



(1) Christiana Town Center, LLC (“Christiana”) appeals a decision of the Superior Court denying its petition for writ of certiorari to review a decision of the New Castle County Board of License, Inspection and Review (the “Board”). Christiana claims that the trial judge erred by: (i) failing to reverse the Board’s decision where the Board failed to state on the record the bases for its decision; (ii) incorrectly applying a substantial evidence standard of review to a common law certiorari proceeding; (iii) denying certiorari review because Christiana was not given reasonable time to bring its job site into compliance as required by the County Drainage Code; (iv) denying certiorari review because the County failed to provide Christiana sufficient advance notice for a rule to show cause hearing (the “RTC hearing”); and (v) denying certiorari review because the County imposed monetary fines without first proving that Christiana intentionally violated the County Drainage Code. We find that the Board sufficiently stated the bases for its decision and the trial judge committed no legal error in denying certiorari review. Accordingly, we affirm.

(2) Christiana owns approximately seventy acres of land in New Castle County, at the intersection of Main Street and Delaware Route 273. The land is zoned “CR” (Commercial Regional) and is approved for the development of 452,842 square feet of commercial space for a shopping center pursuant to a record re-subdivision plan approved by the County.

(3) A series of violations have been at issue on this property. On March 7, 2002, the Department of Land Use (the “Department”) issued a stop work order to Christiana resulting from nine alleged violations of the Delaware Sediment and Stormwater Regulations and the New Castle County Drainage Code. The Department subsequently held four RTC hearings to address the progress made by Christiana on directives found on its violation notices as well as the prior RTC decisions. After the fourth RTC hearing, on January 9, 2003, a decision was made directing Christiana to pay \$500 per day until a revised erosion and sediment control plan was submitted and the job site was brought into compliance. This decision further held that if Christiana did not comply by January 19, 2003, the fine would increase to \$1,000 per day, and if Christiana did not comply by January 24, 2003, the Department would stop all work at the job site.

(4) On January 9, 2003, the Department met on the job site with Christiana to discuss the existing violations in addition to newly discovered violations. On January 15, 2003, the Department issued another violation notice to Christiana. This notice cited twenty-seven violations of the County Drainage Code at the job site, including eighteen new violations and nine outstanding violations. On January 24, 2003, a RTC hearing was held at which time the parties reviewed the alleged violations. On January 30, 2003, the Department issued its written decision finding Christiana in

violation of the County Drainage Code and imposing monetary fines.

(5) Christiana appealed the Department’s decision to the Board. After a hearing, the Board issued its written opinion affirming the decision of the Department. The Board held that “[t]he Department’s actions were taken pursuant to law, and were not arbitrary or capricious.”<sup>1</sup> Christiana thereafter sought review of the Board’s decision through a petition for writ of certiorari filed in the Superior Court. The County filed a motion to dismiss the petition because of its premature filing. The trial judge agreed and granted the County’s motion, but granted Christiana leave to refile. Christiana refiled a petition for writ of certiorari in the Superior Court; however, the trial judge denied Christiana’s petition. This appeal followed.

(6) A writ of certiorari “invokes one of the oldest common law writs,” and “its origins are obscure in the history of medieval England... .”<sup>2</sup> The purpose of the writ is to permit a higher court to review the conduct of a lower tribunal of record.<sup>3</sup> Review on certiorari is not the same as review on appeal because review on certiorari is on the record and the reviewing court may not weigh evidence or review the lower

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<sup>1</sup> Christiana Town Center, LLC, Application No. 03-0001-LIRB, at 3 (New Castle County Board of License, Inspection and Review Apr. 17, 2003).

<sup>2</sup> *Shoemaker v. State*, 375 A.2d 431, 436-37 (Del. 1977) (citations omitted).

<sup>3</sup> *Id.*

tribunal's factual findings.<sup>4</sup> The reviewing court does not consider the case on its merits; rather, it considers the record to determine whether the lower tribunal exceeded its jurisdiction, committed errors of law, or proceeded irregularly.<sup>5</sup> A decision will be reversed on jurisdiction grounds only if the record fails to show that the matter was within the lower tribunal's personal and subject matter jurisdiction.<sup>6</sup> A decision will be reversed for an error of law committed by the lower tribunal when the record affirmatively shows that the lower tribunal has "proceeded illegally or manifestly contrary to law."<sup>7</sup> A decision will be reversed for irregularities of proceedings if the lower tribunal failed to create an adequate record to review.<sup>8</sup>

(7) We will address the issues raised in the order Christiana presented them. Christiana first argues that because the Board failed to state the reasons for its decision, we should reverse the Board's decision and remand it for a new hearing. Christiana's argument is not persuasive. "It is settled law that a quasi-judicial tribunal

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<sup>4</sup> *Reise v. Board of Bldg. Appeals of the City of Newark*, 746 A.2d 271, 274 (Del. 2000) (citing *In the Matter of Butler*, 609 A.2d 1080, 1081 (Del. 1992)).

<sup>5</sup> *Id.* (citing Woolley, Delaware Practice, Volume I, § 896).

<sup>6</sup> Woolley, Delaware Practice, Volume I, § 921

<sup>7</sup> *Id.* at § 939.

<sup>8</sup> *Id.* at § 923.

must state the basis for its decision, in order to allow judicial review.”<sup>9</sup> The present record shows that the Board, in its written opinion, did in fact outline the reasons for its vote and explicitly ruled against each of Christiana’s arguments. Thus, the Board’s decision need not be reversed on this ground.

(8) Christiana also maintains that the trial judge erred in using a substantial evidence standard in a common law certiorari proceeding. The present record shows that the trial judge properly cited the correct standard of review in his decision.<sup>10</sup> The trial judge did, however, make several references to the phrase substantial evidence. Because substantial evidence review is more rigorous than review on certiorari, Christiana benefitted from any erroneous reference made by the trial judge to this standard. Reversal is not warranted on the ground that the trial judge applied the incorrect standard of review in analyzing Christiana’s petition for writ of certiorari.

(9) Christiana next contends that because the Department failed to give it reasonable time to comply with the job site violations as was required by the County Drainage Code, it is entitled to redress under the Fourteenth Amendment of the United States Constitution and Article I, Section 9 of the Delaware Constitution. Christiana asserts that the Department only provided it with nine calendar days (and seven

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<sup>9</sup> *Reise*, 746 A.2d at 274 (citing *Tate v. Miles*, 503 A.2d 187 (Del. 1986)).

<sup>10</sup> *Christiana Town Center, LLC v. New Castle County*, No.CIV.A. 03A-07-008, 2004 Del. Super. LEXIS 209, at \*6-\*7 (Del. Super. Ct. July 7, 2004).

business days) to comply with the Drainage Code violations after the violation notice was issued. Christiana also claims that during this period of time it experienced adverse job site conditions resulting from extreme weather caused by freezing rain and precipitation. We conclude that the argument advanced by Christiana is not an argument appropriate for certiorari review. It does not concern an error of law, an irregularity in the proceedings or a jurisdictional issue. Thus, the trial judge did not err by denying Christiana's petition for certiorari review.

(10) Christiana next argues that the Department failed to provide it with adequate notice for the RTC hearing, thereby violating its due process rights. Christiana asserts that the Department only provided one days notice for the January 24, 2003 RTC hearing. We find Christiana's argument unpersuasive. Administrative proceedings "require adequate notice to all concerned; a full opportunity to be heard by any person potentially aggrieved by the outcome; a decision which reflects the reasons underlying the result and, most importantly, an adherence to the statutory or decisional standards then controlling. Only when the administrative process affords these fundamental protections will the result receive judicial deference."<sup>11</sup> In addition, a party "has the right to notice and a hearing in a meaningful time and a meaningful

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<sup>11</sup> *County Council of Sussex County v. Green*, 516 A.2d 480, 481 (Del. 1986).

manner.”<sup>12</sup> The Fifth and Fourteenth Amendments of the United States Constitution and Article I, Sections 7 and 9 of the Delaware Constitution require this.<sup>13</sup> However, these due process rights are subject to waiver.<sup>14</sup> “[A] valid waiver must be voluntarily, knowingly and intelligently made”<sup>15</sup> or it must be “an intentional relinquishment or abandonment of a known right or privilege.”<sup>16</sup> “The validity of a waiver depends upon the totality of the circumstances.”<sup>17</sup> In this case, the record shows that Christiana voluntarily, knowing and intelligently waived its due process rights to adequate notice of the RTC hearing by failing to object to the inadequate notice at the actual hearing.

(11) Christiana’s final argument is that the trial judge erred by denying certiorari review because the Department presented no evidence that Christiana intentionally violated the Drainage Code so as to justify the fines imposed. We find that Christiana’s argument is not persuasive. Here, the Board made a factual finding that Christiana acted intentionally by failing to comply with prior penalty directives

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<sup>12</sup> *Formosa Plastics Corp. v. Wilson*, 504 A.2d 1083, 1089 (Del. 1986) (*Fuentes v. Shevin*, 407 U.S. 67, 80 (1972)).

<sup>13</sup> *Id.* at 1089-90.

<sup>14</sup> *Mazik v. Decision Making, Inc.*, 449 A.2d 202, 204 (Del. 1982) (citing *D.H. Overmyer Co., Inc. v. Frick*, 405 U.S. 174 (1972); *Boddie v. Connecticut*, 401 U.S. 371 (1971)).

<sup>15</sup> *Id.* (citing *Overmyer*, 405 U.S. at 186).

<sup>16</sup> *Overmyer*, 405 U.S. at 186 (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).

<sup>17</sup> *Mazik*, 449 A.2d at 204 (citing *Zerbst*, 304 U.S. at 464).



in the March 2002 RTC decision. This was a factual determination made by the Board, which shall not be disturbed upon certiorari review.<sup>18</sup> Therefore, the trial judge was correct in his decision to deny Christiana's petition for certiorari review.

NOW THEREFORE, IT IS SO ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>18</sup> *Butler*, 609 A.2d at 1081.