

IN THE SUPREME COURT OF THE STATE OF DELAWARE

YOUNG & MALMBERG, P.A., a	§	
Delaware professional association,	§	
and YOZIMA, LLC, a Delaware	§	
limited liability company,	§	
	§	No. 369, 2004
Respondents Below-	§	
Appellants,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	Kent County
	§	
THE DOVER HISTORICAL	§	C.A. No. 03A-06-002
SOCIETY, HENRY R. HORSEY	§	
MARY JANE RICHTER,	§	
JOSEPH GATES, III, LARRY	§	
JOSEFOWSKI, SUSAN TERRY,	§	
BONNIE JOHNSON, HOLLY	§	
JOHNSON and CHARLES	§	
JOHNSON,	§	
	§	
Petitioners Below-	§	
Appellees.	§	

Submitted: September 22, 2004

Decided: November 19, 2004

Before **HOLLAND** and **JACOBS**, Justices, and **NOBLE**, Vice Chancellor.<sup>1</sup>

**ORDER**

This 19<sup>th</sup> day of November 2004, it appears to the Court that:

(1) On August 26, 2004, this Court received the appellants' notice of appeal from an order of the Superior Court dated July 30, 2004, which granted the

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<sup>1</sup> Sitting by designation pursuant to DEL. CONST. art. IV, § 12 and Del. Supr. Ct. R. 2 & 4.

motion of petitioners-appellees for a writ of certiorari and reversed and remanded a decision of the City of Dover Planning Commission (the "Commission").

(2) On September 1, 2004, the Clerk of this Court issued a notice pursuant to Supreme Court Rule 29(b) directing the appellants to show cause why the appeal should not be dismissed for failure to comply with Supreme Court Rule 42 when taking an appeal from an apparent interlocutory order.

(3) In their response to the notice to show cause, the appellants argue that the appeal is not interlocutory because the Superior Court, on review from the appellees' petition for a writ of certiorari, remanded the matter to the Commission for the non-discretionary application of the factual and legal conclusions already reached by the Superior Court, which is a "purely ministerial" function.<sup>2</sup> In their reply, the appellees argue that this Court consistently has held that an order of remand directed to an administrative agency is interlocutory,<sup>3</sup> and, moreover, that the Commission's function on remand will be more than simply ministerial because it will engage in fact-finding using the proper guidelines.

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<sup>2</sup> *DiSabatinoBros., Inc. v. Wortman*, 453 A.2d 102, 104, n. 3 (Del. 1982). The Superior Court ruled that the Commission failed to follow the Design Guidelines and Standards set forth in the City of Dover Code when it approved a proposal for a non-conforming office building in Dover, Delaware.

<sup>3</sup> *Pollard v. The Placers, Inc.*, 692 A.2d 879, 880-81 (Del. 1997).

(4) We agree with the appellees' argument that the Superior Court's order remanding the matter to the Commission is interlocutory.<sup>4</sup> Absent compliance with Rule 42, this Court does not have jurisdiction to consider this appeal. The appeal must, therefore, be dismissed.

NOW, THEREFORE, IT IS ORDERED that the within appeal is DISMISSED pursuant to Supreme Court Rules 29(b) and 42.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>4</sup> Id.