

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LIBORIO, L.P.,	§
	§ No. 597, 2003
Appellant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for Sussex County
	§ C.A. No. 03A-03-004
SUSSEX COUNTY PLANNING	§
AND ZONING COMMISSION,	§
CHRISTINE REECE, WILLIAM	§
GUGNO and THADDEUS	§
NOWAKOWSKI,	§
	§
Appellees Below,	§
Appellees.	

Submitted: April 13, 2004

Decided: May 18, 2004

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 18th day of May 2004, it appears to the Court that:

1) On February 20, 2003, the Sussex County Planning and Zoning Commission held a hearing on an “Application for Major Subdivision Plan Review” filed by prospective buyers of a parcel of land owned by Thaddeus Nowakowski. The Commission granted that application. On March 25, 2003, Liborio, L.P. owners of parcels of land adjoining and nearby Nowakowski’s parcel of land, filed a direct appeal in the Superior Court that challenged the merits of the Commission’s decision to grant the application.

2) On November 24, 2003, the Superior Court dismissed the appeal, on the basis that it did not have jurisdiction.¹ In its written decision, the court interpreted the language of Section 99-39(C), which states, in part, that “[f]urther appeals shall be to the Superior Court . . .” to mean that the administrative remedies set forth in subsections (A) and (B) of Section 99-39 must be exhausted before an appeal can proceed in the Superior Court.² Since Liborio failed to exhaust those administrative remedies, the court held the appeal to the Superior Court was “premature.”³

3) The issue in this appeal involves the doctrine of exhaustion of administrative remedies and not the merits of the Commission’s decision. All of the parties to this appeal agree that the Superior Court’s decision to dismiss Liborio’s appeal on jurisdictional grounds, for failure to exhaust administrative remedies, is legally incorrect, given this Court’s decision in *Levinson v. Delaware Compensation Rating Bureau, Inc.*⁴ We agree that the Superior Court’s decision is contrary to this Court’s holding in *Levinson*. In *Levinson*, this Court held that “[s]ince nothing in the Delaware Constitution nor the Delaware Code expressly establishes the exhaustion of

¹ *Liborio, L.P. v. Sussex County Planning and Zoning Commission, et al.*, 2003 WL22787630 (Del. Super. Nov. 24, 2003).

² *Id.*

³ *Id.*

⁴ *Levinson v. Delaware Comp. Rating Bureau, Inc.*, 616 A.2d 1182 (Del. 1992).

administrative remedies as a prerequisite to the exercise of judicial authority, we decline to view exhaustion as a jurisdictional threshold.”⁵

NOW, THEREFORE, IT IS ORDERED that the Superior Court’s judgment, dismissing this matter for lack of jurisdiction, is reversed. This matter is remanded to the Superior Court for further proceedings in accordance with this order. Jurisdiction is not retained.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁵ *Id.* at 1190.

