

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                                   |                                |
|-----------------------------------|--------------------------------|
| DONALD L. PELLICONE,              | §                              |
|                                   | § No. 329, 2013                |
| Defendant Below,                  | §                              |
| Appellant,                        | § Court Below – Superior Court |
|                                   | § of the State of Delaware,    |
| v.                                | § in and for New Castle County |
|                                   | § C.A. No. N13C-03-073         |
| NEW CASTLE COUNTY, upon the       | §                              |
| relation of the County Executive, | §                              |
|                                   | §                              |
| Plaintiff Below,                  | §                              |
| Appellee.                         | §                              |

Submitted: November 13, 2013

Decided: November 14, 2013

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

**ORDER**

This 14th day of November, 2013, it appears to the Court that:

1) The above-captioned case, after briefing and oral argument, was submitted to a panel consisting of Justice Holland, Justice Berger and Justice Jacobs. The Court has concluded that this matter should be remanded to the Superior Court to address certain unanswered questions.

2) The appellant contends that Article 7, Chapter 12 of the County Code limits the County's authority to address flood control or prevention projects.<sup>1</sup> In order to approve a flood relief project which deals with "stream

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<sup>1</sup> See New Castle County Code §12.07.001.

and watercourse improvements,” the appellant contends that certain criteria must be met and specific procedures must be followed.<sup>2</sup> The appellant contends that the procedural requirements were not followed because no Ordinance or Resolution establishing satisfaction of the criteria necessary to authorize a County project exists.

3) The appellant further contends that no such project could be authorized because jurisdiction of Little Mill Creek is vested in the Delaware Department of Natural Resources and Environmental Control (“DNREC”) and the United States Army Corps of Engineers (“Army Corps”). Therefore, according to the appellant, the County is barred from pursuing such a project.<sup>3</sup>

4) It appears to this Court that the Superior Court’s opinion did not sufficiently address these contentions. Therefore, we must remand for an analysis of those matters. In particular, the Superior Court should address the following questions:

- a) Does Chapter 12 of the County Code require specific procedural steps in order to authorize a County flood control project?
- b) If so, were those procedural requirements adhered to?

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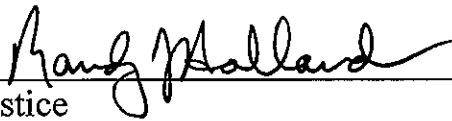
<sup>2</sup> See New Castle County Code §12.07.002.

<sup>3</sup> See New Castle County Code §12.06.001C.

- c) Can the Federal Flood Control Project legally constitute a County project?

NOW, THEREFORE, IT IS HEREBY ORDERED that this matter is remanded to the Superior Court for further consideration in accordance with this order. The Superior Court should file its opinion with this Court within sixty days. Jurisdiction is retained.<sup>4</sup>

BY THE COURT:

  
Justice

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<sup>4</sup> Supr. Ct. R. 19(c).