



SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

ROBERT H. ROBINSON, JR.  
JUDGE

Sussex County Courthouse  
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Georgetown, DE 19947  
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May 24, 2022

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Rehoboth Beach and The Mayor and  
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Rehoboth Beach

Re: *Clear Space Theatre Company and Rehoboth Spotlight, Inc. v. The City of  
Rehoboth Beach, The Mayor and Commissioners of the City of Rehoboth  
Beach, and The City of Rehoboth Beach Planning Commission*  
C.A. No. S21A-08-001 RHR

Dear Counsel:

This case is before the Court on *certiorari* review. The City provided a very limited record for review, citing the Delaware Supreme Court's decision in *Black v.*

*New Castle County Board of License*.<sup>1</sup> Clear Space filed exceptions to that record. It claims the record should also include Clear Space's site plans and the responses to the appeal to the Commissioners filed by Clear Space and the Planning Commission. For the reasons that follow, Clear Space's site plans shall be included as part of the record, but Clear Space's and the Planning Commission's responses to the City council shall not.

The City claims *Black* requires a court conducting *certiorari* review to limit the record to only the complaint, answer, and docket from the proceedings below.<sup>2</sup> I find the City's reading of *Black* is too narrow. In *Black*, the appellants challenged a decision of the New Castle County Board of Licensing, Inspection, and Review through a petition for a writ of *certiorari* in the Superior Court. While noting the limited scope of *certiorari* review, the Superior Court's decision relied upon materials that do not fit into the complaint-answer-docket rule. The Superior Court noted that "the record consists of Petitioner's Appeal to the Board, including the attached exhibits, the Sign In sheet for the Board's hearing, the transcript from the Board's July 8, 2013 hearing, and the Board's July 23, 2013 decision."<sup>3</sup> In other words, the Superior Court in *Black* did not adhere to the strict complaint-answer-

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<sup>1</sup> 117 A.3d 1027 (Del. 2015).

<sup>2</sup> *Id.* at 1031 (quoting *Maddrey v. Justice of Peace Court 13*, 956 A.2d 1204, 1216 (Del.2008)).

<sup>3</sup> *Black v. New Castle Cty. Bd. of License*, 2014 WL 4955183, at \*5 (Del. Super. Ct. Sept. 26, 2014), *aff'd*, 117 A.3d 1027 (Del. 2015).

docket rule that the City asks me to follow in this case. On appeal, the Supreme Court referenced the complaint-answer-docket rule<sup>4</sup> but did not disturb the Superior's Court's decision or analysis. The Supreme Court also seemed to acknowledge that the proper record on *certiorari* review is context-driven: "This Court has thus stated that the transcript of the proceedings is not a proper part of the record, *at least in the context of certiorari* review of a Justice of the Peace proceeding."<sup>5</sup>

Other cases also suggest that the complaint-answer-docket rule is too narrow for writs of *certiorari* other than those arising from the Justice of the Peace Court. For example, in *Green v. Sussex County*, the Superior Court considered assessment rolls in its review.<sup>6</sup> And, in *Christiana Town Center v. New Castle County*, the Superior Court referenced (and apparently relied upon) the transcript of the proceedings, decisions issued by the agencies below, and a letter from one of the attorneys.<sup>7</sup> Both of these cases were affirmed by the Supreme Court.

Strict adherence to the complaint-answer-docket rule argued for by the City does not take into account the variety of cases that come before the Superior Court on *certiorari* review. While the rule may easily apply in the context of an appeal

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<sup>4</sup> *Black*, 117 A.3d at 1031.

<sup>5</sup> *Id.* (citing *Maddrey*, 956 A.2d at 1216) (emphasis added).

<sup>6</sup> 668 A.2d 770, 772 (Del. Super Ct. 1995), *aff'd*, 1995 WL 466586 (Del. Aug. 2, 1995).

<sup>7</sup> *Christiana Town Ctr., LLC v. New Castle Cty.*, 2004 WL 1551457, at \*4 (Del. Super. Ct. July 7, 2004), *aff'd*, 865 A.2d 521 (Del. 2004).



from a Justice of the Peace Court because there is necessarily a complaint, an answer, and a docket, it is not conducive to land-use cases such as this one where a land-use application—which requires a site plan—is filed. Because the City’s decision denying Clear Space’s application was based upon its review of the site plan, it follows that the inclusion of Clear Space’s site plan is appropriate. Even within the limited scope of *certiorari* review, the City’s decision denying approval of the site plan cannot be separated from the site plan itself. The City’s decision references the site plan and draws conclusions from it.

Still, the City is correct that this Court’s review of a petition for *certiorari* is very limited. Therefore, Clear Space’s and the Planning Commission’s responses to the appeal of the Planning Commission’s decision (filings that consisted of legal arguments) are not properly part of the record on *certiorari* review. Moreover, Clear Space will have the opportunity to raise those issues in this appeal.

The City is to amend its Certification in accordance with this decision.

**IT IS SO ORDERED.**

Sincerely,

/s/ Robert H. Robinson, Jr.

Robert H. Robinson, Jr., Judge

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cc: All counsel of record (by File & ServeXpress)