

\$94M Barley Mill Development Appeal Defeated In Del. Court

By **Igor Kossov**

Law360, New York (March 27, 2014, 7:23 PM ET) -- The Delaware Supreme Court on Tuesday upheld a Chancery Court decision overturning a 2011 zoning change that would allow the \$94 million development of Barley Mill Plaza in Greenville.

Stoltz Real Estate Partners, through Barley Mill LLC, submitted plans to expand an office park into a shopping center, running up against community opposition. A county councilman voted to approve the proposal but didn't get to view the accompanying traffic analysis because it was under the impression that it was legally barred from seeing it. Vice Chancellor Sam Glasscock III ruled that this was false and the rezoning vote was invalid. The Supreme Court upheld on that basis.

"The inaccurate contention that the traffic information was not relevant to the council's analysis and could not be considered before the discretionary vote on the rezoning ordinance permeates the record," the high court wrote. "That inaccurate assertion was never contradicted and the record supports the court of chancery's finding that members of the council believes that traffic information was legally unavailable."

According to court records, Young Conaway Stargatt & Taylor LLP represented the developer in the original lawsuit.

The current office park, mostly occupied by DuPont, has a million square feet of low-rise office space. Barley Mill bought the property in 2007 to turn it into more than 2.7 million square feet of residential, office and shopping space, but community groups, including Citizens for Responsible Growth, opposed the idea.

One of the biggest complaints was the amount of traffic that a shopping mall was going to create, according to documents.

Barley Mill revised the plan and nixed the residential units, reducing the overall footprint. This plan required an approval from New Castle County Council and Delaware Department of Transportation.

According to court records, council members got the impression after speaking with Barley Mill's counsel that recent revisions to the state approval process for such project barred it from considering traffic issues.

Councilman Bob Weiner cast the tie-breaking vote for the rezoning, despite multiple public statements

that he regretted lacking access to traffic data. A group called Save Our County brought the suit, hoping to reverse the vote before DelDOT signed off and the project went forward. Weiner later regretted his decision.

Save Our County prevailed in the Chancery in August. Barley Mill appealed and the citizen group cross-appealed. On Tuesday, the Supreme Court affirmed the lower court's decision on its merits, without addressing the cross-appeal.

Douglas Wright, John E. Tracey, William E. Gamgort and Lakshmi A. Muthu of Young Conaway Stargatt & Taylor LLP represented Barley Mill LLC

Jeffrey S. Goddess of Rosenthal Monhait & Goddess PA represented Save Our County Inc.

Sidney S. Liebesman, R. Montgomery Donaldson and Lisa Zwally Brown of Montgomery McCracken Walker & Rhoads LLP represented New Castle County.

The case is Barley Mill LLC v. Save Our County Inc v. New Castle County, case number 419,2013 in the Supreme Court of the State of Delaware.

--Editing by Rebecca Flanagan.