

FACSIMILE TRANSMITTAL  
ARCHER & GREINER  
A PROFESSIONAL CORPORATION  
PLAZA ONE  
1 STATE ROUTE 12, SUITE 201  
FLEMINGTON, NJ 08822-1722  
(908) 788-9700  
FAX (908) 788-7854

TO: KENIN BENBROOK Telecopy #: 735-0384

FROM: GUILTY HERSCH Attorney No: \_\_\_\_\_ Telephone #: (908)

Client/Matter Number: ORDER FOR JUDGMENT IN POWEL

ALSO SEND COPIES TO: V. HARMONY

RICHARD WEBSTER Telecopy #: 973-353-5537

\_\_\_\_\_ Telecopy #: \_\_\_\_\_

\_\_\_\_\_ Telecopy #: \_\_\_\_\_

Number of pages transmitted including this cover sheet: 4

ORIGINALS TO FOLLOW \_\_\_ YES \_\_\_ NO

Message:

CONFIDENTIALITY NOTICE

The information contained in this telefacsimile message is privileged and confidential, and intended only for the use of the individual (s), and/or entity(ies) named above. If you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or taking of any action in reliance on the contents of the telecopied materials is strictly prohibited and review by any individual other than the intended recipient shall not constitute waiver of the attorney-client privilege. If you have received this transmission in error, please immediately notify us by telephone (collect) to arrange for the return of the materials. Thank you.

If you have any problems receiving this message please call:

(908) 788-9700

DATE SENT: 5/22/07

[Signature]

Sent out 5/21/07

ARCHER & GREINER, PC  
Plaza One  
1 State Route 12 • Suite 201  
Flemington, NJ 08822-1722  
908-788-9700  
Attorneys for Plaintiff

TRUE COPY

FILED

MAY 21 2007

ALLISON E. ACCURSO, J.S.C.  
JUDGE'S CHAMBERS  
SUPERIOR COURT OF NEW JERSEY

DOWEL ASSOCIATES,  
Plaintiff,

vs.

HARMONY TOWNSHIP LAND USE  
BOARD, TOWNSHIP OF HARMONY and  
PHILLIPSBURG RIVERVIEW  
ORGANIZATION, INTERVENOR-  
DEFENDANT

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY

DOCKET NO.: SOM-L-001166-05

Civil Action

ORDER FOR JUDGMENT

This matter having come before the Court by way of Prerogative Writ action (Mt. Laurel) brought by Centex Homes, L.L.C. and Dowel Associates; with Guliet D. Hirsch of Archer & Greiner appearing for Plaintiff, Kevin Benbrook of Benbrook & Benbrook for Defendant, Harmony Township Land Use Board, and Richard Webster, Rutgers Environmental Law Clinic for Phillipsburg Riverview Organization; and whereas

The Court having considered the trial briefs of the parties, the record below before the Harmony Township Land Use Board, the reports of the court-appointed experts, and the oral argument of counsel at a trial conducted on May 2, 2007; and whereas

The Court having determined that the Defendant acted in arbitrary and capricious fashion in denying the Plaintiff's major subdivision application based upon the record established before it with respect to the proposed discharge to groundwater sewerage disposal system and the geology of the site; and whereas

The Court having further determined that the Defendant, Land Use Board, was obligated to grant preliminary major subdivision approval conditioned upon the further review and approval of the proposed discharge to groundwater sewerage disposal system by the New Jersey Department of Environmental Protection (NJDEP); and whereas

The Court having further determined that the Court appointed stormwater management expert has confirmed technical deficiencies in the Plaintiff's stormwater management plan's compliance with the Stormwater Management Rules, N.J.A.C. 7:8-1 et seq., a second basis for the Land Use Board's denial of the Plaintiff's major site plan application.

It is on this 21<sup>st</sup> day of May, 2007 ORDERED that the denial of the Plaintiff's preliminary major subdivision be and hereby is REVERSED and the application is remanded to the Land Use Board for further consideration as follows:

1. The Plaintiff shall submit revised stormwater management plans and associated calculations to the Defendant Land Use Board. The Plaintiff shall obtain an updated list of property owners within 200 feet and shall provide legal notice and publication in accordance with the requirements of the Municipal Land Use Law advertising the conduct of a continued public hearing on the Plaintiff's application.

2. The continued public hearing(s) shall be limited to the issue of whether the revised Stormwater Management Plan submitted by Plaintiff corrects the technical deficiencies identified in the report of the court-appointed Stormwater Management expert. Provided that the Plaintiff can demonstrate correction of said technical deficiencies, the Land Use Board shall grant conditional subdivision approval to the Plaintiff within sixty (60) days of the Plaintiff's resubmission.

3. If the Plaintiff cannot demonstrate compliance with the infiltration requirements, the Land Use Board shall nevertheless grant subdivision approval subject to an express condition that the Plaintiff be required to secure a waiver from the NJDEP from the requisite standards.

4. There shall be no reconsideration or further review of the discharge to groundwater system. Rather, the Land Use Board shall expressly condition its preliminary major subdivision approval upon the issuance of a New Jersey Pollution Discharge Elimination System Permits ("NJPDES") by the NJDEP.

5. The Land Use Board shall be entitled to incorporate additional conditions of approval based upon the prior record on the Plaintiff's application as supplemented pursuant to this Order including, but not limited to, approval by the Warren County Planning Board, Soil Erosion and Sediment Control Plan Certification by the Warren County Soil Conservation District, the execution of a developer's agreement prior to the issuance of building permits in a form acceptable to the Township attorney and the posting of inspection fee escrows and performance bonds prior to the commencement of any construction.

*Allison E. Accurso*

HONORABLE ALLISON E. ACCURSO, P.J.C.

2657542v4