

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

DONALD E. CAVE, JR.,	:	
JAMES W. BROWN, and,	:	
JOHN MANTAKOUNAS,	:	C.A. NO. 02A-11-006 SCD
	:	
Petitioners,	:	
	:	
v.	:	
	:	
NEW CASTLE COUNTY COUNCIL,	:	
CHURCHMANS CROSSING, LLC; and	:	
LEON N. WEINER & ASSOCIATES, INC.,	:	
	:	
Respondents.	:	

*Decision of Petitioner’s Motion for Reargument—DENIED*

Submitted: July 29, 2003  
Decided: August 5, 2003

This matter came before the Court on a Writ of Certiorari. After briefings and arguments concluded, I issued a July 21, 2003 memorandum opinion granting a Motion to Dismiss for lack of standing. The Petitioner seeks reargument.

"A motion for reargument will usually be denied unless the Court has overlooked a decision or principle of law that would have a controlling effect or the Court has misapprehended the law or the facts so that the outcome of the decision would be affected."<sup>1</sup>

“The writ of certiorari is a writ of error. The writ lies from the Superior Court to inferior tribunals, such as a county council, to review proceedings that determine legal rights and are capable of legal error. The writ exists to review only errors of law, not

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<sup>1</sup> *Christiana Town Center, LLC v. New Castle County*, 2003 WL 21488200, \*1 (Del. Ch. 2003)(quoting *Huntington Homeowners Ass’n, Inc. v. 706 Investments*, 1999 WL 499451, \*1 (Del. Ch. 1999).

errors of fact. The review is confined to the record, and the Court must not re-decide the merits of the case.”<sup>2</sup>

In its Motion for Reargument, Petitioners do not assert the errors of law or misapprehension of facts that the Motion requires. The Petitioners note that no party filed a Motion to Dismiss yet the decision of July 21, 2003 refers to such a motion. Petitioners then go on to argue that a motion to dismiss requires that the facts alleged must be taken as true and all inferences there from view in a light most favorable to the non-moving party.<sup>3</sup> True enough, that is the standard for a Motion to Dismiss filed in response to a Complaint.

We have entered a procedural quagmire. This matter has come to the Court on a Writ of Certiorari; it is essentially an appeal on the record. As such, the procedure is to enter into a brief schedule, as was done here, and to decide the matter on the merits. The record is closed. Since the Respondents asserted, *inter alia*, the issue of standing, a potentially dispositive preliminary matter that could have been the subject of a Motion to Dismiss, I focused on that first. As the matter proceeded, the standing issue was briefed alongside the arguments on the merits. It would have been better had I labeled the decision of July 21, 2003 as on review of the Writ of Certiorari. The semantics change nothing. All procedural safeguards have been honored.

As noted, the Writ of Certiorari exists only to check for legal error. The court cannot reexamine or supplement the facts. Under the Unified Development Code of New Castle County, the Council must approve a plan that is recommended to them by the

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<sup>2</sup> *Mell v. New Castle County*, 2003 WL 1919331, \*8 (Del. Ch. April 11, 2003)(citing WOOLLEY'S PRACTICE IN CIVIL ACTIONS, Vol. 1, §§ 895-97).

<sup>3</sup> *In Re Tri-Star Pictures, Inc. Litig.*, 634 A.2d 319, 326 (Del. 1993).

General Manager of the Department of Land Use.<sup>4</sup> In this case, the General Manager recommended the Churchman's Meadows Plan to the Council and the Council approved it. The Council may send a plan back if there is a question about its compliance with the U.D.C.<sup>5</sup> Before it approved the plan, the Council heard testimony from William Rhodunda, Esq. and Nathan Hayward III regarding the same issues concerning U.D.C. compliance that the Petitioners raise. The Court cannot substitute its judgment for the conclusion, based on competent testimony, that the Plan complied with the U.D.C.

Finally, there was no error of law regarding standing. The record does not show how the Petitioner's interest in seeing the U.D.C. enforced with respect to Churchman's Meadows is greater than the public at large, even if "the public" is limited only to residents of Christiana Village. Because a Writ of Certiorari is limited to the record, the Petitioner's request to provide supplemental evidence is not permissible.

The Motion for Reargument is DENIED.

IT IS SO ORDERED.

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Judge Susan C. Del Pesco

Original to Prothonotary  
xc: Scott G. Wilcox, Esquire  
Richard H. Cross, Jr., Esquire

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<sup>4</sup> NEW CASTLE COUNTY UNIFIED DEVELOPMENT CODE §40.31.114(C)("U.D.C.").

<sup>5</sup> *Id.*