

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY, PENNSYLVANIA

CIVIL

SHERIDAN CORPORATION,
Appellant

v.

THE ZONING HEARING BOARD OF
CORNWALL BOROUGH, LEBANON
COUNTY, PA.,
Appellee

and

THE BOROUGH OF CORNWALL,
LEBANON COUNTY, PA.,
Intervening Appellee

No. 90-01258

ORDER OF COURT

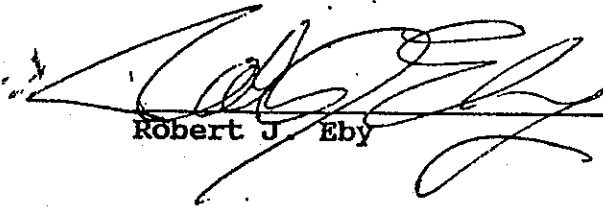
AND NOW, to wit, this 4th day of June, 1991, upon consideration of Sheridan Corporation's challenge to certain May 14, 1990, amendments to the Cornwall Borough Zoning Ordinance and Subdivision and Land Development Ordinances, it is hereby ordered that the challenge is sustained in part and denied in part as follows:

A. The challenge to Ordinance 1990-3, Section I, amendment of Article X, Section 1006, of the Cornwall Zoning Ordinance is sustained.

B. The challenge to Ordinance 1990-4, Section I, addition of Section 4.03(C)(4)(c) to the Cornwall Borough Subdivision and Land Development Ordinance is sustained.

C. The challenge to Ordinance 1990-4, Section I, addition of Section 4.03(C)(4)(b) to the Cornwall Borough Subdivision and Land Development Ordinance is denied.

BY THE COURT,


Robert J. Eby J.

/bfm

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APPEARANCES:

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For Intervening Appellee

JOHN D. ENCK, ESQUIRE
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For Sheridan Corporation

ADJUDICATION, EBY, J., JUNE 4TH, 1991

This matter involves zoning and use restrictions on property owned by Appellant, Sheridan Corporation, in the Borough of Cornwall, Lebanon County. After the Cornwall Borough Council enacted certain zoning ordinances and use restrictions that affected land owned by Sheridan, Sheridan filed a challenge to the ordinances and asked for a hearing on their validity. The Council failed to act, Sheridan's application was deemed denied by operation of the Commonwealth's zoning statutes, and Sheridan filed this appeal.

The legal issues before this Court touch upon, but do not directly concern, a controversial co-generation power plant proposed in the late 1980s by Oxbow Power of Cornwall, Inc. In brief, Oxbow proposed to build a plant on land owned by Sheridan. Community opposition to the plant and associated legal questions have caused Oxbow to abandon its plan to build in Cornwall.¹ The issue of how Sheridan may use its land under the Cornwall ordinances, which Sheridan contends were passed to prohibit Oxbow from building its power plant within the Borough, remains.

FINDING OF FACT

1. Appellant is Sheridan Corporation ("Sheridan"), a Pennsylvania corporation with its principal place of business in Lebanon County, Pennsylvania.
2. Appellee is the Planning and Zoning Commission of the Borough of Cornwall, Lebanon County, Pennsylvania ("the Commission").
3. Intervenor is the Borough of Cornwall, Lebanon County, Pennsylvania, a municipal corporation ("the Borough").
4. Sheridan is the legal owner of land in the Borough of Cornwall, and bought all of the land it now owns in Cornwall prior to 1986. (N.T. pp.33, 35, 36).

1. For a detailed explanation of the issues raised by Oxbow's proposal, see Oxbow Power of Cornwall v. Borough Council of Cornwall, No. 90-00669 (Leb. Com. Pleas Sept. 20, 1990) and Oxbow Power of Cornwall v. The Zoning Hearing Board of Cornwall Borough and Borough of Cornwall, No. 90-01211 (Leb. Com. Pleas Dec. 26, 1990).

5. On February 10, 1986, the Cornwall Borough Council amended its zoning ordinance (Exhibit 1), the initial version of which was adopted in 1978. The zoning ordinance provides for a zoning classification of IP, Industrial Park District, and sets forth regulations respecting the same.

6. In December of 1986, Wormser Engineer approached the Cornwall Borough Council to propose the building of a co-generation power plant in Cornwall, to be built on land then owned by Sheridan.

7. Wormser Engineer later sold its interest in building a co-generation power plant to Oxbow Power of Cornwall, Inc.

8. On June 13, 1988, at the request of Sheridan, the Cornwall Borough Council amended its zoning ordinance to change the zoning designation of part of Sheridan's property from RF (Residential Forest) to IP (Industrial Park).

9. On March 9, 1989, the Cornwall Planning and Zoning Commission voted to approve Sheridan's proposed plan to subdivide one parcel of its IP-zoned land for use by Oxbow and recommend to Cornwall Borough Council that the subdivision plan be approved (Exhibit 6).

10. On March 13, 1989, the Cornwall Borough Council approved the Planning and Zoning Commission's recommendation (Exhibit 6).

11. On July 19, 1989, the Cornwall Borough Council, the Lebanon County Planning Department, the Cornwall Borough Municipal Authority and the Cornwall Borough Planning and Zoning

Commission held a meeting to review Oxbow's proposed land development plan.

12. At the July 19, 1989 meeting, a number of residents of the Borough expressed their strong opposition to Oxbow's proposed development plan (Exhibit 8).

13. At a meeting of the Cornwall Borough Council on October 9, 1989, residents of the Borough expressed their continued strong opposition to Oxbow's proposed development plan (Exhibits 9 and 10).

14. On November 13, 1989, the Cornwall Borough Council passed a resolution opposing Oxbow's proposed construction of a co-generation power plant within the Borough, and a resolution directing Borough officials to request federal and state investigations of Oxbow's plans for a power plant. (Exhibits 13, 14).

15. On December 11, 1989, the Cornwall Borough Council was asked by some residents of Cornwall to change the zoning designation of IP land in the Borough to Light Industrial, Commercial or Recreational Use (Exhibit 11).

16. On December 11, 1989, Cornwall Borough Council voted to select an Environmental Advisor to assist Council in reviewing Oxbow's proposed development plan (Exhibit 11).

17. On March 17, 1990, the Cornwall Borough Council adopted a subdivision and land development ordinance (Exhibit 2).

18. On March 26, 1990, the Cornwall Borough Council held a meeting respecting Oxbow's proposed development plan, at which

residents expressed their continuing strong opposition to the plan (Exhibit 12). The Council denied Oxbow's proposed development plan in writing on March 29, 1990, which denial was upheld by this Court September 20, 1990. Oxbow Power of Cornwall v. Borough Council of Cornwall, No. 90-00669 (Opinion by Walter, P.J.).

19. On May 7, 1990, the Cornwall Zoning and Planning Commission reviewed proposed revisions to the Cornwall Zoning Ordinance (1990-1, 1990-3) and the Cornwall Subdivision and Land Development Ordinance (1990-4) and voted to return the proposed revisions to Council without a recommendation (Exhibit 17).

20. On May 14, 1990, the Cornwall Borough Council adopted revisions to its Zoning Ordinance and Subdivision and Land Development Ordinance (Exhibits 3 and 4).

21. The amendment to the zoning ordinance states, inter alia, "All commercial and/or industrial uses permitted hereunder shall have access to a major road as defined in Section 1023."

22. The amendment to the Subdivision and Land Development Ordinance requires, among other things, that all industrial and commercial subdivisions and land developments have access to major roads as defined in the Cornwall Borough Zoning Ordinance.

23. The Cornwall Zoning Ordinance defines "major roads" as U.S. Route 322, Pennsylvania Route 72, Pennsylvania Route 419, and Cornwall Road.

24. None of the land in Cornwall Borough within the areas zoned IP have frontage along, are adjacent to, abut, adjoin, or

have direct access to any "major road" as defined in the Cornwall Zoning Ordinance as amended. (N.T. p.36).

25. The amendment to the zoning ordinance also changed the uses permitted in an IP-zoned area, specifying 36 authorized uses and prohibiting all other uses. (Exhibit 3, §801).

26. The amendment to the zoning ordinance also limited the height of buildings in IP-zoned areas to 50 feet or less. (Exhibit 3, §805).

27. The amendment to the subdivision and land development ordinance also added a "slope" restriction to commercial and industrial subdivisions, prohibiting creation of subdivisions with slopes averaging more than ten (10) percent and prohibiting access drives with a slope of more than eight (8) percent. (Exhibit 4, §4.03(C)(4)).

28. The revisions passed May 14, 1990, modified the existing Zoning Ordinance and Subdivision and Land Development Ordinance in such a way as to prohibit construction of cogeneration power plants, such as had been proposed by Oxbow, on land zoned IP. (Exhibit 25).

29. On June 11, 1990, Sheridan filed a challenge to the zoning and land development ordinance revisions passed by Borough Council on May 14, 1990.

30. The Cornwall Planning and Zoning Commission did not schedule any hearing on Sheridan's challenge to the revisions, and Sheridan filed an appeal to this Court on August 27, 1990.

31. On September 10, 1990, the Cornwall Borough Council adopted a Comprehensive Plan (Exhibit 26).

32. On September 12, 1990, the Borough of Cornwall filed a petition to intervene in the Sheridan appeal.

33. On February 15, 1991, the parties presented evidence to this Court respecting the validity of the revisions passed by Borough Council on May 14, 1990.

DISCUSSION

It is helpful for the Court to place the issue at Bar in the proper historical and physical perspective to commence its analysis of the factors which lead to our decision. The "community background" section of the Comprehensive Plan adopted by Cornwall in 1990 provides a concise and helpful overview:

Diversity is the key to describing the topography of Cornwall Borough. By virtue of its location within the county, it is part of both valley and mountain regions. It consists of gently rolling farmland in the north, with an elevation of approximately 500 feet above sea level along the Snitz Creek near Karinchville. Southward the terrain becomes progressively more hilly and wooded with small knobs and ridges. The highest elevations (1120 feet near South Lebanon Township line) can be found in the Furnace Hills which span the southern portion of the Borough.

[T]he quarrying and mining operations conducted here for almost two and a half centuries have also had an impact on the landscape of present day Cornwall Borough. The remaining open pit mine is now a 124 acre lake and a 55+ acre tailings pond looms above the village of Rexmont. Although basically a rural municipality, seven (7) residential communities (much as they were originally designed) are located around the site of the once flourishing Cornwall mining operations. An eighth residential area, developed within the last two decades, lies in the Furnace Hills between U.S. Route 322 and the Lancaster County Line.

(Exhibit 26, p.17). The Comprehensive Plan comments further:

It is important to note that a whole host of factors led to the cessation of operations in the Cornwall mines and the subsequent closing of the [Bethlehem Steel] operations in Lebanon County. ...

Although extraction techniques were becoming more sophisticated, economics were still a critical factor. ... Another cost reduction involved the [Bethlehem Steel] large housing stock. Over the decades, the [Bethlehem Steel] had spent millions of dollars maintaining and improving over 200 company-owned homes located within the borough. ... To eliminate these costs and the associated tax burdens, in 1957 [Bethlehem Steel] began to offer these homes for sale to their current occupants. The very reasonable sale prices ... allowed many of the occupants to take advantage of this opportunity.

...
Increased competition from foreign steel makers also threatened the industry. The final blow came in 1972 when Hurricane Agnes flooded the mine shafts. ... Bethlehem Steel operations ceased in Lebanon County in 1985. Subsequently, almost 600 acres of the land owned by [Bethlehem Steel] were sold to the Sheridan slag Corporation, while approximately 21 acres were turned over to the Borough for recreational purposes and another 600 transferred to the Municipal Authority. According to assessment office records, in 1989 the Bethlehem Steel Corporation retained, in addition to the mineral rights to its previously owned property, approximately 1,050 acres in Cornwall Borough.

(Exhibit 26 pp. 8-10.)

The mining operations, established because of the Furnace Hills iron ore, were undertaken at a time when the word "ecology" had not been invented, the federal Clean Air and Clean Water Acts were far in the future, and zoning laws nonexistent. The mining operations dictated the placement of buildings and roads.

From this history, it is apparent that Cornwall was established and developed as a "company town," and that the company no longer operates. The company's land, however, still exists, having been transferred, in part, to Sheridan Corporation. Not unreasonably, Sheridan would like to use its land to what it perceives to be its best advantage.

Sheridan makes the broad argument that the ordinances passed by Borough Council constitute "spot zoning," or "special legislation" designed to keep Oxbow from building its power plant within the Borough's boundaries. "Spot zoning" means to rezone a specific lot, usually small, to bar or to allow a use not permitted otherwise. Mulac Appeal, 418 Pa. 207, 210 A.2d 275 (1965). "Special legislation" is intended to affect a single parcel of land and to deny the owner a right which he might otherwise enjoy. Shapiro v. Zoning Board of Adjustment, 377 Pa. 621, 105 A.2d 299 (1954). The Borough may not, under the U.S. Constitution, this Commonwealth's Constitution, or its Planning Code, "spot zone" or pass "special legislation."

To better acquaint the reader with the law of zoning challenges, we turn to the words of the Supreme Court of Pennsylvania:

The standards by which Pennsylvania courts judge the constitutionality of zoning ordinances under Article 1, Section 1 of the Constitution of Pennsylvania P.S., and the fourteenth amendment to the Constitution of the United States have been stated and restated in a long line of decisions by this Court. A challenge to the constitutionality of a zoning ordinance must overcome the presumption of its validity. The burden of so doing, though heavy, is maintainable and courts may not make it so "onerous as to foreclose, for all practical purposes, a landowner's avenue of redress against the infringement of constitutionally protected rights." Zoning ordinances are valid whenever "they are necessary for the preservation of public health, safety, morals or general welfare," but "the power to thus regulate does not extend to an arbitrary, unnecessary or unreasonable intermeddling with the private ownership of property, even though such acts be labeled for the preservation of health, safety, and general welfare."

Exton Quarries, Inc. v. Zoning Board of Adjustment, 425 Pa. 43, 58-59, 228 A.2d 169, 178 (1967) (footnotes omitted). Governing

bodies which engage in "spot zoning" and "special legislation" are "intermeddling with the private ownership of property" in an arbitrary and unreasonable way.

In reviewing Sheridan's challenge to the ordinances at hand, the Court initially must presume the ordinances are valid. Boundary Drive Associates v. Shrewsbury Township Board of Supervisors, 507 Pa. 481, 491 A.2d 86 (1985). Sheridan argues, however, that the effect of the ordinances is to totally exclude a legitimate use of Sheridan's property, and thus the Borough must establish the "public good" will be protected by the exclusion. Fernley v. Board of Supervisors of Schuylkill Township, 509 Pa. 413, 502 A.2d 585 (1985). The Court's first task, then, is to determine whether the amended ordinances totally exclude a legitimate use for the property. In our review of the amendments, we must apply the Pennsylvania Municipalities Planning Code:

In interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.

53 P.S. §10603.1 (Purdon's 1990 Pamphlet).

Under the amended Zoning Ordinance, IP-zoned land may be used for any one of thirty-six (36) purposes, and all other uses are prohibited (Exhibit 3). Any principal building on IP-zoned land may be no more than 30 feet tall, and other buildings no more than 50 feet tall. Land used for any of the permitted purposes "shall have access to a major road." The amendment to

the Subdivision and Land Development Ordinance bars development of land that has a slope of more than 10 percent. The amendment bars access drives with slopes of more than 8 percent. It also requires IP developments to have access to a "major road."

We shall first consider the "access" requirement.²

The "access" requirement, Sheridan argues, prevents Sheridan from using any of its IP-zoned land at all. The Borough amended its Zoning Ordinance to require that all commercial and/or industrial uses must have "access" to a major road. Major roads were defined elsewhere in the ordinance as Pa. Route 72, U.S. Route 322, Cornwall Road, and Pa. Route 419. None of the land in the Borough that is zoned IP touches any of these roads. Thus, Sheridan argues, it is precluded from using all its IP-zoned land for any commercial or industrial use, and the only uses permitted for IP-zoned land under the ordinance are commercial or industrial.

The Borough argues Sheridan can negotiate rights-of-way over land owned by adjacent property owners to gain "access" to the major roads. The Borough points out that there is an unused network of private roads on the adjacent land that Sheridan could use to gain access to major roads. The Borough also argues the amendment need not be interpreted to require IP-zoned land to

2. Sheridan originally challenged the amendments' restrictions on use, building height, road access and maximum slopes, but has pressed its appeal to this Court on the "slope" and "access" issues only.

have frontage on major roads; "access," the Borough argues, is not the same as frontage.

The Borough's second argument is logically inconsistent. Every parcel of land within the Borough has "access" to a major road, if "access" means simply "a way to get to." When all is said and done, all roads lead to Rome. If any road leads to a parcel of land, under the Borough's interpretation, then the parcel has "access" to a major road, albeit indirect access. There would be no reason for the Borough Council to have enacted the amendments to the ordinance if this were a reasonable interpretation, and the amendments would pose no obstacle to Sheridan's development of its parcels.

As for the Borough's first argument, Sheridan would be left to the mercy of adjacent property owners if we were to accept the Borough's line of reasoning. By enacting the "access" requirement in the ordinance, Cornwall Borough has created impenetrable barriers around Sheridan's IP-zoned parcels, and has cut off Sheridan's parcels from the mainstream of Pennsylvania commerce. We cannot require Sheridan to beg its neighbors for the use of their roads in order to use its IP-zoned land for the purposes set forth in the ordinance itself.

We must conclude the "access" requirement effectively excludes all commercial and industrial uses from Sheridan's IP-zoned parcels. In fact, the "access" requirement effectively bars all new IP development in Cornwall Borough, as none of the

land zoned IP has frontage along the Borough's major roads. (N.T. p.36).

The Court having concluded the ordinance is exclusionary, the burden of justifying the "access" amendments now shifts to the Borough.

The Borough argues the safety of the public is ensured by the ordinance's "access" amendment. The Borough's expert witness, H. Edward Black, testified that the purpose of the amendment was to take commercial traffic away from the center and more populated areas of Cornwall (N.T. p.113). He indicated several other municipalities had enacted similar restrictions on land zoned for industrial parks (N.T. p.112), and discussed the widths of the streets adjoining the IP-zoned land in the Borough (N.T. pp.115-118). He described the roads as narrow and winding, and unsuitable for intense industrial traffic (N.T. p.117). In addition to public safety reasons, the Borough's expert indicated the "access" requirement protected the environment (N.T. p.117). He also noted the Comprehensive Plan recommended drawing heavy industrial traffic away from the downtown Cornwall area (N.T. pp.118-119).

These are all good and worthy reasons to restrict heavy truck traffic on residential roads designed for light motor vehicle use. The amendment, however, does not apply only to heavy truck traffic; it applies to any vehicle traveling to and from land zoned IP, regardless of weight or frequency of travel. This is unduly restrictive under the circumstances.

Pursuant to the allowed uses for its IP property, Sheridan conceivably could put up a building in which computer scientists developed programming software, stored on lightweight floppy disks, which could be shipped in a 14-foot truck with a gross weight of no more than 10,000 pounds no more frequently than once a day. The "access" requirement forbids development of IP land in this manner, as the requirement mandates IP users ship their wares via U.S. Route 322, Pa. Route 72, Cornwall Road, or Pa. Route 419.

Similarly, should a railroad elect to run a spur to any IP-zoned land, enabling business to ship raw materials and goods by rail, the "access" amendment would still forbid development of the land, although none of the problems and dangers inherent in over-the-road transport would then exist, and only a few transportation-related problems would exist at all.

The Court concludes the "access" amendments are unreasonably broad and have effects that go far beyond the stated public purpose. They arbitrarily bar development of all IP-zoned land within the Borough and thus constitute an uncompensated "taking" of Sheridan's property, in violation of both the Pennsylvania and federal Constitutions.³ The Court finds the "access" amendments invalid for those reasons.

Sheridan's next argument addresses the amendment to the Subdivision and Land Development Ordinance passed on May 14,

³. Pennsylvania Constitution, Art.1, §10 (Purdon's 1969); U.S. Constitution Amend. 5, Amend. 14 (West 1987).

1990. The first group of amendments, which is not at issue, governs submission of proposed development plans to the County and Borough planning offices, deadlines, and the like. The second group of amendments restricts development on IP-zoned land to land with an average slope of 10 percent or less, and requires access drives to have a slope no greater than eight percent.⁴ Sheridan complains of these "slope" requirements.

At the hearing, the Borough introduced a contour map of the Borough showing IP-zoned land and the portions of that land that could be developed pursuant to the "slope" requirements. Of the Borough's 433 IP-zoned acres, the Borough's expert testified that 165 acres, owned by Sheridan and by Bethlehem Steel, were suitable for development pursuant to the "slope" requirement (N.T. p.107).⁵ The Borough's planning expert also testified that restricted development was desirable on steep slopes because of "down slope soil movement" (N.T. pp.103, 108) and that safety required access roads to be eight percent or less in slope (N.T. p.104).

The Borough's Comprehensive Plan suggests that development be discouraged in the steep terrain areas (N.T. p.110). There

4. The section in question also incorporates PennDOT's regulations for truck traffic into the ordinance, and repeats the Zoning Ordinance requirement that all subdivisions "access" a major road. The "access" requirement has been discussed above. The PennDOT truck regulation section is not at issue.

5. This is about 47 percent of the total land zoned IP in the Borough (N.T. p.135). Some of the 433 acres is taken up by the lake that formed in the open pit mine after mining operations ended (N.T. p.130).

was some dispute at the hearing as to how "average slope" was to be calculated (N.T. pp.128, 140-142, 150), and how much of Sheridan's land could be developed pursuant to the "slope" criteria (N.T. p.152).

Sheridan suggests the "slope" amendments were enacted simply and solely to stop Oxbow from proceeding with its proposed co-generation plant. Sheridan cites Plymouth Township v. Montgomery County, 109 Pa.Cmwlth. 200, 531 A.2d 49 (1987), in support of its position that the "slope" amendments are thus invalid as "spot zoning."

The Borough argues that the motive of a legislative body in enacting legislation is irrelevant to a determination of the legislation's validity, citing Gladwyne Colony, Inc. v. Lower Merion Township, 409 Pa. 441, 187 A.2d 549 (1963). The Borough also argues that the "slope" amendments do not absolutely bar development of IP-zoned land, as they do not require an entire IP district have a slope of 10 percent or less for development. The Borough argues the amendment means the area to be developed within the IP-zoned area must have an average slope of 10 percent or less.

We accept the Borough's interpretation of the "average slope" requirement, which would allow 47 percent of the IP-zoned land in the Borough to be developed, and so we find the amendment does not totally prohibit a permitted use of the land, although it substantially limits use. We now turn to the question of

whether we may consider Borough Council's motives in enacting the amendments.

In Gladwyne, supra, the issue was whether a township could agree to build an access road and a sewer main for a property owner in exchange for the owner's transfer of acreage for a township park. The Supreme Court pointed out that the taxpayers challenging the agreement did not allege the agreement was without substantial relation to the public health, safety, morals or general welfare, and declined to find the agreement was special legislation. But in Plymouth Township, supra, the Commonwealth Court said:

The key point is that when a municipal governing body puts on blinders and confines its vision to just one isolated place or problem within the community, disregarding a community-wide perspective, that body is not engaged in lawful zoning, which necessarily requires that the picture of the whole community be kept in mind while dividing it into compatibly related zones by ordinance enactments. In other words, legislating as to a spot is the antithesis of zoning, which necessarily functions within a community-wide framework.

109 Pa.Cmwlth. at 217-18, 531 A.2d at 57 (emphasis in original).

In Plymouth Township, the trial court specifically stated in its opinion that the ordinances at issue were specifically designed and enacted to exclude the proposed facility from the township. 109 Pa.Cmwlth. at 57, 531 A.2d at 57. The Commonwealth Court took the trial court's determination into account in considering whether the ordinances at issue constituted spot zoning.

We agree with Sheridan that we may examine the motives of Borough Council in enacting the amendments.

The amendments at issue were enacted in May of 1990, after the Borough rejected Oxbow's co-generation plant plans and while the rejection was on appeal to this Court. The Borough Council president, David Meyer, testified Council believed the ordinance as it existed before the amendment would govern Oxbow's first proposed plan (N.T. pp.164, 188). Council President Meyer believed a later Oxbow plan would have fallen under the ordinance as amended (N.T. p.188).

While Oxbow's proposal created an urgent need for Borough Council to consider "slope" amendments to its Subdivision and Land Development Ordinance, we cannot specifically conclude the amendments were passed for the sole purpose of preventing Oxbow from building its plant in the Borough. We come to this conclusion because of the timing of the amendments, the reasons given for the amendments' presentation to Council, and the pre-existing references to slopes in the Subdivision and Land Development Ordinance (N.T. pp.107-108). The burden now falls upon Sheridan to demonstrate the "slope" amendments bear no reasonable relationship to the public health, safety and general welfare.

Sheridan has not pointed to any evidence in the record, and we have found none ourselves, indicating the "slope" amendments are unrelated to the public health, safety and general welfare. Indeed, as stated in the background study to the Borough's Comprehensive Plan, steep terrain can be developed, but development must be limited and cautious to prevent soil erosion

and other problems (Exhibit 26, p.18). On the basis of the record before us, we do not find that the "slope" amendments of which Sheridan complains are invalid.

An appropriate order will follow.

CONCLUSIONS OF LAW

1. Ordinance 1990-3, Section I, amendment of Article X, Section 1006, of the Cornwall Zoning Ordinance (relating to "access") is an unreasonable and arbitrary exercise of the Borough of Cornwall's zoning power and is invalid.

2. Ordinance 1990-4, Section I, addition of Section 4.03(C)(4)(c) to the Cornwall Borough Subdivision and Land Development Ordinance (relating to "access"), is an unreasonable and arbitrary exercise of the Borough of Cornwall's zoning power and is invalid.

3. Ordinance 1990-4, Section I, addition of Section 4.03(C)(4)(b) to the Cornwall Borough Subdivision and Land Development Ordinance (relating to "slope") is a reasonable exercise of the Borough of Cornwall's zoning power and is valid.