IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

NEW CASTLE COUNTY, Subdivision of the State of Delaware,	)	
Plaintiff, Respondent,	)	
v.	)	**C.A. No. 5969-JW**
	)	**(consolidated with**
PIKE CREEK RECREATIONAL SERVICES, LLC, a Delaware limited liability company,	)	**C.A. N10M-12-005 PRW)**
Defendant, Petitioner.	)	

Submitted: November 21, 2013
Decided: December 30, 2013

OPINION AND ORDER ON PARTIES' MOTIONS UNDER RULES 59(f) AND 60(b) AND FOR A STAY

Upon Plaintiff's Motion for Reargument or Clarification,
GRANTED, IN PART.
Upon Defendant's Motion Pursuant to Rule 60(b),
DENIED.
Upon Defendant's Motion to Stay Statutory Time Periods,
DENIED.

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WALLACE, J.

I. INTRODUCTION

On September 6, 2013, the Court issued an opinion (the "Opinion") on the Parties' cross-motions for partial summary judgment, in which the Court granted both in part, denied a motion to intervene, and dismissed a mandamus petition.[1] In the Opinion, the Court held that the 1964 Agreement and the 1969 Amendatory Agreement (collectively the "Master Plan"), requires Pike Creek Recreational Services ("PCRS") to set aside a minimum of 130 acres which could be conceivably developed as an 18-hole golf course.[2] After the Court issued the Opinion, the Parties filed the three motions decided here.

In its Motion for Clarification and/or Limited Reargument, New Castle County (the "County") asks the Court to detail the procedure for enforcing the Opinion's holdings. The County argues that in order to comply with both the Master Plan and the County's Unified Development Code ("UDC"),[3] the Court should require PCRS to: (1) subtract the 130-acre set-aside from the gross site area of any non-golf course development plan it proposes; and (2) submit a separate

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1 *New Castle County v. Pike Creek Recreational Services*, 77 A.3d 274, 277-78, 310 (Del. Ch. 2013)

2 *See id.*

3 *See generally*, New Castle County Code Chapter 40; § 40.01.010 (the UDC's purpose is "to establish standards, procedures, and minimum requirements, consistent with the [County's] Comprehensive Development Plan, which regulate and control the planning and subdivision of lands; the use, bulk, design, and location of land and buildings; the creation and administration of zoning districts; and the general development of real estate in the [County's] unincorporated areas").

land development plan for a minimum 130-acre, 18-hole golf course. PCRS opposes the County's Motion both on procedural grounds, i.e. that the County's prayers for relief raise new arguments that were not made in the dispositive motion briefing, and on substantive grounds, i.e. it is sufficient that PCRS set aside a minimum of 130 acres because compliance with the Master Plan does not require PCRS to submit a land development application for a hypothetical golf course.

PCRS's first motion seeks: (1) Rule 60(b)[4] relief from the Opinion; (2) deconsolidation of the Superior Court action (the "Mandamus Action") and the Chancery Court action (the "Chancery Action"); and (3) substitution of New Castle County Council ("County Council") for the County as the real party in interest. PCRS argues that new, previously undiscoverable evidence supports a finding that the County, the captioned party in this litigation, and County Council, which is the named third-party beneficiary of the Master Plan, are different entities with different rights and divergent interests which could prejudice PCRS if County Council claims it is not bound by the Court's decisions. PCRS urges the Court to relieve PCRS of the Opinion's holdings, substitute County Council as the "real" party in interest, and decouple the Mandamus Action so it may file thereto a direct, rather than interlocutory, appeal to the Delaware Supreme Court. The County argues it is the proper party to bring this action.

[4] Ct. Ch. R. 60(b).

In its second motion, PCRS asks the Court to equitably stay the time periods of §§ 6.03.12 and 40.31.113 of the New Castle County Code "through the date of a final, non-appealable order or other final disposition of this action as well as the pending Certiorari Actions."[5] PCRS argues for a rule that would allow equitable tolling, from the issuance date, of a temporary or initial building permit, where a legal challenge to the legitimacy of that permit prevents the developer from taking further action within the period of time required by the applicable code. The County challenges the motion as not ripe and as seeking a remedy that violates the law.

For the reasons described below, the County's Motion is **GRANTED in PART**, while PCRS's two Motions are **DENIED**.

II. FACTUAL AND PROCEDURAL BACKGROUND

A review of this case's extensive factual history is set forth in the Opinion.[6] The Court heard oral argument on each of the Parties' post-opinion motions on November 21, 2013. This is the Court's decision on those three motions.

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[5] PCRS Mot. for Stay at 11. The certiorari actions are C.A. No. N11A-02-002 and C.A. No. N11A-05-015.

[6] *See New Castle County v. Pike Creek Recreational Services*, 77 A.3d 274, 277-85 (Del. Ch. 2013).

III. THE COUNTY'S MOTION FOR CLARIFICATION OR REARGUMENT

A. Standard of Review

"A motion for clarification may be granted where the meaning of what the Court has written is unclear."[7] Procedurally, a motion for clarification is treated as a motion for reargument.[8] The Court's review is "limited to consideration of the record,"[9] meaning the Court may not consider issues raised for the first time in a motion for clarification or reargument.[10]

B. Some clarification of the Court's September 6th Opinion is warranted.

The County brought this action to the Court, as it should have,[11] for a determination as to whether a particular use restriction applied to land that PCRS sought to develop.[12] The County maintains that it is unclear whether the 130-acre set-aside that the Court found to exist may, for development purposes, be double-

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7 *Naughty Monkey LLC v. MarineMax Northeast LLC*, 2011 WL 684626, at *1 (Del Ch. Feb. 17, 2011).

8 Ct. Ch. R. 59(f); *Naughty Monkey*, 2011 WL 684626, at *1.

9 *Naughty Monkey*, 2011 WL 684626, at *1.

10 *Naughty Monkey*, 2011 WL 684626, at *1.

11 *G.R.G. Realty Co. v. New Castle County*, 1981 WL 697909, at *4 (Del. Super. Ct. Dec. 30, 1981) ("The Department's expertise, like that of the Planning Board, does not include training in law and equity. . . .[I]t has neither the legal training nor statutory authority to hear and decide contract questions . . . . These are questions best resolved by courts.").

12 If so, the mechanism for altering that restriction is the Restriction Change Statute, PCRS's compliance with which the County sought through its declaratory judgment action.

counted as that which otherwise may be required open space for any proposed PCRS development plan. This matter should be clarified, but neither for the reason nor in the manner the County posits. Many of the County's arguments have been grounded in its enforcement of the UDC. The Court's decisions, however, have been, and continue to be, based solely on interpretation of the Agreements that comprise the Master Plan and one particular land-use restriction created thereby. But how the terms of that restrictive covenant might either coincide or diverge from UDC requirements is simply beyond the reach of the Court's limited opinion here.[13]

The Court has determined that a restrictive covenant does apply to the land PCRS seeks to develop, and has now further clarified the bounds of that restriction.[14] But the County asks more. In the County's view, the Court should now prescribe a specific method for PCRS to ensure the County that it is complying with that restriction, i.e., submission to the County of a fully code-compliant land development plan for a golf course on that restricted property that, as best anyone can presently tell, will never be built. Because such a ruling would

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[13] In turn, the Court clarifies its finding on the terms of that restriction by simultaneously herewith withdrawing and reissuing with clarifications its September 6th Opinion. Those clarifications are found in Part V.B.1 of the reissued Opinion. *New Castle County v. Pike Creek Recreational Services*, __ A.3d __, ____ WL ____, *_ (Del. Ch. Dec. 30, 2013)

[14] *See New Castle County v. Pike Creek Recreational Services*, __ A.3d __, ____ WL ____ (Del. Ch. Dec. 30, 2013) (reissued opinion in accordance with this opinion granting the County's Motion for Clarification).

effectively expand the scope of the restriction – by engrafting therein UDC regulatory and other County administrative requirements – and also would necessitate unnecessary expense and effort, the Court will not do so.

The Court has fulfilled its role given the procedural posture of the case, and now the County must carry out its own coextensive duties as both (1) the reviewing and approving authority for any PCRS development plan for the land in question and (2) a third-party beneficiary of the restrictive covenant that is attached to a portion of that land.

As to that land, PCRS, in any development plan therefor, must ensure that no less than 130 acres is set aside for a single identified use: *development* of a golf course. That is all. There is no evidence that some multi-use of the land set aside was anticipated, e.g., that the land would simultaneously serve as a golf course and as neighborhood open space. Thus, the 130-acre parcel must remain set aside for that single purpose envisioned by the original coventors, unless and until the restriction is changed with the assent of the County as granted by the County Council.[15] The restricted land cannot be designated for any other use, and must be of a quality, quantity, contiguity and configuration that an 18-hole golf course

[15] The requirement of County approval of any proposed change of that designated use was granted expressly in the Agreements. *See, e.g.*, 1969 Amendatory Agreement at art. 10 ("If for any reason construction of the golf course is not commenced within five years from the date hereof the open space set-aside for the same shall be devoted to uses approved by the Department of Planning and the New Castle County Council."). The mechanism under present law for seeking such approval is the Restriction Change Statute. UDC § 40.31.130.

could feasibly be developed thereon. These physical and use attributes are all that were enshrined in the original restriction and all PCRS must ensure it now abides by. In terms of enforcing the restriction, where PCRS demonstrates single use of the set-aside land in accordance with the restriction,[16] the Court will not require PCRS to take additional steps to show compliance with administrative or regulatory mandates. The concept now is as it was then; at least 130 acres must be set aside for the sole purpose of developing a golf course.

IV. PCRS'S MOTION FOR RELIEF PURSUANT TO RULE 60(B).

A. Standard of Review

This Court will grant a party's motion pursuant to Chancery Court Rule 60(b) based on newly discovered evidence only where: "(1) newly discovered evidence has come to its knowledge since the trial; (2) it could not, in the exercise of reasonable diligence, have been discovered for use at the trial; (3) it is so material and relevant that it probably will change the result if a new trial is granted; (4) it is not merely cumulative or impeaching in character; and (5) it is reasonably possible that the evidence will be produced at the trial."[17] The decision on such

[16] Adherence to the terms of this particular restrictive covenant may well also ensure compliance with certain UDC land use provisions. *See, e.g.*, New Castle County Code, § 40.10.210 (prohibiting golf course use of land designated as required open space). But such regulatory compliance is not required by the express terms of the restriction. Nor is such compliance a matter this Court should administer.

[17] *Vianix Delaware LLC v. Nuance Communications, Inc.*, 2011 WL 487588, at *4 (Del. Ch. Feb. 9, 2011) (noting several other equitable factors may be considered, including:

motion "is a discretionary matter which requires the Trial Judge to weigh the facts and circumstances of [the] case."[18] The burden of proof lies with the movant.[19]

B. No Alleged Newly Discovered Evidence Serves to Relieve the Parties from the Holdings in the Opinion.

PCRS claims that statements made by the County Attorney at a recent County Council meeting are newly discovered evidence and warrant relief from the Court's decision dismissing PCRS's Petition for Writ of Mandamus and granting in part both the County and PCRS's Motions for Partial Summary Judgment. In support of its current Motion, PCRS submits a transcript from a County Council meeting in which members of the County Council raised concerns with the County Attorney about the County's legal strategy in the instant case. During the same hearing, County Council members also requested that the County Attorney keep them better informed of the litigation strategy the Law Department developed in response to the Court's then-recently-announced rulings. The County opposes PCRS's motion on the grounds that it is permitted to pursue this action to enforce the Master Plan under both the Delaware Code and the Court's rules.[20]

"(6) whether the moving party has made a timely motion; (7) whether undue prejudice will inure to the nonmoving party; and (8) considerations of judicial economy").

[18] *In re U.S. Robotics Corp. S'holders Litigation*, 1999 WL 160154, at *8 (Del. Ch. Mar. 15, 1999) (internal quotations omitted).

[19] *Vianix*, 2011 WL 487588, at *4.

[20] *See* n.24 and n.25, *infra*.

Supposed new evidence in the form of a "disagreement" between certain County government officials regarding how the instant litigation should be carried out or explained to other County government officials is of no moment here. The "evidence" forwarded by PCRS is not new and previously undiscoverable "evidence" that would lead this Court to exercise its discretionary power to grant a motion under Rule 60(b).[21] There is simply no "evidence" that any organ of County government will refuse to be bound by the Courts' decisions in this case.

Fundamentally, PCRS's Motion is an attempt to resurrect a prior claim which the Court has rejected, that the County is not the true party in interest, and therefore the County has no standing to enforce the Master Plan. No aspect of the "new evidence" PCRS offers supports such an assertion. All that exists are media reports and meeting transcripts reflecting spirited debate between the County Council and the County Attorney. Armed with only such debate, PCRS cannot meet its burden for relief under Rule 60(b).

[21] *See* n.17, *supra*.

C. The Court will not deconsolidate these actions or substitute County Council for the County in this action.

PCRS seeks deconsolidation of the Chancery Action and the Mandamus Action, as well as substitution of the County Council for the County as the supposed real party in interest in the Chancery Action. According to PCRS, deconsolidation of the two actions and re-designation of its opposing governmental party in the Chancery Action would permit the County Council to step in to defend its reputed sole interest in the Chancery Action, and allow the County to continue to fight the Mandamus Action, which would be ripe for direct appeal.[22] The County opposes both measures on a number of grounds,[23] including an argument that the County is indeed the proper party in interest under both the Delaware Code[24] and the rules of this Court.[25]

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[22] Should the actions remain consolidated, the Court having dismissed the Mandamus Action, any attempt at appellate review of that decision at this stage would need be in the form of an interlocutory appeal. *See* Super. Ct. Civ. R. 74; Supr. Ct. R. 42.

[23] Those grounds include arguments that: (1) the Mandamus action has been dismissed and cannot therefore be "decoupled" from the main action; (2) the two actions have a common nucleus of applicable facts; (3) the County is the proper party to bring the Chancery suit; (4) even assuming the County Council's claim is somehow distinct from the County's claim, consolidation is appropriate because County government agencies are parties to both suits; (5) consolidation is more efficient especially since the Court has already decided many of the issues; (6) PCRS is not prejudiced by consolidation since any and all County government bodies are bound by the Court's decision; and (7) there is no risk of confusion with continued consolidation. Cty's Ans. Brf. in Opp. to PCRS's Mot. for Relief Pursuant to Rule 60(b), Deconsolidation, and Substitution, at 8-9.

[24] *See* DEL. CODE ANN. tit. 9, § 318 ("All suits, actions or proceedings brought by the government of New Castle County . . . shall be brought in the name of the county . . . ."); *see also id.* at § 301(b) (providing that for the purposes of Title 9 provisions, the words "county government" and the words "county council" are interchangeable).

Deconsolidation is not proper at this stage, where the Chancery Action and the Mandamus Action have been consolidated for nearly two years, and where the Mandamus Action has been dismissed by the Court. As suggested in Part IV.B above, the County is an appropriate party to seek enforcement of the restrictions in the Master Plan and the County Code through the Chancery Action. Nine *Del. C.* § 318 *requires* all "suits, actions or proceedings brought by the government of New Castle County," to be brought in the name of New Castle County.[26] Furthermore, the rules of this Court accommodate the law and permit the County to bring this action without "joining" or expressly naming the County Council as a party.[27]

County Council, as an organ of the County as a whole, is a party properly seeking enforcement of its rights as a third-party beneficiary under the Master Plan. The County Council, through Resolution 10-217, has expressly authorized the County Law Department to bring the Chancery Action "to enforce all applicable covenants, restrictions, agreements and dedications regarding the Pike Creek Golf Course (including the requirement for the 18-hole golf course to

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[25] *See* Ch. Ct. R. 17(a) ("[A] party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; but in those cases in which the bringing of an action for the use or benefit of another is the subject of statutory regulation, the action shall be brought as provided by statute.").

[26] *See* n.24, *supra*.

[27] *See* n.25, *supra*.

remain) until such time as proposed changes to the common scheme of development are approved by County Council in its discretion."[28]

The notion, posed by PCRS, that the County Council would now lie in wait to see how "the County," i.e. the executive branch, fairs in the current litigation, only to later raise objections to the planned development premised on its singular and independent standing under the restrictive covenant, is novel, but in the context presented here, nonsensical.[29] For the purpose of identifying a party to or beneficiary under both the restrictive covenant applicable to the 130-acre set-aside and the County's Restriction Change Statute, "the County" and "County Council" are, without doubt, one entity. Thus, the actions will remain consolidated.

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[28] Resolution No. 10-217 at p.4, Dec. 14, 2010. [A311] ("BE IT RESOLVED THAT: (1) The County Council reaffirms, ratifies, and reauthorizes the suit filed by the County against the property owners of the golf course captioned, *New Castle County v. Pike Creek Recreational Services LLC*, C.A. No[.] 5969-MG (Del. Ch.). The suit, which is expressly authorized and ratified hereby . . . . [and] (2) The County Council directs the County (including the Office of Law and/or agents thereof) to enforce all applicable covenants, restrictions, agreements, and dedications regarding the Pike Creek Golf Course until such time as such dedications are removed by County Council, including, but not limited to, the 18-hole golf course requirement.").

[29] *Christiana Town Center, LLC v. New Castle County*, 2003 WL 21314499, at *4, n.19 (Del. Ch. June 5, 2008) ("It would be anathema to our form of government to believe, as a baseline principle, that after a court renders a declaratory judgment another governmental agency would not follow that decision.").

V. PCRS'S MOTION TO STAY TIME PERIODS OF §§ 6.03.12 AND 40.31.113 OF THE NEW CASTLE COUNTY CODE

A. Standard of Review

"[I]t is well established that '[c]ourts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law.'"[30] Here, PCRS requests this Court to bypass the County administrative governance scheme and stay those statutory time periods governing expiration of the Hogan Drive and Terraces land development plans. Delaware Courts endorse a strong presumption in favor of exhaustion of administrative remedies,[31] which "can only be overcome by a showing that the 'interest of justice so requires.'"[32]

Only in certain situations has the Delaware Supreme Court determined that exhaustion is not required: "where administrative review will be futile, where there is a need for prompt decision in the public interest, where the issues do not involve administrative expertise or discretion and only a question of law is involved and

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30 *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 485 (1997) (citing *Hedges v. Dixon County*, 150 U.S. 182, 192 (1893)).

31 *See New Castle County v. Pike Creek Recreational Services*, 77 A.3d 274, 304 (Del. Ch. 2013) (reissued with clarifications on December 30, 2013) ("Under the exhaustion doctrine, 'where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will either review any action by the agency or provide an independent remedy.' Under Delaware Law, there is a strong presumption in favor of exhausting administrative remedies. The doctrine 'allows administrative bodies to perform their statutory functions in an orderly manner without preliminary interference from the courts . . . .'").

32 *Levinson v. Delaware Compensation Rating Bureau, Inc.*, 616 A.2d 1182, 1190 (Del. 1992) (citing *Brunetti v. Borough of New Milford*, 350 A.2d 19, 25 (N.J. 1975)).

where irreparable harm will otherwise result from denial of immediate judicial relief."[33] Because PCRS has filed the motion claiming, in essence, irreparable harm would result if it is required to exhaust its administrative remedies, PCRS bears the burden to overcome the presumption in favor of exhaustion.[34]

B. Whether the statutory time limits governing initial building permits should be equitably tolled is not yet properly before the Court.

PCRS seeks a stay of the periods contained in New Castle County Code §§ 6.03.12[35] and 40.31.113[36] for the time period beginning November 9, 2010, "through the date of a final, non-appealable order or other final disposition of this action as well as the pending Certiorari Actions."[37] In support, PCRS offers several extra-jurisdictional cases which endorse its view that where a developer is

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[33] *Id*. (adopting the reasoning in *Brunetti*, 350 A.2d at 25-26); *see also Nextel Commc'n of the Mid-Atlantic, Inc. v. City of Margate*, 305 F.3d 188, at 193 (3d Cir. 2002). ("Whether a question is fit for judicial review depends upon factors such as whether the agency action is final; whether the issue presented for decision is one of law which requires no additional factual development; and whether further administrative action is needed to clarify the agency's position . . . .") (quoting *Felmeister v. Office of Attorney Ethics*, 856 F.2d 529, 535-36 (3d Cir. 1988)).

[34] *Toll Bros.*, 2006 WL 1829875 at *8.

[35] *See* New Castle County Code § 6.03.12(M)(1) (requiring developers begin both non-residential and residential new construction within 180 days of receiving a permit, and must complete all said new construction within one year).

[36] *See* New Castle County Code § 40.31.113(H) ("An applicant shall have thirty-six (36) months from the date of the exploratory plan initial report to proceed to the record plan review stage, or the plan will expire.").

[37] PCRS Mot. for Stay at 11. The certiorari actions are C.A. N11A-02-002 and C.A. N11A-05-015.

awarded a temporary or initial building permit, and where a legal challenge to the legitimacy of that permit prevents the developer from taking further action within a statutorily mandated period of time, the period may be equitably tolled from the date the permit was first issued.[38]

The County responds that it will not invoke § 6.03.012 with respect to the Hogan engineering submissions until the certiorari actions are resolved.[39] The County does however oppose PCRS's motion to stay the statutory deadlines for the Terraces development plan. The County asks the Court to deny the motion as premature, violative of the law, and because allowing expiration of the current development plan would not prejudice PCRS.

The Parties agree that absent an extension, the Terraces initial exploratory plan will expire on July 8, 2014. The Parties also agree that PCRS may request, and the County may grant, two three-month extensions, which would extend the exploratory plan date to January 8, 2015.[40] The County argues, and the Court agrees, that the question of whether to equitably toll the final expiration dates is not

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38 *See, e.g.*, *City of Bowie v. Prince George's County*, 832 A.2d 976, 990 (Md. 2004); *Preseault v. Wheel*, 315 A.2d 244, 247-48 (Vt. 1974); *Fromer v. Two Hundred Post Assocs.*, 631 A.2d 347, 351-52 (Conn. App. 1993); *Cardinale v. Ottawa Regional Planning Comm.*, 627 N.E.2d 611, 615-16 (Ohio Ct. App. 1993).

39 *See* Cty. Rsp. to PCRS Mot. for Stay at 8-9 ("[The County] will not seek to invoke New Castle County Code § 6.03.12 regarding the previously submitted Hogan engineering submissions until the pending certiorari actions are resolved and the applicable appeal periods on the certiorari actions have passed.").

40 *See* New Castle County Code Table 40.31.390.

yet properly before this Court.[41]

Delaware courts have explicitly adopted the United States Supreme Court's reasoning in support of the ripeness doctrine:

> [I]t is fair to say that [the ripeness doctrine']s basic rational is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.[42]

Courts are rightly "reluctant" to exert their authority in administrative matters before a complainant exhausts all available administrative remedies.[43]

Although the instant litigation has been lengthy and cumbersome, the facts on this particular issue are clear. With litigation still pending, PCRS's development plan will expire on July 8, 2014 without intervention from the County. If extensions are requested and granted, the deadline may be extended until January 8, 2015, or over a year from the date of this opinion. Thus PCRS is seeking an equitable stay (1) before actual expiration; (2) before requesting

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[41] If, however, PCRS applies for an extension which the County denies, thereby hastening the expiration, such a stay request may be properly brought to the Court.

[42] *In Matter of Dev. of Regulations for Implementation of Telecomms. Tech. Inv. Act*, 1994 WL 679995, at *1-2 (Del. Super. Ct. Oct. 4, 1994) (quoting *Abbott Laboratories v. Gardener*, 387 U.S. 136, 148 (1966)) (discussing adoption by Delaware and other state court systems).

[43] *See id*.; *see also Nextel Commc'n of the Mid-Atlantic, Inc. v. City of Margate*, 305 F.3d 188, at 193 (3d Cir. 2002).

available extensions; and (3) before the County's administrative agencies have issued a decision on the matter. To intervene at this juncture would be to "certainly entangle this court in internal agency proceedings which are far from complete and which may well result in a decision favorable to [PCRS]."[44]

Weighing the *Levinson* factors here demonstrates that judicial intervention is inappropriate.[45] Again, PCRS has not yet requested, and the County has not yet had an opportunity to decide whether any extensions will be granted. The grant of such a statutory extension is discretionary;[46] thus, it is not a matter of law suitable for the Court's consideration. PCRS simply has not demonstrated that such a request would be futile. And, in fact, further administrative action is needed in order to clarify whether, upon request, the General Manager of the Department of Land Use will grant PCRS the two allowable extensions.[47]

Finally, an equitable stay is inappropriate because PCRS faces no prejudice or irreparable harm if the Court denies its request.[48] With the first deadline more than six months away, both PCRS and the County will have adequate time to

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44 *Telecomms. Tech.*, 1994 WL 679995, at *2.

45 *Levinson v. Delaware Compensation Rating Bureau, Inc.*, 616 A.2d 1182, 1190 (Del. 1992) (citing *Brunetti v. Borough of New Milford*, 350 A.2d 19, 25 (N.J. 1975)).

46 *See* New Castle County Code § 40.31.390.

47 *See* New Castle County Code Table 40.31.390.

48 *See Levinson*, 616 A.2d at 1190; *Felmeister v. Office of Attorney Ethics*, 856 F.2d 529, 535-36 (3d. Cir. 1988).

determine whether the matter will be satisfactorily managed administratively, or whether an additional appeal to this or another Court is warranted. PCRS's position will not change unless and until a request for an extension is denied.[49] PCRS fails to demonstrate that it would suffer immediate prejudice so great that judicial intervention is compelled prior to application to or final decision by the Department of Land Use.

VI. CONCLUSION

For the reasons stated above: the County's Motion for Clarification or Limited Reargument is **GRANTED in PART**; PCRS's Motion Pursuant to Rule 60(b) is **DENIED**; and PCRS's Motion to Stay is **DENIED**.

IT IS SO ORDERED.

Paul R. Wallace, Judge

[49] *Telecomms. Tech.*, 1994 WL 679995, at *2.