

STATE OF MAINE

YORK, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NOS. AP-02-042  
AP-02-043  
AP-02-044

PAF-YOR-2/2/2007

WILLIAM T. WOODS and  
LILA WOODS, et al.,

Plaintiffs

v.

ORDER

THE INHABITANTS OF THE  
TOWN OF YORK,

Defendant

DONALD L. GARBRECHT  
LAW LIBRARY

MAY 13 2007

On October 7, 2005 I signed an order staying the defendant's motion for summary judgment to permit the plaintiffs to seek necessary state and federal permits. Those permits have been granted and the parties have filed supplemental briefs.

The defendant's motion for summary judgment will be granted as to Counts II (the State Constitutional claims) and Counts III (the Federal Constitutional claims). The Maine Supreme Judicial Court has determined that the state and federal claims would require the same analysis in this case. See *MC Associates v. Town of Cape Elizabeth*, 2001 ME 89, ¶11, 773 A.2d 439, 443. The test is whether the York zoning restrictions have caused the properties to lose all value. *MC Associates*, at ¶11, or "all practical value", *Seven Islands Land Co. v. Maine Land Use Regulation Commission*, 450 A.2d 475, 482 (Me. 1982).

In this case the evidence presented by the plaintiffs' own expert, before he attempted to distance himself from his opinion, was that each property was worth about \$7,800.00. Another expert admitted that the property would have a nominal

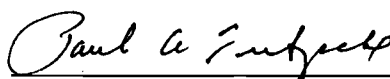
value, but have value. Regardless of whether the newly enacted "Wetland Protection Bonus" provision of the York Zoning Ordinance, §7.6.4(B)(3) adds practical value some modest value existed and exists.

While the properties with land use restrictions have a significantly reduced value, enough value, which to the owners must be discouragingly small, remains to defeat a state or federal constitutional challenge to the zoning restrictions.

The entry is:

Judgment for the defendant on Counts II and III in AP-02-42, AP-02-43 and AP-02-44.

Dated: February 2, 2007



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Paul A. Fritzsche  
Justice, Superior Court

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William V. Ferdinand, Jr., Esq. - PLS  
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Durward Parkinson, Esq. - DEF