IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

FARMERS FOR FAIRNESS, an unincorporated association of Kent County landowners, on its own behalf and on behalf of all others similarly situated, KENT COUNTY FARM BUREAU, INC., a Delaware corporation on its own behalf, and on behalf of the Kent County landowners it represents, HENRY CAREY, MARY MOORE, CARTANZA FARMS LIMITED PARTNERSHIP, a Delaware Limited Partnership, SANDRA L. CARTANZA, CHESTER T. DICKERSON, JR., and HARMAN BROTHERS, LLC, a Delaware Limited Liability Company,	)	
Petitioners,	)	
v.	)	*Civil Action No. 4215-VCG*
THE KENT COUNTY LEVY COURT, the governing body of Kent County, Delaware, P. BROOKS BANTA, ALLAN F. ANGEL, HAROLD K. BRODE, ERIC L. BUCKSON, BRADLEY S. EABY, W.G. EDMANSON, and RICHARD E. ENNIS, in their official capacities as members of the Kent County Levy Court,	)	
Respondents.	)	

MEMORANDUM OPINION

Date Submitted: November 7, 2011
Date Decided: January 27, 2012

John W. Paradee, Stephen E. Smith, and Nicole M. Faries, of PRICKETT, JONES & ELLIOTT, P.A., Dover, Delaware, Attorneys for Petitioners.

Joseph Scott Shannon, Artemio C. Aranilla, II, and Melissa E. Cargnino, of MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN, Wilmington, Delaware, Attorneys for Respondents.

GLASSCOCK, Vice Chancellor

This matter involves the adoption of a land use "Comprehensive Plan" by the Kent County Levy Court, and its effect on the Petitioners, who are Kent County landowners. The Petitioners' position is that the ordinance adopting the Comprehensive Plan worked a zoning change on the Petitioners' properties (the "Properties") because, pursuant to the land use map incorporated in the Comprehensive Plan, the density of the permissible development of the Properties was significantly reduced. The Petitioners allege numerous violations of constitutional and statutory law arising from the alleged downzoning of the properties. The County responds that the Comprehensive Plan and its associated land use map are planning documents only and have not changed the Petitioners' property rights. Any such diminution in rights, according to the County, will occur, if at all, only upon the promulgation of ordinances enforcing the Comprehensive Plan. Thus, in the County's view, this matter is not ripe for adjudication and the County has moved to dismiss on that ground. This is my decision on that motion, and for the reasons explained below, I deny the County's Motion to Dismiss.

I. BACKGROUND

A. Facts

In some instances, the Delaware General Assembly delegates the zoning power of the state to the counties. As part of this delegation of power, the General Assembly requires that each county periodically adopt a land use comprehensive

plan[1] in order "to encourage the most appropriate use of land, water and resources consistent with the public interest and to deal effectively with future problems that may result from the use and development of land within their jurisdictions."[2] The comprehensive plan must consist of written and graphic materials that "may be appropriate to the prescription of principles, guidelines and standards for the orderly and balanced economic, social, physical, environmental and fiscal development of the [county]."[3] The comprehensive plan must also address various planning and development issues such as land use, transportation, infrastructure, conservation, economic development, housing, natural resources, and open spaces.[4] Of particular importance here, the comprehensive plan must include a future land use plan element.[5] The land use element must contain a land use map or map series detailing the "proposed distribution, location and extent of the various categories of land use."[6] This map or map series must then be "supplemented by goals, policies and measurable objectives" in the balance of the comprehensive

[1] *See generally Lawson v. Sussex County Council*, 1995 WL 405733, at *4 (Del. Ch. June 14, 1995).
[2] 9 *Del. C.* § 4951(a).
[3] *Id.* § 4956(a).
[4] *Id.* § 4956.
[5] *Id.* § 4956(g)(1).
[6] *Id*.

plan.[7] Kent County was required by statute to update its comprehensive plan every five years, and Kent County had previously completed this update in 2002.[8]

Kent County adopted the 2007 Comprehensive Plan update through Ordinance #LC08-06 (the "Ordinance"). Kent County's approval of the Ordinance followed a long and involved process that took place over 2006, 2007, and 2008. Numerous interested parties throughout the county—including a working committee comprising 26 individuals representing various interests throughout Kent County, the Kent County Regional Planning Commission (the "RPC"), the Kent County Department of Planning Services, the Kent County Levy Court (the "Levy Court"), the State's Preliminary Land Use Service, the State's Livable Delaware Advisory Council, and the general public—provided input into the ordinance. As a result of this input, the 2007 Comprehensive Plan update and the Ordinance were revised numerous times. While the RPC and the Levy Court held a series of public hearings regarding the Ordinance, the public hearings did not occur after every revision of the Ordinance.

B. Parties

The Petitioners are: Farmers for Fairness, an unincorporated association of Kent County landowners; Kent County Farm Bureau, Inc.; Henry Carey; Mary

[7] *Id.*

[8] *Id.* § 4960(a); Pet. ¶ 9. Section 4960(a) was amended on July 13, 2011, so that the comprehensive plan must now be updated every 10 years. This change has no bearing on my analysis here.

Moore; Cartanza Farms Limited Partnership; Sandra L. Cartanza; Chester T. Dickerson, Jr.; and Harman Brothers, LLC. The Petitioners are owners of property located outside of Kent County's growth zone[9] whose property is zoned either Agricultural Conservation or Agricultural Residential ("AC-AR").

The Respondents are the Kent County Levy Court, and the following members of the Levy Court: P. Brooks Banta, Allan F. Angel, Harold K. Brode, Eric L. Buckson, Bradley S. Eaby, W.G. Edmanson, and Richard E. Ennis (collectively, the "County").

C. Procedural History

This case has an unusual procedural history. The Petitioners filed their initial petition for relief on constitutional and state law grounds on December 8, 2008. On March 13, 2009, the Respondents filed their answer and also moved to dismiss the Petitioners' claims, in part, because they were not ripe. On April 24, 2009, the Petitioners responded by filing a motion to amend the petition, proposing amendments that primarily addressed the Respondents' substantive objections raised in the motion to dismiss but not their ripeness claim. Then, on August 14, 2009, the Respondents filed their answer and opposition to the Petitioners' motion to amend the petition. The case then languished for some time. Finally, on March

[9] The Kent County "growth zone" is an overlay district corresponding roughly to the DuPont Highway corridor.

4, 2010, the Petitioners filed their Motion for Summary Judgment Upon the Petitioners' State Law Claims.

On March 4, 2010, the Petitioners also proposed, and the Court agreed, that the parties should simultaneously brief all these motions. The case was transferred to me, and I heard oral argument on all outstanding motions. For reasons of judicial economy, in this Opinion I will address the Respondents' motion to dismiss on ripeness grounds and allow the parties to confer and inform me what matters remain for disposition by motion.

D. Allegations

The Petitioners' allegations primarily rest on two propositions: that the County did not provide constitutionally or statutorily required notice and opportunity to be heard; and that the Ordinance diminished the Petitioners' land use rights, rezoning the Properties in what the Petitioners allege was an illegal or unconstitutional manner. Because all of the Petitioners' allegations depend, in part, on whether the Ordinance did in fact diminish their ability to develop the Properties, I must determine, as a predicate matter, what effect the adoption of the Ordinance had.

The Petitioners allege that the Ordinance altered their land use rights. The Petitioners argue, in part, that the adoption of the Comprehensive Plan initiated a "zoning change" because 9 *Del. C.* § 4959 "precludes any development which is

not in conformity with [the land use map]."[10] The Petitioners assert that the moment after the County adopted the Comprehensive Plan, no land development could occur if it conflicted with the Comprehensive Plan.[11]

As noted above, the Properties are located outside of Kent County's growth zone and are zoned AC-AR. The Petitioners maintain that before October 7, 2008, Kent County's zoning statutes, Comprehensive Plan, and accompanying future land use map (the "old land use map") permitted AC-AR land outside the growth zone to be developed as a "major subdivision" at a density of one unit per acre.[12] At Oral Argument, the Petitioners presented the future land use map associated with the 2007 Comprehensive Plan update showing that for AC-AR land with 51 or more lots, a parcel can now only be developed at one unit per four acres; therefore, the Petitioners allege, pursuant to the future land use map adopted as part of the Ordinance (the "New Land Use Map"), on October 7, 2008, the development density for some of their land was immediately altered.[13]

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[10] Oral Arg. Tr. 44:6-7 (Nov. 7, 2011).
[11] *Id*. at 48:16-49:6.
[12] Pet. ¶ 7; *see* Oral Arg. Tr. 57:11-16.
[13] Oral Arg. Tr. 57:8-24. At the Motion to Dismiss stage, I can examine documents incorporated by reference in the complaint and judicially-noticed facts. *See Desimone v. Barrows*, 924 A.2d 908, 928 (Del. Ch. 2007) ("In engaging in this inquiry, I confine myself to the well-pled allegations of the complaint, to the documents incorporated into the complaint by reference, and to judicially-noticed facts."). I also note, however, that there was no objection from the Respondents to the introduction of these maps. For purposes of this motion only, I disregard the Respondents' factual argument that the Petitioners' development rights are not diminished even if the New Land Use Map has immediate vitality, and I assume that the Petitioners are correct that the maps direct a downzoning of their properties.

The Petitioners also allege that the New Land Use Map associated with the Ordinance exacerbates the disparity between the density at which land could be developed within the Kent County growth zone and outside the growth zone. The old land use map presented by the Petitioners at Oral Argument, and referenced in the Petition, showed that previously, in some cases, AC-AR land inside the growth zone could be developed at two units per acre and AC-AR land outside the growth zone could be developed at one unit per acre. By contrast, the New Land Use Map now shows that some AC-AR land inside the growth zone can be developed at three units per acre, and, as noted above, some AC-AR land outside the growth zone can only be developed at one unit per four acres for parcels developed for 51 or more lots. The possible density disparity inside the growth zone versus outside the growth zone grew from 2:1 to 12:1.

The Respondents, however, contend that the Comprehensive Plan is "a long range planning document"[14] and does not create or deny rights; therefore, the Respondents argue, the Petitioners' claims are not ripe until implementing regulation consistent with the Comprehensive Plan is passed.

II. DISCUSSION

By law, the comprehensive plan must contain a future land use map or map series providing "[t]he proposed distribution, location and extent of the various

[14] Oral Arg. Tr. 11:9-11.

categories of land use."[15] Whether a county's adoption of a land use map as part of a comprehensive plan may work an immediate zoning change appears to be an issue of first impression. While Delaware case law has addressed whether development would be inconsistent with a comprehensive plan,[16] no court has decided whether properties included for downzoning in a land use map have been thereby rezoned, or whether such rezoning lacks the force of law without an enforcing ordinance.[17] I find that because, by statute, no development of affected

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[15] 9 *Del. C.* § 4956(g)(1).

[16] *See Brohawn v. Town of Laurel*, 2009 WL 1449109, at *5 (Del. Ch. May 13, 2009) (finding a municipal ordinance invalid because the ordinance was inconsistent with the municipal comprehensive plan and reaffirming that "[o]nce adopted, a comprehensive plan shall have the force of law and no development shall be permitted except as consistent with the plan" and that "[t]his requirement is . . . no mere technicality[;] . . . the consistency requirement is a fundamental feature of the scheme of delegation of zoning authority to municipalities by the State" (internal quotation marks omitted)); *see also Concerned Citizens of Cedar Neck, Inc. v. Sussex County Council*, 1998 WL 671235, at *5 (Del. Ch. Aug. 14, 1998) ("Plaintiff correctly points out that any decision by the Council to rezone must be in accordance with the approved Comprehensive Plan."); *Orchard Homeowners Ass'n v. County Council of Sussex County*, 1992 WL 71448, at *4 (Del. Ch. Mar. 31, 1992)(finding a rezoning ordinance invalid because it conflicted with zoning classifications and stating: "Indeed, it is only logical to hold that if a rezoning ordinance violates the terms of a county's comprehensive development plan and is, therefore, invalid, as was the case in *Green*, the failure of a rezoning ordinance to comply with classifications promulgated pursuant to the comprehensive development plan also is invalid."); *New Castle County Council v. BC Development Assocs.*, 567 A.2d 1271, 1276 (Del. 1989) (addressing the comprehensive plan, and explaining that "rulings in which zoning regulations have been overturned for failure to meet statutory standards are hardly unprecedented") (citing *Green v. County Council of Sussex County*, 508 A.2d 882 (Del. Ch. 1986)). In *Hansen v. Kent County*, the Court noted that a "rezoning [was] dependent upon a valid amendment of the County's Comprehensive Plan. A portion of the lands, identified as industrial in the Comprehensive Plan before the effort to amend it, was rezoned to commercial, a use inconsistent with an industrial designation. The amendment of the Comprehensive Plan, if effective, resolved that problem." 2007 WL 1584632, at *4 (Del. Ch. May 25, 2007).

[17] The Respondents argue that *O'Neil v. Town of Middletown*, 2006 WL 205071 (Del. Ch. Jan. 18, 2006); *Lawson*, 1995 WL 405733; and *Green*, 508 A.2d 882; all stand for the proposition that the comprehensive plan is merely a guide. While *O'Neil* noted that a comprehensive plan must be flexible, it also stated that "the legislature's mandate that comprehensive plans are to

properties may take place in a manner inconsistent with the New Land Use Map, the Petitioners' lands (which, according to the Petition, have suffered a diminution in development density) were effectively rezoned upon the adoption of the Comprehensive Plan.[18]

A. Standard of Review

"For a dispute to be settled by a court of law, the issue must be justiciable, meaning that courts have limited their powers of judicial review to 'cases and controversies.'"[19] The Delaware Constitution does not have a direct parallel to Article III, Section 2, of the U.S. Constitution,[20] but our Supreme Court has explained that the "requirements for establishing standing under Article III to bring an action in federal court are generally the same as the standards for determining

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carry 'the force of law' militates against analysis so flexible as to render such plans a nullity." *O'Neil*, 2006 WL 205071, at *32. *Green* and *Lawson* do not address the meaning of "the force of law." All three cases did, however, address when a rezoning would be so inconsistent with a comprehensive plan as to render a rezoning invalid. In fact, in *O'Neil* and *Green*, the Court ultimately concluded that the rezonings were fundamentally incompatible with the comprehensive plan and thus invalid. *O'Neil*, 2006 WL 205071, at *38; *Green*, 508 A.2d at 891-92.

[18] The Petitioners allege that the Properties have been "rezoned," and I adopt that language for purposes of my ripeness analysis only. I make no decision here as to whether the Petitioners' properties have undergone "property specific" rezoning for notice purposes under, for instance, 9 *Del. C.* § 4926. *See J.N.K., LLC v. Kent County Levy Court*, 974 A.2d 197 (Del. Ch. 2009).

[19] *Energy Partners, Ltd. v. Stone Energy Corp.*, 2006 WL 2947483, at *6 (Del. Ch. Oct. 11, 2006); *see also Anonymous v. State*, 2000 WL 739252, at *4 (Del. Ch. June 1, 2000) ("[R]ipeness or justiciability . . . speaks to whether a given dispute lends itself to adjudication by any court, with ripeness referring to the concept that a controversy will not be adjudicated unless it involves truly adverse interests and actual rights." (internal quotation marks omitted)).

[20] *See Energy Partners*, 2006 WL 2947483, at *6.

standing to bring a case or controversy within the courts of Delaware."[21] The Supreme Court, therefore, has held that for an actual controversy to exist:

> (1) It must be a controversy involving the rights or other legal relations of the party seeking declaratory relief; (2) it must be a controversy in which the claim of right or other legal interest is asserted against one who has an interest in contesting the claim; (3) the controversy must be between parties whose interests are real and adverse; (4) the issue involved in the controversy must be ripe for judicial determination.[22]

The Parties only dispute whether the issue is ripe for judicial determination. Here, the Parties agree that if the adoption of the Comprehensive Plan has an immediate effect on the Petitioners' rights, this matter is ripe; conversely, if the Comprehensive Plan is merely precatory, no present controversy exists.

B. Statutory Construction

"The rules of statutory construction are designed to ascertain and give effect to the intent of the legislators, as expressed in the statute."[23] "[T]he meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . the sole function of the courts is to enforce it according to its terms."[24] Thus, I must first determine whether the statute is

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[21] *Energy Partners*, 2006 WL 2947483, at *16 n.57 (quoting *Dover Historical Soc. v. City of Dover Planning Comm'n*, 838 A.2d 1103, 1111 (Del. 2003)).
[22] *Rollins Int'l, Inc. v. Int'l Hydronics Corp.*, 303 A.2d 660, 662-63 (Del. 1973).
[23] *Chase Alexa, LLC v. Kent County Levy Court*, 991 A.2d 1148, 1151 (Del. 2010); *see also Friends of H. Fletcher Brown Mansion v. City of Wilmington*, 2011 WL 6148717, at *3 (Del. Dec. 12, 2011).
[24] *Friends of H. Fletcher Brown Mansion*, 2011 WL 6148717, at *3 (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)).

ambiguous.[25] Disagreement among the parties about the meaning of the statute does not render it ambiguous.[26] "Rather, a statute is ambiguous only if it is reasonably susceptible of different interpretations."[27] Accordingly, if unambiguous, I must give effect to the plain language of the statute.[28]

C. Force of Law

Sections 4951 and 4959 of the Quality of Life Act of 1988[29] (the "Act") state that the land use map or map series found in the comprehensive plan has "the force of law." Section 4951 addresses the intent and purpose of the Act:

> The land use map or map series forming part of the comprehensive plan as required by this subchapter shall have the force of law, and no development, as defined in this subchapter, shall be permitted except in conformity with the land use map or map series and with county land development regulations enacted to implement the other elements of the adopted comprehensive plan.[30]

Section 4959(a) provides the legal status of the comprehensive plan and states that:

> After a comprehensive plan or element or portion thereof has been adopted by County Council or Levy Court in conformity with this subchapter, the land use map or map series forming part of the

[25] *Chase Alexa,* 991 A.2d at 1151.
[26] *Id*.
[27] *Id*.
[28] *Id*.
[29] 9 *Del. C.* §§ 4951-4962.
[30] 9 *Del. C.* § 4951(b). Section 4952 defines "Development" as "any construction or reconstruction of any new or existing commercial or residential building(s) or structure(s) upon lands which are not owned by the State or its agencies or its political subdivisions, or are not within the jurisdictional control of the State or its agencies or its political subdivisions." 9 *Del. C.* § 4952.

> comprehensive plan as required by this subchapter shall have the force of law, and no development, as defined in this subchapter, shall be permitted except in conformity with the land use map or map series and with land development regulations enacted to implement the other elements of the adopted comprehensive plan.[31]

The Act is unambiguous. The land use map or map series has "the force of law," and the County may not permit development contrary to that provided for in the land use map. According to the Petition, the Properties were formerly entitled to development at a density of one unit per acre are now in an area designated on the map for development at a significantly lower density. Accordingly, the adoption of the Comprehensive Plan and its New Land Use Map "downzoned" the properties as of the time of adoption.[32]

D. The County's Contentions

The County points out, correctly, that comprehensive plans are planning documents, large in scope and lengthy in effect, and thus "cannot . . . serve unyieldingly as guide[s] to detailed questions of zone designation."[33] The County argues that, notwithstanding the plain language of §§ 4951 and 4959, the density provisions of the land use maps have no actual effect until ordinances implementing the map are put in place. They point to § 4960(c), which provides that "[w]ithin 1 year of the date of adoption of the county plan, the County shall

[31] 9 *Del. C.* § 4952(a).
[32] *See supra* note 18.
[33] *O'Neil*, 2006 WL 205071, at *32 (quoting *Lawson*, 1995 WL 405733, at *4).

initiate an implementation program regarding subdivision and development controls," and § 4960(e), which provides:

> Within 18 months of the date of adoption of the county comprehensive plan or revision thereof, Kent County shall amend its official zoning map(s) to rezone all lands in accordance with the use and intensities of uses provided for in the future land use element for the County. In the event that the comprehensive plan includes provisions governing the rate of growth of particular planning districts or sub-areas of the County, the County's zoning district regulations shall be amended to reflect the timing elements of the comprehensive plan.

According to the Respondents, §§ 4951 and 4959, which state that the land use map shall have "the force of law," only apply to the County, which is then required to amend its zoning law as described in the language cited above. Such a reading, however, conflicts with the clear language of §§ 4951 and 4959 of the Act. As explained above, those sections provide that after the comprehensive plan is adopted, the land use map or map series has the force of law and no development is permitted unless it conforms to the land use map or map series.

The statutory language of §§ 4951(b) and 4959 is straightforward and uncomplicated. The "force of law" means that any provisions in the land use map or map series have a "legally binding effect."[34] If proposed development does not conform to the land use map, the County may not permit it to go forward. Because

[34] *Steele v. Stevenson*, 1990 WL 114218, at *3 (Del. Ch. July 31, 1990) ("The words 'force of law' and 'effect of law' have been used interchangeably, and particularly where the action is by a legislative body. The words 'force of law' or 'effect of law' are synonymous with having a legally binding effect." (quoting *Wilmington Trust Co. v. Caratello*, 385 A.2d 1131, 1133 (Del. Super. Ct. 1978))).

private development in Kent County may not go forward without County permission,[35] the designations adopted in the land use map prescribe development rights. To the extent that, as is alleged here, the new map prescribes a change in permitted use that amounts to a rezoning, adoption of the Comprehensive Plan works a rezoning.

The County argues that if the land use maps were self-enforcing between the time of passage and the time enabling ordinances were enacted, there would be no need for enabling ordinances, and the legislative mandate of §§ 4951 and 4959 requiring that the County pass enabling ordinances would be surplusage, or an absurdity. The County misreads the statutes. The statute says that the enabling ordinances shall be in conformity with the land use element, not identical to it.[36] In other words, the County must enact zoning legislation, and it must not contradict the land use maps. While the legislation provides that the County must enable the comprehensive plan through ordinances adopted within eighteen months, the

[35] *See generally* 9 *Del. C.* §§ 4402, 4407, 4816.

[36] The statute provides that the enabling ordinances must be in conformity with the land use *element*, not the land use *map*. The land use element can include more than simply the maps; it can include the maps and text. Section 4956(a) states that: "The comprehensive plan shall consist of materials in such descriptive form, either *written or graphic*, as may be appropriate to the prescription of principles, guidelines and standards for the orderly and balanced future economic, social, physical, environmental and fiscal development of the area." 9 *Del. C.* § 4956(a). Section 4956(g) further explains that part of the comprehensive plan shall include a future land use plan element which *includes a land use map or map series* that shows "[t]he proposed distribution, location and extent of the various categories of land." *See also Upfront Enterprises, LLC v. Kent County Levy Court*, 2007 WL 2459247, at *7 (Del. Ch. Aug. 9, 2007) ("The Comprehensive Plan is of limited direct regulatory impact: only the land use map or map series forming part of the comprehensive plan . . . are said to have the force of law." (internal quotation marks omitted)).

County is also bound during that eighteen month period to prevent development that is inconsistent with the land use maps.

Likewise, the County's reference to § 4952 of the Act is inapt. Section 4952 states:

> Whenever in this subchapter land use regulations are required to be in accordance with the comprehensive plan, such requirements shall mean *only* that such regulations must be in conformity with the applicable maps or map series of the comprehensive plan. Whenever in this subchapter land use orders, permits or zoning district changes are required to be in accordance with the comprehensive plan, such requirements shall mean *only* that such orders, permits and changes must be in conformity with the map or map series of the comprehensive plan and county land use regulations enacted to implement the other elements of the adopted comprehensive plan.[37]

The County contends that the quoted language means that "only" the County is affected by the conformity requirements of §§ 4951 and 4959. As a result, the County alleges, "conformity with the land use maps does *not* mean that the map or map series itself is an enacted law or regulation; that the map or map series creates or denies rights; that a failure to conform to the land use map or map series confers standing to some aggrieved parties to bring a petition; that an aggrieved party has standing to bring suit based on the 'force of law' related to the maps; or that any new cause of action has been created."[38] But § 4952 does not address this question

[37] 9 *Del. C.* § 4952 (emphasis added).

[38] Resp'ts' Summ. J. Br. at 9. This argument comes from the Respondents' Answering Brief in Opposition to Petitioners' Motion for Summary Judgment Upon Petitioners' State Law Claims. Because of the outstanding motions' unusual briefing schedule, the effect of the Comprehensive

at all. The statute simply provides that, when crafting zoning regulations, orders and permits, the County is bound to respect only the land use maps and not the text and other materials that, together with the maps, compose the comprehensive plan (except to the extent regulations implement the latter). The change in permissible land use at issue here arises from the legislative pronouncement in §§ 4951 and 4959 that the maps have the force of law and that the County may not permit development contrary to the maps. Section 4952 in fact confirms that pronouncement: it mandates that, where statutes require conformity with the comprehensive plan, land use "orders and permits" must conform to the land use maps.[39]

I also note that, even if the statutory language mandating the immediate vitality of the land use maps was ambiguous, reading the Quality of Life Act as a

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Plan was touched upon in each of the various briefs. I include this argument only so that the Respondents would not be prejudiced by the cacophony of motions.

[39] The Delaware Courts have viewed § 4952 as meaning that just the maps or map series of a county's comprehensive plan have the force of law, rather than the maps or map series *and* the text of the comprehensive plan. The Court in *O'Neil* addressed municipal comprehensive plans. While the statutes dealing with municipal comprehensive plans are similar to those for counties, *O'Neil* noted: "[i]nterestingly, the Delaware Code provides only that 'the land use map or map series' have the force of law with respect to county plans, while a municipality's entire comprehensive plan carries the force of law." 2006 WL 205071, at *38 n.272. This difference means that when interpreting a municipality's comprehensive plan, the Court looks to the "text of the plan, in addition to the maps, in order to discover what the comprehensive plan envisioned for the property." Here, § 4952 is clarifying that only the map has the force of law, rather than the map and the text. *See also Donnelly v. City of Dover*, 2011 WL 2086160, at *5 (Del. Super. Ct. Apr. 20, 2011).

whole would allow me to come to the same conclusion I have reached above.[40] Sections 4959(c) and (d) state that applications submitted or approved before the adoption of a new comprehensive plan will be subject to the prior comprehensive plan.[41] If, as the Respondents suggest, the Comprehensive Plan with its land use map is merely a guide and has no effect until the implementing ordinances are approved, there would be no reason for this language. If the Comprehensive Plan is only precatory, all that would matter is when applications were submitted or approved *in relation to the implementing ordinances*, not in relation to the Comprehensive Plan. By including this language and making no provision for applications submitted between the adoption of the new comprehensive plan and the implementing ordinances, the statutes support my determination that the General Assembly intended the land use map or map series to take immediate effect, with the force of law.

CONCLUSION

[40] *See Chase Alexa*, 991 A.2d at 1151 ("Statutes must be construed as a whole, in a way that gives effect to all of their provisions and avoids absurd results.").

[41] Section 4959(c) states: "Any application for a development permit filed or submitted prior to adoption or amendment under this subchapter of a comprehensive plan or element thereof shall be processed under the comprehensive plan, ordinances, standards and procedures existing at the time of such application." 9 *Del. C.* § 49459(c). Section 4959(d) states that "All development permits and development orders heretofore or hereafter validly issued or approved by county government and not thereafter limited, rescinded or restricted shall automatically be incorporated into and become part of the present and all future comprehensive plans, subject to whatever time limitations may otherwise apply to such permits and orders at the time of issuance or approval." *Id.* § 4959(d).

According to the Petition, before the adoption of the current Comprehensive Plan, via Ordinance #LC08-06, the Properties were AC-AR zoned and were permitted development at a density of one unit per acre. The Petitioners allege that the land use map of the new Comprehensive Plan provides for significantly less dense development of their properties than did the previous land use map. Land use maps have the force of law, and the County may not permit development of the Properties except in conformity with the New Land Use Map. Assuming that the factual allegations of the Petition are true, the Petitioners have therefore suffered a diminution in their ability to develop the Properties, and their allegations that this rezoning failed to conform to statutory and constitutional requirements are ripe for consideration in this action.[42]

[42] *See supra* note 18.