

PARTIES

2. DBE is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business at 124 Dickinson Avenue; P.O. Box 507; Rehoboth Beach, Delaware 19971.

3. RRI is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business at 124 Dickinson Avenue; Dewey Beach, Delaware 19971.

4. Defendant, Town of Dewey Beach (the “Town” or “Dewey Beach”), is a Delaware municipality with an official address at 105 Rodney Avenue; Dewey Beach, Delaware 19971. In relevant part, the Town is comprised of the Town Commission, which consists of four Commissioners and the Mayor; the Planning and Zoning Commission; the Building Inspector; the Town Manager; and the Board of Adjustment. The Town is organized by State charter as a town manager form of government, and, as such, is not designed to be managed by the Town Mayor.

5. Defendant, Dell Tush, is a Commissioner of the Town of Dewey Beach, with an official address at 105 Rodney Avenue; Dewey Beach, Delaware 19971.

6. Defendant, Richard Hanewinkel, is a Commissioner of the Town of Dewey Beach, with an official address at 105 Rodney Avenue; Dewey Beach, Delaware 19971.

7. Defendant, Diane Hanson, is a Commissioner of the Town of Dewey Beach, with an official address at 105 Rodney Avenue; Dewey Beach, Delaware 19971.

8. Defendant, David King, is the Vice-Chairperson of the Planning and Zoning Commission, with an official address at 105 Rodney Avenue; Dewey Beach, Delaware 19971.

JURISDICTION AND VENUE

9. This action arises under 42 U.S.C. §§ 1983, 1985 and 1986 and the Constitution of the United States of America. This Court possesses jurisdiction over this action pursuant to 28 U.S.C. § 1331 because DBE's claims arise under the Constitutional laws of the United States. The Court also possesses jurisdiction over this action pursuant to 28 U.S.C. § 1343 because the claims relate to the deprivation under the color of State law, statute, ordinance, regulation, custom or usage of rights, privileges or immunities secured by the Constitution of the United States. This Court possesses supplemental jurisdiction pursuant to 28 U.S.C. § 1367 of state law claims asserted herein and that form part of the same case or controversy.

10. Venue is proper in the District of Delaware pursuant to 28 U.S.C. § 1391(b)(2) because the property that is the subject of this action is situated within this district, and the events giving rise to the claims occurred within this district.

FACTS

11. Defendants have abused their powers and conspired to thwart DBE and RRI's legitimate efforts to redevelop Ruddertowne, as explained in detail below.

I. TOWN OF DEWEY BEACH

12. The Town of Dewey Beach is located in Sussex County, Delaware. The Town was incorporated in 1981 pursuant to the Charter of the Town of Dewey Beach (the "Charter"). The Charter creates a town manager form of government. The Charter provides that five Commissioners comprise the Town Commission,¹ which shall be the government of the Town. The Town Commission, sometimes also referred to as "Town Commissioners," "Commissioners," or the "Commission," is led by the Mayor, who, as a Commissioner, is

¹ At times the Town Commissioners are incorrectly referred to as "Town Council" by the Town.

selected by a majority vote of the Commissioners to be the Town Mayor. At all relevant times, the Town Commission has included the following individuals:

- (i) Mayor Dell Tush
- (ii) Robert Fitzgerald (replaced in September 15, 2007 election)
- (iii) Michael Eisenhower (replaced in September 15, 2007 election)
- (iv) Claire Walsh (replaced in September 20, 2008 election)
- (v) Dale Cooke (replaced in September 20, 2008 election)
- (vi) Diane Hanson (elected September 15, 2007)
- (vii) Richard Hanewinkel (elected September 15, 2007)
- (viii) Marc Appelbaum (elected September 20, 2008 election)
- (ix) Marty Seitz (elected September 20, 2008 election)

13. The Town of Dewey Beach Planning Commission (commonly referred to as “Planning and Zoning” or “P&Z”) is authorized to investigate, report and recommend changes to the zoning code in Dewey Beach and has full authority to investigate and review any other matter referred to it by the Town Commissioners. P&Z was vested with the task of preparing a comprehensive development plan for the Town that, among other things, “best promotes the health, safety, prosperity and general public welfare” of the citizens of Dewey Beach. As a quasi-judicial body, P&Z must act with impartiality in carrying out its tasks. P&Z is comprised of five to seven members appointed by the Mayor and affirmed by the Town Commissioners. At all relevant times, P&Z consisted of the following members:

- (i) Chairman Harry Wilson
- (ii) Vice Chairman David King
- (iii) Edward Beste
- (iv) James Dedes
- (v) Faith Duncan
- (vi) George Metz (February 2008)
- (vii) Carolann Dryer (May 2008)
- (viii) Gary Mauler (as of May 2008)
- (ix) Charles McKinney (as of February 2008)

The Town of Dewey Beach, through the enactment of the Dewey Beach Code, has delegated to the Building Inspector (also at times referred to as the “Building Official”) the power to review

building permit applications and issue all Dewey Beach building permits required prior to constructing, repairing or removing structures located or proposed to be located within the municipal boundaries of the Town. Furthermore, the Building Inspector is vested with exclusive authority to administer all regulations relating to building permits. The Building Inspector is hired by and reports to the Town Manager. At all relevant times, the Building Inspector was William Mears.

14. The Town Manager, and not the Mayor, acts as the Chief Administrative Officer of the Town as well as the Secretary of the Commission of the Town and the Treasurer of the Town Commission. In essence, the Commissioners must handle all Town business through the Town Manager. The Town Manager is appointed by the Mayor and unanimously confirmed by the Commissioners. Pursuant to the Charter, the Town Manager is responsible to the Town Commissioners. To help ensure the fair and lawful administration of Town laws and regulations, the Town Charter specifically states that the Town Manager shall not be influenced by any matters whatsoever of a political nature. At all relevant times, the Town Manager was Gordon Elliot.

15. Unless otherwise specifically referenced, “the Town” or “Dewey Beach” shall include all governing bodies and officials, herein described.

II. TOWN OF DEWEY BEACH COMPREHENSIVE DEVELOPMENT PLAN²

16. Delaware law requires that municipalities, such as the Town of Dewey Beach, prepare a comprehensive development plan with respect to land use and zoning. On June 29, 2007, after a five year process of public input and public meetings, the Town, through the unanimous vote of its Town Commission, adopted the 2007 Dewey Beach Comprehensive Plan

² Pertinent sections of the Comprehensive Plan are attached as Exhibit A.

(the “Comprehensive Plan”). The State of Delaware, Office of Management and Budget Planning, certified the Comprehensive Plan on July 29, 2007. Delaware law plainly states that, upon certification by the State of Delaware, the Comprehensive Plan “shall have the force of law.”

17. The Comprehensive Plan specifically provides for expansion of the already existing “commercial-land-use area” by creating three resort-business (RB) districts, replacing the previous designation of one RB district. The Comprehensive Plan designates RB-1 as the most intensely developed, most dense zone in Town with relaxed bulk standards (“setbacks, lot coverage, etc.”) for sites consisting of 80,000 square feet or more of contiguous area. It is widely recognized and accepted that building height is a type of “bulk standard.” Indeed, the Town’s own planner/consultant, Christopher Fazio, P.E., of Remington, Vernick & Beach Engineers, publicly represented that “bulk standards encompass height and density.”

18. Ruddertowne is located in the area designated in the Comprehensive Plan as RB-1, the most intense and most dense district in Town. Because the Ruddertowne property is also over 80,000 square feet in size, the Comprehensive Plan provides for relaxed bulk standards in the development or redevelopment of the site. Ruddertowne is the only property that satisfies the 80,000 square foot requirement in the Town of Dewey Beach.

19. RB-2 is defined as “the middle level of development intensity.” The Best Western Gold Leaf Hotel (“Best Western”) is located across the street from Ruddertowne in an RB-2 district. Upon information and belief, the Town permitted the Best Western to be built to a height of 42 feet. Unlike Ruddertowne, the Best Western is not a mixed-use structure and is less than an 80,000 square foot parcel. Furthermore, the Best Western is located in a lower tier commercial zoning district than Ruddertowne. The Best Western existed at the time the

Comprehensive Plan was enacted; therefore, the Comprehensive plan contemplates that new structures built in the RB-1 district upon land equal to or greater than 80,000 square feet are entitled to be more dense, more intense, and include relaxed bulk standards that exceed those enjoyed by the Best Western.

III. HISTORY OF RUDDERTOWNE

20. Between 1979 and 1988, DBE purchased three contiguous parcels of land in Dewey Beach that now comprise Ruddertowne. In 2000, Highway One, a limited partnership, became the sole or majority stockholder of DBE. Highway One remained the sole stockholder until October 31, 2007 when it sold its interest to Ruddertowne Redevelopment, Inc. (“RRI”).

21. RRI purchased DBE stock in order to develop the Property in accordance with the Comprehensive Plan’s designation of RB-1 as the most dense, most intense development area in Dewey Beach with relaxed bulk standards. Ruddertowne is the only parcel of land in Dewey Beach that is both designated by the Comprehensive Plan as RB-1 and that meets the 80,000 square foot requirement for relaxed bulk standards. Ruddertowne currently includes the Baycenter for the Performing Arts, and a number of popular restaurants such as The Lighthouse Cove (f/k/a Crabbers Cove and The Lighthouse) and Que Pasa, as well as other shops and places of interest.

IV. HARASSMENT AND OBSTRUCTION OF DBE’S PROPERTY RIGHTS

22. In 2006, prior to RRI purchasing DBE stock, DBE obtained a building permit to convert Ruddertowne from a commercial use to an exclusive residential use which was permitted in Dewey Beach’s former zoning code. The building permit authorized the first phase of construction of a development project designed ultimately to include 48 townhouses. While code compliant, the Town went to great lengths to stop the conversion of the commercial use to residential use. Nevertheless, following the law in place at the time, the Building Inspector

issued the building permit for the first phase to DBE. Following issuance of the building permit, the Town attempted to nullify it and then, only after that attempt failed, requested that DBE forego its right to build the residential development. In return, the Town offered to work toward expanding the existing commercial uses at Ruddertowne. In fact, as part of its promised Comprehensive Plan development efforts, the Town requested that DBE design a mixed-use structure of residential and commercial units instead of building all townhouses on the property. In reliance on the Town's commitment to work towards erecting a mixed-use structure in the most dense, most intense zoning district with relaxed bulk standards, DBE agreed to forego its right to build townhouses on the Property.

23. The Town reaffirmed its firm commitment to DBE in this regard by explicitly providing in its Comprehensive Plan that: "The Town of Dewey Beach should continue to negotiate with Highway One Limited Partnership LLC [then associated with DBE] in order to harmonize the development plans of Highway One, in accordance with this Comprehensive Plan." In keeping with this requirement, the Mayor formed a working group, the Ruddertowne Architectural Review Committee ("RAC" or the "working group").

24. The Chairman of RAC, Commissioner Michael Eisenhauer, publicly stated that the Town was going to create a town center, and, "[I]f they [DBE] come in inches below the Lighthouse, I think we'll be OK." Commissioner Eisenhauer also publicly confirmed that height is a part of the relaxed bulk standards.

25. Prior to the enactment of the Comprehensive Plan, the Dewey Beach Zoning Code (the "Zoning Code") limited building height to 35 feet. Despite this restriction, the Town has authorized numerous commercial and residential buildings to exceed 35 feet. Historically, the Town has not allowed any structure to exceed the 72-foot tall Dewey Beach Lighthouse. Just

as importantly, the Town's Comprehensive Plan confirmed that Ruddertowne was located in the most intense, most dense area in Town, and that it would enjoy relaxed bulk standards when developed or re-developed.

26. Mayor Tush even stated the Town's position at the January 13, 2007 Town Meeting by reiterating her approval of the Commercial Overlay District:

“It is the goal of this plan to encourage the commercial and residential use of contiguous tracts of at least 80,000 square feet. The percentages listed herein are the ideals of the plan. However, with the development plans filed before the enactment of the 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.*”

Mayor Tush further stated that “she believed his [Town Solicitor's] wording would allow negotiations to go forward and, whatever the compromise, it would be consistent with the plan.”

And, in fact, substantially similar language to that proposed above was placed in the Comprehensive Plan.

27. At the first RAC meeting, DBE requested a “wish list” from Town Officials and its residents in an effort to incorporate their desires into a concept plan to redevelop the Ruddertowne property consistent with the Comprehensive Plan. At this point, the Town was well aware that the Ruddertowne property was under contract. In fact, the Town wanted DBE to be sold to a party willing to develop or redevelop the Property as a mixed use structure in accordance with its Comprehensive Development Plan requirements. The primary motivation for RRI to purchase DBE shares was the Property's designation in the Comprehensive Plan as RB-1 which was to be the “most intensely developed, most dense, zone” in Town with relaxed bulk standards.

28. On June 15, 2007, DBE unveiled the initial concept plan for the Ruddertowne redevelopment (the “Concept Plan”) to the public. The Concept Plan was designed to

accommodate the Town's wish list for a town center, and for adherence to the provisions of the Comprehensive Plan. The Concept Plan included a Welcome Center, a bayside boardwalk, public restrooms, a 120 room five-star hotel and condominium project, much needed additional public parking, a convention center and a "funland" for children. The Concept Plan was prepared by an architect and was promised to meet hurricane standards so as to be a safe haven for Town residents during severe storms. The height of the proposed structure was relaxed and was proposed at 68 feet - below the height of the existing Lighthouse located on the Property.

29. RAC met on seven occasions: February 1, February 16, March 16, May 24, June 8, June 15 and June 22, 2007. RAC opened each meeting to the public and allowed public comment. On June 22, 2007, RAC approved the Concept Plan by a vote of 7-2, sending it to the Town Commissioners with a recommendation for ratification (the "RAC Report"). At that time, the Town Commission consisted of the following members:

- (i) Mayor Dell Tush
- (ii) Claire Walsh
- (iii) Dale Cooke
- (iv) Robert Fitzgerald
- (v) Michael Eisenhauer

30. Pursuant to the language of the Comprehensive Plan, and according to RAC Chairman Michael Eisenhauer, the Concept Plan submitted by DBE was properly approved by RAC as compliant with the Comprehensive Plan. The Town Commissioners, thereafter, held a public hearing wherein they introduced an ordinance which would permit the construction of the Concept Plan. This ordinance was then referred to the P&Z Commission for review and recommendation.

A. Planning and Zoning Commission

31. The P&Z Commission performs quasi-judicial functions and must act with impartiality. A member of P&Z cannot review any matter in which he or she has a personal or private interest.

32. P&Z receives referrals from the Town Commission with respect to zoning matters. Upon information and belief, normally, at the Town Commission meeting, when the Commissioners refer a matter, the chairman of P&Z publicly provides a date for the next P&Z hearing. This process is important because the Dewey Beach Zoning Code mandates that P&Z report back to the Town Commissioners on the referral within sixty days of the first P&Z meeting following the referral or otherwise the referred ordinance is automatically deemed a recommendation of approval.

33. At the Town Commissioners' July 13, 2007 public hearing, the Town Commissioners introduced and referred an ordinance to P&Z that would permit the construction of the Concept Plan. However, P&Z failed to provide a meeting date for consideration of the ordinance, deliberately delaying the process to ensure the sixty day deadline would fall after the Town's upcoming September municipal election.

34. At the July hearing and after referral of the ordinance, DBE began to experience significant resistance to its Concept Plan and was often prevented from participating in the meetings relating to the development of its Property. After a tainted and unfair hearing process (described in more detail below) that was deliberately delayed by P&Z beyond the Town's September election cycle, on October 19, 2007, P&Z voted to reject the proposed ordinance, thereby disregarding RAC's report and the Town's Comprehensive Plan.

(i) Harry Wilson

35. Harry Wilson, as Chairman of the P&Z Commission, routinely schedules hearings for proposed ordinances. When the Town Commissioners voted to refer the ordinance that would permit construction of the Concept Plan to P&Z, Wilson was adamantly opposed to the referral. Wilson left the public hearing thereby placing the responsibility for scheduling in the hands of David King, Vice-Chairman of the P&Z Commission.

36. Wilson should have recused himself from Ruddertowne matters, but he failed to do so. Upon information and belief, Wilson owns at least eight rental properties in Dewey Beach that would be adversely affected should the Concept Plan be approved and built. If 120 hotel rooms were built, owners of rental property in Dewey Beach would suffer greater competition and financial loss due to the increased number of units on the rental market. As a result, Wilson stood to lose income if Ruddertowne was redeveloped. Before Wilson left the public hearing he expressed his desire to have the ordinance relating to Ruddertowne's redevelopment placed on hold for eighteen months. When P&Z did vote on the matter, not surprisingly, Wilson voted against the ordinance.

(ii) David King

37. The P&Z Commission's impartiality was also corrupted, and its entire process infected, by P&Z Commission Vice-Chairman David King. As a result, the P&Z Commission as a whole failed to properly carry out its purpose, to the direct detriment of DBE.

38. Even prior to his review of the ordinance to permit the construction of the Concept Plan, David King had formed a bias against the Concept Plan based upon extra-judicial contacts. David King actively participated in an extra-judicial campaign to defeat the very Concept Plan he was later duty-bound to judge with impartiality.

39. While campaigning to undermine the ordinance, King simultaneously launched efforts to solicit third parties to purchase Ruddertowne.

40. Typically, when Town Commissioners refer a matter to P&Z, P&Z sets a hearing date promptly. Instead, after Mr. Wilson left the July 13, 2007 public hearing, King refused to set a P&Z hearing date, thereby ensuring the delay of P&Z's hearing until after the September municipal election.

41. Commissioner Michael Eisenhauer, concerned as a result of King's biased actions, requested that the State Public Integrity Commission review his behavior. On July 17, 2007, weeks prior to the first P&Z hearing relating to Ruddertowne, the Public Integrity Commission issued an opinion advising David King to recuse himself from all Ruddertowne matters. The minutes of this Public Integrity Commission meeting are attached as Exhibit B. In total disregard for the Public Integrity Commission's opinion, King continued to participate in Ruddertowne matters before P&Z, working to undermine RAC's report and the Concept Plan at every turn.

42. On September 24, 2007, the Public Integrity Commission unanimously upheld its earlier opinion, stating that King had detrimentally advocated against the Concept Plan, creating bias incompatible with his service as a P&Z Commissioner. The minutes of this Public Integrity Commission meeting are attached as Exhibit C.

43. Shockingly, despite the Public Integrity Commission's repeated admonitions, the Town Commissioners unanimously endorsed King's continued participation in Ruddertowne matters, and so stated at the November 10, 2007 Town Commissioners' meeting. In fact, the Commissioners "unanimously" decided that King's continued participation was acceptable even

in the face of the Public Integrity Commission's opinions to the contrary. Mayor Tush independently voiced her support for King's continued participation.

44. At that same meeting, David King stated that he raised the issue with Council and "each and every Commissioner said there was nothing dealing with Harvey-Hanna, there was nothing dealing with redevelopment, and there was no reason for me not to participate, and in fact, I was advised by the Mayor, by individual Commissioners and by the Town Attorney that it was my responsibility and my obligation as Vice Chair of P and Z to fully participate in all of those meetings." The Town Solicitor chastised King, advising that he was previously warned that it would be in his best interest not to attend the meetings.

45. With the Mayor and the Town Commissioners' blessings, King continued to participate in debate and discussions regarding Ruddertowne. In fact, it was clear that King, in his role as Vice-Chairman of the P&Z Commission, was the driving force in all such discussions opposing the Ruddertowne redevelopment. Not only did King verbally advocate and lead opposition to the Concept Plan, he also prepared handouts, charts, visual depictions and exhibits to lobby the members of the P&Z Commission to vote against the ordinance supporting DBE's Concept Plan. In total disregard for the ethical requirements of his position, King thereby infected the integrity of the entire P&Z process with his sustained bias.

46. For example, King repeatedly advised the Commissioners that the Zoning Code only permitted a 1.2 floor-area ratio ("FAR") in commercial districts when, in fact, he knew that there was no FAR in existence for commercially zoned property. When King's incorrect and misleading assertions were challenged, he sought to amend the Zoning Code to add a 1.2 FAR requirement in the RB-1 district to unlawfully, retroactively apply the FAR amendment to the Concept Plan.

47. On January 24, 2008, the Public Integrity Commission issued yet a third, this time, 28-page opinion wherein the Public Integrity Commission made it forcefully clear that King should cease participation in any matters relating to Ruddertowne. The opinion is attached as Exhibit D. Despite the third Public Integrity Commission opinion, King continued to participate directly in Ruddertowne matters, in defiance of the State Public Integrity Commission.

48. King's actions were intentional, malicious and specifically designed to frustrate, delay, harass and ultimately defeat the process to redevelop Ruddertowne to the detriment of DBE. King knew that it was highly likely that an ordinance allowing the Concept Plan would be approved by a majority of the sitting Commissioners at the time of RAC's approval. Therefore, King improperly and deliberately stalled the P&Z process past the September election. King abused his official authority for the sole purpose of defeating the ordinance that would have allowed the Concept Plan to be built.

49. As a result of King's deliberate corruption of the process and abuse of official power, the ordinance and Concept Plan were never properly considered, and as planned by King, the ordinance was ultimately rejected (following the Town's September election cycle) by the newly elected Town Commissioners on November 10, 2007.

(iii) Intervening Election

50. The 2007 election of the Commissioners was a one-issue election: Ruddertowne. Dell Tush, Richard Hanewinckel and Diane Hanson campaigned on this one-issue, promising to prevent Ruddertowne from being redeveloped. On Election Day, these three anti-Ruddertowne candidates positioned themselves prominently and directly in front of the only polling place in Dewey Beach displaying a large poster depicting an altered photograph of the

Concept Plan. This distorted image falsely magnified the size and scale of the structure so as to mislead the public. A copy of this altered photograph is attached as Exhibit E.

51. The distorted photograph was intentionally skewed to create the false impression that the proposed structure would rise above the Dewey Beach Lighthouse. As Dell Tush, Richard Hanewinckel and Diane Hanson knew, DBE's Concept Plan had always depicted a building height below The Lighthouse.

52. On September 15, 2007, following the election, the makeup of the Town Commissioners changed, now consisting of:

- (i) Mayor Dell Tush
- (ii) Dale H. Cooke
- (iii) Diane Hanson
- (iv) Richard Hanewinckel
- (v) Claire Walsh

Upon information and belief, 100% of the income of at least one of the Town Commissioners above was earned from rental properties located in Dewey Beach.

B. Town Council

53. After P&Z voted to recommend rejection of the ordinance allowing the Concept Plan, the matter went before the Town Commissioners for a vote. On October 20, 2007, following the election cycle, the Town Commissioners made a motion to accept the recommendation of the P&Z Commission. The ordinance that would have allowed development consistent with the Concept Plan was thereafter placed on the Town Commissioners' November 10, 2007 agenda even though the ordinance would only apply to DBE and despite that DBE did not request that the ordinance be advanced at that time.

54. Recognizing that King had tainted and corrupted the process and that it appeared DBE would be unable to obtain an unbiased review of the ordinance, DBE attempted to meet with the Commissioners to further discuss the Concept Plan. The Commissioners refused

to meet with DBE, in direct conflict with the requirement of cooperation enunciated in the Comprehensive Plan.

55. Nevertheless, DBE attempted to compromise with the Town. On November 10, 2007, the Town Commission held a meeting, during which Commissioner Walsh attempted to introduce a proposed amendment to the ordinance that would allow DBE to construct its alternative 48-foot structure on the Ruddertowne Property (the “Compromise Plan”). The Compromise Plan provided for condominiums (in lieu of hotel rooms), 48,000 square feet of commercial space, and preservation of the Bay Center and Lighthouse, among other amenities. Because height was allegedly the Town’s main concern, this proposed Compromise Plan was 20 feet shorter than the Concept Plan originally approved by RAC. The majority of the Town Commissioners refused to consider the proposed amended ordinance allowing the Compromise Plan, acting in direct conflict with the Town’s obligation to negotiate as set forth in their own Comprehensive Plan. In fact, DBE was denied permission to make a presentation regarding the ordinance or proposed compromise, in violation of the Town’s typical procedure and DBE’s fundamental due process rights.

56. The Town Commissioners refused to allow DBE to make any presentation. The refusal was inconsistent with the Town’s past practice and DBE’s fundamental due process rights.

57. Once DBE realized that the Town Commissioners would not hear the ordinance related to the Compromise Plan, DBE sought to have the Town Commissioners table the ordinance until the next meeting to allow DBE time to resolve any issues with either the Concept Plan or the Compromise Plan. The Town Commissioners instead voted to reject the Concept Plan ordinance and refused to consider the Compromise Plan Ordinance.

58. Immediately following the Town Commissioners' meeting, Joy Howell, a member of Citizens to Preserve Dewey Beach, approached a representative of DBE offering to purchase Ruddertowne on behalf of an unidentified buyer, claiming DBE would never make a profit in Dewey Beach. Ms. Howell was directly involved in the successful election campaigns of Mayor Tush, Diane Hanson and Richard Hanewinckel of the Town Commission who were opposed to DBE's plans.

(i) **Mayor Dell Tush**

59. The Dewey Beach Code of Conduct provides that no official shall participate in the review or disposition of any matter in which the official has a private or personal interest. A copy of the Dewey Beach Code of Conduct is attached as Exhibit F.

60. The Mayor of Dewey Beach is an elected official of the Town. Mayor Tush owns rental properties in Dewey Beach, and she stood to lose income should the Town approve the Concept Plan or the Compromise Plan. In fact, the Mayor maintains an active website at www.deweybeachvacation.com where she advertises several rental units each year. With redevelopment of Ruddertowne on hold from 2006 to the present, the Mayor has been able to protect her rental income, and has increased the rental rates for each rental unit she owns.

61. On July 2, 2007, Mayor Tush stated to the Cape Gazette newspaper, "Any more units in the pool will affect rentals, whether it's townhouses or condo units." A copy of the Cape Gazette article is attached as Exhibit G. Mayor Tush directly linked her own economic interest in the rental units to the denial of the Concept and Compromise Plans. Further, during her election, like Hanson and Hanewinckel, the Mayor used an inaccurate and doctored photograph in an effort to distort the Concept Plan for her own personal benefit.

62. Mayor Tush also rushed the vote on the ordinance to allow the Concept Plan, to the detriment of DBE. Pursuant to the Comprehensive Plan and Town Meetings, the Town was

required to negotiate with DBE in good faith. Mayor Tush refused to allow the Town Commission to meet with DBE. Instead, despite DBE's request for the matter to be tabled to allow for discussions, the Town Commissioners, at Mayor Tush's urging, voted to reject the ordinance to allow the Concept Plan without any negotiations or opportunity for compromise. Moreover, she refused to consider Commissioner Walsh's amendment, detailing the Compromise Plan proposed by DBE, to the proposed ordinance.

63. Not surprisingly, the Mayor campaigned, meddled and eventually voted against the redevelopment of Ruddertowne to obtain a significant personal benefit. Because of her personal financial interest and bias, Mayor Tush should have recused herself from Ruddertowne matters.

(ii) Commissioner Diane Hanson

64. Commissioner Diane Hanson owns rental properties in Dewey Beach, which are advertised at www.team-doctor.com. If the Town allowed the Concept Plan or the Compromise Plan, Hanson stood to lose income. Commissioner Hanson was quoted by the Cape Gazette during the election as stating, "[T]he hotel [Ruddertowne's Concept Plan] will also compete with property owners who rent their homes" A copy of the article is attached as Exhibit H. Not surprisingly, she voted against the ordinance to allow the Concept Plan and refused to negotiate with DBE. Due to the effect on her personal financial interest, Commissioner Hanson should have recused herself from Ruddertowne redevelopment matters.

65. Hanson was a member of RAC, and as a result, she obtained detailed knowledge of the Ruddertowne project prior to the matter coming before the Town Commissioners. This allowed Hanson to make predetermined decisions relating to Ruddertowne prior to her vote as a Commissioner. Hanson was clearly prejudiced against DBE, and at the very least, created the appearance of partiality. For instance, during her election, Hanson, like

Tush and Hanewinckel, used an inaccurate and doctored photograph in an effort to distort the Concept Plan for her own personal benefit. Hanson should have recused herself from Ruddertowne matters. Instead, she voted against the ordinance proposed by DBE to redevelop the property and refused to negotiate with DBE.

(iii) Commissioner Richard Hanewinckel

66. Commissioner Richard Hanewinckel became a Commissioner with the Town of Dewey Beach in September 2007. Like Hanson, Hanewinckel had prejudged Ruddertowne matters prior to his vote with the Commission. His prejudice was made clear during his campaign when Hanewinckel also utilized an inaccurate and doctored photograph in an effort to distort the Concept Plan so as to ensure his election by the public. Hanewinckel was clearly prejudiced against the redevelopment of Ruddertowne, and at the very least, Hanewinckel created an appearance of partiality. Hanewinckel should have recused himself from Ruddertowne redevelopment matters. Instead, he voted against any ordinance to redevelop the Property and refused to negotiate with DBE.

V. 35-FOOT PLAN

67. On or about November 8, 2007, DBE proposed a compromise yet again, submitting a plan to build a 35-foot structure on the Property (the “35-foot Plan”).

68. The 35-foot Plan was a “by right” plan that was tailored to meet the standards in the then-current Dewey Beach Zoning Code. As required, DBE submitted the 35-foot Plan directly to the Building Inspector, who, as the sole legal authority, would issue a building permit.

69. On November 8, 2007, Inspector Mears met with two representatives of DBE to review the 35-foot Plan. Inspector Mears advised DBE that the application “appeared to be in order and in compliance,” and, thereafter, issued a standard form letter of referral enabling the

35-foot Plan to be forwarded to Sussex County for basic code compliance review. That letter is attached as Exhibit I.

70. While not the decision maker, the Town Solicitor also advised DBE that the 35-foot by right application complied with the Dewey Beach Zoning Code and that the Dewey Beach building permit should issue once Sussex County granted its own approval. Sussex County approved the 35-foot Plan and issued DBE a building permit.

71. In reliance on these assurances that the 35-foot Plan complied with the Dewey Beach Zoning Code, DBE spent a substantial amount of additional money pursuing the plans.

72. On November 14, 2007, Inspector Mears again advised DBE that the 35-foot Plan complied with all Dewey Beach requirements and that a building permit would be issued. In fact, on several occasions, Inspector Mears repeated to DBE that the 35-foot Plan complied with all requirements. DBE reasonably relied upon Inspector Mears' position as the sole legal authority in this matter, expending substantial sums of money to prepare for implementation. Despite these assurances, the Town Commissioners had no intention of allowing DBE to build even a 35-foot structure.

A. Improper Interference by Town Regarding Application for 35-foot Plan

73. Mayor Tush improperly threatened Inspector Mears with the loss of his job if he approved the 35-foot Plan. According to Inspector Mears, Mayor Tush was "pissed" that he had issued the referral letter, and he was not allowed to issue DBE a permit for the 35-foot Plan or he would be fired. Inspector Mears explained to a DBE representative, "I'm not calling the shots here anymore." Mayor Tush misused her power and exceeded her authority by conditioning William Mears' livelihood on denying the permit. Mayor Tush's interference with the Building Inspector's authority is in direct contrast to the Town's longstanding practice of

allowing the Building Inspector to perform his lawful function, and was in direct conflict of the Town Code and the Town Charter, which was intended to isolate Town employees from improper political influence.

74. In addition, the Town tried to frustrate and prevent DBE's permit from being approved by Sussex County. Upon information and belief, certain Town officials contacted Sussex County officials and appeared at meetings relating to Sussex County's review process. Upon information and belief, the Town's interference with Sussex County's processing of DBE's application is in direct contrast to the Town's practice of allowing an application to be processed by Sussex County free of meddling, and is without support in the Dewey Beach Code.

75. Despite confirmation that the original DBE building permit application was in compliance with Town zoning requirements related to density, on December 24, 2007, the Town Solicitor sent a letter to DBE indicating the 35-foot Plan was not in compliance with the Zoning Code ("Christmas Eve Letter"). The Christmas Eve Letter failed to state all reasons for non-compliance, and the reasons stated were specious. This letter was deliberately sent to DBE by the Town without Inspector Mears' knowledge or approval, when it was known by the Town that Inspector Mears would be on vacation. Failure to allow the Building Inspector to act as the decision maker on a building permit application, and failure of the Town to inform its Building Inspector of the Christmas Eve Letter violated the Town's laws and standard decision-making process.

76. On January 15, 2008, DBE sought clarification of the alleged non-compliance stated in the Christmas Eve Letter. The Town failed to respond to DBE's request.

B. *Improper Procedure Regarding Board of Adjustment Hearing Relating to the 35-foot Plan*

77. DBE had been attempting to meet with the Commissioners since November 2007 regarding the redevelopment of Ruddertowne. On January 23, 2008, DBE asserted its right to a hearing before the Board of Adjustment due to the Town's, and specifically Mayor Tush's, acts preventing the Building Inspector from issuing a building permit. The Town Solicitor responded on February 8, 2008 with a one page letter indicating that "a board of adjustment hearing will be scheduled shortly." No hearing date was set. On March 28, 2008, after several other attempts, counsel for DBE again requested a thorough explanation of the Town's denial of the 35-foot Plan. Typically, applicants seeking an appeal hearing timely receive a scheduled date from the Town, as well as all of the reasons for denial of the permit. DBE received neither.

78. In the meantime, counsel for DBE requested that the promised executive meeting with the Commissioners occur prior to the April 5, 2008 Town Commissioners' meeting. Despite DBE's efforts, it was not until June 13, 2008 (over six months after DBE first requested a meeting), that the Commission agreed to an executive meeting date of June 26, 2008.

79. On the same date that it scheduled the executive meeting, and four months after the Town Solicitor promised that the Board of Adjustment hearing would be scheduled "shortly," the Town scheduled a Board of Adjustment hearing for July 2, 2008 to review the 35-foot Plan. Inspector Mears, as the sole official vested with the power to issue building permits, was not informed of the date of the Board of Adjustment hearing. When DBE advised Inspector Mears of the July 2nd hearing date, he stated with surprise, "That's impossible. They have to tell me. I don't even know anything about it." Such failure of the Town to inform its own Building Inspector of a Board of Adjustment hearing regarding the issuance of a building permit is in direct contrast to the Town's practice and is without support in the Dewey Beach Code.

80. The Town posted a notice of the Board of Adjustment hearing, stating that the Board of Adjustment will hear the appeal of DBE with respect to Phase I of the 35-foot Plan.

81. Further, Town Manager Gordon Elliot advised a number of supporting parties that the Board of Adjustment hearing was not public, causing those allies not to appear at the Board of Adjustment hearing. In contrast, those opposing the 35-foot Plan were well aware that the Board of Adjustment hearing was public, attended the hearing and voiced their concerns to the Board.

C. Board of Adjustment Hearing

82. The Board of Adjustment finally heard DBE's appeal, in limited fashion, on July 2, 2008. Pursuant to the Dewey Beach Code, Board of Adjustment members serve at the pleasure of the Commissioners. At the July 2nd hearing, the Board consisted of four members:

- (i) Milton Wishard
- (ii) Donald Ziegler
- (iii) Leonard Read
- (iv) Richard Dryer

83. The issue before the Board of Adjustment hearing was limited to whether the 35-foot Plan was lawfully denied by the Town. Several individuals, including Inspector Mears, testified on behalf of DBE while under the watchful eye of Mayor Tush. Inspector Mears admitted, under oath, that he did not draft nor was he aware of the Christmas Eve Letter when it was sent. Moreover, Inspector Mears admitted that he did not make a decision regarding DBE's requested building permit. Inspector Mears confirmed that his job was threatened. Board members attempted to question Town Solicitor Brady, the surrogate decision-maker, with respect to the 35-foot Plan. However, the Town asserted a claimed attorney-client privilege that prevented Brady from testifying.

84. Milton Wishard, one of the four Board of Adjustment members, abstained from deciding the matter because Inspector Mears was not allowed to make the decision. The remaining three members voted, two in favor of denying the building permit and one in favor of the permit.

85. On July 22, 2008, DBE appealed the decision of the Board of Adjustment to the Superior Court of Delaware. The parties have briefed and argued the issues and are awaiting a decision from the Superior Court.

86. The Building Inspector maintained throughout the proceedings that DBE meets all of the Town's requirements, but Mayor Tush refuses to allow a permit to be issued. Mayor Tush's interference in the issuance of a building permit to allow DBE to move forward with its 35-foot Plan is in direct contrast to the Town's practice and is without support in the Dewey Beach Code. But for these improper actions and abuse of power, the 35-foot Plan would have been approved. By improperly interfering in the building permit process, the Mayor abused and continues to abuse her power to the direct detriment of DBE.

VI. BUILDING PERMITS FOR PHASE II AND III

87. On April 4, 2008, DBE submitted to the Town building permit applications for Phase II and Phase III plans for the Ruddertowne redevelopment. To date, the Town refused to act on the applications. DBE submitted repeated requests in writing that the applications be processed, or in the alternative, be placed before the Board of Adjustment. In fact, on April 22, 2008, the Building Official advised DBE that "no further consideration can be given to any future expansion to the project" because "there has been no final decision on what is to be done with the plans for Phase I."

88. To date, the Town has refused to schedule an appeal hearing for Phase II or Phase III, nor has the Town entertained variances sought in the alternative.

***VII. ENACTMENT OF ZONING CODE IN CONTRAVENTION OF
COMPREHENSIVE PLAN***

89. On January 10, 2009, the Town attempted to amend the Dewey Beach Zoning Code in its entirety (hereinafter referred to as the “New Zoning Code”) by adopting Ordinance No. 634. In several substantive ways, the New Zoning Code directly contravenes the Comprehensive Plan adopted by the Town.

90. Not only does the New Zoning Code not comply with the Comprehensive Plan, but at the time of adoption, the Commissioners expressed erroneous opinions that the Comprehensive Plan was unnecessary and not legally binding.

91. The New Zoning Code creates three new RB zoning districts. The New Zoning Code also creates two Planned Resort Business (PRB) overlay districts for contiguous tracts of land encompassing at least 80,000 square feet. Although the Comprehensive Plan mandates relaxation of bulk standards found in the Zoning Code, all of the newly created RB zoning districts, including the overlay districts in the New Zoning Code, contain new or more restrictive bulk standards. Even P&Z Chairman Harry Wilson, who opposed the Ruddertowne concept plans, expressed “great public disappointment and sadness that the proposed new RB standards (all RB districts) did not conform to the goals of the Comp. Plan.” See Exhibit J.

92. The New Zoning Code, as enacted, directly and detrimentally affects DBE. Once again ignoring the admonition of the Public Integrity Commission, P&Z Vice Chairman David King remained a key player in the adoption of the new standards for the RB-1 overlay district even though Ruddertowne is the only tract of land in Dewey Beach in the RB-1 that consists of more than 80,000 square feet of land. In fact, David King expressed enthusiasm for the New Zoning Code and proudly presented the New Zoning Code to the Commissioners on November 20, 2008 for adoption in direct defiance of the Public Integrity Commission’s opinion.

93. The restrictions in the New Zoning Code were specifically designed to thwart development by DBE. For instance, each of the three new Resort Business (“RB”) zoning districts within the New Zoning Code now contain a Floor Area Ratio. Diane Hanson and David King strongly supported the FAR purposefully to hinder DBE’s redevelopment of Ruddertowne. In doing so, the Town ignored the Comprehensive Plan’s direction to relax bulk standards in the RB-1 district.

94. In fact, the Bulk Zoning Standards in RB-1 are the same as those in RB-2. Fundamentally, RB-1 (the most dense and intensely developed zone) and RB-2 (the middle level of development intensity) cannot have the same bulk standards and still fulfill the requirements of the Comprehensive Plan.

95. The Town purposefully enacted the New Zoning Code with restrictive building standards in the RB-1 district to again stop DBE’s redevelopment plans that are consistent with the Comprehensive Plan.

96. Moreover, the Town violated its own procedural requirements to enact the New Zoning Code. DBE has more recently filed an action in Chancery Court to have Ordinance 634 invalidated because of the Town’s failure to follow its own law.

VIII. ATTEMPT TO ADD HEIGHT RESTRICTION TO DEWEY BEACH CHARTER

97. Since DBE submitted its 35-foot application, Town officials have intentionally continued to abuse their power in complete disregard for DBE’s constitutional rights by harassing DBE with the goal of running DBE out of Dewey Beach.

98. On January 17, 2008, the Town Commissioners voted in favor of holding a binding referendum to place a height restriction of 35 feet in the Town Charter.

99. On September 20, 2008 the Town participated in a referendum to amend the Town Charter to include a 35-foot height restriction. This referendum passed, allowing the Town to move forward with State legislation referral to amend the Town Charter.

100. Mayor Tush stated that this Charter amendment was “designed to deal with one property owner,” meaning DBE. The Town’s attempted Charter amendment (HB-50) is meant to further derail and frustrate DBE’s plans to redevelop Ruddertowne.

101. The Town has abused its official power and has continued to harass DBE for the purpose of harming DBE. Amending a Town Charter to include a building height restriction is in direct contrast to the manner in which municipalities in general, and the Town specifically, regulates zoning matters.

IX. ADDITIONAL HARASSMENT BY THE TOWN

102. Defendants have continued to unlawfully harass DBE. Upon information and belief, Mayor Tush ordered the Town Manager to contact the Delaware Department of Natural Resources (“DNREC”) with respect to allegations of minor trash violations at Ruddertowne. It is atypical for the Town to seek DNREC’s involvement regarding such an alleged trivial infraction.

103. The Town has created obstacles with respect to other permits within Dewey Beach relating to other entities owned by DBE or associated with DBE’s principals. The Town has caused numerous applications by DBE or by associated parties to go through unprecedented measures for licenses to be granted. For instance, DBE principals owned Crabber’s Cove and The Lighthouse Restaurants. DBE submitted an application to merge the liquor license for the two restaurants, now named The Lighthouse Cove, and to obtain a conditional use permit for the based on the newly proposed floor plan. Building Inspector Mears approved the plan and merger. Since that time, Mayor Tush has gone to great lengths to undue Inspector Mears’

approval, including contacting the State of Delaware Alcohol, Beverage Control Commission (ABCC) directly, and suggesting that the ABCC acted improperly. The Mayor's interference is in direct contrast to the Town's practice and is without support in the Dewey Beach Code.

104. After finally obtaining the conditional use permit sought for the Crabber's Cove, Mayor Tush advised DBE that the licensing process would have gone smoother if DBE had not filed the Chancery Court suit. This action creates a chilling effect on DBE's First Amendment Rights.

105. Town Officials instructed the Building Inspector to inspect restaurants owned by DBE solely for the purpose of finding code violations. Even after no violations were found, the agenda for the June 13, 2008 Town Commissioners meeting listed discussion with respect to "possible violations of floor plan changes" relating to the inspection. Commissioner Hanson proposed the agenda item, but no notice was given to DBE. Upon information and belief, Town Officials' instructions to the Building Inspector is in direct contrast to the Town's practice and is without support in the Dewey Beach Code.

106. Mayor Tush instructed Inspector Mears to "tear apart the place" and find a reason to remove the Grandfathering status from the Crabber's Cove Restaurant and The Lighthouse Restaurant, owned by DBE principals. Upon information and belief, the Mayor's instructions to the Building Inspector are in direct contrast to the Town's practice and is without support in the Dewey Beach Code.

107. At the behest of David King, the Town attempted to enact a 1.2 Floor-Area-Ratio in the RB-1 zone. In fact, David King attempted to enforce the 1.2 FAR retroactively. A 1.2 FAR would be detrimental to the redevelopment of Ruddertowne, and is, in fact, in violation of the Comprehensive Plan's relaxed bulk standards set forth for RB-1 and RB-1 overlay

districts. The new FAR is now incorporated into the Town's new zoning code in direct conflict with the Comprehensive Plan.

X. VIOLATIONS

108. Defendants deliberately and maliciously tainted the process for consideration of matters related to DBE's redevelopment plans for Ruddertowne, in violation of DBE's constitutional and other legal rights and with the express intent to preclude DBE from its right to operate its business or make improvements to its Property consistent with the laws of Dewey Beach. Defendants acted under the color of state law.

109. Defendants knowingly, recklessly and maliciously acted in violation and derogation of DBE's constitutional and other legal rights with the express intent to preclude DBE from operating its business consistent with the laws of Dewey Beach.

110. Defendants engaged in a pattern and practice of knowingly, recklessly and maliciously violating DBE's constitutional and other legal rights to preclude DBE from operating in Dewey Beach.

111. Defendants failed to prevent actionable harm to DBE by knowingly allowing the foregoing improper, unlawful and unconstitutional acts. For instance, Defendants failed to prevent actionable harm to DBE by knowingly allowing individuals with personal bias to remain in their respective positions and act on matters relating to Ruddertowne, and knowingly allowing impermissible and unconstitutional interference with the Town's building permit process.

112. Upon information and belief, the Town Manager knew, or should have known, of all improper, unconstitutional and unlawful acts complained of herein, and failed to prevent actionable harm to DBE.

113. The individual Defendants named herein acted at all times without a good faith belief in the legality of their acts, but rather willfully and with full awareness of the unlawful

nature of their actions, for the purpose of, and with the intent to, harm DBE's redevelopment efforts.

114. At all relevant times, DBE has owned Ruddertowne, and, therefore, possesses a property interest in the Property in Dewey Beach, affording DBE certain constitutional protections.

115. Defendants made it clear and apparent that the Town would not allow DBE to erect a structure higher than 35 feet, and the Town asserts that its decision was a final determination.

116. Through their actions, Defendants made it clear and apparent that the Town would not approve a plan submitted by DBE to allow a 35-foot structure at the requested density, and the Town asserts that its decision was a final determination.

117. As a result of Defendants' collective and individual actions, DBE has been deprived of the legal and proper use of its Property and has been otherwise injured. Defendants violated DBE's constitutional and other legal rights, directly causing DBE financial and other damages as set forth below.

COUNT I
42 U.S.C. § 1983 - Violations of Substantive Due Process
(DBE v. All Defendants)

118. DBE hereby incorporates, as if fully set forth herein, the allegations contained in the preceding paragraphs of this complaint.

119. The Defendants intentionally, knowingly, or recklessly committed acts which operated to deprive DBE of its rights secured by the Constitution of the United States.

120. The Fourteenth Amendment to the Constitution affords the right to substantive due process. Specifically, the Fourteenth Amendment provides "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

121. Accordingly, before any party may be deprived of its personal or property rights, it is entitled to a hearing before a fair and impartial tribunal, and the laws or rules with which it is expected to comply must be reasonable and not ambiguous. Further, a party shall not be deprived of its personal or property rights in an arbitrary or capricious manner.

122. DBE has a private right of action under 42 U.S.C. § 1983 because Defendants have deprived it of federally-protected rights by acting under color of state law.

123. Defendants violated DBE's substantive due process rights guaranteed by the Fourteenth Amendment to the Constitution of the United States of America by intentionally harassing and obstructing DBE's land development efforts with the specific illegitimate purpose of harming DBE and denying DBE the legal and proper use of its Property.

124. Defendants' deliberately harmful acts are so egregious that they shock the conscience.

125. Defendants acted with full and complete knowledge that their egregious actions against DBE were unrelated to legitimate governmental interests, were arbitrarily, capriciously and improperly motivated and were in violation of DBE's constitutional rights.

126. Any or all of the above acts by the Defendants caused DBE deprivation of the legal and proper use of its Property and has otherwise injured DBE.

127. WHEREFORE, DBE demands judgment in its favor as follows:

(A) Compelling the Defendants to allow DBE to construct on the Property a structure in conformity with the 35 Foot Plan, and to further construct a structure in excess of 35 feet in height pursuant to DBE's proposed Phase II and Phase III building permit applications;

(B) Prohibiting Defendants from interfering with DBE's lawful activities and construction in Dewey Beach;

(C) Awarding DBE compensatory and punitive damages;³

(D) Awarding attorneys' fees and costs of suit in accordance with 42 U.S.C. § 1988;

(E) Awarding pre- and post judgment interest; and

(F) Awarding any and all other remedies, in law or equity, which are appropriate.

COUNT II

42 U.S.C. § 1983 - Violations of Procedural Due Process (DBE v. All Defendants)

128. DBE hereby incorporates, as if fully set forth herein, the allegations contained in the preceding paragraphs of this complaint.

129. The Defendants intentionally, knowingly, or recklessly committed acts which operated to deprive DBE of its rights secured by the Constitution of the United States.

130. The Fourteenth Amendment to the Constitution affords rights to procedural due process. Specifically, the Fourteenth Amendment provides "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend XIV, § 1.

131. A party shall not be deprived of its personal or property rights in an arbitrary or capricious manner.

132. DBE has a private right of action under 42 U.S.C. § 1983 because Defendants have deprived it of federally-protected rights by acting under color of state law.

133. The Defendants intentionally engaged in a pattern and practice of arbitrary and irrational government action motivated by improper bias, bad faith and intent to harass DBE to prevent DBE from operating in Dewey Beach and redeveloping Ruddertowne, and in doing so

³ Plaintiff seeks punitive damages only against Defendants Tush, King, Hanson and Hanewinckel.

deprived DBE of its liberty and property interests without due process of law, by failing to provide an unbiased and untainted official body to review any plan or permit application submitted by DBE, by preventing DBE's plans, permits or alleged code violations from timely moving through the Town's normal procedure or process and by violating procedural laws for the purpose of harming DBE.

134. Defendants' interfering and harassing actions, which obstructed the licensing and permit process, constitute unlawful deprivation of DBE's constitutionally protected property rights without due process of law.

135. DBE's right to obtain certain building permits and approvals from the Defendants as they relate to DBE's property is a constitutionally protected property right.

136. Any or all of the above acts by the Defendants caused DBE deprivation of the legal and proper use of its Property and has otherwise injured DBE.

137. WHEREFORE, DBE demands judgment in its favor as follows:

(A) Compelling the Defendants to allow DBE to construct on the Property a structure in conformity with the 35 Foot Plan, and to further construct a structure in excess of 35 feet in height pursuant to DBE's proposed Phase II and Phase III building permit applications;

(B) Prohibiting Defendants from interfering with DBE's lawful activities and construction in Dewey Beach;

(C) Awarding DBE compensatory and punitive damages;⁴

(D) Awarding attorneys' fees and costs of suit in accordance with 42 U.S.C. § 1988;

(E) Awarding pre- and post judgment interest; and

⁴ Plaintiff seeks punitive damages only against Defendants Tush, King, Hanson and Hanewinckel.

(F) Awarding any and all other remedies, in law or equity, which are appropriate.

COUNT III
42 U.S.C. § 1983 - Violations of Equal Protection Clause
(DBE v. All Defendants)

138. DBE hereby incorporates, as if fully set forth herein, the allegations contained in the preceding paragraphs of this complaint.

139. The Defendants intentionally, knowingly, or recklessly committed acts which operated to deprive DBE of its rights secured by the Constitution.

140. The Fourteenth Amendment to the Constitution affords equal protection under the law. Specifically, the Fourteenth Amendment provides that “no state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV, § 1.

141. Defendants’ intentional acts under the color of state law violated DBE’s rights under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States of America, and were otherwise unconstitutional, unlawful and invalid, and as a result, DBE has been unlawfully deprived of the legal and proper use of its Property and is otherwise injured as a result of the Town’s intentional and arbitrary acts.

142. Defendants had full knowledge of DBE’s intended use of the Property and intentionally took official action specifically to prevent that use.

143. Defendants’ actions lacked any legitimate reason or purpose, were not related to any legitimate government interest, were discriminatory, arbitrary, capricious, unreasonable, malicious, improperly motivated and affected only DBE’s property and interests. Defendants’ acts shock the conscience.

144. Defendants intentionally and irrationally distinguished DBE from other similarly situated property owners in Dewey Beach. For instance, unlike referrals related to

other property owners, P&Z refused to promptly schedule a hearing regarding the Concept Plan. Unlike other applications by property owners for building permits, the Mayor purposefully meddled in the DBE application review process and, further threatened to fire the Building Inspector if he issued DBE a building permit.

145. The Town did not harass or obstruct other similarly situated property owners in their use of their property or land development efforts.

146. The Town did not subject other applications submitted by similarly situated Dewey Beach property owners to the same standard and scrutiny that the Town arbitrarily imposed on DBE, with the specific intent to deprive DBE of the use of its Property.

147. Any or all of the above acts by Defendants caused DBE deprivation of the legal and proper use of its Property and has otherwise injured DBE.

148. WHEREFORE, DBE demands judgment in its favor as follows:

(A) Compelling the Defendants to allow DBE to construct on the Property a structure in conformity with the 35 Foot Plan, and to further construct a structure in excess of 35 feet in height pursuant to DBE's proposed Phase II and Phase III building permit applications;

(B) Prohibiting Defendants from interfering with DBE's lawful activities and construction in Dewey Beach;

(C) Awarding DBE compensatory and punitive damages;⁵

(D) Awarding attorneys' fees and costs of suit in accordance with 42 U.S.C. § 1988;

(E) Awarding pre- and post judgment interest; and

⁵ Plaintiff seeks punitive damages only against Defendants Tush, King, Hanson and Hanewinckel.

(F) Awarding any and all other remedies, in law or equity, which are appropriate.

COUNT IV
Regulatory Taking
(DBE v. All Defendants)

149. DBE hereby incorporates, as if fully set forth herein, the allegations contained in the preceding paragraphs of this complaint.

150. The Defendants intentionally, knowingly, or recklessly committed acts which operated to deprive DBE of its rights secured by the Constitution.

151. The Fifth and Fourteenth Amendments to the Constitution afford protection from a government entity seizing property unjustly. Specifically, the Fifth Amendment of the Constitution provides that no person shall “be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” U.S. Const. Amend. V.

152. Defendants’ intentional acts under the color of state law violated DBE’s rights under the Fifth Amendment to the Constitution of the United States of America, and were otherwise unconstitutional, unlawful and invalid, and as a result, DBE has been unlawfully deprived of the legal and proper use of its Property and is otherwise injured as a result of the Town’s intentional and arbitrary acts.

153. Defendants intentionally, arbitrarily and maliciously delayed the approval processes relating to the DBE Property, and in doing so, caused abnormal delay in the planning and development process.

154. By intentionally delaying the process, Defendants acted in violation of DBE’s constitutional rights as secured by the Fifth and Fourteenth Amendments to the United States Constitution with the specific intent to deprive DBE of its property rights.

155. Defendants' actions fail to substantially advance any legitimate purpose and had the effect of depriving DBE of the beneficial use of its property based upon DBE's investment-backed expectations. Defendants have failed to justly compensate DBE for its temporary taking.

156. DBE has attempted to exhaust all administrative remedies available to it.

157. WHEREFORE, DBE demands judgment in its favor as follows:

(A) Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, declaring the failure of Defendants to timely act upon the applications for a structure of 35 feet and greater than 35 feet constitute temporary takings in violation of the United States Constitution, and is otherwise unlawful and invalid;

(B) Awarding DBE compensation for the temporary deprivation of its property rights as a result of the temporary taking through delay of the process to act upon DBE's numerous applications to build a structure of 35 feet and in excess of 35 feet; and

(C) Awarding such further relief as the Court deems just and proper.

COUNT V
42 U.S.C. § 1985 - Civil Conspiracy
(DBE v. All Defendants)

158. DBE hereby incorporates, as if fully set forth herein, the allegations contained in the preceding paragraphs of this complaint.

159. The Defendants intentionally, knowingly, or recklessly committed acts which operated to deprive DBE of its rights secured by the Constitution.

160. Section 1985 of Title 42 of the United States Code affords protection from officials conspiring to interfere with civil rights. 42 U.S.C. § 1985.

161. Defendants' intentional acts under the color of state law violated DBE's rights under 42 U.S.C. § 1985 and were otherwise unconstitutional, unlawful and invalid, and as a

result, DBE has been unlawfully deprived of the legal and proper use of its Property and is otherwise injured as a result of the Town's intentional and arbitrary acts and omissions.

162. The Defendants, acting in concert, agreed and/or conspired together and/or with the Town of Dewey Beach and/or with third parties to disrupt, obstruct and interfere with DBE's right and ability to obtain the necessary building permit and approval from the Town of Dewey Beach, denying DBE equal protection of the laws.

163. The Defendants, acting in concert, agreed and/or conspired together and with the Town of Dewey Beach and/or with third parties to deprive DBE, within the jurisdiction of Delaware, of its constitutional rights, and to commit other unlawful acts as set forth herein, and to commit lawful acts by unlawful means.

164. The Defendants conspired to inflict wrongs against and injuries upon DBE, including the deprivation of legal and proper use of its Property in Dewey Beach and conduct of its business, and the value and profits thereof.

165. As a direct and proximate result of Defendants' conspiracy to intentionally and maliciously deprive DBE of its constitutional rights and other unlawful and improper conduct, DBE has sustained irreparable interference with its property rights, including financial loss and damage.

166. WHEREFORE, DBE demands judgment in its favor as follows:

(A) Compelling the Defendants to allow DBE to construct on the Property a structure in conformity with the 35 Foot Plan, and to further construct a structure in excess of 35 feet in height pursuant to DBE's proposed Phase II and Phase III building permit applications;

(B) Prohibiting Defendants from interfering with DBE's lawful activities and construction in Dewey Beach;

- (C) Awarding DBE compensatory and punitive damages;⁶
- (D) Awarding attorneys' fees and costs of suit in accordance with 42 U.S.C. §

1988;

- (E) Awarding pre- and post judgment interest; and
- (F) Awarding any and all other remedies, in law or equity, which are

appropriate.

COUNT VI
42 U.S.C. § 1986 - Failure to Prevent Actionable Harm
(DBE v. All Defendants)

167. DBE hereby incorporates, as if fully set forth herein, the allegations contained in the preceding paragraphs of this complaint.

168. The Defendants intentionally, knowingly, or recklessly committed or omitted acts which operated to deprive DBE of its rights secured by the Constitution.

169. Section 1986 of Title 42 of the United States Code affords redress from officials with the “power to prevent or aid in preventing the commission of the [wrongs conspired to be done], neglects or refuses so to do, if such wrongful act be committed.” 42 U.S.C. § 1986.

170. Defendants' intentional acts and omissions under the color of state law violated DBE's rights under 42 U.S.C. § 1986 and were otherwise unconstitutional, unlawful and invalid, and as a result, DBE has been unlawfully deprived of the legal and proper use of its Property and is otherwise injured as a result of the Town's intentional and arbitrary acts and omissions.

171. Defendants, collectively and individually-named, each had actual knowledge of the blatant continuing violations of DBE's civil rights.

⁶ Plaintiff seeks punitive damages only against Defendants Tush, King, Hanson and Hanewinckel.

172. Defendants collectively and individually failed to take any steps to thwart or stop the unlawful misconduct toward DBE, and Defendants failed to take any remedial actions toward the misconduct to protect DBE.

173. Defendants continuously and intentionally exhibited deliberate indifference to DBE's civil rights.

174. Defendants knew or should have known of the unlawful misconduct described above, and having the power, authority and duty to correct these conditions, willfully, deliberately and with reckless disregard of DBE's civil rights, failed to act to prevent irreparable harm to DBE.

175. As a direct and proximate result of Defendants' negligent and/or intentional conspiratorial acts, including Defendants' negligent and/or intentional omissions, each as described herein, DBE has suffered damages in connection with the deprivation of its constitutional and statutory rights.

176. WHEREFORE, DBE demands judgment in its favor as follows:

(A) Compelling the Defendants to allow DBE to construct on the Property a structure in conformity with the 35 Foot Plan, and to further construct a structure in excess of 35 feet in height pursuant to DBE's proposed Phase II and Phase III building permit applications;

(B) Prohibiting Defendants from interfering with DBE's lawful activities and construction in Dewey Beach;

(C) Awarding DBE compensatory and punitive damages;⁷

(D) Awarding attorneys' fees and costs of suit in accordance with 42 U.S.C. § 1988;

⁷ Plaintiff seeks punitive damages only against Defendants Tush, King, Hanson and Hanewinckel.

- (E) Awarding pre- and post judgment interest; and
- (F) Awarding any and all other remedies, in law or equity, which are

appropriate.

COUNT VII
First Amendment Free Speech and Petition Violation
(DBE v. All Defendants)

177. DBE hereby incorporates, as if fully set forth herein, the allegations contained in the preceding paragraphs of this complaint.

178. DBE participated in constitutionally protected conduct, including seeking judicial redress against the Defendants.

179. Defendants intentionally took action adverse to DBE as a direct and proximate result of, and in retaliation for, DBE's First Amendment protected rights.

180. There is a causal link between DBE's First Amendment right to seek judicial redress and the adverse actions of the Defendants.

181. First Amendment protected rights were a substantial or motivating factor in the Defendants' adverse actions directed toward DBE.

182. The totality of retaliatory adverse action taken by Defendants against DBE is sufficient to chill any person's speech and discourage them from seeking judicial redress.

183. WHEREFORE, DBE demands judgment in its favor as follows:

(A) Prohibiting Defendants from interfering with DBE's exercise of its First Amendment rights;

(B) Awarding DBE compensatory and punitive damages;⁸

(C) Awarding pre- and post judgment interest; and

⁸ Plaintiff seeks punitive damages only against Defendants Tush, King, Hanson and Hanewinckel.

(D) Awarding any and all other remedies, in law or equity, which are appropriate.

COUNT VIII
Equitable/Promissory Estoppel
(DBE v. All Defendants)

184. DBE hereby incorporates, as if fully set forth herein, the allegations contained in the preceding paragraphs of this complaint.

185. Defendants intentionally, recklessly or negligently misrepresented to DBE that (1) the Town would act in good faith and negotiate with DBE in relation to the development of Ruddertowne; (2) the Town intended to allow DBE to develop its Property in accordance with the Comprehensive Plan; and (3) that DBE's plans and/or permits would be subject to the proper process as indicated within the Comprehensive Plan.

186. DBE reasonably relied upon the Town's intentional misrepresentation and delayed its right to build townhouses on the Property, and instead submitted a plan to the Town to allow DBE to erect a structure greater than 35 feet on the Property.

187. Defendants knew DBE sacrificed its right to build townhouses specifically for the purpose of creating a mixed use structure, greater than 35 feet, that would be subject to relaxed bulk standards (setbacks, parking, etc.) because the Property was situated in an RB-1 district.

188. Defendants knew or should have known that the Town would refuse to act in good faith and negotiate with DBE as it related to the Ruddertowne Property prior to DBE giving up its right to build townhouses.

189. As a direct and proximate result of the misrepresentation and reliance of the Town's statements and actions, DBE has taken substantial steps in anticipation of developing the Property, including engaging engineers, architects and other professionals for various services.

190. In light of the Town's refusal to approve a plan for a structure greater than 35 feet, DBE filed an application to obtain a building permit for a 35-foot structure. The Town advised DBE that the 35-foot plan should be approved, and following standard procedure, the Town sent the application to Sussex County.

191. In reasonable reliance of the Town's assurances, and based upon the Town's action, DBE incurred substantial costs and expenses for engineers, architects and other developers, in addition to spending substantial sums for the application process itself.

192. DBE incurred the above-stated costs in justifiable and reasonable reliance on the representation and past proven record as a government agency, that the Town would either approve the Concept Plan, Compromise Plan, or the 35-foot Plan feet within a reasonable time.

193. Despite its promises to the contrary, the Town has failed to act in good faith and negotiate with DBE and has failed to approve any plan to build on the Property. DBE has suffered and continues to suffer damages as a direct and proximate result of its reasonable and justifiable reliance on Defendants' prior representations and actions.

194. WHEREFORE, DBE demands judgment in its favor as follows:

(A) Compelling the Defendants to allow DBE to construct on the Property a structure in conformity with the 35 Foot Plan, and to further construct a structure in excess of 35 feet in height pursuant to DBE's proposed Phase II and Phase III building permit applications;

(B) Prohibiting Defendants from interfering with DBE's lawful activities and construction in Dewey Beach;

(C) Awarding DBE compensatory and punitive damages;⁹

⁹ Plaintiff seeks punitive damages only against Defendants Tush, King, Hanson and Hanewinckel.

(D) Awarding attorneys' fees and costs of suit in accordance with 42 U.S.C. § 1988;

(E) Awarding pre- and post judgment interest; and

(F) Awarding any and all other remedies, in law or equity, which are appropriate.

COUNT IX
Equitable/Promissory Estoppel
(RRI v. All Defendants)

195. RRI hereby incorporates, as if fully set forth herein, the allegations contained in the preceding paragraphs of this complaint.

196. Defendants intentionally, recklessly or negligently misrepresented to RRI that (1) the Town would act in good faith and negotiate with DBE in relation to the development of Ruddertowne; (2) the Town intended to allow DBE to develop its Property in accordance with the Comprehensive Plan; and (3) that DBE's plans and/or permits would be subject to the proper process as indicated within the Comprehensive Plan.

197. Defendants knew RRI intended to purchase the stock of DBE specifically for the purpose of creating a mixed use structure, greater than 35 feet, that would be subject to relaxed bulk standards (setbacks, parking, etc.) because the Property was situated in an RB-1 overlay district.

198. Defendants knew or should have known that the Town would refuse to act in good faith and negotiate with DBE as it related to the Ruddertowne Property prior to RRI becoming DBE's sole stockholder.

199. As a direct and proximate result of the misrepresentations and based on reasonable reliance of the Town's statements and actions, RRI purchased all of DBE's stock.

200. RRI purchased DBE's stock in justifiable and reasonable reliance on the representation and past record as a government agency, that the Town would approve the Concept Plan.

201. Despite its promises to the contrary, the Town has failed to act in good faith and negotiate with DBE and has failed to approve any plan to build on the Property. RRI has suffered and continues to suffer damages as a direct and proximate result of its reasonable and justifiable reliance on Defendants' prior representations and actions.

202. WHEREFORE, DBE demands judgment in its favor as follows:

(A) Compelling the Defendants to allow DBE to construct on the Property a structure in conformity with the 35 Foot Plan, and to further construct a structure in excess of 35 feet in height pursuant to DBE's proposed Phase II and Phase III building permit applications;

(B) Prohibiting Defendants from interfering with DBE's lawful activities and construction in Dewey Beach;

(C) Awarding DBE compensatory and punitive damages;¹⁰

(D) Awarding attorneys' fees and costs of suit in accordance with 42 U.S.C. § 1988;

(E) Awarding pre- and post judgment interest; and

(F) Awarding any and all other remedies, in law or equity, which are appropriate.

¹⁰ Plaintiff seeks punitive damages only against Defendants Tush, King, Hanson and Hanewinckel.

COUNT X
Abuse of Official Power / Violation of Substantive Due Process
(DBE v. David King)

203. DBE hereby incorporates, as if fully set forth herein, the allegations contained in the preceding paragraphs of this complaint.

204. King intentionally and blatantly abused the official power placed upon him in the official capacity as Vice-Chair of the Planning and Zoning Commission of Dewey Beach.

205. King knew the debilitating nature of the ongoing pattern of his outrageous misconduct described above, and having the power, authority and duty to correct these conditions, willfully, deliberately and with reckless disregard of DBE's civil rights, and in brazen disregard for Public Integrity Commission's three opinions, failed to act to prevent the harm to DBE by recusing himself from P&Z actions regarding Ruddertowne redevelopment.

206. King's deliberate harassing, obstructing and malicious actions are so egregious that they shock the conscience.

207. After RAC ratified the Concept Plan, the Town required P&Z to review the Concept Plan and to draft an ordinance accordingly. As the first official body in Dewey Beach to review this matter, King deliberately tainted the procedural process in place for DBE to gain relief, which is a violation of DBE's constitutional rights.

208. As a direct and proximate result of King's intentional and malicious acts, DBE suffered damages in connection with the deprivation of its constitutional and statutory rights.

209. WHEREFORE, DBE demands judgment in its favor as follows:

(A) Compelling King to recuse himself from any and all matters relating to the Property and/or DBE, and any individuals therein;

(B) Awarding DBE compensatory and punitive damages;

(C) Awarding attorneys' fees and costs of suit;

(D) Awarding pre- and post judgment interest; and

(E) Awarding any and all other remedies, in law or equity, which are appropriate.

COUNT XI
Abuse of Official Power / Violation of Substantive Due Process
(DBE v. Dell Tush)

210. DBE hereby incorporates, as if fully set forth herein, the allegations contained in the preceding paragraphs of this complaint.

211. Tush intentionally and blatantly abused the official power placed upon her in the official capacity of both Commissioner and Mayor of Dewey Beach.

212. Tush's deliberately harassing and obstructing actions are so egregious that they shock the conscience.

213. Tush's failure to recuse herself from all matters relating to Ruddertowne for the purpose of ensuring that DBE received none of the requested permits, as required by the Town's own Code of Ethics, is an abuse of power that shocks the conscience.

214. Tush knew the debilitating nature of the ongoing pattern of her outrageous misconduct described above, and having the power, authority and duty to correct this conduct, willfully, deliberately and with reckless disregard of DBE's civil rights, failed to cease action and failed to prevent the harm to DBE.

215. Tush, in her individual capacity, has deliberately ignored the illegality and unethical nature of her actions and the actions of others taken against DBE, and in doing so, she tainted the procedural process in place for DBE to gain relief.

216. As a direct and proximate result of Tush's intentional acts, each as described herein, DBE has suffered damages in connection with the deprivation of its constitutional and statutory rights.

217. WHEREFORE, DBE demands judgment in its favor as follows:

(A) Compelling Tush to recuse herself from any and all matters relating to the Property and/or DBE, and any individuals therein;

(B) Awarding DBE compensatory and punitive damages;

(C) Awarding attorneys' fees and costs of suit;

(D) Awarding pre- and post judgment interest; and

(E) Awarding any and all other remedies, in law or equity, which are appropriate.

COUNT XII

**Abuse of Official Power / Violation of Substantive Due Process
(DBE v. Diane Hanson)**

218. DBE hereby incorporates, as if fully set forth herein, the allegations contained in the preceding paragraphs of this complaint.

219. Hanson abused her official power placed upon her in the official capacity as Town Commissioner by establishing her bias and prejudice toward DBE and/or the redevelopment of Ruddertowne, and refusing to recuse herself as required by the Dewey Beach Code of Ethics.

220. Hanson knew or should have known of the unethical misconduct described above, and nevertheless, Hanson willfully, deliberately and with reckless disregard of DBE's civil rights, failed to act to prevent the harm to DBE by recusing herself from the matter.

221. Based upon her bias against Ruddertowne and/or DBE, Hanson's failure to recuse herself as required by the Code of Ethics is an abuse of power that shocks the conscience.

222. Hanson's deliberately harassing and obstructing actions abused her official power to a degree that shocks the conscience.

223. Hanson purposely tainted the procedural process in place for DBE to gain relief, violating DBE's constitutional rights.

224. As a direct and proximate result of Hanson's intentional and unethical acts, each as described herein, DBE has suffered damages in connection with the deprivation of its constitutional and statutory rights.

225. WHEREFORE, DBE demands judgment in its favor as follows:

(A) Compelling Hanson to recuse herself from any and all matters relating to the Property and/or DBE, and any individuals therein;

(B) Awarding DBE compensatory and punitive damages;

(C) Awarding attorneys' fees and costs of suit;

(D) Awarding pre- and post judgment interest; and

(E) Awarding any and all other remedies, in law or equity, which are appropriate.

COUNT XIII

Abuse of Official Power / Violation of Substantive Due Process (DBE v. Richard Hanewinckel)

226. DBE hereby incorporates, as if fully set forth herein, the allegations contained in the preceding paragraphs of this complaint.

227. Defendant Hanewinckel abused his official power placed upon him in the official capacity as Town Commissioner by establishing his bias and prejudice toward DBE and/or the redevelopment of Ruddertowne, and refusing to recuse himself as required by the Dewey Beach Code of Ethics.

228. Hanewinckel knew or should have known of the unethical misconduct described above, and nevertheless, Hanewinckel willfully, deliberately and with reckless

disregard of DBE's civil rights, failed to act to prevent the harm to DBE by recusing himself from the matter.

229. Based upon his bias toward Ruddertowne and/or DBE, Hanewinckel's failure to recuse himself as required by the Code of Ethics is an abuse of power that shocks the conscience.

230. Hanewinckel purposely tainted the procedural process in place for DBE to gain relief, violating DBE's constitutional rights.

231. As a direct and proximate result of Hanewinckel's intentional and unethical acts, DBE has suffered damages in connection with the deprivation of its constitutional and statutory rights.

232. WHEREFORE, DBE demands judgment in its favor as follows:

- (A) Compelling Hanewinckel to recuse himself from any and all matters relating to the Property and/or DBE, and any individuals therein;
- (B) Awarding DBE compensatory and punitive damages;
- (C) Awarding attorneys' fees and costs of suit;
- (D) Awarding pre- and post judgment interest; and
- (E) Awarding any and all other remedies, in law or equity, which are appropriate.

Dated: July 10, 2009

DRINKER BIDDLE & REATH, LLP

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