

IN THE SUPREME COURT OF THE STATE OF DELAWARE

2003 DEC 12 P 2:36

DEPT. OF TRANSPORTATION
WILMINGTON

JOHN J. MCGRELLIS, III,

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§ No. 312, 2003
§
§ On appeal from the Superior Court
§ of the State of Delaware
§ in and for New Castle County
§ C.A. No. 98C-12-259 (CHT)
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Defendant Below,
Appellant,

v.

THE STATE OF DELAWARE
UPON THE RELATION OF
THE SECRETARY OF THE
DEPARTMENT OF
TRANSPORTATION,

Plaintiff Below,
Appellee.

Submitted: December 9, 2003
Decided: December 12, 2003

Before **VEASEY**, Chief Justice, **HOLLAND**, **BERGER**, **STEELE** and **JACOBS**,
Justices (constituting the Court *en Banc*)

ORDER

This 12th day of December, 2003, it appears to the Court that:

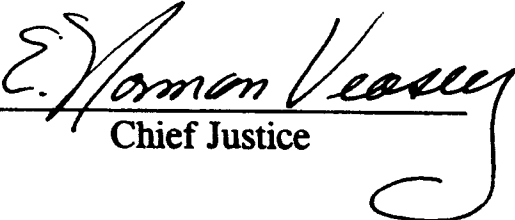
- (1) The record shows that the Department of Transportation proceeded properly under applicable law and that its decision on the necessity of the taking for a public purpose was supported by the record and did not constitute an abuse of its discretion.

(2) The Superior Court properly applied the applicable law with respect to its determination that: (a) the Department's action was within its discretion under applicable law; (b) the Department did not abuse its discretion; and (c) the property owner failed to carry his burden under Superior Court Civil Rule 71.1 "to overcome the presumption of regularity and the prima facie case of necessity for a public use" which had been presented by the Department.

(3) The property owner has failed to show on this record that the Superior Court abused its discretion or deprived the property owner of procedural due process by denying the property owner additional time for discovery.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court set forth in its Order of Possession dated May 30, 2003, is **AFFIRMED**.

BY THE COURT:



Chief Justice