

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. Henley Graves  
Resident Judge

SUSSEX COUNTY COURTHOUSE  
THE CIRCLE  
P.O. BOX 746  
GEORGETOWN, DE 19947  
(302) 856-5257

November 24, 2003

L. Vincent Ramunno, Esquire  
Ramunno & Ramunno, P.A.  
903 N. French Street  
Wilmington, DE 19801-3399

Vincent G. Robertson, Esquire  
Griffin and Hackett, P.A.  
P.O. Box 612  
Georgetown, DE 19947

Jackson R. Dunlap, Jr., Esquire  
Brown, Shiels, Beauregard and Chasanov  
P.O. Box 742  
Georgetown, DE 19947

Christine Reece  
William Gugno  
H69 Maple Court  
Lewes, DE 19958

RE: Liborio, L.P. v. Sussex County Planning and Zoning Commission, et al.  
C.A. #03A-03-004

Dear Counsel, Ms. Reece and Mr. Gugno:

This appeal is based on a decision of the Sussex County Planning and Zoning Commission, filed directly to Superior Court. A question of this Court's jurisdiction has arisen.

The applicable law is Chapter 99-39 of the Code of Sussex County:

"A. Any applicant aggrieved by a finding, decision or recommendation of the Commission and/or its staff may request and shall receive opportunity to appear before the Commission to present additional relevant information and request reconsideration of the original finding, decision or recommendation to the County Council within 60 days.

B. If, after requesting the Commission to reconsider the denial of any preliminary or final plat, the applicant still feels that such action is unreasonable and causes him unjustifiable hardship, he may appear before the County Council to request a reconsideration of the denial of said plat.

C. Further appeals shall be to the Superior Court in the same manner as appeals from decision of the Board of Adjustment in 9 Del.C. §6918."

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I interpret “further appeals” in subsection “C” to mean that the administrative remedies contained in subsections “A” or “B” must be exhausted before an appeal can be filed in Superior Court. Therefore, the appeal was premature and must be dismissed as Superior Court has no jurisdiction.

As an aside, I note that the appellant may not be without a forum for relief, as the zoning decision to allow an “open space” lot to become a residential lot isn’t the end of the issue.

Based on the above, the appeal from the Sussex County Planning and Zoning Commission is dismissed upon jurisdictional grounds.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

jfg  
oc: Prothonotary