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October 8, 2007

**VIA HAND DELIVERY**

John F. Brady, Esquire  
Dewey Beach Town Solicitor  
Brady, Richardson, Beauregard & Chasanov, LLC  
10 E. Pine Street  
P.O. Box 742  
Georgetown, DE 19947

**Re: Ruddertowne Redevelopment Proposal/RB-1 Text Amendment & RB-1  
Rezoning Ordinance/Sign Ordinance**

Dear Mr. Brady:

I want to again thank the Planning and Zoning Commission ("P&Z") for permitting our presentation this past Saturday. We write today to follow-up upon statements made by certain members of the opposition as our rebuttal<sup>1</sup>, and to discuss the applicable standards which P&Z is legally obligated to follow. We are very concerned that certain members of P&Z may not fully recognize and understand our client's constitutionally protected property right to obtain the "most intensely developed, most dense, zone" in Dewey Beach. As you know, a violation of our client's constitutionally protected property rights would unnecessarily subject Dewey Beach to liability (42 U.S.C.A. § 1983), and those individuals who intentionally violated those rights to personal liability.

After Saturday's meeting we have become concerned about the process by which P&Z is utilizing to review the pending ordinances. The review process required by the 2007 Dewey Beach Comprehensive Development Plan (the "2007 Comp Plan") makes clear that it is the "working group" who establishes the "final agreement" regarding the final form of the proposed Ruddertowne development. The "working group" has already reviewed and recommended our client's proposal to the Town Commissioners at 68 feet, and the Town Commissioners are now

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We had previously requested in writing a rebuttal period.

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required by law to consider ratifying this final agreement as to height and concept after P&Z completes its review of the pending ordinances, and any proposed substitute ordinances. Specifically, the 2007 Comp Plan, now adopted into law, provides that:

"The Town of Dewey Beach should continue to negotiate with Highway One Limited Partnership LLC in order to harmonize the development plans of Highway One<sup>[2]</sup> in accordance with this Comprehensive Plan." 2007 Comp Plan at page 22.

The 2007 Comp Plan further provides that a "working group" should meet with Highway One to reach a "final agreement" which would then be sent to the Town "Commissioners" for "ratification". 2007 Comp Plan at page 22.

As you know, a "working group" was lawfully established, as was contemplated by the 2007 Comp Plan, and after four public meetings held with our client on May 24th, June 15th, June 22nd and June 29th, the working group voted 7-2 in favor of our client's proposal at 68 feet in height. Thereafter, the Chairman of the working group stated at a meeting of the Town Commissioners, held on July 13th, that the working group had voted to forward to the Commissioners "exactly what was proposed by Harvey Hanna." July 13, 2007 Hearing Transcript at page 15. The Chairman went on to explain that the goal of the working group was to "[c]ome up with what was their proposal, was their proposal something that was reasonable, something that met the requirements of the Comprehensive Development Plan. We discussed all of that." July 13, 2007 Hearing Transcript at page 20. The next step in the process, as was noted by the working group Chairman, was to establish the necessary zoning regulations now that the working group had recommended the proposed concept be forwarded to the Town Commissioners at 68 feet. July 13, 2007 Hearing Transcript at page 20.

We have been advised by our client that the above language was specifically discussed with the Town Commissioners at a public hearing regarding the 2007 Comp Plan this year, and it was acknowledged at that public meeting that the Ruddertowne property was for sale and that negotiations between the Town may include negotiations with the Town and a new buyer. In addition, please also be advised that the current contract between our client and Highway One is a stock purchase agreement. Accordingly, under the stock purchase agreement, our client has become the equitable owner of the entity which owns the Ruddertowne parcels. As such, our client stands in the legal shoes of the Ruddertowne property owner, and enjoys all of its property rights as established by law and discussed infra at note 3.

Thus, as of the last meeting of the working group on June 29, 2007, an "agreement" at 68 feet with a concept plan had been reached with the working group and our client as contemplated in the 2007 Comp Plan. 2007 Comp Plan at page 22.

After P&Z acts on our client's application, the next legal step set forth in the 2007 Comp Plan is "ratification" of the agreement between our client and the working group at 68 feet with the Town Commissioners. Thus, the 68 feet height and concept of the proposal as presented by our client to the working group is the current agreement between the Town and our client, subject to the Commission's ratification, and it is now the role of P&Z to assist the Town in drafting the ordinances which will fully implement the existing agreement and concept in the form of new zoning and subdivision ordinances.

Notwithstanding the agreement reached with the working group, as you know, at P&Z's meeting this past Saturday, our client suggested a possible compromise to 48 feet. This was a suggested compromise in good faith to address public concerns, as well as political concern, and to help mend the divide our client's proposal has created between some Dewey Beach property owners.<sup>3</sup>

#### *I. Legal Status of P&Z Review and Recommendation*

As you know, in prior correspondence to P&Z, we have provided the relevant law and legal standards that we believe must be applied to the pending ordinances. We believe the law we have provided to P&Z is clearly established and, as such, we respectfully submit must be followed not only by our client, but also by P&Z.

We are troubled that P&Z has been invited by certain members of the opposition to violate our client's property rights.<sup>4</sup> Indeed, some in opposition to our client's project have

<sup>3</sup> Please note, however, that we have advised our client that in order to protect its legal rights and the final agreement reached with the working group on June 29, 2007, the 48 foot proposed compromise should be promptly withdrawn if not recommended by P&Z to the Town Commissioners this month.

<sup>4</sup> As was set forth in our August 23<sup>rd</sup> letter to the Town Solicitor, our client enjoys a property right in the parcels subject to the pending rezoning request as the equitable owners. County Council of Sussex County v. Green, 516 A.2d 480, 481 (Del. Supr. 1986)(constitutional rights attach to a property owner's property); Gelof v. First Nat. Bank of Frankford, 373 A.2d 206, 207 (Del. 1977)(equitable owners of property also enjoy constitutional protections afforded to the property owner); Riccobono v. Whitpain Tp., 497 F.Supp. 1364 (E.D.Pa. 1980)(same); National Land and Investment Co. v. Kohn, 215 A.2d 597, 601-02 (Pa 1966)(same); 27 A.L.R.3d 572 (1969)(same); 6 Summ. Pa.

incorrectly advised P&Z regarding the plain language of the 2007 Comp Plan and have significantly minimized its importance in the process suggesting, at times, that it is merely a guide that is somehow only optional.<sup>5</sup> The opposition's approach, if followed by the Town and P&Z, will unnecessarily expose the Town to significant liability and its officials to personal liability.<sup>6</sup> This approach also ignores the agreement our client reached with the working group when it approved our client's 68 foot concept by a vote of 7-2 on June 29th. We address these issues and others in more detail below, not to create an adversarial atmosphere in this process, but rather, to provide a factual and legal context to help ensure that our client's constitutionally protected property rights are not knowingly or unknowingly violated by P&Z or the Town.

## *II. Relaxed Bulk Standards Requires Greater Height in RB-1 Zoning District*

As was discussed in our September 24<sup>th</sup> letter to the P&Z, the plain meaning of the 2007 Comp Plan mandates a relaxation of not just some zoning "bulk standards," but all bulk

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Jur. 2d Property § 4:1 (March 2007 update)(same); see generally Article I, Secs. 8 & 9 of the Delaware Constitution.

<sup>5</sup> It is worth noting that some of those in opposition spent months, unsuccessfully, trying to undo the 2007 Comp Plan with Town Commissioners, the Office of State Planning and even the Attorney General's Office. Obviously, this opposition knows exactly how important the 2007 Comp Plan language is to our project, and its legal significance, or they would not have gone to such great lengths attempting to change the 2007 Comp Plan.

<sup>6</sup> There have been multiple examples where certain members of the opposition have engaged in rhetoric and a "say anything to win approach" to derail this project with statements alleging shadows on the beach at 3 p.m., false statements of applicable law, misleading petitions, false allegations of wrong doing and government corruption, and false allegations that we have "hijacked" the process by merely making a rezoning application. Such behavior has unfairly misled the media and many folks in Town. Some have begun to wise up to these tactics, and at this Summer's meeting at the bay center two residents demanded their names be removed from the opposition's "petition" because the opposition had misled them. Indeed, the opposition used questionable tactics to obtain signatures on their petitions. To this end, we have been advised that the opposition failed to show the concept of the project which we had provided them, failed to inform residents about the already approved 48 townhouse plan, and told at least one person that they were not a "friend" of Dewey Beach if they did not sign the survey. A survey we conducted, thereafter, resulted in over 1,300 signatures of support for our project when residents, property owners, business owners, and visitors were shown an actual picture of the project.

standards. Indeed, page 22 of the 2007 Comp Plan provides that "Relaxed bulk standards (setbacks, lot coverage, etc.) are available." It is important to note that the transition "or" **is not** used in this phrase, but rather, the transition, "etc." is used which plainly means that **all** bulk standards are available for relaxation. One of those bulk standards is "height" as is commonly stated in the planning and legal sources previously provided to P&Z.<sup>7</sup>

It is important to note that the 2007 Comp Plan does not indicate that such relaxation of the bulk standards is "optional" or is a "maybe" -- rather, the 2007 Comp Plan clearly states that the "relaxed bulk standards (setbacks, lot coverage, etc.) **are** available." This statement now carries the "force of law" in Dewey Beach and must be followed or our client's property rights will have been intentionally violated.<sup>8</sup> 22 Del. C. Sec. 702(d) ("After a comprehensive plan or portion thereof has been adopted by the municipality in accordance to this chapter, the comprehensive plan shall have the **force of law.**")(emphasis added). A violation of our client's constitutionally protected property rights would unnecessarily subject Dewey Beach to liability (42 U.S.C.A. § 1983), and those individuals who intentionally violated those rights to personal liability. Hall v. McGuigan, 743 A.2d 1197, 1206 (Del.Super. 1999)(where a "clearly established" right is violated and a reasonable person could understand the right established in law, personal liability is imposed against the violator); Gruenke v. Seip, 225 F.3d 290, 298 (3<sup>rd</sup> Cir. 2000)(same); Brown v. Muhlenberg Twsp., 269 F.3d 205 (3<sup>rd</sup> Cir. 2001)(same). Furthermore, private individuals who may conspire with government officials to violate our client's protected right are also subject to personal liability. See e.g., Riccobono v. Whitpain Twsp., 497 F.Supp. 1364 (D.C.Pa. 1980)(private parties will be held liable if they are found to have "conspired with governmental officials to deprive another of his rights."); Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970).

*III. The 2007 Comp Plan Requires the RB-1 Zone Be the "Most Intensely Developed, Most Dense Zone"*

The language in the 2007 Comp Plan also makes abundantly clear that our client's property is required to be rezoned to the new RB-1 zoning district which is to be the "most intensely developed, most dense, zone" in Dewey Beach. This is not optional, as has been suggested at past meetings; rather, this requirement is the law that must be followed by not only

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<sup>7</sup> As was set forth in our August 22<sup>nd</sup> and September 24<sup>th</sup> letters to P&Z, there can be no doubt that "height" is one of several "bulk standards," and this fact is well established in both planning and legal precedent as cited in our earlier correspondence. (Please see copies attached hereto for your convenience).

<sup>8</sup> At recent public hearings it has been suggested by some that the 2007 Comp Plan is merely an optional guide. However, the 2007 Comp Plan is not simply a guide, but also a legal blueprint which must be followed as it possesses the force of law.

our client, but also the Town. Furthermore, the language contained in the 2007 Comp Plan is the law our client relied upon before spending substantial sums of money in regard to the pending ordinance and related proposal.

As you know from our presentation and the information we have submitted into the record to date, the Best Western Hotel (also located on Dickinson Street) is over 42 feet in height (4 stories tall). In addition, the Best Western contains 75 units, and is located upon a parcel which is only 21,875 +/- square feet in size.<sup>9</sup> The 2007 Comp Plan requires that the Best Western be rezoned to RB-2 which is only the "middle level of development intensity" according to the 2007 Comp Plan. In contrast, the Ruddertowne is required by the 2007 Comp Plan to be rezoned to RB-1 which is required to be the "most intensely developed, most dense, zone" in Dewey Beach. Thus, the RB-1 must, at a minimum, permit a 5 story structure (at least 48 feet in height) with a density and intensity greater than that of the Best Western. Otherwise, the RB-1 will not be the "most dense" and "most intense[]" district in Dewey and the 2007 Comp Plan will not have been properly adhered to by the Town. By comparison to the Best Western parcels<sup>10</sup>, our client's parcels total 102,801 +/- square feet. In order to exceed the density and intensity of the Best Western as required by the 2007 Comp Plan, our client's proposal should be approved at a density of greater than 345 units, and be approved for a construction height of at least 5 stories. However, because of the 2007 Comp Plan's mixed-use preference, and based upon sound planning principals supporting such mixed-use development, our client's proposed compromise includes 120 hotel rooms<sup>11</sup>, 48 condominiums, and approximately 28,000<sup>12</sup> square feet of new commercial area at five stories and 48 feet above average grade.

<sup>9</sup> We have been advised that the Best Western was approved and constructed after Dewey Beach was incorporated, and after Dewey Beach adopted its zoning Code. Obviously, the Best Western existed when the 2007 Comp Plan was adopted requiring the RB-1, and not the RB-2 district, to be the most intense, most dense zone in Town.

<sup>10</sup> Note that the Best Western rests on two separate tax parcels, whereas the Ruddertowne rests on three separate tax parcels.

<sup>11</sup> When reviewing a zoning ordinance a court initially presumes that the ordinance is valid and constitutional. See APT Pittsburgh Limited Partnership v. Penn Township Butler County of Pennsylvania, 196 F.3d 469, 475-476 (3rd Cir. 1999). However, this presumption can be overcome by proof that the ordinance, among many other things, totally excludes an otherwise legitimate use. Id. citing Farrell v. Worcester Twshp. Bd. of Supervisors, 481 A.2d 986, 989 (Pa. Commw. Ct. 1984); accord Ficco, 677 A.2d at 899; Overstreet v. Zoning Hearing Bd. of Schuylkill Twshp., 618 A.2d 1108, 1112-13 (Pa. Commw. Ct. 1992). Exclusionary ordinances take two forms: *de jure* and *de facto* - *De jure* exclusion exists where "the ordinance, on its face, totally bans a legitimate use."

If our client's parcels are not rezoned to permit a higher density and intensity than the Best Western in the proposed RB-2, the 2007 Comp Plan will not have been properly followed by the Town, and our client's property rights will have been intentionally violated.<sup>13</sup>

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*Id.* citing Farrell, 481 A.2d at 989. "Exclusionary impact can invalidate an ordinance; exclusionary intent is not necessary." *Id.* citing Overstreet, 618 A.2d at 1113.

If a party rebuts the presumption of constitutionality by presenting sufficient evidence that an ordinance is exclusionary, the burden then shifts to the municipality to demonstrate that the zoning ordinance "[b]ears a substantial relationship to public health, safety and welfare." *Id.* citing Lamanti's, 556 A.2d at 24; see Exton Quarries, Inc. v. Zoning Bd. of Adjust. of W. Whiteland Twshp., 228 A.2d 169, 179 (Pa. 1967) ("[A] zoning ordinance which totally excludes a particular business from an entire municipality must bear a more substantial relationship to the public health, safety, morals and general welfare than an ordinance which merely confines that business to a certain area in the municipality."). Aesthetic considerations alone are not a valid use of such police power. See The Mayor and Council of Wilmington v. Turk, 1925 Del. Ch. LEXIS 39 (Del. Ch. 1925). Compare Exton Quarries, Inc., 228 A.2d 167 (the Pennsylvania Supreme Court held it was unconstitutional to completely ban quarries from township limits and, in so doing, the court rejected the reasoning that such business use could be performed in neighboring jurisdictions).

As you know, Dewey Beach's current zoning Code does not permit new hotels to be built within the Town even though it is a well known and established Delaware resort destination. To help remedy this imbalance, the ordinance before P&Z proposes that hotels again be a permitted use in this resort town, but only in the RB-1 district, so as to remedy this exclusionary zoning practice. Indeed, by prohibiting all hotels in all districts it will be difficult for the Town to establish that a complete prohibition on all such uses bears a substantial relationship to public health, safety and welfare.

<sup>12</sup> The existing square footage at Ruddertowne today is approximately 20,000 square feet.

<sup>13</sup> Some members of the opposition have stated that the 2007 Comp Plan should be amended to change this type of language. On the one hand, the opposition states this language means nothing and is only optional, but on the other hand they want it changed by the Town. We note that our client enjoys a "vested right" in the currently adopted and certified 2007 Comp Plan because it is the law today and our client has spent substantial sums of money in direct reliance upon the law. As such, any changes to the 2007 Comp Plan cannot lawfully be retroactively applied to our client without violating our client's property rights.

*IV. The 2007 Comp Plan Requires The Town To Negotiate in Good Faith*

The 2007 Comp Plan indicates that the Town of Dewey Beach should continue to negotiate with Highway One in accordance with the provisions contained in the 2007 Comp Plan. As discussed *supra*, the final step remaining after P&Z issues their recommendation based upon the agreement between our client and the working group, is a ratification of the agreement by the Commissioners. While it was asserted at the last P&Z meeting that these negotiations were intended to apply only to Highway One, our client is the equitable owner of the property, and, therefore, the legal successor of Highway One for purposes of the Ruddertowne property. Moreover, while not required, our client has confirmed that this issue was specifically discussed with the Commissioners at a 2007 Comp Plan public hearing, and it was acknowledged that Ruddertowne was for sale and that this language would also apply to the purchaser. Because this language is contained in the 2007 Comp Plan, it is also the law that we must all follow in good faith. To this end, we are respectfully requesting, as the applicant and beneficiary of the language contained in the 2007 Comp Plan, that we be permitted to discuss our client's application with P&Z, including our proposed 48 foot compromise, at Tuesday night's scheduled workshop. If the Town refuses to conduct such negotiations in good faith as contemplated by the 2007 Comp Plan, the 2007 Comp Plan will not have been properly followed and our client's property rights will have been intentionally violated.

*V. Dewey Beach May Lawfully Adopt Differing Building Heights*

As was discussed in our August 22<sup>nd</sup> letter, Dewey Beach (and all other Delaware municipalities for that matter) has the legal right to establish different heights in different zoning districts, and may also establish special heights within the same zoning district where certain standards are satisfied, such as the language in the 2007 Comp Plan regarding the minimum 80,000 square foot minimum size requirement. For your convenience, we have attached additional case law supporting this same, well established, legal position. As set forth in the case law and legal treatise found in the footnote below<sup>14</sup>, the touchstone to establishing differences in

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<sup>14</sup> Barry v. Town of Dewey Beach, 2006 WL 1668352 (Del.Ch.) (noting that the uniformity requirement of 22 Del. C. § 302 has been treated as "a type of statutory equal protection challenge"); Green v. County Council of Sussex County, 508 A.2d 882 (Del.Chan. 1986) (finding that in order to defeat an equal protection challenge to a zoning regulation, courts must find that the regulation has "some rational plan or purpose"); Charter Twsp. of Oshtemo v. Central Advertising Co., 336 N.W.2d 823, 826 (C.A.Mich. 1983) (holding that a zoning ordinance permitting billboards in certain parts of a zoning district but not others did not violate the uniformity requirement, following other jurisdictions that "have read an exception into their codification of the uniformity requirement, allowing classifications within a district as long as they are reasonable" and finding that the regulation met the "reasonableness" standard); 1 Rathkopf's *The Law of Zoning and Planning* § 11:16 (4th ed) (Uniformity requirements in "zoning enabling acts ... generally

heights is related to whether the proposed zoning law is rationally related to a legitimate governmental purpose. To this end, your 2007 Comp Plan clearly establishes the legal basis for this approach based upon a well thought-out, State certified, growth management plan.

As you may also be aware, by letter dated September 13<sup>th</sup>, counsel to the opposition sent a letter to P&Z stating that the proposed ordinance "violates Delaware law." In support of this legal position, the opposition cites – nothing. We learned for the first time Saturday that the apparent legal basis for this claim is some type of equal protection argument. In support of the equal protection argument made on Saturday the opposition again cited – nothing.<sup>15</sup> As the above case law confirms, a rational basis review is the legal standard applied to zoning ordinances. Obviously, any person who has ever visited a city or town in this State, let alone in this nation, knows that it is commonplace for cities and towns to assign different heights to different areas, sometimes based upon special conditions within such areas – like minimum lot size. The authority to set such standards dates back to the very first U.S. Supreme Court challenge to zoning authority in Euclid. Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365 (1926). Put another way, if P&Z were to accept this argument, it would accept the absurd positions that virtually all cities have illegal zoning ordinances.

#### *VI. Proposed Substitute to Pending Ordinance*

As was discussed at Saturday's P&Z meeting, as a magnanimous proposed compromise in the interest of seeking consensus with all parties and to reduce tension between neighbors, our client proposed to reduce the building height at Ruddertowne to only 48 feet. This proposed compromise is 20 feet less than what was originally proposed in the pending ordinance and will permit one story greater than the Best Western located in the proposed RB-2 district, which, again, is proposed to be a less dense and less intense business district. As is commonly permitted in the ordinance introduction and review process, attached hereto please find for your review and consideration a proposed substitute ordinance proposing the change in height from 68

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[have] been interpreted by courts as commensurate with the constitutional equal protection prohibition of arbitrary discrimination in the regulation of land use and development"); 1 Rathkopf's The Law of Zoning and Planning § 4.1 (4th ed) (only "arbitrary and unreasonable" zoning regulations will be struck down as violating equal protection and stating that some inequality in treatment as a result of zoning regulations is permissible, so long as the regulations "bear a reasonable and just relation either to the general object of the legislation or to some substantial consideration of public policy or convenience or the service of the general welfare").


<sup>15</sup> As you may recall, unlike the opposition, we have regularly provided P&Z with case law and analysis to support our positions. This practice provides you and your Town Solicitor time to review and confirm our research.

feet to a reduced height of only 48 feet.<sup>16</sup> We have offered this proposed compromise as part of our ongoing good faith efforts to voluntarily negotiate with the Town as required by the 2007 Comp Plan.<sup>17</sup>

In sum, we again thank you for your attention to this important matter. We felt it necessary to send this letter in rebuttal to help ensure that P&Z is fully appraised of our client's constitutionally protected property rights and the legal standards which must be applied by the Town to ensure those rights are not intentionally or unintentionally violated at the invitation of the opposition. We are certain that if it were the opposition's property rights at stake, they would want to ensure the same level of detail and clarity.

We very much look forward to working with the members of P&Z and the Town of Dewey Beach in regard to the pending ordinances, and further hope that the opposition will accept the property rights our client enjoys and set aside what has proven to be a "win at any cost" and "say anything approach" to derail our client's project. Indeed, we have never witnessed any effort by the opposition toward any compromise on height whatsoever.

Respectfully submitted,



Shawn P. Tucker

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

Enclosures

cc: The Honorable Mayor Dell Tush, Commissioner, w/enclosures, via regular mail  
The Honorable Dale H. Cooke, Commissioner, w/enclosures, via regular mail  
The Honorable Diane Hanson, Commissioner, w/enclosures, via regular mail  
The Honorable Richard Hanewinkel, Commissioner, w/enclosures, via regular mail  
The Honorable Claire Walsh, Commissioner, w/enclosures, via regular mail  
Harry Wilson, Planning and Zoning Chairman, w/enclosures, via federal express  
David King, Planning and Zoning Vice Chairman, w/enclosures, via federal express

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<sup>16</sup> Please also note that this proposed form of substitute ordinance also includes the house keeping changes we forwarded to P&Z and the Town Solicitor on September 20th.

<sup>17</sup> Obviously, we were disappointed that the opposition Saturday did not see this proposed compromise as a positive development, but instead, suggested such a substitute would be improper. It seems peculiar that a group backed by a professional lobbyist is unaware that amendments to pending legislation can be lawfully proposed.

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Ed Beste, Planning and Zoning Commissioner, w/enclosures, via federal express  
Jim Dedes, Planning and Zoning Commissioner, w/enclosures, via federal express  
Carol Ann Dryer, Planning and Zoning Commissioner, w/enclosures, via federal express  
George Metz, Planning and Zoning Commissioner, w/enclosures, via federal express  
Faith Duncan, Planning and Zoning Commissioner, w/enclosures, via federal express  
Gordon Elliott, Town Manager, w/enclosures, via federal express  
Chris Fazio, Dewey Beach Planner, w/enclosures, via federal express  
Harvey, Hanna & Associates, Inc., w/enclosures, via regular mail  
William J. Cohen, AICP, Ph.D, Professional Planner, w/enclosures, via regular mail  
Jeremy Alvarez, AICP, Professional Planner, w/enclosures, via regular mail  
Christopher J. Williams, P.E., Traffic Engineer, w/enclosures, via regular mail

**Meeting Minute Details**  
**06/29/2007 07:00**

**DRAFT**

**RUDDERTOWNE ARCHITECTURAL COMMITTEE MEETING MINUTES**

**June 29, 2007**

The meeting was called to order by Chairperson Mike Eisenhauer at 7:30 p.m. with the Pledge of Allegiance. All Committee members were present.

The minutes of the June 22<sup>nd</sup> meeting were amended and accepted as such.

**Old Business:** Discussion and comments pertaining to the proposed development on Dickinson Avenue south:

**Public Comments:**

Lynne Meyer – was dismayed that she received information only by personal email. She feels the change of height is a “Pandora’s Box” that will change the character of the Town.

Tom Bronze – spoke as a registered civil engineer and understands the Comprehensive Plan. His concern is that when a Plan is violated, a precedent is set. A variance will significantly impact the tone of the community. He claims the Commissioners can take part of the land by eminent domain.

Harold Dukes – received calls asking his law firm, Tunnell & Raysor, to stop this proposal.

Ellen Danaher – her concerns are that the citizens haven’t been adequately informed, that the agendas need to be better, primarily the height topic, and she questioned the legalities of the postings.

Everett Widiska – wonders whether there are enough facilities to handle the larger number of people in a smaller area, primarily the beach, and is concerned for public safety in larger structures.

Rick Judge – agrees with Hal Dukes --thinks we are giving Ruddertowne too much importance: a 68 ft structure will change Dewey Beach.

Fred Henry – concerned with the 35 ft height restriction change; questioned condo restrictions, and thinks the project is a guise to get a chance to change units to condo units.



Diane Hanson – Yes

Vivian Barry – No

Anna Legates – Yes

Carol Everhart – No



Paul Bauer – No

Claire Walsh – No

Bernadette Hearn – No

Steve Montgomery – No



Mike Eisenhower – No

 A motion was made by Claire Walsh, seconded by Vivian Barry, to accept the plan and send to the Commissioner a **recommendation to accept the proposal** to the Commissioners. The discussion ensued: 

Paul Bauer – in favor of having the process continue.

Steve Montgomery – questioned Mr. Brady whether (hypothetically) the Commissioners have the ability extend the current building permit past Nov 1<sup>st</sup> for another two or three years: Mr. Brady responded from Chapter 71, subpart 3 G. Steve feels it is the job of the Committee to gather information for the Commissioners.

Anna Legates stated the Town should be careful about zoning; they may be in non-compliance with the Plan. She wanted the planner's comment added to the public record to be careful until the Plan is certified by the State

 A roll call vote was taken to **send the recommendation** to the Commissioners: (Motion passed 7 – 2) 

Diane Hanson – No

Vivian Barry – Yes

Anna Legates – No

Carol Everhart – Yes

Paul Bauer – Yes

land uses and residential dwelling units are permitted uses on upper floors in mixed-use structures.

4. The Town of Dewey Beach should continue to negotiate with Highway One Limited Partnership LLC. in order to harmonize the development plans of Highway One in accordance with this Comprehensive Plan.

Utilizing these elements, the following criteria are presented for consideration for new Commercial Overlay Districts. It is the goal of this Comprehensive Plan to encourage the commercial and residential use of contiguous tracks of at least 80,000 square feet. The percentages listed herein are the ideals of this Plan, however, with the development plans filed before the enactment of this Comprehensive Plan, which could be considered inconsistent with this Plan, the working group's final agreement upon ratification by the Commissioners shall be considered consistent with the Plan.

**Resort Business-1 (RB-1).** This zone is the most intensely developed, most dense, zone. As Map 9 indicates, it is recommended for a relatively small area west of S.R. 1 between Rodney and Van Dyke Avenues. The features of this zone include the following.

- Mixed-use structures with floor-area square footage of not less than one third commercial land use and not greater than two thirds residential land use are required.
- If not mixed use, a structure must be entirely dedicated to commercial land use.
- Permitted commercial land uses are similar to those permitted commercial land uses in the current RB Zone.
- Parking is the same as in current RB Zone.
- Single-family detached dwellings are prohibited.
- Relaxed bulk standards (setbacks, lot coverage, etc.) are available for contiguous tracts consisting of at least 80,000 square feet with a detailed commercial-, mixed- and multi-family land-use-development-plan review as an overlay district or alternate method of development, provided that there is public access to all common areas of the development and any waterfront area shall be for public use. Commercial land use is required on the first floor (or, if the first floor is substantially below grade, the street-level floor) in all structures within a mixed-use overlay district.

**Resort Business-2 (RB-2).** This zone represents the middle level of development intensity. As Map 9 indicates, it is recommended for the S.R. 1 corridor. The features of this zone include the following.

- Mixed-use structures of floor-area square footage of not less than one third commercial land use and not greater than two thirds residential land use are required.
- If not mixed use, a structure must be entirely dedicated to commercial land use.
- Permitted commercial land uses are similar to those permitted commercial land uses in the current RB and RR Zones.
- Parking is the same as in the current RB Zone.
- Single- and multi-family dwelling land uses are prohibited.
- Relaxed bulk standards (setbacks, lot coverage, etc.) are available for contiguous tracts consisting of at least 80,000 square feet with a detailed commercial-, mixed-, and multi-family land-use-development-plan review as an overlay district or alternate method of development, provided there is public access to all common areas of the development and any waterfront area shall be for public use. The floor-area square footage development in this overlay district shall be not less than one third commercial land use and not greater than two thirds residential land

Wilmington Trust Center, 1100 North Market Street, Suite 1001, Wilmington, DE 19801  
Tel: (302) 777-5860 ■ Fax: (302) 777-5863 ■ www.WolfBlock.com

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October 9, 2007

**VIA HAND DELIVERY  
& ELECTRONIC MAIL**

John F. Brady, Esquire  
Dewey Beach Town Solicitor  
Brady, Richardson, Beauregard & Chasanov, LLC  
10 E. Pine Street  
P.O. Box 742  
Georgetown, DE 19947

**Re: Ruddertowne Redevelopment Proposal/RB-1 Text Amendment & RB-1  
Rezoning Ordinance/Sign Ordinance**

Dear Mr. Brady:

In follow-up to our October 8th letter, we also wanted to provide you with a copy of the minutes from the working group wherein the final agreement was reached and the working group voted to "accept the plan", which was the color concept drawing our client provided at 68 feet (copy attached).

"A motion was made by Claire Walsh, seconded by Vivian Barry, to accept the plan and send to the Commissioner a **recommendation to accept the proposal** to the Commissioners.

\* \* \*

A roll call vote was taken to **send the recommendation** to the Commissioners: (Motion passed 7 – 2)"

June 29, 2007 Meeting Minutes (emphasis in original). (Copy Attached).

WIL:69068 1/COM284-244916

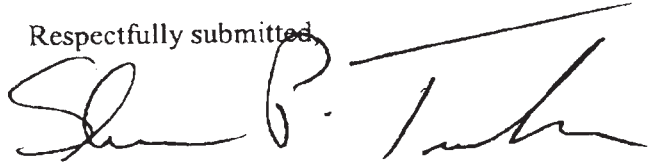
Boston, MA ■ Cherry Hill, NJ ■ Harrisburg, PA ■ New York, NY ■ Norristown, PA ■ Philadelphia, PA ■ Roseland, NJ ■ Wilmington, DE

WolfBlock Government Relations - Harrisburg, PA ■ WolfBlock Public Strategies - Boston, MA and Washington, DC

Wolf Block, Schorr and Solis-Cohen LLP, a Pennsylvania Limited Liability Partnership

Excepting the suggested compromise by our client at 48 feet, pursuant to Dewey Beach law and State law, 68 feet stands as the "final agreement" between our client and the Town of Dewey Beach, and it is this final agreement which by law must serve as the legal basis for P&Z's recommendation to the Town Commissioners along with the implementing ordinances. (2007 Comp Plan, page 22 attached).

Respectfully submitted,



Shawn P. Tucker  
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

Enclosures

cc: The Honorable Mayor Dell Tush, Commissioner, w/enclosures, via regular mail  
The Honorable Dale H. Cooke, Commissioner, w/enclosures, via regular mail  
The Honorable Diane Hanson, Commissioner, w/enclosures, via regular mail  
The Honorable Richard Hanewinkel, Commissioner, w/enclosures, via regular mail  
The Honorable Claire Walsh, Commissioner, w/enclosures, via regular mail  
Harry Wilson, Planning and Zoning Chairman, w/enclosures, via federal express  
David King, Planning and Zoning Vice Chairman, w/enclosures, via federal express  
Ed Beste, Planning and Zoning Commissioner, w/enclosures, via federal express  
Jim Dedes, Planning and Zoning Commissioner, w/enclosures, via federal express  
Carol Ann Dryer, Planning and Zoning Commissioner, w/enclosures, via federal express  
George Metz, Planning and Zoning Commissioner, w/enclosures, via federal express  
Faith Duncan, Planning and Zoning Commissioner, w/enclosures, via federal express  
Gordon Elliott, Town Manager, w/enclosures, via federal express  
Chris Fazio, Dewey Beach Planner, w/enclosures, via federal express  
Harvey, Hanna & Associates, Inc., w/enclosures, via regular mail  
William J. Cohen, AICP, Ph.D, Professional Planner, w/enclosures, via regular mail  
Jeremy Alvarez, AICP, Professional Planner, w/enclosures, via regular mail  
Christopher J. Williams, P.E., Traffic Engineer, w/enclosures, via regular mail