

**SUPPLEMENTAL INFORMATION PURSUANT TO RULE 3(a)
OF THE RULES OF THE COURT OF CHANCERY**

The information contained herein is for use by the Court for statistical and administrative purposes only. Nothing stated herein shall be deemed an admission by or binding upon any party.

1. Caption of Case: Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach; Richard N. Solloway, Marc Appelbaum, Diane Hanson, James Przygocki and Marty Seitz

2. Date Filed: September 20, 2010

3. Name and address of counsel for Plaintiff: Shawn P. Tucker, Esq.; Drinker Biddle & Reath LLP; Wilmington Trust Center, 1100 N. Market Street, Suite 1000; Wilmington, DE 19801 and Kathleen M. Jennings, Esq., Aaronson, Collins & Jennings, LLC, 8 E. 13th Street, Wilmington, DE 19805

4. Short statement and nature of claim asserted: DBE seeks a declaratory judgment regarding the invalidity of the Ordinance enacted by the Defendants on September 11, 2010. DBE also seeks to enjoin the Defendants from enforcing the Ordinance.

5. Substantive field of law involved (check one):

- | | |
|---|---|
| <input type="checkbox"/> Administrative Law | <input type="checkbox"/> Trade Secrets/Trade Mark/ or other Intellectual Property |
| <input type="checkbox"/> Commercial Law | <input type="checkbox"/> Trusts |
| <input type="checkbox"/> Constitutional Law | <input type="checkbox"/> Wills and Estates |
| <input type="checkbox"/> Corporation Law | <input checked="" type="checkbox"/> Zoning |
| <input type="checkbox"/> Guardianship | <input type="checkbox"/> Other |
| <input type="checkbox"/> Labor Law | |
| <input type="checkbox"/> Real Property | |

6. Related case(s), including any Register of Wills matters, which requires copies of all documents in this matter to be filed with the Register of Wills: Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, *et al.*, C.A. No. 4426-VCN; Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, *et al.*, C.A. No. 4991-VCN; Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, *et al.*, C.A. No. 5711-VCN.

7. Basis for court's jurisdiction (including the citation of any statute conferring jurisdiction): Equitable relief sought (permanent injunction); 10 *Del. C.* §§ 341 & 342

8. If the complaint seeks preliminary equitable relief, state the specific preliminary relief sought: N/A.

9A. If the complaint seeks summary or expedited proceedings, check here .

9B. If the complaint seeks expedited proceedings, check here .

10. If the complaint is one that in the opinion of counsel should not be assigned to a Master in the first instance, check here and attach a statement of good cause X.

/s/ Shawn P. Tucker
Shawn P. Tucker, Esquire (No. 3326)

Kathleen M. Jennings (No. 913)
AARONSON, COLLINS & JENNINGS, LLC
8 East 13th Street
Wilmington, DE 19805
(302) 655-4600 - Phone
(302) 655-4622 - Fax
KJennings@acjdelaware.com

September 20, 2010

Law Offices

1100 N. Market Street
Suite 1000
Wilmington, DE
19801-1254

(302) 467-4200
(302) 467-4201 fax
www.drinkerbiddle.com

CALIFORNIA
DELAWARE
ILLINOIS
NEW JERSEY
NEW YORK
PENNSYLVANIA
WASHINGTON D.C.
WISCONSIN

Register in Chancery
New Castle County Courthouse
500 North King Street, Suite 11400
Wilmington, DE 19801

Re: Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, et al.

Dear Register:

Please issue a Summons for service upon the Defendants, who will be served by Brandywine Process Servers. The appropriate addresses for service are:

Town of Dewey Beach
105 Rodney Avenue
Dewey Beach, DE 19971

Commissioners of Dewey Beach
105 Rodney Avenue
Dewey Beach, DE 19971

Richard N. Solloway
105 Rodney Avenue
Dewey Beach, DE 19971

Marc Appelbaum
105 Rodney Avenue
Dewey Beach, DE 19971

Diane Hanson
105 Rodney Avenue
Dewey Beach, DE 19971

James Przygocki
105 Rodney Avenue
Dewey Beach, DE 19971

Marty Seitz
105 Rodney Avenue
Dewey Beach, DE 19971

Thank you for your attention to this matter. Please contact me with any questions.

Respectfully submitted,

/s/ Shawn P. Tucker
Shawn P. Tucker (No. 3326)

IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

DEWEY BEACH ENTERPRISES, INC.,)

Plaintiff,)

v.)

C.A. No. _____)

TOWN OF DEWEY BEACH, a municipal)
corporation of the State of Delaware,)
COMMISSIONERS OF DEWEY BEACH:)
MAYOR RICHARD N. SOLLOWAY, in his)
official capacity; MARC APPELBAUM, in his)
official capacity; DIANE HANSON, in her)
official capacity; JAMES PRZYGOCKI, in his)
official capacity; and MARTY SEITZ, in his)
official capacity,)

Defendants.)

COMPLAINT

Plaintiff, Dewey Beach Enterprises, Inc., by and through its undersigned attorneys, hereby brings this action for injunctive relief and declaratory judgment against the Defendants and alleges as follows:

NATURE OF THE ACTION

1. This is the fourth in a series of actions to invalidate ordinances adopted by the Dewey Beach Town Commission (the "Town Commission" or "Town Commissioners") that have been designed to unlawfully nullify and otherwise frustrate Dewey Beach Enterprises Inc.'s ("DBE") pending building permit application to redevelop Ruddertowne.¹

¹ Three previous complaints, similarly captioned: *Dewey Beach Enterprises v. Town of Dewey Beach et al.* filed March 17, 2009, October 14, 2009 and August 12, 2010 in the Delaware Chancery Court, also challenge the conduct of then-acting Town Commissioners in their efforts to delay consecutive redevelopment proposals offered by developer, Dewey Beach Enterprises, Inc. Each action is currently pending before this Court.

2. This building permit application was submitted prior to the Town enacting a moratorium upon such building permits, and is, therefore, grandfathered.

3. Further, DBE submitted the building permit application to the Town in reliance upon, *inter alia*, the 2007 Dewey Beach Comprehensive Plan (the “Comprehensive Plan” or the “Plan”).

4. On July 29, 2007, the Comprehensive Plan was certified by the State of Delaware.

5. Because the Comprehensive Plan was certified by the State, it carries the “force of law,” pursuant to 22 *Del. C.* Sec. 702.

6. For the new RB-1 zoning district, the Comprehensive Plan provides, *inter alia*, that “Relaxed bulk standards (**setbacks, lot coverage, etc.**) are available for contiguous tracts consisting of at least 80,000 square feet.” Dewey Beach Comprehensive Plan, at. 22 (emphasis added).

7. The Comprehensive Plan also makes clear that the RB-1 zoning district is to be the “most intensely developed, most dense, zone” in the Town. *Id.*

8. The Dewey Beach Municipal Code (the “Code”) broadly defines “bulk” as a term “[t]o describe the **size and shape** of a building or structure and its relationship to other buildings, to the lot area for a building, density and to open spaces and yards.” Dewey Beach, Delaware Code § 1-16 (emphasis added).

9. Furthermore, the Town’s professional planner, the Chairman of the Dewey Beach Planning and Zoning Commission, and multiple Town Commissioners have all publicly stated that “bulk” includes building “height”.

10. It is widely known that Ruddertowne is the only property located in the Town that is eligible for the relaxed bulk standards, and that the Ruddertowne property was specifically earmarked to be the “most intensely developed” and “most dense” in Town.

11. However, with only two weeks until the scheduled election of new Town Commissioners, the Town Commission enacted a new Ordinance number 683 (the “Ordinance”) that purports to amend, or otherwise revise the Comprehensive Plan language regarding “relaxed bulk standards” to the detriment of DBE and its grandfathered building permit application.

12. Specifically, the Ordinance excludes “height” as a bulk standard to be relaxed.

13. The Ordinance was unlawfully enacted by the Town Commission in violation of 22 *Del. C. Sec. 702*, because it was not submitted to the Governor’s Office (or designee) for review, nor was it provided to the Governor’s Advisory Council on Planning Coordination.

14. The Ordinance was also unlawfully adopted because it retroactively imposes a new and different meaning to the phrase “relaxed bulk standards” found in the Comprehensive Plan, as previously certified by the State of Delaware.

15. The Town’s Commissioners were, in fact, made *aware* of DBE’s legal position regarding the unlawful provisions of the Ordinance. *See* Correspondence to the Town dated August 20, 2010 and attachments dated October 8, 2007, September 24, 2007, August 22, 2007 (collectively, “Correspondence to the Town”), attached hereto as Exhibit A.

16. Moreover, on September 10, 2010, Commissioner Diane Hanson was explicitly advised by the head of the Office of State Planning that changes to the Comprehensive Plan could only be applied to “future” development, and that any change would have to be approved by the State. *See* E-mail from Connie Holland to the Honorable Peter Schwartzkopf, dated Friday September 10, 2010, attached hereto as Exhibit B; *see also* Coastal Sussex Weekly, “Dewey Beach

Commissioner Hanson Accused of Withholding Information,” published September 17, 2010, attached hereto as Exhibit C; Dewey Beach News Update, “Commissioner Diane Hanson Withholds Critical Information,” published September 18, 2010, attached hereto as Exhibit D.

17. Due to the Town Commission’s disregard of State law, its disregard of its certified Comprehensive Plan, and due to its efforts to retroactively apply the unlawfully adopted Ordinance to DBE’s grandfathered building permit application, the Plaintiff seeks an injunction and a declaratory judgment.

PARTIES

18. Plaintiff Dewey Beach Enterprises, Inc. 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 649, Rehoboth Beach, Delaware 19971. DBE owns three parcels of land, occupying seven lots, on the bayside of Dewey Beach. These parcels, encompassing an entire block in the Town, are commonly referred to as Ruddertowne and include DBE property located at 113 Dickinson Avenue and the Bay, Dewey Beach, Delaware 19971.

19. Defendant Town of Dewey Beach (“Dewey Beach” or “Town”) is a Delaware municipal corporation chartered by special enactment of the Delaware General Assembly, with an official address at 105 Rodney Avenue, Dewey Beach, Delaware 19971.

20. Defendant Commissioners of Dewey Beach (“Commissioners” and collectively referred to with the Town and all individual Commissioners named below as the “Town”) is the governing body of the Town of Dewey Beach. Its offices are also located at 105 Rodney Avenue, Dewey Beach, Delaware 19971.

21. Defendant, Richard N. Solloway, is the Mayor and a Commissioner of the Town of Dewey Beach, with an official address at 105 Rodney Avenue, Dewey Beach, Delaware 19971.

22. Defendant, Marc Appelbaum, is a Commissioner of the Town of Dewey Beach, with an official address at 105 Rodney Avenue, Dewey Beach, Delaware 19971.

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

24. Defendant, James Przygocki, is a Commissioner of the Town of Dewey Beach, with an official address at 105 Rodney Avenue, Dewey Beach, Delaware 19971.

25. Defendant, Marty Seitz, is a Commissioner of the Town of Dewey Beach, with an official address at 105 Rodney Avenue, Dewey Beach, Delaware 19971.

JURISDICTION

26. This Court has jurisdiction pursuant to 10 *Del. C.* §§341 and 342.

FACTUAL ALLEGATIONS

27. Beginning in June of 2007, DBE submitted to the Town proposals to redevelop Ruddertowne as a mixed-use commercial and residential complex. The original concept proposed a welcome center, a bayside boardwalk, public restrooms and parking, a convention center, a “funland” for children and a 68-foot structure that would house a 120 room five-star hotel and condominium complex. Although blessed by the Ruddertowne Architectural Review Committee on June 22, 2007, following the September 2007 election of new Commissioners, the proposal was rejected despite compliance with the Plan and the grandfathered status of the building permit application.

28. Phase 1 of DBE’s redevelopment plans with a building height of 35 feet, though initially approved by the Town’s Building Inspector and Town Solicitor – was also rejected. Upon appeal, the Supreme Court of the State of Delaware reversed the Town’s denial of this plan.²

² *Dewey Beach Enterprises, Inc. v. Board of Adjustment of the Town of Dewey Beach*, No. 465, 2009 (July 30, 2010) (Berger, J.) (reversing Superior Court affirmance of Board of Adjustment’s denial of DBE

The Ordinance is Inconsistent with the Comprehensive Plan

29. On June 29, 2007, the Town, through unanimous vote of its then Commissioners, adopted the Dewey Beach Comprehensive Plan – a directive detailing future planning and development guidelines for the community and its representatives. The Comprehensive Plan was certified on July 29, 2007 by the State of Delaware, Office of Management and Budget Planning – attaining the “force of law”.

30. Indeed, Section 702 (d) of Title 22 of the Delaware Code provides:

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 and no development shall be permitted except as consistent with the plan.*

22 Del. C. § 702 (d) (emphasis added).

31. Aiming to “create additional opportunities for local commercial establishments that provide year-round community support,” (see 2007 Dewey Beach Comprehensive Plan at 20), the Comprehensive Plan explicitly promotes the expansion of the existing “commercial-land-use area” of Dewey Beach by establishing three resort-business (“RB”) districts. *Id.* The first of these districts, RB-1, encompasses Ruddertowne and is designated by the Comprehensive Plan as the “most intensely developed, most dense zone.” *Id.* To that end, the Comprehensive Plan establishes “relaxed bulk standards . . . for contiguous tracts consisting of at least 80,000 square feet. . .” within RB-1. *Id.* at 22. Ruddertowne satisfies both conditions.

32. At least three (3) of the Town Commissioners who voted in favor of the “relaxed bulk standard” language contained in the Town’s Comprehensive Plan previously acknowledged that the phrase encompassed *the relaxation of height above 35 feet.* See Correspondence to the

building permit and holding that residential lot size requirements do not apply to mixed use structures under the Dewey Beach Zoning Code).

Town at Exhibit A. Indeed, this understanding was also affirmed by the current Chairman of the Planning and Zoning Commission who has publicly proposed heights in excess of 35 feet in the RB-1 zoning district. *Id.* Moreover, in 2007, at least two of the five Town Commissioners then seated also proposed that relaxed bulk standards permitted DBE's development of a 68-foot high structure on the Ruddertowne parcel, owing to RB-1's unique zoning designation. *See id.* Even the Town's professional planner made clear that bulk standards include building "height".

33. Not a single member of the current Town Commission served as a member of the Commission when the phrase "relaxed bulk standards" was adopted into law.

34. Nevertheless, on September 11, 2010, the current Town Commission adopted the Ordinance, which not only purports to amend and revise the meaning of the phrase "relaxed bulk standards (setbacks, lot coverage, etc.)", but also completely undermines the Comprehensive Plan language making Ruddertowne the most densely and intensely developed property in the Town.

35. In an apparent effort to circumvent Delaware law and the Governor's Office of State Planning, the Town claims the Ordinance merely offers a *clarification* of the Comprehensive Plan's reference to "relaxed bulk standards".

36. The Ordinance states that "relaxed bulk standards," as referenced in the Plan, are "bulk standards that are of a more dense developmental nature than the bulk standards provided for in the Resort Business-2 (RB-2) zoning district and the Resort Business-3 (RB-3) zoning district." The Ordinance, dated July 24th, at Section 1, attached hereto as Exhibit E.³ The Ordinance goes on to provide that "it is not, and has never been, the intention of the Commissioners to require relaxation of every bulk standard in the RB-1 district for parcels of 80,000 square feet or more, and the Commissioners hereby clarify that only selected bulk standards, as determined by the

³Upon information and belief, this draft contains the final language of the Ordinance as adopted on September 11, 2010 by the Mayor and Commissioners of the Town of Dewey Beach.

Commissioners, should be relaxed.” *Id.* The Ordinance also adds that “relaxed bulk standards . . . as used in the 2007 Comprehensive Plan’s description of the RB-1 zoning district, does not permit any height increase beyond 35 feet.” (internal quotations omitted). *Id.* at Section 2.

37. In so doing, the Ordinance excludes height from the term “relaxed bulk standards” ~~prohibiting height increases above the 35-foot maximum height standard established for~~ development in Dewey Beach.⁴ See Dewey Beach, Delaware Code § 185, Table 2 Bulk Zoning Standards In All Districts, attached hereto as Exhibit F. In this way, the Ordinance asserts that the Comprehensive Plan’s reference to “bulk” did not intend to include the relaxation of building height – a position that directly contravenes the stated aim of the Plan.

38. As adopted, the Ordinance plainly amends or otherwise revises the State certified Comprehensive Plan as it relates to Ruddertowne.

39. Notwithstanding the Town’s post factum and self serving change to the Comprehensive Plan, the generally accepted definition of “bulk” irrefutably includes height. The Planners Dictionary, the purpose of which is to define such concepts, provides three common definitions of “bulk regulations,” each of which include building height as a component:

“Standards and controls that establish the maximum size of buildings and structures on a lot and the buildable area within which the building can be located, including coverage, setbacks, height, impervious surface ratio, floor area ratio, and yard requirements.” (Nashville and Davidson County, Tenn.);

“Controls that establish the maximum size, height, and setback of a building on its lot.” (New Castle County, Del.);

“Controls which establish the maximum size of buildings and structures on a lot or parcel and the buildable area within which the structure may be placed, including lot coverage, height, floor area ratio, setbacks, and yard area.” (Clarksdale, Ariz.).

⁴The Town of Dewey Beach’s maximum height standards convey a 35-foot limit on properties within each of the Town’s neighborhood residential, resort residential and resort business zoning districts.

A Planners Dictionary, Michael Davidson and Fay Dolnick (American Planning Assoc.) at p.98, a copy of which is attached hereto as Exhibit G.

40. Further, the Dewey Beach Municipal Code (the "Code") broadly defines "bulk" as a term used "[t]o describe the size and shape of a building or structure and its relationship to other buildings, to the lot area for a building, density and to open spaces and yards." Dewey Beach, Delaware Code § 1-16. While it seems that such a reference to the "size" of a building would ordinarily include the building's height, to be sure, the Code instructs that any undefined terms "[s]hall be interpreted in accord with their normal dictionary meaning and customary usage." Dewey Beach, DE Code § 1-15. To that end, a survey of dictionary definitions for the term "size" yields the following results:

SIZE. "The physical dimensions, proportions, magnitude, or extent of an object." The American Heritage® Dictionary of the English Language (4th ed. 2000), <http://www.bartleby.com/61/25/S0442500.html>

SIZE. "[T]he spatial dimensions, proportions, magnitude, or bulk of anything." Random House Unabridged Dictionary (2010), <http://dictionary.reference.com/browse/size>

SIZE. "The dimensions or magnitude of a thing; how big something is." Wictionary.org, <http://en.wiktionary.org/wiki/size> (as of September 17, 2010).

41. Each of the definitions above indicates that "size" includes the "dimensions" of an object. Dictionary references to "dimension" confirm that "height" is one among three components which define dimension – height, width, length.

DIMENSION. "A measure of spatial extent, especially width, height, or length." The American Heritage® Dictionary of the English Language (4th ed. 2000), <http://www.bartleby.com/61/25/S0442500.html>

DIMENSION. "In common usage, a dimension . . . is a parameter or measurement required to define the characteristics of an object –

i.e., length, width, and **height** or size and shape.” Wikipedia, *Dimension*, <http://en.wikipedia.org/wiki/Dimension> (as of September 17, 2010).

DIMENSIONS. “The width, length, and **height** of a plane or space figure.” Geometry glossary, ThinkQuest, <http://library.thinkquest.org/2647/geometry/glossary.htm#d>

~~42. Indeed, the notion that “bulk” includes “height” is a topic discussed at length in~~
correspondence from DBE to Dewey Beach’s Planning and Zoning Commission Members. *See* Correspondence to the Town at Exhibit A.

43. The Ordinance’s imposition of a 35-foot height restriction, therefore, directly conflicts with prevailing standards under the Comprehensive Plan that contemplates a relaxation of the bulk standards for the RB-1 zoning district to create “the most intensely developed, most dense, zone.” 2007 Dewey Beach Comprehensive Plan, at 21. As it conflicts with existing law, the Ordinance is invalid.

The Town Did Not Comply with State Procedural Requirements

44. Not only does the Ordinance unlawfully impede DBE’s Ruddertowne redevelopment design – an RB-1 initiative which meets the conditions for relaxed bulk height and density standards under the Comprehensive Plan – but the Town’s process of approving the Ordinance did not comply with State procedural requirements.

45. At base, the Commission’s effort to “clarify” the Comprehensive Plan is procedurally deficient. Amendments inconsistent with the Comprehensive Plan cannot be achieved by a simple vote of the Town Commissioners and the ensuing enactment of an ordinance. Rather, the Delaware Code requires that any revisions to the Plan “shall be submitted to the Governor or designee at such time as the plan is made available for public review,” after which, “[t]he Advisory Council, within 30 days of plan submission, shall conduct a public meeting. . .”

22 Del. C. § 702(f). The Town cannot now circumvent this procedure in an effort to hasten its imposition of a height restriction in contravention of the Plan.

46. In fact, none of the Commissioners now seated served as Commissioners during the deliberation on and ultimate adoption of the “relaxed bulk standards (setbacks, lot coverage, etc.)” and the “most dense most intense” language in the State certified Comprehensive Plan which carries the “force of law”.

Conduct of Town Officials

47. In addition, prior to the Town Commission meeting in which the Ordinance was enacted, Commissioners were on notice that their attempt to amend the Town’s Comprehensive Plan through an ordinance was unlawful. According to the September 10, 2010 Coastal Sussex Weekly, Commissioner Diane Hanson contacted the office of State Planning to ask whether the Town Council could *clarify* the Comprehensive Plan in a Town Commission meeting scheduled for the following day. See Coastal Sussex Weekly, “Dewey Beach Commissioner Hanson Accused of Withholding Information,” published September 17, 2010, attached hereto as Exhibit C; see also E-mail from Connie Holland to the Honorable Peter Schwartzkopf, dated Friday September 10, 2010, attached hereto as Exhibit B. During their conversation, Director of State Planning, Connie Holland, informed Commissioner Hanson that a language change would constitute a Plan amendment, which would require certification by the State. The Ordinance, therefore, would only be applicable to *future* applications – meaning it would not apply retroactively to development initiatives in the Town such as DBE’s grandfathered Ruddertowne building permit application. *Id.*

48. Notwithstanding the advice of the Director of State Planning, Commissioner Hanson did not disclose the guidance she received from the Office of State Planning to her

fellow Commissioners during the meeting in which the Ordinance was approved. See Coastal Sussex Weekly news story at Exhibit B; see also Dewey Beach News Update, "Commissioner Diane Hanson Withholds Critical Information," published September 18, 2010, attached hereto as Exhibit D.

49. As a result, Commissioner Hanson violated her duty to act in the best interests of the Dewey Beach public in contravention of 29 Del. C. § 5802.

50. The Ordinance violates the prevailing municipal law articulated by the Comprehensive Plan and the Town's failure to comply with the state procedural requirements for enacting legislation render the Ordinance invalid. For the reasons stated above, this Court should enjoin the Ordinance and grant a declaratory judgment in favor of the Plaintiff.

COUNT I - PERMANENT INJUNCTION

51. Plaintiff hereby repeats and realleges the allegations contained in paragraphs 1 through 50 above as if fully set forth herein.

52. Plaintiff can establish actual success on the merits of its claim challenging the adoption of the Ordinance.

53. The Ordinance was plainly amended or otherwise revised by the Town in violation of State law.

54. Further, the Ordinance is being unlawfully applied retroactively to DBE's grandfathered building permit application.

COUNT II - DECLARATORY JUDGMENT

55. Plaintiff hereby repeats and realleges the allegations contained in paragraphs 1 through 54 above as if fully set forth herein.

56. The interests of the parties are adverse as there exists a real and justiciable controversy between the parties regarding the validity of the Ordinance.

57. Plaintiff has a real and current interest in invalidating the Ordinance.

58. This controversy is ripe for judicial determination. Defendants have not adhered to their legal obligation to comply with State law applicable to amendments or revisions to a State certified Comprehensive Plan.

~~WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment:~~

(a) Enjoining Defendants from enforcing, relying upon or taking any action based upon the Ordinance;

(b) Mandating that the Defendants comply with applicable procedural requirements to amend or otherwise revise their State certified Comprehensive Plan consistent with State law;

(c) Entering a declaratory judgment that the Ordinance as adopted: (i) violates the State certified Comprehensive Plan; (ii) contravenes the State procedural requirements for amending the Comprehensive Plan; (iii) violates DBE's legal rights (common law, statutory and Constitutional) because of the Ordinance's intended retroactivity and (iii) is illegal, invalid and of no lawful force and effect;

(d) Granting the Plaintiff its reasonable attorneys' fees, costs and such other and further relief as this Court may deem just and proper.

Dated: September 20, 2010

DRINKER BIDDLE & REATH LLP

/s/ Shawn P. Tucker

Shawn P. Tucker (No. 3326)
Wilmington Trust Center
1100 North Market St., Ste. 1000
Wilmington, DE 19801
(302) 467-4200 - Phone
(302) 467-4201 - Fax
shawn.tucker@dbr.com

Kathleen M. Jennings (No. 913)
AARONSON, COLLINS & JENNINGS, LLC
8 East 13th Street
Wilmington, DE 19805
(302) 655-4600 - Phone
(302) 655-4622 - Fax
KJennings@acjdelaware.com

IN AND FOR THE COURT OF CHANCERY IN THE STATE OF DELAWARE

DEWEY BEACH ENTERPRISES, INC.,)

Plaintiff,)

v.)

C.A. No. _____

TOWN OF DEWEY BEACH, a municipal corporation of the State of Delaware; COMMISSIONERS OF DEWEY BEACH; MAYOR RICHARD N. SOLLOWAY, in his official capacity; MARC APPELBAUM, in his official capacity; DIANE HANSON, in her official capacity; JAMES PRZYGOCKI, in his official capacity; and MARTY SEITZ, in his official capacity,)

Defendants.)

VERIFICATION TO COMPLAINT

STATE OF DELAWARE)

) ss:

NEW CASTLE COUNTY)

I, David N. Sills, IV, am a Partner of Dewey Beach Enterprises, Inc. I state under oath that I have read the foregoing Complaint and that, to the best of my knowledge, information and belief, the statements made therein are true and correct.

David N. Sills, IV

David N. Sills, IV

SWORN AND SUBSCRIBED before me this 20 day of September, 2010.

[Signature]

Notary Public

My Commission expires: 7/21/2013

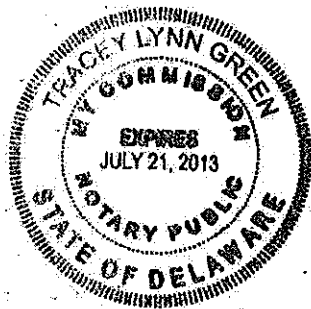


EXHIBIT A

Law Offices

1100 North Market Street
Suite 1000
Wilmington, DE

19801-3151

302-467-4200 phone

302-467-4201 fax

www.drinkerbiddle.com

CALIFORNIA

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WYOMING

August 20, 2010

VIA FIRST CLASS U.S. MAIL & ELECTRONIC MAIL

Glen Mandalas, Esquire, Dewey Beach Town Solicitor
Town of Dewey Beach
105 Rodney Ave.
Dewey Beach, DE 19971

Re: An Ordinance To Clarify The Intended Meaning of "Relaxed Bulk Standards"

Dear Mr. Mandalas,

This letter is written on behalf of our client Dewey Beach Enterprises and is being offered to you and for entry into the public record in response to the above-proposed Ordinance. It appears clear that, yet again, the Town of Dewey Beach, and individual Town Commissioners, are attempting to adversely impact the property rights of our client. To that end, in our opinion, the Town of Dewey Beach cannot lawfully "clarify" the meaning of "relaxed bulk standards" as proposed in the above-referenced Ordinance.

Attached for your review are prior letters delivered to the Town of Dewey Beach, dated September 24, 2007 and October 8, 2007 (pgs. 4-5) regarding the issue of "relaxed bulk standards". We ask that you and your clients please review these letters before the vote on the Ordinance referenced above.

In our opinion, the attached letters, and research contained therein, confirm beyond doubt that the phrase "relaxed bulk standards" includes within its meaning a relaxed building height in excess of 35 feet. Furthermore, the phrase "relaxed bulk standards" is not ambiguous, and is, therefore, not subject to clarification.

Perhaps more importantly, at least three (3) of the five (5) Town Commissioners who voted in favor of the "relaxed bulk standard" language contained in the Town's Comprehensive Development Plan previously acknowledged that the phrase included the relaxation of height above 35 feet. Even the current Chairman of the Town's Planning and Zoning Commission is on the public record proposing a height in excess of 35 feet in the RB-1 district.

We further note that none of the Town Commissioners who approved the Town's Comprehensive Development Plan sit upon the current Commission. Accordingly, it seems utterly impossible for the current Town Commission to be in a position to "clarify"

Drinker Biddle & Reath

Town of Dewey Beach
August 20, 2010
Page 2

what the unambiguous phrase "relaxed bulk standards" was intended to mean by the former Town Commission.

Certainly, if the Town seeks to amend its Comprehensive Plan prospectively there is a specific procedure under State law that must be followed. 22 *Del. C. Sec. 702(f)* (Copy Attached). However, please be aware that, in our opinion, the proposed Ordinance under consideration does not comply with the State law procedure for amending the Comprehensive Plan.

We thank you for your attention to this important matter. We believe this Ordinance to be clearly unlawful in its present form.

Respectfully submitted,



Shawn P. Tucker

SPT/lsv

Enclosures

cc: Diana Smith, Dewey Beach Town Manager, Via First Class U.S. Mail and Electronic Mail
Megan Mantzavinos, Esquire, Via First Class U.S. Mail and Electronic Mail
Max Walton, Esquire, Via First Class U.S. Mail and Electronic Mail
Dewey Beach Enterprises, Inc., Via First Class U.S. Mail and Electronic Mail



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

Shawn P. Tucker
Direct Dial: (302) 777-6375
Direct Fax: (302) 778-7835
E-mail: stucker@wolfblock.com

October 8, 2007

FILE COPY

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 rebuttal¹, 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

¹ We had previously requested in writing a rebuttal period.

WIL:69072.2/COM284-244916 /corrected

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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^[2] 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.

² 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.

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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.³

E 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.⁴ Indeed, some in opposition to our client's project have

³ 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.

⁴ As was set forth in our August 23rd 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.

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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.⁵ 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.⁶ 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 24th 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

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

⁵ 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.

⁶ 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.

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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.⁷

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.⁸ 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 (3rd Cir. 2000) (same); Brown v. Muhlenberg Twsp., 269 F.3d 205 (3rd 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

⁷ As was set forth in our August 22nd and September 24th 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).

⁸ 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.

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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.⁹ 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,¹⁰ 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 rooms¹¹, 48 condominiums, and approximately 28,000¹² square feet of new commercial area at five stories and 48 feet above average grade.

⁹ 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.

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

¹¹ 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 Fieco, 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."

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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.¹³

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.

¹² The existing square footage at Ruddertowne today is approximately 20,000 square feet.

¹³ 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.

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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 22nd 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 below¹⁴, the touchstone to establishing differences in

¹⁴ 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

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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 13th, 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.¹⁵ 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 Raddertowne 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

[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").

¹⁵ 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.

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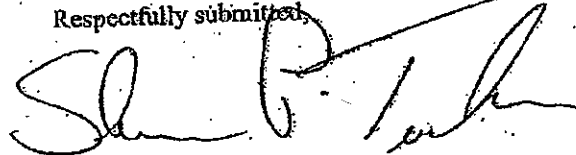
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feet to a reduced height of only 48 feet.¹⁶ We have offered this proposed compromise as part of our ongoing good faith efforts to voluntarily negotiate with the Town as required by the 2007 Comp Plan.¹⁷

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 apprised 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 Delt 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

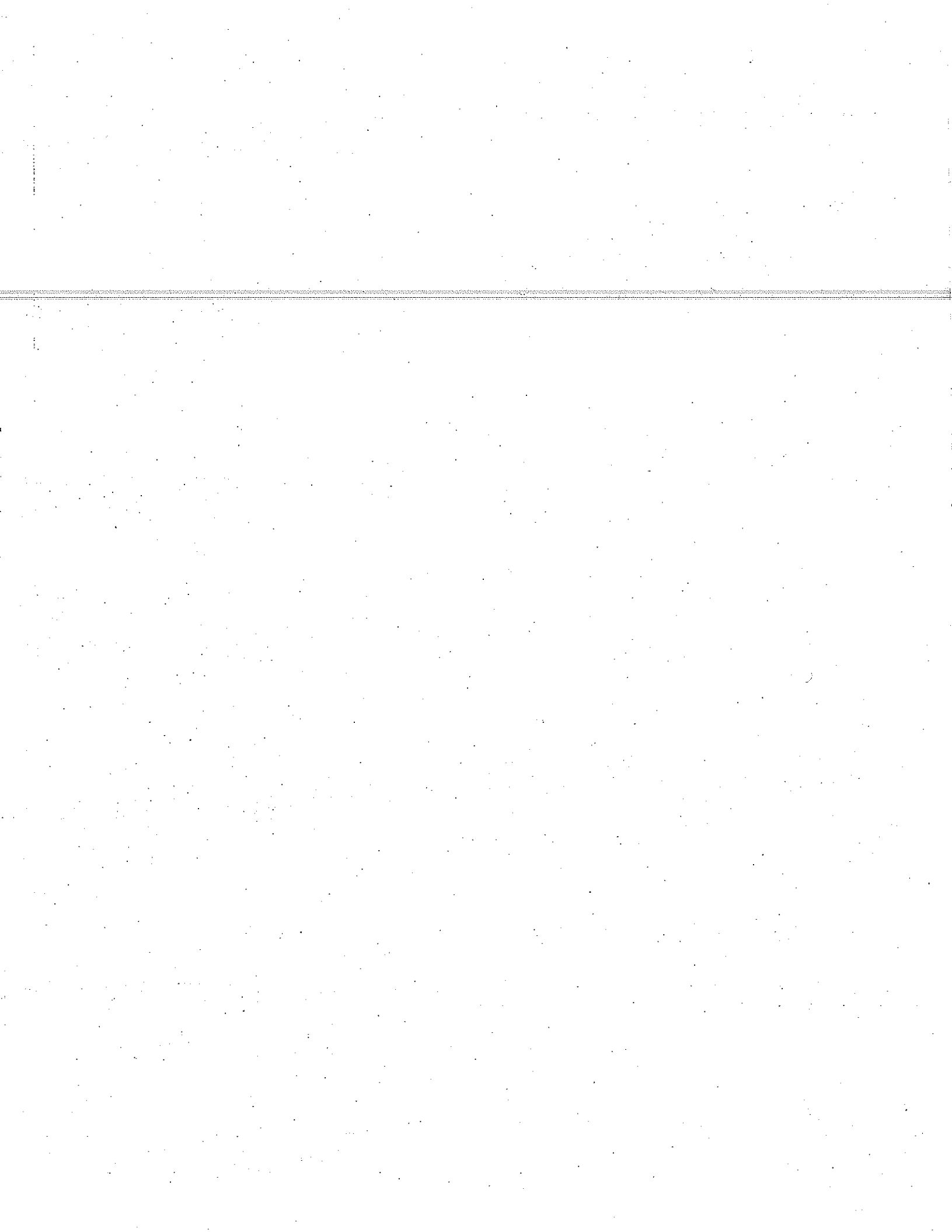
¹⁶ Please also note that this proposed form of substitute ordinance also includes the house keeping changes we forwarded to P&Z and the Town Solicitor on September 29th.

¹⁷ 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 Dunagan, 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



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

Shawn P. Tucker

Direct Dial: (302) 777-6375

Direct Fax: (302) 778-7835

E-mail: stucker@wolfblock.com

September 24, 2007

VIA FEDERAL EXPRESS & ELECTRONIC MAIL

Harry Wilson, Dewey Beach Planning and Zoning Chairman
awayoflife@comcast.net
Dewey Beach Town Hall
105 Rodney Avenue
Dewey Beach, DE 19971

David King, Dewey Beach Planning and Zoning Vice Chairman
king.deweybeach@verizon.net
Dewey Beach Town Hall
105 Rodney Avenue
Dewey Beach, DE 19971

Ed Beste, Dewey Beach Planning and Zoning Commissioner
ibestece@yahoo.com
Dewey Beach Town Hall
105 Rodney Avenue
Dewey Beach, DE 19971

Jim Dedes, Dewey Beach Planning and Zoning Commissioner
jsdedes@yahoo.com
Dewey Beach Town Hall
105 Rodney Avenue
Dewey Beach, DE 19971

Carol Ann Dryer, Dewey Beach Planning and Zoning Commissioner
odysea@adyseabeach.com
Dewey Beach Town Hall
105 Rodney Avenue
Dewey Beach, DE 19971

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George Metz, Dewey Beach Planning and Zoning Commissioner

seaesta@verizon.net

Dewey Beach Town Hall

105 Rodney Avenue

Dewey Beach, DE 19971

Faith Duncan, Dewey Beach Planning and Zoning Commissioner

rbduncan@alumni.princeton.edu

Dewey Beach Town Hall

105 Rodney Avenue

Dewey Beach, DE 19971

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

Dear Planning and Zoning Commission Members:

We write as a follow-up to the letter dated August 22, 2007 that was sent on behalf of our client regarding the above-referenced matter. As you may recall, in that letter we discussed a number of issues, including whether the 2007 Dewey Beach Comprehensive Development Plan's (the "Plan") reference to "relaxed bulk standards" in the RB-1 district includes within its plain meaning a reduction in Dewey Beach's existing height restrictions. As we set forth in our August 22nd letter, we believe our research confirms that the Plan's required "relaxed bulk standards" provision in the new RB-1 zoning district includes a relaxation in height for the new RB-1 zoning district.

Since our last letter we have uncovered additional information which further confirms that the Plan's reference to relaxed bulk standards includes a required relaxation of existing "height" limitations in the new RB-1 zoning.

First, we have located reference material designed specifically for land use planning that includes a definition of "bulk regulations." This planning reference is titled "A Planner's Dictionary" and it is published by the American Planning Association for the purpose of defining "the concepts that planners, public officials, and the public address in any consideration of community building." A Planner's Dictionary, Michael Davidson and Fay Dolnick (American Planning Assoc.) at 2. A Planner's Dictionary provides three different definitions for "bulk regulations," as follows:

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"Standards and controls that establish the maximum size of buildings and structures on a lot and the buildable area within which the building can be located, including coverage, setbacks, height, impervious surface ration, floor area ration, and yard requirements.

Controls that establish the maximum size, height, and setback of a building on its lot.

Controls which establish the maximum size of buildings and structures on a lot or parcel and the buildable area within which the structure may be placed, including lot coverage, height, floor area ratio, setbacks, and yard area."

(emphasis added). A review of these definitions confirms that all three of them include "height" within the definition of "bulk regulations," making it irrefutable that the generally accepted definition of "bulk" includes "height" within its meaning.

Second, although not contained within the Zoning or Subdivision chapters of the Dewey Code, the current Dewey Beach Municipal Code does include a definition of "bulk" in Chapter 1 of the Code which, according to the Code's explicit language, is intended to apply throughout all chapters of the Code: Dewey Beach, Delaware Code § 1-16. That definition of "bulk" in Chapter 1 of the Dewey Beach Code reads as follows:

BULK - A term used in this Code to describe the size and shape of a building or structure and its relationship to other buildings, to the lot area for a building, density and to open spaces and yards.

(emphasis added). Dewey Beach, DE Code § 1-16.

While it seems commonsensical that the "size" of a building must include its "height," in order to provide the most complete review of this issue, we have taken the analysis one step further. To this end, the Dewey Beach Municipal Code also provides that any undefined terms in the Code "[s]hall be interpreted in accord with their normal dictionary meaning and customary usage." Dewey Beach, DE Code § 1-15. In terms of the "customary usage" of the word "size," it again seems clear that the "size" of a three-dimensional object includes all three dimensions - one of those dimensions, of course, being height. This conclusion is further supported in terms of the "dictionary meaning" of the word "size," and we have included several dictionary definitions of "size" as well as "dimension" below:

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SIZE. "The physical dimensions, proportions, magnitude, or extent of an object." The American Heritage® Dictionary of the English Language (4th ed. 2000), <http://www.bartleby.com/61/25/S0442500.html>.

SIZE. "[T]he spatial dimensions, proportions, magnitude, or bulk of anything." Random House Unabridged Dictionary (2006), <http://dictionary.reference.com/browse/size>.

SIZE. "The dimensions or magnitude of a thing; how big something is." Wiktionary.org, <http://en.wiktionary.org/wiki/size> (as of September 17, 2007).

The definitions above all indicated that "size" includes the "dimensions" of an objection. The dictionary definitions below confirm that "height" is included within the dictionary meaning of "dimensions" which actually include all three dimensions - the length, width, and height of an object:

DIMENSION. "A measure of spatial extent, especially width, height, or length." The American Heritage® Dictionary of the English Language (4th ed. 2000), <http://www.bartleby.com/61/69/D0226900.html>

DIMENSION. "In common usage, a dimension ... is a parameter or measurement required to define the characteristics of an object—i.e., length, width, and height or size and shape." See Wikipedia, *Dimension*, <http://en.wikipedia.org/wiki/Dimension> (as of Sep. 17, 2007, 19:59 GMT).

DIMENSION. "The width, length, and height of a plane or space figure." Geometry glossary, ThinkQuest, <http://library.thinkquest.org/2647/geometry/glossary.htm#d>.

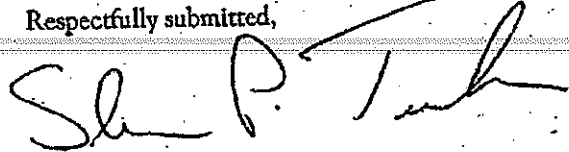
In summary, we believe that both A Planners Dictionary and the current Dewey Beach Municipal Code make abundantly clear that the word "bulk" includes "height." Accordingly, the 2007 Dewey Beach Comprehensive Development Plan's requirement that the new RB-1 zoning district be established with "relaxed bulk standards (setbacks, lot coverage, etc.)" is a requirement that the current height limitations in the RB district must now be relaxed to create "the most intensely developed, most dense, zone" in Dewey Beach. See generally 2007 Dewey Beach Comprehensive Development Plan, at pg. 22.

Your time and attention to our client's proposal is greatly appreciated by all involved.

September 24, 2007

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Respectfully submitted,

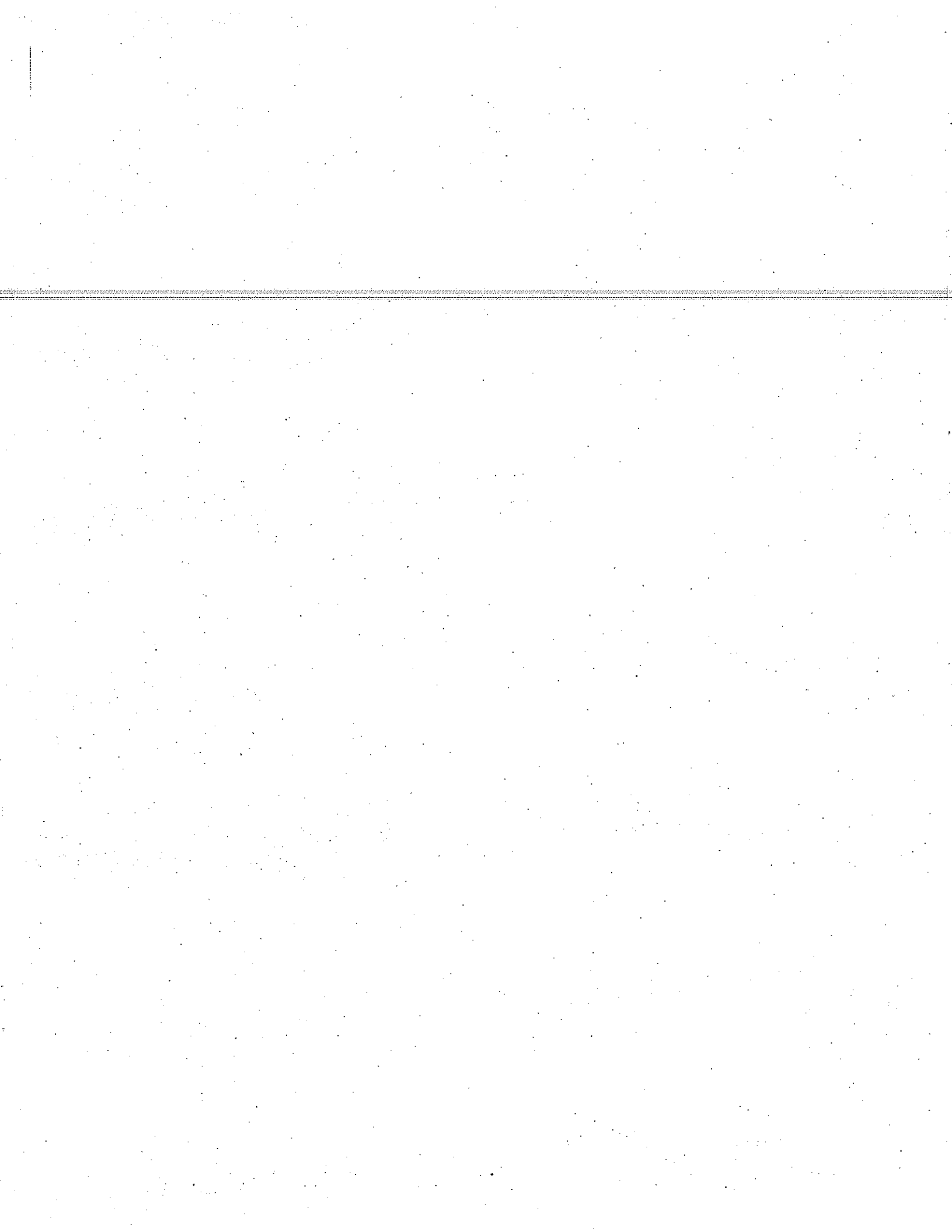


Shawn P. Tucker

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

Enclosure

cc: The Honorable Mayor Dell Tush, Commissioner, w/enclosure
The Honorable Dale H. Cooke, Commissioner, w/enclosure
The Honorable Mike Eisenhauer, Commissioner, w/enclosure
The Honorable Bob Fitzgerald, Commissioner, w/enclosure
The Honorable Claire Walsh, Commissioner, w/enclosure
The Honorable Diane Hanson, Commissioner, w/enclosure
The Honorable Richard Hanewinkel, w/enclosure
Gordon Elliott, Town Manager, w/enclosure
John Brady, Town Solicitor, w/enclosure
Harvey, Hanna & Associates, Inc., w/enclosure
William J. Cohen, AICP, Ph.D, Professional Planner, w/enclosure
Jeremy Alvarez, AICP, Professional Planner, w/enclosure
Gary Burcham, MLA, RLA, ASLA, Professional Planner, w/enclosure
Christopher J. Williams, P.E., Traffic Engineer, w/enclosure



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George Metz, Planning and Zoning Commissioner
seaesta@verizon.net
Dewey Beach Town Hall
105 Rodney Avenue
Dewey Beach, DE 19971

Faith Duncan, Planning and Zoning Commissioner
rbduncan@alumni.princeton.edu
Dewey Beach Town Hall
105 Rodney Avenue
Dewey Beach, DE 19971

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

Dear Planning and Zoning Commission Members:

We want to thank the Chairman for promptly responding to our August 16, 2007 letter in regard to the above referenced matter. Indeed, we received an e-mail from Chairman Wilson late Monday indicating that the Commission has no plans to entertain a presentation by our client this Thursday evening, August 23rd. However, we were invited by the Chairman to attend the meeting should the Commission have any questions. (8/20/07 e-mail enclosed). As such, we will be in attendance this Thursday and will be happy to answer any questions the Commission may have in regard to the proposed ordinance.

As indicated in our August 16th letter, we have additional planning professionals¹ available for the Commission's upcoming public hearings. Indeed, William J. Cohen, AICP,

¹ By way of my planning background, prior to entering private practice, I served as a First Assistant County Attorney in New Castle County and was responsible for legal issues related to all planning matters County-wide as well as the 1997 drafting and implementation of New Castle County's current zoning and subdivision codes. In addition to a re-write of the County's zoning and subdivision codes, this effort included the rezoning of approximately 137,000 parcels of land. Subsequently, I served as the General Manager of the Land Use Department (planning director) for New Castle County where I managed and oversaw the review and approvals of all zoning, rezoning, subdivision and building permit applications for the County, and served as the chief adviser on all planning related matters to the New Castle County Planning Board and County Council.

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Ph.D, Professional Planner and Jeremy Alvarez, AICP, Professional Planner, were requested by our client to review the Dewey Beach Comprehensive Development Plan, the pending RB-1 ordinance and our client's concept plan for the redevelopment of Ruddertowne. Both of these professional planners will be present Thursday evening to answer any questions the Commission may have. In addition, Christopher J. Williams, P.E., Traffic Engineer, has also reviewed our client's proposal and will be attending Thursday as well to answer any questions the Commission may have.

In the meantime, and in follow-up to our August 16th request, we will await confirmation from the Commission as to which hearing date our client will be provided an opportunity to make a presentation as the applicant, and the rules of procedure that the Commission will be following for rebuttal and otherwise as we move forward. The Chairman was kind enough to contact me today to discuss the procedural matters raised in our August 16th letter, and Chairman Wilson indicated that September 12th would be the likely date for our client's presentation. We will plan to present on that date unless we are advised otherwise.

Also, in follow-up to our August 16th letter we have attached for your convenience a power point presentation outline of the issues related to our client's proposal, including a breakdown of how our client's proposal satisfies the requirements of the Dewey Beach Comprehensive Development Plan. As you know, with this Commission's recommendation in hand, the Dewey Beach Comprehensive Development Plan was unanimously adopted by the Commissioners on June 29th, and, thereafter, certified by the State of Delaware. As such, the Dewey Beach Comprehensive Development Plan has now become "the law" in Dewey Beach and its provisions now set a new legal standard by which all ordinances regulating the approval of development must be evaluated by this Commission and the Town Commissioners. See 22 Del. C. § 702(c) & (d). In accordance with the plain language contained in the Dewey Beach Comprehensive Development Plan, our client's project proposes development in the new RB-1 district that includes, but is not limited to:

- (1) A mixed-use structure (page 22);
- (2) Floor-area square footage of not less than one-third commercial land use and not greater than two thirds residential land use (page 22);
- (3) Commercial land uses that are similar to those permitted commercial land uses in the current RB Zone (page 22);
- (4) Significant parking with over 500 parking spaces and a 3 level internal structured parking garage (which will take up a very large portion of the first 35 feet of development area)(page 22);

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- (5) Single-family detached dwellings are prohibited (page 22);
- (6) Relaxed bulk standards (page 22);
- (7) Proposed development area of at least 80,000 square feet (page 22);
- (8) Public access to all common areas and all waterfront areas (page 22);
- (9) Commercial land use is provided on first floor of the project (page 22);
- (10) An expanded commercial area is proposed (page 40);
- (11) Year-round restaurants and retail businesses are proposed (page 40);
- (12) Proposal limited to focused geographic area (page 40);
- (13) Proposed as most intensely development, most dense zone (page 22); and
- (14) A bay walk is provided (page 25).

In addition, we have attached for your convenience a copy of the current Dewey Beach Subdivision and Zoning Codes, available on-line, along with a copy of the proposed RB-1 Zoning and Rezoning Ordinance which was referred by the Commissioners to the Planning and Zoning Commission on July 13th. Lastly, as promised in our last letter, we want to provide you with a summary of our legal research and analysis regarding issues raised at prior public hearings regarding "spot zoning", bulk standards, and legal precedent.

Spot Zoning

At the last public meeting a concern was raised that the rezoning of the Ruddertowne parcels to RB-1 might constitute "spot zoning." We want to address that concern and assure the Commission that the proposed rezoning does not constitute spot zoning under Delaware law.

Generally speaking, spot zoning occurs when a small parcel of land in the middle of a district is rezoned in a way that is completely out of character with the surrounding property, and the rezoning is done solely to benefit the owner of that parcel, to the detriment of the larger community. McQuail v. Shell Oil Co., 183 A.2d 572 (Del.Supr. 1962); Pettinaro Enterprises v. Stango, 1992 WL 187625 (Del.Ch. 1992); Scarborough v. Mayor & Council of Town of Cheswold, 303 A.2d 701, 705 (Del.Ch. 1973); Hudson v. County Council of Sussex County, 1988 WL 15802 (Del.Ch. 1988); 39 Am.Lur., "Proof of Facts" 3d 433 (2007). When that occurs, a lawsuit may be brought claiming that the change is inconsistent with the comprehensive plan or with the uses of the surrounding property, that it discriminates against

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the surrounding owners whose property is not rezoned, or that it benefits the owner of the rezoned property to the detriment of the community. 39 Am. Jur., "Proof of Facts" 3d 433 (2007).

Turning to the application before the Commission, this application does not constitute spot zoning because none of the required elements of spot zoning are present. First, Delaware courts have noted that spot zoning requires a change that is drastically inconsistent with the zoning in the surrounding properties (McQuail; Pettinaro)-- for example, as stated in one case, taking one parcel in the middle of a single-family residential district and rezoning it to industrial (Pettinaro). Under the facts of this application, the proposed change is not drastic. Rather, the proposed amendment would permit additional commercial uses with relaxed bulk standards within a zoning district which is already zoned commercial.

Second, the Delaware Supreme Court has held that the fact that the owner of a rezoned parcel will benefit from a rezoning does not make it spot zoning, so long as the change also serves the broader community. McQuail. The rezoning application before you is not being proposed to solely benefit the owner of the parcels -- to the contrary, the rezoning is entirely consistent with the Dewey Beach Comprehensive Development Plan, which has been adopted by the Town Commissioners, and certified by the State of Delaware, to guide future land use for the benefit of the entire Dewey Beach community. The Dewey Beach Comprehensive Development Plan is now the law in Dewey Beach, and its provisions now constitute the legal standard which must be utilized by the Town and this Commission before voting or making a recommendation upon an ordinance. To this end, the Comprehensive Development Plan determined that in keeping with the plan's goals of providing opportunities for "sustainable economic development," the best possible use of the parcels now proposed for rezoning was for them to be part of the most intensely developed zone, with the highest density within the new RB-1 district. The uses, and intensity of such uses, set forth in the Dewey Beach Comprehensive Development Plan are precisely what this rezoning application proposes.

Finally, there can be no viable claim that rezoning these parcels will discriminate against the owners of the surrounding parcels, as those parcels are also included in the proposed RB-1 district. This is not a case where the Council is attempting to change one and only one parcel and refusing to change any of the surrounding properties -- rather, this is the first step in an 18 month process as set forth in State law for implementing the Dewey Beach Comprehensive Development Plan and ultimately rezoning many of the surrounding parcels to RB-1 zoning as clearly set forth on Map 9 of the Plan. 22 Del. C. § 702(c).

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The Plain Meaning Doctrine & Bulk Standards

Another important issue that we would like to address is the question of whether the Dewey Beach Comprehensive Plan's reference to relaxed "bulk standards" in the RB-1 district includes height restrictions.

It has been well settled in Delaware by our Supreme Court, as well as the courts of other states, that where the language of a law is unambiguous the "plain meaning of the words" controls. Tomei v. Sharp, 2007 Del. Lexis 42 (Del. Jan. 30, 2007), at pg. 2. (emphasis added).²

Indeed, where the language of the statute is unambiguous, no interpretation is required and the plain meaning of the words controls. Ingram v. Thorpe, 747 A.2d 545, 547 (Del. 2000) (citing Spielberg v. State, 558 A.2d 291 (1989)); see Coastal Barge Corp. v. Coastal Zone Industrial Control Bd., 492 A.2d 1242, 1247 (Del. 1985) (citing Delaware Solid Waste Authority v. The News-Journal Co., 4800 A.2d 628 (Del. 1964)). If ambiguity does exist, then the Supreme Court has made clear that zoning laws must be interpreted in favor of land owners. Mergenthaler v. State, 293 A.2d 287, 288 (Del. 1972).

As you know, the Dewey Beach Comprehensive Plan plainly states that the RB-1 district will be the "most intensely developed, most dense zone" and provides for "relaxed bulk standards (setbacks, lot coverage, etc.)" in this zone. (page 29). The Dewey Beach Comprehensive Development Plan language is plain and clear in this regard, and height is certainly encompassed in the phrase "relaxed bulk standards (setbacks, lot coverage, etc.)" (emphasis added).

Pursuant to Delaware law, the first step in interpreting the language regarding bulk standards found in the Dewey Beach Comprehensive Development Plan – as with any statutory or regulatory interpretation – is to consider the "plain meaning" of the words used. According to www.dictionary.reference.com, "bulk" means "magnitude in three dimensions." Clearly then, the phrase "relaxed bulk standards" means a relaxation of the standards pertaining to length, width and height. Second, legal scholars interpret the phrase "bulk restrictions" to include height as one element of the size of a building -- "bulk restrictions control setbacks and size, shape, and placement of buildings on property." 83 Am. Jur. 2d "Zoning and Planning" § 127. Third, Delaware case law has specifically indicated that "bulk standards" includes height.

² This is a well settled rule of law has come to be know as the "plain meaning doctrine". See e.g., 31 Hofstra L.Rev. 849, 873 (2003).

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Indeed, in Dover Historical Society v. City of Dover Planning Commission, 2004 WL 1790164 (Del.Super.), the Superior Court recognized that waivers in bulk standards, which the Dover Planning Commission had granted, included both "building height" and "number of stories."

Finally, and perhaps most notably, it is commonsensical that the inclusion of the phrase "relaxed bulk standards" referred to in the Dewey Beach Comprehensive Development Plan includes relaxing existing height requirements. The inclusion of the abbreviated word "etc." in the parenthetical makes clear that all bulk standards (not just setbacks and lot coverage) are included in this legal requirement for the new RB-1 district. Further, setbacks and lot coverage are already provided for in the parenthetical, so height is the only other primary bulk standard remaining to be included and required to be relaxed. Further, the Dewey Beach Comprehensive Development Plan makes clear that the RB-1 district is to be the "most intensely developed, most dense zone". Because construction today, under existing setbacks and lot coverage, take up almost the entire Ruddertowne site, "relaxed bulk standards" creating the "most intensely developed, most dense zone", in Dewey Beach could not be truly satisfied without relation of height.

Legal Precedent

Finally, we have heard great concern expressed by some folks at public hearings that if bulk standards, including height, are relaxed in the RB-1 district, that a precedent will be set and that all others in town will have the legal right to sue the Town for greater height in all residential zoning districts. One property owner even claimed that approval of our client's proposal would eventually lead to development in Dewey Beach which would cast a shadow on the beach at 3pm. This is simply not the case, and statements such as this have unfairly caused much confusion about our project in the minds of many Dewey Beach property owners.

First, State law makes clear that the Town of Dewey Beach has the right to establish different zoning standards, including bulk standards, in each of its zoning districts. 22 Del. C. § 302. Thus, the Town may lawfully create different bulk standards in different districts and no property owner would have the legal right to sue the Town for doing so. In fact, it is common practice in this State, as well as in the Country, for towns to adopt relaxed bulk standards in limited commercial areas to create walkable town centers which help enhance year round economic development, while, at the same time, limiting the sprawling out of commercial uses through the remaining part of the town.

In addition to the above State law, another State law also makes clear that the Town can only approve proposals which are consistent with the Dewey Beach Comprehensive Development Plan. 22 Del. C. § 702(c) & (d). Map 9 of the Dewey Beach Comprehensive Development Plan confirms that the RB-1 district makes up approximately 4% of the Town and is located on the bayside of Dewey Beach. No relaxed bulk standards are provided for in any

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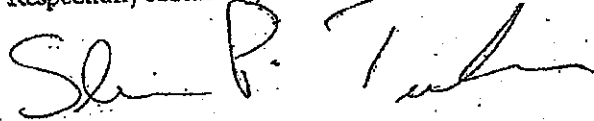
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residential zoning district in the Dewey Comprehensive Development Plan, and, therefore, the Town could not by law approve an ordinance permitting a greater height in any residential zoning district without first amending the Dewey Beach Comprehensive Development Plan.

The above information represents an outline of our legal research in these areas. We would be happy to supplement this information and/or provide information on other legal or planning topics as the Commission may desire as we move forward in this process.

Your time and attention to our client's proposal is greatly appreciated by all involved.

Respectfully submitted,



Shawn P. Tucker

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

Enclosures

cc: The Honorable Mayor Dell Tush, Commissioner, w/enclosures, via federal express
The Honorable Dale H. Cooke, Commissioner, w/enclosures, via federal express
The Honorable Mike Eisenhauer, Commissioner, w/enclosures, via federal express
The Honorable Bob Fitzgerald, Commissioner, w/enclosures, via federal express
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Gordon Elliott, Town Manager, w/enclosures, via federal express
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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

EXHIBIT B

From: Holland Connie (OMB)
Sent: Friday, September 10, 2010 12:27 PM
To: Schwartzkopf Peter (LegHall)
Subject: RE:

Diane Hanson,,, commissioner

From: Schwartzkopf Peter (LegHall)
Sent: Friday, September 10, 2010 12:25 PM
To: Holland Connie (OMB)
Subject: RE:

Connie,
Who did you talk to from Dewey? Was it the Mayor?

Pete Schwartzkopf
Majority Leader
State Representative
14th District
302-744-4351

From: Holland Connie (OMB)
Sent: Friday, September 10, 2010 12:17 PM
To: Schwartzkopf Peter (LegHall)
Subject: RE:

Good Afternoon Pete...I have reviewed your e-mail and you are correct!...I have spoken with Dewey Beach and the representative from the UofD that worked on their currently certified plan regarding this issue,,,if language change is done,, it would be a plan amendment and the new language would only be applicable to FUTURE applications. The person I spoke to from Dewey was unhappy with my answer, but the UofD wholeheartly supported my comments because they follow the current language in DelCode,, Hope this is helpful,, great to hear from you,,,keep the Beach safe, Connie

From: Schwartzkopf Peter (LegHall)
Sent: Friday, September 10, 2010 12:10 PM
To: Holland Connie (OMB)
Cc: Hopkins Melissa T (LegHall)
Subject:

Connie,
I have a quick question for you. If a municipality wants to change something in their Comprehensive Plan which was certified by the State, does the change then have to be certified or approved by the State? The reason for the question is Dewey Beach. As you may know, Dewey Beach commissioners are in a battle with Dewey Beach Enterprises(DBE) over the future of the block that the Lighthouse and Que Pasa occupy. There are numerous law suits that have been filed by DBE in an effort to protect their property rights and to get the town to abide by their Comprehensive Plan. So far, the town has lost 2 of their battles in court. One issue still in the court is about the