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Re: *Cartanza, et al. v. DNREC, et al.*
Civil Action No. 2641-MG

Dear Counsel:

In this class action, plaintiffs bring various challenges to maps created by defendant Delaware Department of Natural Resources and Environmental Control ("DNREC") designating certain lands as Natural Areas ("NAs") and State Resource Areas ("SRAs"). Plaintiffs, who are owners of land designated as NAs or SRAs, filed this action on December 22, 2006 alleging that the adoption of the NA and SRA maps violated both the Delaware and United States Constitutions and constituted arbitrary and capricious government decision-making in violation of Delaware administrative law.

This action was referred to the Master, and on October 10, 2008, the Master issued a final report ("Master's Report" or "Report") resolving motions for summary judgment filed by plaintiffs and by defendants DNREC and DNREC Secretary John R. Hughes (the "state defendants"). In the Report, the Master concluded (1) that DNREC's designation of properties in the SRA maps is void because the designation was contrary to DNREC's statutory authority and (2) that plaintiffs do not have standing to challenge DNREC's identification of lands for inclusion on the NA maps or their approval of the NA maps because the designation of land as an NA is an act with no independent legal significance. Plaintiffs filed exceptions to the Master's Report, contending that the Report erred by omitting certain facts regarding the NA approval process and by concluding that plaintiffs lack standing to challenge the NA designations. No exceptions were filed regarding the Master's conclusion on the SRA designations.

While the standard of review for a master's factual and legal findings is *de novo*, a new trial is not necessary if the Court of Chancery can read the relevant portion of the factual record and draw its own conclusions.[1] Here, because none of the key factual issues turn on credibility determinations, I rule on the exceptions based on a *de novo* review of the record.[2] I conclude that the recommendations in the Master's Report are correct; accordingly, the exceptions to the Report are denied, and judgment is entered in accordance with the Report. I need not replicate the Master's thorough and well-reasoned Report, and I address only the factual and legal conclusions relevant to plaintiffs' exceptions.

I. FACTUAL BACKGROUND

Chapter 73 of Title 7 of the Delaware Code directs DNREC to establish and maintain a registry of "areas of unusual natural significance" so that such areas can be "preserved for the benefit of present and future generations."[3] While the purpose of the NA designations is to identify lands that may be recommended for acquisition, DNREC is only authorized to acquire such areas through voluntary means such as purchase or gift, and not through the power of eminent domain.[4] At oral argument, counsel for the state defendants confirmed that counties are not required to use the NA maps or NA designations in their zoning decisions.[5]

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[1] *See DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999).
[2] *See id.*
[3] 7 *Del. C.* § 7301(a)-(b).
[4] 7 *Del. C.* §§ 7301(a)-(b), 7306(a).
[5] Tr. at 23-24 (Oct. 1, 2007 hearing).

Although it was not required, New Castle County (the "County") adopted a land-use code which imports NA designation as a marker for permitting and denying certain uses of property.[6]

II. ANALYSIS

Plaintiffs and state defendants sought summary judgment before the Master. To be entitled to summary judgment, the moving party must demonstrate that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law.[7] In considering the factual record, I must review the evidence in the light most favorable to the non-moving party.[8]

Plaintiffs contend that the Master's Report erred by concluding that plaintiffs lack standing to challenge DNREC's designation of their lands as NAs in the NA maps.[9] The party invoking the jurisdiction of a court has the burden to establish standing.[10] As the Master stated in the Report, "[t]o establish standing, a plaintiff must demonstrate: (1) an injury in fact; (2) a causal connection between the injury and the conduct of which plaintiff complains; and (3) that a favorable decision is likely to redress the injury."[11] "Unlike the federal courts, where standing may be subject to stated constitutional limits, state courts apply the concept of standing as a matter of self-restraint to avoid the rendering of advisory opinions at the behest of parties who are 'mere intermeddlers.'"[12]

Plaintiffs point to the Declaratory Judgment Act in an attempt to bolster their standing argument. The purpose of the declaratory judgment act is to allow the Court to adjudicate a controversy earlier than it traditionally would, "where the

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[6] *See* UDC § 40.05.420, 421 and corresponding tables.
[7] Ct. Ch. R. 56(c).
[8] *See, e.g., HIFN, Inc. v. Intel Corp.*, C.A. No. 1835-VCS, 2007 WL 1309376, at *9 (Del. Ch. May 2, 2007).
[9] Plaintiffs also contend that the Master's Report erred by omitting three facts regarding the process by which DNREC adopted the NA maps. These facts, however, are only relevant if plaintiffs have standing to challenge DNREC's designation and approval of the NAs. In light of my conclusion that plaintiffs do not have such standing, the facts are not relevant and need not be included in the Report.
[10] *Dover Historical Soc'y v. City of Dover Planning Comm'n*, 838 A.2d 1103, 1109 (Del. 2003).
[11] Master's Report, *Cartanza v. Del. Dep't of Natural Res. & Envtl. Control*, C.A. No. 2641-MG, 2008 WL 4682653, at *4 (Del. Ch. Oct. 10, 2008). *See id.* at 1110.
[12] *Dover Historical Soc'y*, 838 A.2d at 1111 (quoting *Stuart Kingston, Inc. v. Robinson*, 596 A.2d 1378, 1382 (Del.1991)).

alleged facts are such that a true dispute exists and eventual litigation appears to be unavoidable."[13] The concerns underlying the standing requirement, however, are not rendered irrelevant by the Declaratory Judgment Act, and the Act is not a device by which the Court should render advisory opinions.[14] In Delaware, courts decline to render hypothetical opinions for two primary reasons: (1) to prevent the waste of valuable judicial resources and (2) to reduce the risk of making an incorrect judgment or taking a premature step in the development of the law by deciding a case based on facts that are not fully developed.[15] "[T]o the extent that the judicial branch contributes to law creation in our legal system, it legitimately does so interstitially and because it is required to do so by reason of specific facts that necessitate a judicial judgment."[16] Thus, even under the Declaratory Judgment Act, the requirements of an "actual controversy" must be met:

> (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.[17]

Plaintiffs lack standing to challenge DNREC's designation and approval of the NAs because they suffered no injury from those actions. The direct effect of designation of lands as NAs is that they are placed on a registry of lands that could be recommended for acquisition by DNREC through voluntary means. An NA designation, of itself, does not place restrictions on the use of plaintiffs' property. Plaintiffs, therefore, cannot show that they are injured by a wrongful NA designation.

Additionally, the controversy between plaintiffs and the state defendants does not constitute an actual controversy under the Declaratory Judgment Act. While the Declaratory Judgment Act may allow courts to adjudicate some issues

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[13] *Rollins Int'l, Inc. v. Int'l Hydronics Corp.*, 303 A.2d 660, 662 (Del. 1973).
[14] *See Stroud v. Milliken Enters., Inc.*, 552 A.2d 476, 479-80 (Del. 1989).
[15] *See id.* at 480.
[16] *Id.* (quoting *Schick Inc. v. Amalgamated Clothing and Textile Workers Union*, 533 A.2d 1235, 1239 (Del. Ch. 1987)).
[17] *Id.* at 479-80 (quoting *Rollins*, 303 A.2d at 662-63).

before they otherwise would or before an injury has occurred, it does not confer standing on plaintiffs to challenge an action that, of itself, does not injure plaintiffs. This is not a situation where the Court could review the state defendants' actions in advance of a potential injury to plaintiffs; the complained-of actions—DNREC's designation of land as NAs and approval of the NA maps—are already complete, and plaintiffs have not suffered an injury solely as a result of the NA designations.

Plaintiffs argue that they have been injured by the NA designations because the County has adopted a land-use code that uses NA designations to restrict certain uses of property. Any harm to plaintiffs, however, is a result of the allegedly wrongful importation of the NA designations by the County, not the designation of lands as NAs by the state. Plaintiffs chose to challenge DNREC's designation of their lands as NAs, and have not challenged the decision by the County under its land-use code.[18] As the Master noted, plaintiffs may not be entitled to the relief they seek against the County even if they were able to establish that the NAs were not properly designated or approved by DNREC. A conclusion by this Court that the NAs were not properly designated and approved by DNREC would not necessarily mean that the County's use of them as zoning criteria was wrongful. It is possible that even NA designations that were approved by DNREC in contravention of its statutory authority could be appropriate for use by the County in its land-use decisions. It is also possible that it would not be appropriate for the County to use properly designated NAs in its land-use decisions. These questions could be answered in an action challenging the County's decisions under its land-use code.

In a proper case, plaintiffs could seek to challenge the County's zoning decisions, something they have foregone in this action. Plaintiffs have pointed out that such a claim may be untimely,[19] and that if they do not have standing to challenge DNREC's actions, they may have no redress for their alleged injuries. This argument is unconvincing. That plaintiffs did not bring a timely action challenging the County's zoning practices does not confer standing to challenge

[18] In the complaint, plaintiffs made clear that they are not challenging the County's zoning code and, instead, are only seeking to prohibit the County from relying on the allegedly wrongful NA designations. Indeed, plaintiffs conceded that "1) the Plaintiffs' are challenging DNREC's approval of the Maps; and 2) the County is merely named as a nominal party in this case for purposes of obtaining their compliance with a Court Order invalidating the Maps." Pls.' Answering Br. in Opp'n to Def. New Castle County's Mot. for Summ. J. at III.

[19] Like the Master, I offer no opinion on the issue of whether a claim against the County would be timely.

DNREC's entirely separate action which, of itself, does not injure plaintiffs.[20] The time limitations that may apply to plaintiffs' claims against the County have their own policy justifications, and this Court will not relax the standing requirements for the purpose of allowing plaintiffs to bypass timeliness requirements.

Additionally, as the County pointed out before the Master, only one named plaintiff owns property in New Castle County, and he has not sought a development permit or a zoning variance; accordingly, plaintiffs' claims are barred because they are not ripe for judicial determination and because plaintiffs have not exhausted their administrative remedies. To avoid rendering advisory opinions, Delaware courts will not decide a case unless "the facts underlying the claim are established and are not subject to change."[21] Additionally, "Delaware Courts employ a strong presumption favoring the exhaustion of administrative remedies."[22] Plaintiffs bear the burden of overcoming this presumption, which can be done "by showing that: (1) administrative review would be futile; (2) there is a need for a prompt decision in the public interest; (3) the issues do not involve administrative expertise or discretion; or (4) irreparable harm would result from denial of immediate judicial relief."[23]

As in *Toll Brothers, Inc. v. Wicks*, plaintiffs' claims have "not yet matured to a point where judicial action is appropriate" because they have not yet obtained, or even sought, a final decision by applying for a variance.[24] Plaintiffs' alleged injury stems from the County's use of NA designations in its land-use restrictions, and the facts surrounding the alleged injury may change if plaintiffs exhaust their administrative remedies. Plaintiffs have not alleged sufficient facts to overcome the presumption in favor of requiring exhaustion of administrative remedies.

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[20] *See Toll Bros., Inc. v. Wicks*, C.A. No. 1314-N, 2006 WL 1829875, at *6 (Del. Ch. June 21, 2006) ("[T]his Court has stated on at least two previous occasions that DelDOT's role is limited because county authorities hold final, decision-making authority over local land use decisions . . . . The fact that *County officials* are mistaken about the letter of the law, however, does not create a right of action *against DelDOT*.").
[21] *Id.* at *7.
[22] *Id.* at *8.
[23] *Id.*
[24] *Id.* at *7 (quoting *Stroud*, 552 A.2d at 480).

III. CONCLUSION

For the foregoing reasons and for the reasons stated by the Master, I conclude that the Master's recommendations are correct. Accordingly, the exceptions to the Master's Report are denied, and judgment is entered in accordance with the Master's Report.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

William B. Chandler III

WBCIII:jmb