

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

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Re: *Lynch, et al. v. The City of Rehoboth Beach, et al.*
Civil Action No. 2266-S

Dear Counsel:

This case involves the rezoning of plaintiffs' five contiguous lots ("Lots") on or near Columbia Avenue in Rehoboth Beach, which were rezoned by the City from a C-3 commercial designation to an R-2 residential designation. The plaintiffs filed an action seeking to enjoin the rezoning, which was referred to the Master, who issued a Report that rejected plaintiffs' claim.¹ Now, it is before me

¹ See Master's Report, *Lynch v. Rehoboth*, C.A. No. 2266-S (Apr. 21, 2005)(hereinafter "Master's Report"). Plaintiffs contend that the rezoning is illegal or unconstitutional because "[o]n property designated C-3, certain commercial activity is permitted in addition to all residential activities permitted on property zoned R-2."

for review of exceptions. According to *DiGiacobbe v. Sestak*,² I am required to review *de novo* the Master's legal conclusions and any factual disputes. In this situation it is possible to conduct a *de novo* review on the record, without requiring a new hearing.³ For the reasons set forth below, I conclude that the Master's recommendations are correct and judgment will be entered in favor of defendants.

I. FACTS

On December 2, 2002, the Rehoboth Beach Commissioners ("Commissioners") passed a resolution calling for a public hearing to consider rezoning the Lots near Columbia Avenue. At the time of the resolution, the Lots were the subjects of deliberation by the City Planning Commission ("CPC").⁴ The CPC was considering the proper zoning of the Lots to see if they were in accordance with the 1996 comprehensive development plan. The plan allowed the City to determine if developments were conforming to the proper zoning and if any zoning changes were necessary. Also, in 2002, the City was considering a new comprehensive development plan ("Development Plan"), that called for rezoning

² 743 A.2d 180, 184 (Del. 1999).

³ *Id.* Generally *de novo* review means to conduct a new trial or hearing on questions of fact. However, it is possible to conduct a *de novo* review on the record, without a new trial or hearing. *Id.* When the parties except to one or more of the Master's findings from the evidence in the case, the Court can read the record that is relevant to the exceptions raised and draw its own factual conclusions. *Id.*

⁴ Master's Report at 3. The CPC is an advisory board that gives recommendations to the City Commissioners.

of areas in Rehoboth. This Development Plan identified the Lots as part of the rezoning area.

Before the Development Plan was adopted, several hearings were conducted to gain public opinion on the rezoning of the Lots on or near Columbia Avenue. On November 14 and 16, 2002, a public hearing was held by the CPC regarding the Development Plan. All property owners in Rehoboth, including plaintiffs, were given notice of this hearing. Later, the plaintiffs attended the hearing and voiced their opposition to the Development Plan.⁵ The plaintiffs wanted to show that the current C-3 zone designation was not harmful to the community. At the end of the hearing, the CPC recommended to the Commissioners that the Development Plan should be adopted. Then on December 2, 2002, the Commissioners adopted the resolution (as mentioned above) calling for a public hearing on the rezoning of Columbia Avenue.

On January 13, 2003, during a scheduled CPC meeting (which was not open to the public) the CPC reaffirmed its decision to rezone the Lots on or near Columbia Avenue. Five days later, on January 18, 2003, the Commissioners held a public hearing regarding the rezoning of the Lots. At the hearing the majority of those who spoke were in support of the rezoning. Once again, plaintiffs, who were represented by counsel, stated their opposition to the rezoning. They presented

⁵ See Master's Report at 3 n.3.

evidence and expert testimony to show that the rezoning would not be beneficial to the City. The hearing concluded and the Commissioners adjourned without making a decision.

On February 18, 2003, the Commissioners met and determined that since plaintiffs filed a protest, the Commissioners needed a three-fourths favorable vote to permit the rezoning.⁶ The Commissioners voted six to one in favor of the rezoning, which satisfies the three-fourths requirement, and this litigation ensued. As of August 8, 2004, the Development Plan has been adopted and approved by the State and now has the force of law.

II. MASTER'S RULING

The Master's Report recommended the grant of summary judgment in favor of the defendants and denial of plaintiffs' challenge to the Commissioners' legislative decision to rezone the Lots. In recommending the grant of summary judgment, the Master determined that there was substantial evidence to support the rationale of the rezoning motion, thus making the rezoning valid. There was

⁶ See 22 Del. C. § 305, which provides in part:

[i]n case, however, of a protest against such changes signed by the owners of 20 percent or more, either of the area of the lots included in such proposed change or of those immediately adjacent thereto extending 100 feet therefrom or of those directly opposite thereto extending 100 feet back from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three fourths of all the members of the legislative body of the municipality....

substantial evidence that the rezoning was necessary for the safety, health and welfare of the community, as is required by law.⁷

The Master also rejected the plaintiffs' due process argument. As the Master pointed out, the plaintiffs' due process rights were satisfied since they had notice and opportunity to be heard on the rezoning of the Lots.⁸ Plaintiffs had a full opportunity to present all their arguments to the Commissioners. Therefore, plaintiffs' due process rights were not abridged.

Regarding the plaintiffs' burden of proof argument, the Master determined that there was no erroneous understanding of the burden on the Commissioners that could have affected the outcome. The Commissioners, in their legislative capacity, are bound by no burden of proof when considering a rezoning. The Commissioners do have the burden to determine if the rezoning is in the interests of the health, safety and welfare of the community. Additionally, the Commissioners must conform to due process, as they did here.

The Master also rejected the plaintiffs' third argument, regarding the participation of Commissioner Sargent. As the Master stated, "a legislator is entitled to have a view of the evidence and to express that view."⁹ Commissioner

⁷ *Tate v. Miles*, 503 A.2d 187, 191 (Del. 1986). *See also Willdel Realty, Inc. v. New Castle County*, 281 A.2d 612, 614 (Del. 1971).

⁸ As stated earlier, the plaintiffs voiced their opinions at both meetings, held on November 14 and 16, 2002 and January 18, 2003, offering their opposing thoughts.

⁹ Master's Report at 11.

Sargent's behavior demonstrated that he only had the best interests of the community in mind while considering the rezoning.

The Master again declined plaintiffs' final argument, regarding the rationale for the Commissioners' vote. He determined that there was sufficient rationale to support the Commissioners' voting for the rezoning of the Lots. It was clear to the Commissioners that they, in voting for the motion, were adopting Commissioner Sargent's findings of fact. They also knew that these findings of fact were rationally related to the public interest.

III. PLAINTIFFS' EXCEPTIONS

Plaintiffs raise three exceptions to the Master's Report. The first exception is to the Master's finding that the Commissioners of Rehoboth Beach, as proponents of rezoning, are not bound by a "burden of proof" requirement.¹⁰ Plaintiffs believe that the Commissioners are bound by an affirmative burden of proof, which must be met before the Commissioners act in their legislative functions.

Their second exception concerns the Master's observation that the Commissioners found the rezoning was in the interest of the city, therefore they did not act capriciously or arbitrarily,¹¹ and hence there was no erroneous

¹⁰ Plaintiffs' Notice of Exceptions at 2, *Lynch v. Rehoboth* (C.A. No. 2266-S).

¹¹ Although it was determined that the Commissioners have no "burden of proof" in considering rezoning, they must not act arbitrarily or capriciously when deciding to rezone property. Therefore, if they determine to rezone property based on the interests of the City, in a sense, they are fulfilling their "burden."

understanding of the “burden of proof” by the Commissioners which could have affected the outcome. Plaintiffs believe that at the time of the vote, the Commissioners misunderstood the burden of proof to be on the plaintiffs.

Plaintiffs’ third exception is in regard to the Master’s finding that the act of rezoning the plaintiffs’ land by the Rehoboth Commissioners was in conformity with the Rehoboth 1996 Comprehensive Plan.¹² Plaintiffs contend that the 1996 Comprehensive Plan does not specifically target their land and that the Commissioners acted contrary to the 1996 Plan before the commencement of the rezoning.

IV. ANALYSIS

A. Plaintiffs’ Exceptions 1 and 2—the Commissioners’ Burden of Proof

Plaintiffs’ first and second exceptions address the Commissioners’ burden of proof. For the following reasons, I determine that these exceptions are without merit and should be dismissed.

The Supreme Court of Delaware has stated several times that “zoning is a legislative function and a rezoning ordinance is usually presumed to be valid unless clearly shown to be arbitrary and capricious because it is not reasonably related to the public health, safety, or welfare.”¹³ This presumption is rebuttable. The burden of rebutting the presumption is on the party who is challenging the

¹² *Id.* at 3.

¹³ *Supra* n.7.

rezoning.¹⁴ This party must show that the rezoning is arbitrary and capricious.¹⁵ Therefore, the only “burden” the Commissioners have, while acting in their legislative capacity, is to determine if the rezoning is in the interests of health, safety and welfare of the community.¹⁶

There was no misunderstanding of the burden of proof upon the plaintiffs to challenge the rezoning and show that it was arbitrary and capricious. As stated by the Master, the Commissioners determined the rezoning of the Lots was in the interest of the City, by relying on substantial evidence to make this conclusion. For that reason the Commissioners did not act arbitrarily or capriciously, and hence the rezoning of the Lots is valid.

B. Plaintiffs’ Exception 3—the Rezoning was not in Conformity with the 1996 Comprehensive Plan

Plaintiffs’ third exception takes into account whether or not the Development Plan is in conformity with the 1996 Comprehensive Plan. For the following reasons, I find the third exception also is without merit.

As stated by the Master, there is substantial evidence to support the Commissioners’ decision to rezone based on the Development Plan.¹⁷ There were several items of evidence showing that, if the Lots were developed as commercial,

¹⁴ *Tate*, 503 A.2d at 191.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See* Master’s Report at 7.

the health, safety and welfare of the community would be harmed.¹⁸ Because there was substantial evidence to support the Development Plan, and consequently that the rezoning was in conformity therewith, no basis exists for the Court to overturn the decision.¹⁹ In addition, the 1996 Comprehensive Plan allowed rezoning of properties that were "... commercial but not developed, and commercial areas developed as residential."²⁰ Since the property in question is located in a residential area, the Commissioners could rationally believe that the Development Plan was in accordance with the 1996 Comprehensive Plan.

V. CONCLUSION

For the reasons stated herein and for the reasons stated by the Master, the Master's recommendations are correct. The plaintiffs' three exceptions to the Master's Report, regarding the rezoning of Lots on or near Columbia Avenue, are without merit. Judgment is entered in favor of the defendants and against the plaintiffs. An order has been entered consistent with this letter opinion.

¹⁸ Some of the evidence presented to the Commissioners in support of the rezoning is: (1) several witnesses testified that the Lots were residential in nature and that commercial development would be harmful, (2) the increased density of a commercial development would cause traffic and parking congestion, (3) there would be reduced light and air if a commercial development occurred, and (4) the commercial development would be "detrimental to the residential character of the community and to the health, safety and welfare of the community as a whole." *See* Master's Report at 7.

¹⁹ *See Deskis v. County Council of Sussex County*, 2001 WL 1641338 (Del. Ch. July 24, 2001).

²⁰ *See* Master's Report at 7 n.7.

Very truly yours,

William B. Chandler III

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