

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

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March 27, 2013

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Re: *Save our County, Inc., et al. v. New Castle County*,
Civil Action No. 7151-VCG

Dear Counsel:

Today I address the outstanding Motion to Amend the Answer and Affirmative Defenses of Defendant New Castle County.

Chancery Court Rule 15 provides for liberal amendment of a party's pleadings. Where a motion to amend comes more than 20 days after the moving party was served, a party may still amend its pleading "by leave of Court or by written consent of the adverse party."¹ Rule 15 indicates that "leave shall be freely given when justice so requires."²

¹ Del. Ch. Ct. R. 15(a).

² *Id.*

In this case, I find that the interests of justice are best promoted by allowing the County to establish its factual position on the record. I find that the beneficial effect of correcting factual inaccuracies outweighs the risk of unfair prejudice. In this case, the only risk articulated by Defendant Barley Mill is that the County will argue that its new position should be entitled to deference should I find it necessary to resolve an ambiguity in the Unified Development Code. However, the likely dispositive issues in this case are legal, not factual. I also note that amendment of the County's answer is justified on the basis that Plaintiff Save our County, the party actually *adverse* to New Castle County, has agreed to the amendment. Accordingly, I have decided to grant New Castle County's Motion to Amend with the proposed amended answer as set forth in the exhibit attached to Mr. Liebesman's letter to the Court dated Feb. 25, 2013.

To the extent the foregoing requires an order to take effect, IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III