

CITY OF DOVER PLANNING
COMMISSION,

V.

and

Respondents Below-Appellees.

Court Below---Superior Court
of the State of Delaware,
in and for Kent County
C.A. No. 03A-06-002

Decided: November 19, 2004

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

ORDER

This 19th day of November 2004, it appears to the Court that:

(1) On August 27, 2004, this Court received the appellant's notice of appeal from an order of the Superior Court dated July 30, 2004, which granted the motion of petitioners-appellees for a writ of certiorari 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 appellant 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 its response to the notice to show cause, the appellant argues 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.² In their reply, the appellees argue that this Court consistently has held that an order of remand directed to an administrative agency is interlocutory,³ and, moreover, that the Commission's function

² *DiSabatino Bros., 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.

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

on remand will be more than simply ministerial because it will engage in fact-finding using the proper guidelines.

(4) We agree with the appellees' argument that the Superior Court's order remanding the matter to the Commission is interlocutory.⁴ 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

⁴ Id.