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April 13, 2010

*Via LexisNexis File & Serve
and First Class Mail*

Mr. Michael A. Duffy
3010 Kitts Hummock Road
Dover, DE 19901

Via LexisNexis File & Serve
William W. Pepper Sr., Esquire
Schmittinger and Rodriguez, P.A.
414 South State Street
P.O. Box 497
Dover, DE 19903-0497

Re: Duffy v. Kent County Levy Court
C.A. No. 4281-VCN
Date Submitted: March 8, 2010

Dear Mr. Duffy and Mr. Pepper:

Mr. Duffy's filings on or about February 23, 2010, have caused me to revisit the status of this matter.¹

Mr. Duffy brought this action in early 2009 in an effort to restrain Kent County from demolishing certain structures on his property in Kitts Hummock,

¹ Various documents were filed at that time, bearing captions such as Motion for Temporary Injunction, First Motion on Relief of Equity in Destruction of Private Property and Absence of Due Process in Permitting, and Motion to Adjoin Exhibits J-M to Amicus Curiae Brief. Since then, other documents, entitled Facts of the Matter and Questions of Jurisdiction, also have been filed.

Kent County, Delaware. Mr. Duffy was unsuccessful in obtaining injunctive relief and the demolition process is now complete.

Although the relief which Mr. Duffy now seeks is not altogether clear, one conclusion can be safely drawn: he no longer has a claim for equitable relief. The structures have been demolished, and it is beyond the power of an equity court to prevent that which has already occurred.² In short, those equitable claims are moot. At most, Mr. Duffy may—and the Court expresses no opinion as to this possibility—have a claim for damages.³ Because nothing remains but a claim that can be remedied in a court of law, there is no reason for this Court to retain subject matter jurisdiction. To the extent that it could in the abstract continue with the case, it declines to exercise its discretion in favor of retaining jurisdiction.

One of Mr. Duffy's most recent filings appears to focus on obtaining discovery which he believes was not properly provided to him earlier in these

² Mr. Duffy is concerned about the condition of his now-vacant lands and the potential for erosion. Because they are his lands, the primary responsibility for them rests with him.

³ Presumably any such claim would seek to encompass not only the loss of the structure but also any corollary damages to the land, such as might result from erosion attributable to Kent County's actions.

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proceedings. Those claims are either moot or are best handled by the court that will be addressing any potential claim for damages that he may have.

Furthermore, to the extent that Mr. Duffy seeks judicial protection of any “grandfathered” “footprint” for land use regulatory purposes, there is nothing in the record to suggest that Kent County has denied or otherwise rejected any such claim. Thus, it does not appear that any such claim is ripe and ready for judicial action.

Accordingly, for the foregoing reasons, those claims which are either moot or not ripe are dismissed, but, otherwise, the balance of the above-entitled action is dismissed for lack of subject matter jurisdiction. Mr. Duffy may seek to transfer his pending legal claims to the Superior Court of the State of Delaware, in and for Kent County, all in accordance with 10 *Del. C.* § 1902.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K