants, joined by amici Ohio Prosecutor's Association, Ohio Township Association, the Ohio Farm Bureau Federation, Inc., and the Wayne County Farm Bureau, respectfully request that this Court reverse the decision of the Ninth District Court of Appeals, uphold the Congress Township Zoning Resolution, and reinstate the trial court's decision.

Respectfully submitted,



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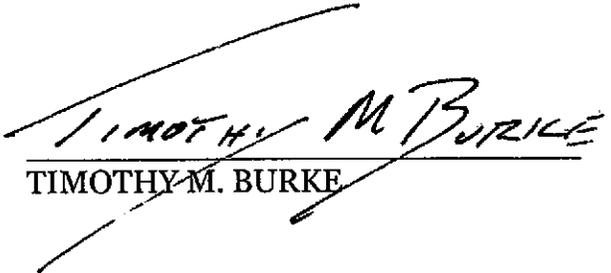
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Reply Brief of Defendants-Appellants is being served on all parties entitled to service this 16th day of September, 2008 by regular U.S. Mail.


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LEXSEE 1987 OHIO APP. LEXIS 10094

**Wood's Carriers, Inc., Plaintiff-Appellant, v. Board of Trustees of Pleasant Twp.,
Defendant-Appellee**

No. 9-86-32

Court of Appeals of Ohio, Third Appellate District, Marion County

1987 Ohio App. LEXIS 10094

December 11, 1987, Decided

PRIOR HISTORY: [*1] Civil Appeal from Common Pleas Court.

DISPOSITION: Judgment affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant landowner sought review of the judgment of the Court of Common Pleas, Marion County (Ohio), which denied the landowner's motion for a permanent injunction against appellee township board of trustees and granted the board's motion for a permanent injunction against the landowner. The landowner sought to enjoin the enforcement of a zoning resolution against his property.

OVERVIEW: A landowner purchased property from a public utility. The township designated the land within an agricultural district. The landowner used the property for industrial purposes. The township board of trustees ordered the landowner to discontinue his industrial use of the property, except for the uses specified in a variance that he obtained. The landowner brought an action against the board of trustees and claimed that the zoning resolution was invalid and sought a permanent injunction against the board. The lower court granted the board's motion for a permanent injunction against the landowner, and the landowner sought review. On review, the court found that the landowner's reliance on *Ohio Rev. Code Ann. § 519.21* was misplaced. The statute prohibited a township from zoning land owned by a public utility, but only while the public utility actually continued to operate on the land. The court concluded that the township had the authority to create an agricultural zone and to include within the zone the land formerly owned by the public utility. The court also concluded that the zoning resolu-

tion was not arbitrary or unreasonable and was thus constitutional.

OUTCOME: The court affirmed the judgment of the lower court.

LexisNexis(R) Headnotes

Governments > Local Governments > Administrative Boards

Real Property Law > Zoning & Land Use > General Overview

[HN1] *Ohio Rev. Code Ann. § 519.21* provides in part that such sections confer no power on any board of township trustees or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad, for the operation of its business.

Environmental Law > Zoning & Land Use > Constitutional Limits

Real Property Law > Zoning & Land Use > Constitutional Limits

Real Property Law > Zoning & Land Use > Ordinances

[HN2] A strong presumption exists in favor of the validity of zoning ordinances. The party challenging an ordinance bears the burden of demonstrating its unconstitutionality. As long as the validity of the ordinance is fairly debatable, the legislative judgment in enacting it is permitted to control. The basis for this presumption is that the local legislative body is familiar with local conditions and is therefore better able than the courts to determine

the character and degree of regulation required. The right of an individual to use and enjoy his private property is not unbridled but is subject to the legitimate exercise of the local police power, under *Ohio Const. art. XVIII, § 3*. This power includes the authority to impose zoning regulations, although such regulations must conform to certain standards. Since the object of the police power is the public health, safety and general welfare, its exercise in order to be valid must bear a substantial relationship to that object and must not be unreasonable or arbitrary.

COUNSEL: JAMES C. THOMPSON, for Appellant.

HARRY M. WELSH, for Appellee.

JUDGES: COLE, P.J., MILLER and SHAW, JJ., concur.

OPINION BY: COLE

OPINION

OPINION

COLE, P.J.

This is an appeal by the plaintiff from a judgment of the Court of Common Pleas of Marion County finding a Pleasant Township zoning resolution to be constitutional in a declaratory judgment action, denying plaintiff's motion for a permanent injunction, and issuing a permanent injunction against plaintiff on defendant's counterclaim.

In 1975, plaintiff, Wood's Carriers, Inc., purchased approximately thirty-five acres of land in Pleasant Township, Marion County, Ohio from Ohio Edison. Ohio Edison is a public utility. Edison had operated a generating plant on the land. In 1977, plaintiff sold approximately fifteen acres of the land and this portion is being used for agricultural purposes. The plaintiff retained twenty acres of the property it had purchased from Ohio Edison. Plaintiff uses the property for various industrial enterprises including the construction of truck beds and small trailers, the commercial storage of grain, welding, and a junkyard. The property [*2] plaintiff retained is covered with cinders to a depth of approximately twenty feet. This property is not suitable for agricultural purposes.

In 1970, defendant, Board of Trustees of Pleasant Township (hereafter "Board"), adopted a comprehensive zoning plan for the township. The zoning resolution adopted by the Board designated the land owned by Ohio Edison and the surrounding acreage an agricultural district. Although the zoning resolution was amended in 1978 and 1985, the area retained its designation as an agricultural district. Principal permitted uses in the agricultural district include agriculture, single family dwellings, two family dwellings, public uses, semi-public

uses, and noncommercial recreation facilities. Pleasant Township Zoning Resolution Section 6.02.

On March 30, 1978 the Board of Zoning Appeals granted the plaintiff a variance which permitted the plaintiff to construct truck beds, small trailers, and related items on its property.

In August 1985 the Board of Trustees ordered the plaintiff to discontinue its industrial use of the property, except for the uses specified in the variance.

On June 10, 1986 plaintiff filed an action in Common Pleas Court seeking [*3] a declaration that the 1970 zoning resolution was invalid and seeking to permanently enjoin the Board from enforcing the zoning resolution against plaintiff's property. The Board filed a counterclaim seeking to permanently enjoin the plaintiff from utilizing his property for industrial purposes except for those uses permitted by the variance. After conducting an evidentiary hearing, the trial court determined that the 1970 zoning resolution was valid, constitutional and enforceable; denied plaintiff's demand for a permanent injunction; and permanently enjoined plaintiff from using its property in any manner inconsistent with the zoning resolution as varied for the plaintiff on March 30, 1978.

On September 29, 1986, plaintiff filed a motion for a new trial. The trial court conducted a hearing on the motion on October 31, 1986. By journal entry filed November 3, 1986, the trial court overruled the motion for a new trial. Thereafter, plaintiff timely appealed.

Although the notice of appeal purports to also be taken from the judgment overruling plaintiff's motion for a new trial, plaintiff does not assign any error or raise any argument concerning the court's decision on the motion. [*4] Accordingly, our discussion will be limited to the court's ruling on the merits.

The plaintiff contends that the Board did not have authority under *R.C. 519.21* to zone the area formerly owned by the public utility. *R.C. 519.21*, as effective in 1986, provided in pertinent part:

" * * *

[HN1] "Such sections confer no power on any board of township trustees or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad, for the operation of its business.

" * * * "

(This provision of *R.C. 519.21* was renumbered effective March 5, 1987 and is currently found in *R.C. 519.211*.)

R.C. 519.21 does not deprive the Board of Trustees of power or authority to enact a comprehensive zoning plan for the township. *R.C. 519.02* gives authority to the Board to divide all or any part of the unincorporated area of the township into districts or zones pursuant to a comprehensive zoning plan. The Board divided the township into three districts or zones: [*5] agricultural, industrial, and residential. The agricultural district encompasses the southern half of the township. Contained within this district are the twenty acres of land currently owned by the plaintiff.

In 1970, the land was owned by Ohio Edison, a public utility. Under *R.C. 519.21*, the township had no power to regulate the buildings or structures of the public utility and further had no power to regulate the public utility's use of the land. Although the Board included the land in an agricultural zone, it could not regulate the public utility's use of the land so long as a public utility continued to operate on the land.

We conclude that the Board had authority to create an agricultural zone within the township and to include land formerly owned by Ohio Edison within that agricultural zone. Once the public utility use of the property ceased, the land lost its *R.C. 519.21* exemption from regulation.

In the alternative, the plaintiff contends that if the property is zoned agricultural, the zoning is unconstitutional as it applies to plaintiff.

In *Hudson v. Albrecht, Inc.* (1984), 9 Ohio St. 3d 69, appeal dismissed (1984), 467 U.S. 1237, the Supreme Court summarized [*6] the principles which apply when an issue is raised concerning the constitutionality of a zoning regulation. The court stated at pages 71-72:

[HN2] " * * * a strong presumption exists in favor of the validity of the [zoning] ordinance. *Downing v. Cook* (1982), 69 Ohio St. 2d 149, 151 [23 O.O.3d 186]; *Brown v. Cleveland* (1981), 66 Ohio St. It is firmly established that the party challenging a legislative enactment bears the burden of demonstrating its unconstitutionality. *Mayfield-Dorsch, Inc. v. South Euclid* (1981), 68 Ohio St. 2d 156, 157 [22 O.O.3d 388]; *Hilton v. Toledo* (1980), 62 Ohio St. 2d 394, 396 [16 O.O.3d 430]. As long as the validity of the legislation is fairly debatable, the legisla-

tive judgment in enacting it is permitted to control. *Brown v. Cleveland*, *supra*, at 98; *Willott v. Beachwood* (1964), 175 Ohio St. 557, 560 [26 O.O.2d 249]; *Curtiss v. Cleveland* (1959), 170 Ohio St. 127 [10 O.O.2d 85], paragraph three of the syllabus. See, generally, *Euclid v. Ambler Realty Co.* (1926), 272 U.S. 365. The basis for this presumption is that the local legislative body is familiar with local conditions [*7] and is therefore better able than the courts to determine the character and degree of regulation required. *Wilson v. Cincinnati* (1976), 46 Ohio St. 2d 138, 142 [75 O.O.2d 190]; *Allion v. Toledo* (1919), 99 Ohio St. 416, paragraph one of the syllabus.

"We further note that the right of the individual to use and enjoy his private property is not unbridled but is subject to the legitimate exercise of the local police power. See *Section 3, Article XVIII of the Ohio Constitution*. This power includes the authority to impose zoning regulations, although such regulations must conform to certain standards. Since the object of the police power is the public health, safety and general welfare, its exercise in order to be valid must bear a substantial relationship to that object and must not be unreasonable or arbitrary. *Cincinnati v. Correll* (1943), 141 Ohio St. 535 [26 O.O. 116], paragraph one of the syllabus."

The zoning regulation in question is not arbitrary or unreasonable. The entire southern half of the township is zoned agricultural. Placing an industrial area in the center of an agricultural district would be an arbitrary and unreasonable decision. The [*8] zoning resolution is in the interest of the public health, safety, and general welfare because it segregates potentially harmful industrial areas from agricultural and residential areas.

It appears that the Board of Trustees recognizes the fact that the plaintiff owns property that is not suited for agricultural purposes because a variance was granted which allows plaintiff to perform some light manufacturing. The record demonstrates that the Board of Trustees and Board of Zoning Appeals are willing to work with the plaintiff by granting future variances to permit some industrial uses of the property. While this may not be the most desirable result for the plaintiff, we find that the benefit to public health, safety, and general welfare which results from enforcement of the zoning regulations outweighs the loss which the restrictions impose on the plaintiff. We conclude that the township zoning regulation is constitutional. The plaintiff's assignments of error are not well taken.