IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

BARBARA MURRAY, et al.	)	
	)	
Petitioners,	)	
	)	
v.	)	C.A. No. 2249-MG (S)
	)	
RIVERVIEW, LLC, et al.	)	
	)	
Respondents.	)	

MASTER'S REPORT

Date Submitted: October 11, 2007
Final Report: November 30, 2007

Michael J. Malkiewicz, Esquire, of Barros, McNamara & Malkiewicz, Dover, Delaware, Attorney for Petitioners.

Dennis L. Schrader, Esquire, of Wilson, Halbrook & Bayard, P.A., Georgetown, Delaware, Attorney for Respondents Riverview LLC and Caldera Properties-Indian River V, LLC.

Joseph Scott Shannon, Esquire, of Marshall, Dennehey Warner Coleman & Goggin, Wilmington, Delaware, Attorney for Respondents Sussex County Council, Dale Dukes, Finley B. Jones, Jr., George B. Cole, Vance Phillips and Lynn J. Rogers.

GLASSCOCK, Master

In this matter, the petitioners seek a declaratory judgment that an ordinance[1] amending a zoning map, enacted by respondent Sussex County Council,[2] is invalid as adopted and, thus, void. The real Property subject to the Ordinance (the "Property") is a 79-acre parcel in eastern Sussex County overlooking a tributary of Indian River Bay. Until the early 1970s, the Property was part of a larger parcel owned by Doris and Jesse Murray. The Murrays sold the Property to a developer who obtained a rezoning of the Property to medium residential—residential planned community ("MR-RPC") which allowed a higher density of development than the surrounding medium density residential ("MR") zoning. That developer, however, was unable to proceed for reasons not disclosed in the record, and the Property was eventually sold at sheriff's sale to its current owner, respondent Caldera Properties-Indian River V, LLC ("Caldera"). Because the original developer was unable to proceed with the development plan, the MR-RPC zoning had lapsed. Caldera, together with co-respondent developer Riverview, LLC ("Riverview") sought and obtained the Ordinance in question (the "Ordinance") from the respondent Sussex County Council (the "County Council") restoring the MR-RPC zoning designation and approving a condominium development on the parcel. The Ordinance permits a condominium development with 72 units on the approximately 16 acres of developable uplands which exists on the Property.

---

[1]The ordinance in question is Sussex County Ordinance No. 1846.

[2]The individuals named as respondents are the individual councilmen, being sued in their official capacity.

The Property is surrounded by lands formerly owned by Doris and Jesse Murray. That Property is now owned by a partnership, the petitioner D and B Murray Limited Partnership (the "Partnership"). Petitioner Barbara Murray ("Murray") is a principal of the Partnership. Murray and the Partnership object strenuously to the development of the Property. They seek a declaration that the Ordinance restoring the MR-RPC designation, and approving the plan of development, is void. The petitioners also seek associated injunctive relief. Both the petitioners and the County Council have moved for summary judgment, and the matter has been briefed and argued. This is my decision on the cross-motions for summary judgment.

Facts

Both the Property and the surrounding acreage owned by the Partnership consist of woods, wetlands and cultivated agricultural areas. The Property is in an area designated (for zoning purposes in the County Comprehensive Plan) an Environmentally Sensitive Developing Area. The Property is all but landlocked by the lands of the Partnership. The only connection of the Property to the public highway is a 100-foot wide neck of land (the "pipestem") running from the main part of the Property to Walter's Bluff Road. It is reasonable to assume that when the Murrays divided the Property from their remaining acreage, they created the odd shape of the parcel intending the pipestem to provide access to the Property. While some of the pipestem adjacent to the highway is uplands, however, portions of the pipestem are entirely occupied by Federal and State wetlands.

The rest of the Property also contains significant wetlands. The majority of the 16 or so developable acres in the Property have no access to the highway except through the wetlands in the pipestem. In other words, to reach the developable part of the Property from a public road, access must be through wetlands in the pipestem or across uplands belonging to the adjacent Partnership property.

The Partnership, through Murray, has made it abundantly clear that it opposes development of the Property and that it will not permit a right-of-way or easement over Partnership lands to permit development. Cognizant that any development plan, therefore, would have to provide access to the Property through the wetlands of the pipestem, Riverview/Caldera crafted a proposed Ordinance that attached, as one of the suggested "conditions" to the Ordinance, a proposal for a massive timber bridge to be built from the uplands in the pipestem adjacent to the highway across the Federal and State wetlands to the proposed development area. The proposed bridge would have been 34 feet wide and 1300 feet long This timber bridge would have been the only method of access for residents in and visitors to the development. According to petitioners' counsel, if constructed, it would have been the longest timber bridge in Sussex County. Riverview/Caldera conceded at various stages of the hearing process that (in their opinion) such a bridge was the only way to provide access to the Property without running afoul of wetlands protection statutes and ordinances.

In order for the Ordinance to be placed before County Council, a number of reviews of the planned Riverview development were required. 29 Del.C. Ch. 92. These

opinions were collected in the Preliminary Land Use Service Commentary (the "PLUS review") assembled by the Office of State Planning Coordination. Throughout the PLUS review process, the proposed bridge proved to be a major concern for the reviewing bodies. The Delaware Department of Transportation ("DelDOT"), the Delaware Department of Natural Resources and Environmental Control ("DNREC") and the Sussex County Engineer all stated their concerns as part of the PLUS review about the bridge, and recommended that alternative means of access to the Property be pursued. After the PLUS review, the proposed Ordinance came before the Sussex Planning and Zoning Commission for two hearings, on March 31 and May 12, 2005. At the May 12 hearing, Commissioners raised concerns about the bridge, including problems which would occur if evacuation of the development was required, safety concerns with respect to fires on the marsh adjacent to the bridge and the potential for negative impact on wetlands that the bridge might cause. Ultimately, the Commissioners voted unanimously to recommend that the proposed Ordinance be rejected.[3] Petitioner Murray herself spoke out against the bridge before the Planning and Zoning Commission.

The County Council held a public hearing on April 19, 2005, at which petitioner Murray once again presented her views that the bridge was problematic and that the

[3]In addition to concerns about the proposed bridge, the Planning and Zoning recommendation was negative for other stated reasons, including that "the purpose of an RPC is to create 'superior living environments' and to utilize 'design ingenuity.' In this case neither has been established. The design appears to have the primary goal of establishing as many homes as possible on a very limited upland area" and that "the proposed MR-RPC is not in accordance with the goal of the 2002 Comprehensive Plan update because it does not represent growth directed to an area where public infrastructure and sewage are available."

proposed Ordinance should be denied on that basis. After the hearing the record was left open for further comments. Finally, on April 25, 2006, County Council voted four to one in favor of enacting the Ordinance with a number of conditions. The Council's conditions, as made a part of the Ordinance, did not include a condition requiring or permitting bridge access across the wetlands in the pipestem, however. Instead, the Ordinance provides, in Condition 14: "vehicular access shall be by a road constructed to County standards on the applicant's Property or by an easement approved by the County attorney over the land of an adjoining property owner." As stated above, the petitioners seek a declaratory judgment that the Ordinance, including Condition 14, is invalid.

The Law

The path that leads to summary judgment in this Court is well-worn. When considering a motion for summary judgment, this Court will grant the motion where, viewing the record in a light most favorable to the non-moving party, it appears that there are no issues of material fact and that the moving party is thus entitled to judgment as a matter of law. Chancery Court Rules, Rule 56 (b); *e.g.*, Ginsberg v. Philadelphia Stock Exchange, Del.Ch., No. 2202-CC, Chandler, C. (May 31, 2007)(Letter Op.) at 2. Here, both sides claim entitlement to summary judgment on the issue of the validity of the Ordinance at issue. "Rezoning decisions are presumptively valid and will not be set aside unless clearly shown to be arbitrary and capricious." Citizen Coalition Inc. v. Sussex County Council, Del.Ch., No. 2218-S, Parsons, V.C. (April 30, 2004)(Letter Op.) at 5. The burden is on the party challenging the rezoning to rebut this presumption. *Id.* Decisions of the Council will be found arbitrary and capricious where clearly shown not to be reasonably related to the health, safety or welfare of the public. Concerned Citizens of Cedar Neck v. Sussex County Council, Del. Ch., Lamb, V.C. (August 14, 1998)(Mem Op.) at 4. A decision is arbitrary and capricious where taken "without consideration of and in disregard of the facts and circumstances of the case." *Id.*

This Court's role in the review of the actions of the County Council is quite limited. Upon challenge, this Court will review the record to insure that the complained-of actions of the Council derived from a non-arbitrary application of legislative judgment, based on sufficient record to permit a meaningful review by the Court. The Council's

action must be consistent with due process and statutory law including with any delegation of legislative authority from the General Assembly. *E.g.* Green v. County Council of Sussex, Del. Ch., 415 A.2d 481, 485-86 (1980). Put another way, "any zoning action that is not in conformity with the law is considered to be arbitrary and capricious." Deskis v. County Council of Sussex, Del. Ch. No. 2066-S, Jacobs, V.C. (December 7, 2001)(Mem. Op.) at 4.

Discussion

This case, at first blush, appears to be in an odd posture. The petitioners argued forcefully before the County Council that the bridge sought by Riverview/Caldera as part of the proposed Ordinance, to provide access to the development, was unsafe and environmentally unsound and thus should not be permitted. The petitioners prevailed on that issue. In adopting the Ordinance with Condition 14, the County Council, in effect, washed its hands of the problem. It consented to the change in zoning allowing Riverview/Caldera to build a condominium community on the Property. It did not permit the bridge as a means of access to that development, however. Effectively, Riverview/Caldera was told by the County Council that it would approve their development if the developer could find a way to build a surface road to the development area across Caldera's lands or the lands of another, presumably lands of the Partnership. The County Council argues that the Ordinance as enacted leaves the petitioners in complete control of the situation: unless they permit a road to be placed across their

uplands to the development area of the Property, the Property cannot be developed. To the petitioners, however, this victory appears purely pyrrhic. They view the Ordinance as giving the developer *permission* to build a surface road through the Federal and State wetlands in the pipestem. Indeed, Riverview apparently agrees: according to petitioners' counsel it has petitioned the Delaware Department of Natural Resources and Environmental Control ("DNREC") for permission to build a surface road through the wetlands. The petitioners seek to have the Ordinance declared void on three grounds. First, the petitioners argue that in exchanging the proposed condition of a timber bridge for one requiring a surface roadway, the County Council fundamentally amended the proposed Ordinance in a manner which triggers the need for a full review and hearing as required for an entirely new proposed Ordinance. Next, the petitioners argue that there is insufficient evidence of record to support the provision of the Ordinance (Condition 14) which directs that access to the development be via a surface roadway. Finally, the petitioners argue that there is no sufficient record of the reason for the votes of the County Council so that I may find that the zoning change was a result of a proper deliberative process or enacted for a proper purpose.

A. Whether County Council amended the Ordinance as to a matter of substance without subjecting the amended Ordinance to "new ordinance review" in violation of § 7002 (m)(2).

9 Del.C. § 7002 (m) provides for enactment of County ordinances. Part 2 of Subsection (m) provides in part pertinent here that

> [a]fter the public hearing the County government may adopt the ordinance with or without amendment or reject it, but if it is amended as to any matter of substance which is not embraced within the title of the ordinance, the County government may not adopt it until the ordinance or its amended sections have been subjected to all the procedures here and before required in the case of a newly introduced ordinance.

In other words, if after the required review and required public hearing on the Ordinance in question, the County Council amended the proposed Ordinance, and if the amendment was "as to any matter of substance which is not embraced within the title of the Ordinance," the County Council was required to submit the amendment (or the entire Ordinance as amended) to the required PLUS review, Planning and Zoning review, due process hearing, etc., before adopting the amended Ordinance.

The petitioners argue strenuously that the conditions appended to the Ordinance are part of the Ordinance, that the County Council amended the Ordinance by substituting Condition 14 (a surface road for access) for proposed Condition 15 (access via a bridge over the wetlands), that that amendment alters a matter of substance not embraced within the title of the Ordinance, and that therefore the County's action in adopting the amended Ordinance without the required review and hearing is void. I agree that in approving the Ordinance with conditions, the County has made the conditions a part of the Ordinance.

It is also abundantly clear that a great portion of the concerns voiced by PLUS review participants, by the Planning and Zoning Commission, and by petitioners at the public hearings involved the suitability of the access to the development via a timber bridge through wetlands. Among the concerns raised by the participants was the ecological impact of the construction and maintenance of the timber bridge in wetlands. If, as the petitioners contend, the Ordinance was amended to include a provision which gave the developer permission to place a surface road through wetlands in the pipestem without PLUS or Planning and Zoning review of that issue and without a public hearing, I agree that the substitution of Condition 14 for proposed Condition 15 would have worked an amendment as to a matter of substance in the Ordinance, potentially triggering a new "review and hearing" requirement under § 7002 (m)(2). But just as Condition 14 is a part of the Ordinance, so are all of the other conditions, and the Ordinance must be read as a whole to determine whether the addition of new Condition 14 was a substantive amendment to the proposed Ordinance.

The initial Ordinance proposed by Caldera/Riverview contained a condition that a timber bridge be built through the wetlands in the pipestem. This condition was made a part of the proposed Ordinance because the developer believed that it would not be able to obtain permission from the petitioners to put a road through their uplands to the proposed development, and that it would be unable to obtain permission from the Federal and State authorities to fill the wetlands in the pipestem to put a surface road across its own property. As described above, the proposed timber bridge caused grave concerns

with the PLUS review entities, the public and the Planning and Zoning Commission. County Council, therefore, determined to allow the Ordinance to proceed without the condition that a timber bridge be built. Instead, it substituted a condition that the developer must find a way to construct a surface road across its own lands, the Partnership property or a combination of both to serve as access for its development. Condition 14 is inartfully drafted and can be read (if read in isolation) to approve a development with a surface road through the pipestem. Condition 14 is not the only operative condition, however. In addition, the Ordinance appends a Condition 11, which provides that construction is not permitted within 50 feet of a wetland.[4] Since the construction of a road in the pipestem would necessarily require road construction within 50 feet of a wetland (as well as through the wetlands themselves) it is clear that the Ordinance together with its conditions prohibits construction of a roadway in the pipestem. Therefore, as the County Council has stressed, even if the developer were permitted to run the surface road through the pipestem by Federal and State regulators, it would then need to appear before the Council to seek an amendment to the Ordinance as written, permitting construction within 50 feet of wetlands. Such an amendment would indeed trigger a full review and hearing process. Since the Ordinance as currently written and conditioned does not permit construction of a roadway in the pipestem, the petitioners' suggestion that the amended Ordinance be submitted for PLUS review,

[4] Condition 11 states that "a fifty (50) foot buffer shall be provided from the State wetland line."

Planning and Zoning review and a public hearing on the advisability of building a surface roadway in the pipestem is misplaced. Because I find the amendments to the Ordinance as adopted and conditioned not substantive amendments within the meaning of § 7002 (m)(2), no further review or hearing is required.

B. Whether sufficient evidence exists of record to support the Council's decision to amend the Ordinance to add Condition 14.

As described *infra*, the County Council was abundantly apprized of perceived problems from various entities concerning the timber bridge, from the record created by the PLUS reviews, the Planning and Zoning recommendation and through public commentary at its own hearing. The petitioners argued at the public hearing that the timber bridge was ecologically unsound. In response to the negative commentary and evidence before it with respect to the bridge, the Council disallowed the proposed condition that a bridge be built, and provided that access to the development was to be by road. The petitioners' contention is that there was insufficient evidence to allow the County Council to make a rational decision that a surface roadway should be permitted through the wetlands in the pipestem. As described above, however, that is not the decision the County Council made. They put in place an Ordinance which did away with the problematic timber bridge, allowed the zoning upgrade, and approved the development plan *provided* a way were found to put in place a surface roadway which did not require construction within 50 feet of wetlands. While the conditions were inartfully

drawn, it is clear that read together that is the import of Conditions 14 and 11. The requirement of a surface roadway, while it may ultimately prevent the development plan otherwise approved, was a rational reaction to the advice which the County Council received via the PLUS review and Planning and Zoning commentary, indicating that a timber bridge through the pipestem was not in the public interest.

C. Whether the record is sufficient to support the zoning change.[5]

The Courts of this jurisdiction have made clear that, while deference is due to the legislative enactments of the counties, in order for an enactment to survive challenge a record must exist sufficient for the Court to conduct a meaningful review. In particular, the County Council must create a record, or state on the record, "its reasons for the zoning change in terms that address the factors to be taken into account under the applicable statute." Tidewater Utilities, Inc. v. Sussex County Council, Jacobs, V.C. (September 17, 1986)(Mem. Op.) at 2, *citing* Tate v. Miles, Del. Supr., 503 A.2d 187 (1986). In addition to any other statutory rationale required for the enactment of a County ordinance,[6] the record must at minimum reflect that the reasons for adoption of the ordinance comply with 9 Del.C. § 6904: that the ordinance promotes "the health, safety, morale,

[5]Because my answer to this question is in the negative, I could have begun and concluded my analysis here. Mindful, however, that this report is subject to exceptions, I have addressed all issues raised by the petitioners in their motion for summary judgment, to provide a full commentary for use in any potential review.

[6]Such as the requirement that a zoning change be in accordance with the County Comprehensive Development Plan.

convenience, order, prosperity or welfare of the present and future inhabitants of Sussex County." This record requirement may be satisfied by each member stating his reasons for his vote. It may also be satisfied by the adoption of findings of fact sufficiently setting forth the rationale of the adopting members so that the Court, upon review, may divine the purposes for which the legislation was enacted. Deskis (Mem. Op.) at 3.

Here, the statements of the Council members (with the exception of the statement of Councilman Cole, who voted against the Ordinance) are bereft of rationale for the vote in terms of the purposes set forth in 9 Del.C. § 6904.[7] In order for me to deduce whether

---

[7]The following is the transcript of the vote enacting the Ordinance at the County Council hearing on April 25, 2006:

Mr. ROGERS: Motion Mr. Dukes. Second by Mr. Phillips. To approve change of zone Number 1572 Riverview, LLC. You've read the facts of findings. [sic] We've deleted 10. Again, we've deleted 15 and made a new 14. That vehicular access would have to go through the–by County standards or an easement from the land of the adjacent owner. Any questions? If not, call for the vote. Mr. Cole.
MR. GRIFFIN: Please state your reasons.
MR. ROGERS: State your reasons.
MR. COLE: Yes, I would be glad to My–the project is in the environmentally sensitive district. The project maximizes the number of units that would be permitted in an MR zoning category. As an MR subdivision the lots would be larger, there would be less homes, less runoff. Less impact on the adjoining wetlands, less people, less everything. That would be more environmentally sensitive than approving a project where the homes are closer, which would produce more runoff and potentially other impacts on the neighboring agricultural uses and the environmentally sensitive wetland areas. My vote is no.
MR. ROGERS: Mr. Cole votes no. Mr. Phillips?
MR. PHILLIPS: With the conditions imposed by Council, I believe that it will answer a lot of the concerns that were raised at the public hearing and by Planning and Zoning, disclosing of stipulation Number 4. Guarantees that it will be a part of a sanitary sewer system in accordance with the Sussex County Engineering Department specifications and regulations. Seventy nine acres in play and only 72 units being proposed, it certainly is not a significant increase in overall density. To the contrary, four units per acre, it's extremely low density. I vote, yes.
MR. ROGERS: Mr. Phillips votes yes. Mr. Jones?
MR. JONES: If you look at the conditions that we had before us and what we talked about. I think the concerns, if you look at the minutes, that Number 1 it would be the central sewer versus

the votes of the members were arbitrary or capricious, then, I must look elsewhere in the record. The County Council points me to the "findings of fact" which are appended to the Ordinance. A proposed set of findings of fact were submitted by the developer and were theoretically available to the Council members at the meeting of April 25, 2007. These may be the findings of fact which were referred to by Mr. Rogers when he presented the Ordinance for a vote: "To approve change of zone Number 1572 Riverview, LLC. You've read the facts of findings [sic]. We've deleted 10. Again, we've deleted 15 and made a new 14. That vehicular access would have to go through the—by County standards or an easement from the land of the adjacent owner. Any questions? …." On the other hand, the specific "facts of findings" listed by Mr. Rogers are not findings of fact, but instead the conditions which were proposed to the Ordinance, so it is not clear that the reference in the vote proposition was to the developer's proposed findings of fact. In any event, the "findings of fact" appended to the Ordinance are *not* the developer's proposed findings that appear in the record. They are different findings

---

a private unit; and Number 2, the bridge was certainly a big concern as far as environmental. I think we've addressed both those issues with our conditions and the way we modified them. Then my vote is, yes, also, Mr. President.
MR. ROGERS: Mr. Dukes?
MR. DUKES: I don't know why our discussion gets into what a MR subdivision is when that's not what the applicant applied is for. He applied for an MR–RPC and that's what our discussion should be based upon and taking the bridge out and other modifications and the 14 stipulations that's on it, my vote is yes.
MR. ROGERS: CZ 1572 Riverview, LLC, we've addressed I believe all the concerns or they have been addressed that Planning and Zoning recommended denial for, mainly being the bridge and the environmental area and they have to meet all the agency approvals and with the conditions and with the facts of findings [sic] that we have opposed [sic] upon the applicant my vote would be yes. Motion passed.

of fact. The record does not indicate how they came to be appended to the Ordinance. The transcript discloses that the findings of fact were not adopted, voted upon or read into the record at the April 25, 2006 meeting, before or after the vote on the Ordinance. The minutes of that meeting as approved by the Council set out the Ordinance in full, together with the conditions, but are silent as to any findings of fact. The Ordinance itself sets out the title and substance of the Ordinance together with all conditions, below which the Council Clerk, Robin A. Griffith, has subscribed a certification "THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 1846 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 25TH DAY OF APRIL 2006." Below that is appended the following (uncertified and unacknowledged) statement: "The Council found that the change of zone was appropriate legislative action based on the following findings of fact:" The findings that follow appear for the first time in the record. They include "6. The development is consistent with the Comprehensive Plan's housing and community design elements in that it would provide housing for permanent residents and second homeowners," "7. The Property is located in an area that is currently zoned MR, is located in a growth area, and the proposed development would cause no adverse impact on the uses or values of surrounding properties," and "9. The proposed RPC would promote the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County."

The County, citing Deskis, argues that these findings of fact, together with the statements of Council members at the time of their votes, create a sufficient record to

show that the enactment was not arbitrary or capricious.[8] The flaw in this reasoning is that the decision in Deskis flowed from the circumstance that the findings of fact in that case were actually adopted by the Council: "I conclude … that by voting to adopt the twenty-nine findings of fact, the County Council provided a fully adequate record as to why it believed that the rezoning would benefit the health, safety and welfare of the residents of Sussex County, as Delaware law required." Deskis, at 3. In the instant case, the findings of fact were not voted upon and not even read into the record. While the Council members may have had the developer's proposed findings of fact before them, these are not the findings of fact upon which Council now attempts to rely. These findings of fact were not adopted as part of the minutes of the April 25, 2006 meeting. They do not appear as part of the Ordinance certified by the clerk of the Council, but are merely appended below that certification. Stated simply, the "findings of fact" are not a part of the record on which this Court may rely in evaluating whether the votes of the

[8]Inexplicably, the County Council's Answering Brief states that "[a]s in Deskis … 'the findings of fact [in this case including the conditions] were discussed at the County Council meeting, and then, before the Council members voted, they were read aloud. . .. By voting for the Ordinance, the Council members signified their agreement with the reasons and conclusions set forth in the' in the [sic] Findings of Fact and Conditions." County Council's Answering Brief, at 19, citing Deskis (Mem. Op.) at 15 [sic]. In fact, and unlike Deskis, only one proposed finding of fact was discussed, concerning sewerage handling, in a debate about whether the proposed finding, submitted by the developer, was accurate. There was no comprehensive discussion of findings of fact at the April 25, 2006 Council meeting. The findings of fact and the conditions were *not* read aloud, and there is no basis in the record to conclude that the vote adopting the zoning change "signified [Council members] agreement with the reasoning and conclusions set forth in the Findings of Fact."

Council members were arbitrary and capricious.[9] I cannot determine from the voting statements of the members why they determined that the zoning amendment was consistent with the Comprehensive Plan or the proper legislative goals mandated in 9 Del.C. § 6904. Because the record is inadequate to demonstrate that the actions of the Council were not arbitrary and capricious, I must find the Ordinance invalid.

[9]I am aware of the holding in Blake v. Sussex County Council, Del. Ch., Steele, V.C., No. 1757 (July 15, 1997)(Mem. Op.), in which the Court found that an otherwise-insufficient statement by Council members explaining their zoning-amendment vote was successfully augmented by a list of findings of fact appended to the Ordinance in question. Blake (Mem. Op.) at 2. The Court in Blake, however, noted that the findings of fact were attached to the Ordinance and adopted by the Council on the same day as the vote effecting the zoning change. In the instant case, in contrast, the record does not indicate that the findings of fact as appended to the Ordinance were ever adopted by the Council.

Conclusion

The petitioners having met their burden to demonstrate that the record created by the County Council is inadequate to sustain the Ordinance as a proper legislative act, and no material issues of fact appearing, petitioners' motion for summary judgment must be granted. The respondents' motion for summary judgment must be denied.

/s/ *Sam Glasscock, III*
Master in Chancery