

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

CHRISTIANA TOWN CENTER, LLC,)
A Delaware Limited Liability Company,)
and 395 Associates, LLC, a Delaware)
limited liability company)
Petitioners,)

v.)

NEW CASTLE COUNTY, a political)
subdivision of the State of Delaware,)
and NEW CASTLE COUNTY)
DEPARTMENT OF LAND USE, an)
administrative agency of New Castle)
County.)

C.A. No. 03M-08-072 RSG

Findings of Fact and Order

Now this 16th day of September, 2004, the Court having heard trial on this matter without a jury on May 20 - 21, 2004, and having considered post-trial briefing of the parties which was completed on July 26, 2004, makes the following findings of fact:

1. The parties are Christiana Town Center, LLC and 395 Associates, LLC, Limited Liability Companies (hereinafter "Christiana") and New Castle County, Delaware and New Castle County Department of Land Use (hereinafter "County").
2. Christiana owns approximately seventy acres of land located in White Clay Creek Hundred near the Village of Christiana.
3. Christiana is seeking a Writ of Mandamus to compel county to issue a building permit for Phase 4 of the Christiana Town Center project.
4. The County employs a building permit review process designed to ensure public safety by requiring compliance with applicable codes.

5. The County review process has four steps: pre-screen review, zoning review, construction drawing review and permit process review. These steps require an affirmative showing that the project is in compliance with the record plan.
6. It is undisputed that certain requirements imposed by the County were never met by Petitioner. In particular, a restriction on the record plan for the shopping center that DeIDOT acceptance of “a realigned connector”; and an issue related to gross floor space.
7. It is undisputed that DeIDOT at the critical times relating to submission of this application for building permit no longer wanted the “realigned connector” but had other plans that called for acquisition of some or all of the area relating to phases 8 and 9 of this project.
8. Christiana clearly believed that satisfaction of this note on the record plan had become impossible and/or impracticable. Litigation ensued between Christiana and DeIDOT in the Court of Chancery. Christiana Town Center, LLC, et al vs. State of Delaware Department of Transportation, C.A., No. 19731.
9. The Secretary of Transportation informed New Castle County on August 26, 2003, that the department objected to any further construction on this project until the issues relating to roads were resolved. This clearly was not a removal of the note from the record plan.

The Law

10. A Writ of Mandamus is an extraordinary writ issued only to cause an official or agency to perform a ministerial duty where the petitioner has a clear legal

right to the relief sought.

11. A Writ of Mandamus will not lie where a petitioner has not demonstrated a clear legal right to the relief requested.

The Law Applied to the Facts of this Case

12. Petitioner seeks to have this Court order the County to issue a building permit based upon an application that upon review on its face is deficient.
13. In actuality, the Petitioner seeks to have the county exercise discretion to decide that the note on the record plan is no longer necessary; because the acts of DeIDOT have made it impossible. This clearly goes beyond a ministerial act, it involves fact finding and decision making.
14. Clearly in this case Mandamus is not the proper remedy.¹

Wherefore, the Court enters Judgment for the defendants, New Castle County and New Castle County Department of Land Use. The Petition for Writ of Mandamus is DENIED.

IT IS SO ORDERED,

_____/s/_____
The Honorable Richard S. Gebelein

Orig: Prothonotary
cc: All Counsel of Record

¹ The Court expresses no opinion as to actions of New Castle County; or those of DeIDOT with respect to this matter. It simply notes that a case for Mandamus has not been proved.