

High court blocks Barley Mill project

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A three-year battle over the redevelopment of Barley Mill Plaza in Greenville to stores and offices ended Tuesday with the Delaware Supreme Court unanimously upholding a lower court decision that struck down a 2011 rezoning that would have allowed the project to go through.

Barley Mill LLC, a real estate entity under the Stoltz Real Estate Partners umbrella that had proposed a 1.6-million-square-foot retail and office complex on 37 acres on Del. 141, now must decide how to proceed with its investment. It could take the retail-office proposal through the rezoning process again or it could create a new development plan.

Tom Gailey, spokesman for Stoltz, said the company had no comment on the high court's decision. Stoltz, which bought the 92-acre property in 2007 from the DuPont Co. for \$94 million, has been working to redevelop the park since 2008 despite opposition from nearby residents. An initial proposal that called for a 2.8-million-square-foot mixed-use project, including condominiums, met virulent resistance.

The developer worked with Citizens for Responsible Growth. A compromise was reached in 2010 on a scaled-back development plan. Stoltz then took 37 acres through the New Castle County rezoning process.

But another group of residents objected to the new plan, saying the project was more intrusive than the earlier proposal. They formed the citizens' group Save Our County. The organization and four homeowners near Barley Mill Plaza appealed the ordinance, saying the re-zoning is illegal because an analysis of the traffic impact was not considered beforehand.

"For many in the community, even the brightened prospect of being in closer proximity to a Cheesecake Factory and Cinnabon did not assuage their worries about the effect that the large scale development and its accompanying traffic would have on their quality of life," Leo E. Strine Jr., the Supreme Court's new Chief Justice, writes in the opinion.

Tuesday's ruling upheld Vice Chancellor Sam Glasscock III, who agreed in June with the neighbors that the rezoning was invalid because at least one

vote by a New Castle County Council member was made arbitrarily, and that vote was necessary for the ordinance to pass.

According to Glasscock, Councilman Robert Weiner wrongly believed he was not entitled to obtain traffic information before the vote. Weiner expressed publicly at the time of the vote that information from the study was essential to his vote, Glasscock wrote.

In its appeal, Barley Mill argued that Glasscock overreached when he examined more than Weiner's final statement when he cast his vote.

But the high court agreed with Glasscock that Weiner's vote was arbitrary and capricious because mistaken information about traffic undermined the council's deliberative process.

"In this case, traffic was a major concern of Councilman Weiner throughout the rezoning process, and he made plain his preference to have the traffic information moments before he cast his vote," the Supreme Court opinion says. "The Court of Chancery did not err, therefore, when it reviewed the record and determined that the Council's decision was undermined by a mistake of law that caused Councilman Weiner to vote without the traffic information."

Jeff Goddess, the lawyer for Save Our County, said he was pleased the court's decision was unanimous.

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