



IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

DEWEY BEACH ENTERPRISES, INC.,

Plaintiff,

v.

TOWN OF DEWEY BEACH, a municipal corporation of the State of Delaware, COMMISSIONERS OF DEWEY BEACH; DELL TUSH, in her official capacity; MARC APPLEBAUM, in his official capacity; RICHARD HANEWINCKEL, in his official capacity; DIANE HANSON, in her official capacity; and MARTY SEITZ, in his official capacity,

Defendants.

C.A. No. 4426-VCN

ANSWER

The Defendants, the Town of Dewey Beach, the Commissioners of Dewey Beach, Dell Tush, Marc Applebaum, Richard Hanewinckel, Diane Hanson, and Marty Seitz, through their attorneys answer the Plaintiff's Complaint as follows:

PARTIES

1. The Defendants lack information sufficient to form a belief as to the facts alleged in this paragraph, and on that basis, deny them.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.

7. Admitted.

8. Admitted.

JURISDICTION

9. Admitted.

FACTUAL BACKGROUND

10. The Defendants admit the first and third sentences of paragraph 10 of the Complaint. The second sentence contains no allegations to which a response is required.

11. The Defendants admit that the text of the statute cited in this paragraph is accurate.

12. The Defendants admit that the Town's zoning code in place before the 2007 Comprehensive Code included a resort-business zoning district.

13. In response to the allegations in paragraph 13 of the Complaint, the Defendants state that Comprehensive Plan referred to speaks for itself, and denies the allegations to the extent they are inconsistent with the document.

14. In response to the allegations in paragraph 14 of the Complaint, the Defendants state that Comprehensive Plan referred to speaks for itself, and denies the allegations to the extent they are inconsistent with the document.

15. The Defendants admit that the Town adopted Ordinance No. 634 on January 10, 2009 and that Chapter 185 of the Dewey Beach Municipal Code is the Dewey Beach Zoning Code. In response to the remaining allegations in paragraph 15 of the Complaint, the Defendants state that Ordinance 634 referred to speaks for itself, and denies the allegations to the extent they are inconsistent with the document.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. The allegations in paragraph 20 of the Complaint state a legal conclusion as to which no response is required, as such, it is deemed denied.

21. Denied. In further response to the allegations in paragraph 21 of the Complaint, the Defendants state that Ordinance 634 referred to speaks for itself, and denies the allegations to the extent they are inconsistent with the document.

22. Denied. In further response to the allegations in paragraph 22 of the Complaint, the Defendants state that Ordinance 634 referred to speaks for itself, and denies the allegations to the extent they are inconsistent with the document.

23. Denied.

24. Admitted that David King has been a member of the Planning Commission at all times relevant to the adoption of Ordinance 634. In further response to the allegations in paragraph 24 of the Complaint, the Defendants state that the State Public Integrity Commission's Opinion speaks for itself. The balance of the allegations in paragraph 24 are denied.

25. Denied.

26. Denied.

COUNT I – PERMANENT INJUNCTION

27. Defendants incorporate paragraphs 1-26 by reference.

28. Denied.

29. Denied.

30. Denied.

COUNT II – DECLARATORY JUDGMENT

31. Defendants incorporate paragraphs 1-30 by reference.

32. The allegations in paragraph 32 of the Complaint state a legal conclusion as to which no response is required, as such, it is deemed denied.

33. The allegations in paragraph 33 of the Complaint state a legal conclusion as to which no response is required, as such, it is deemed denied.

34. The allegations in first sentence of paragraph 34 of the Complaint state a legal conclusion as to which no response is required, as such, it is deemed denied. The Defendants deny the allegation in the second sentence.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, the Defendants respectfully requests that this Court: (i) deny any and all requested relief by Plaintiff, (ii) award Defendants their costs and expenses, including reasonable attorneys' fees, in defending this action, and (iii) award such other and further relief as this Court may deem just and proper.

BAIRD MANDALAS, LLC

/s/ Glenn C. Mandalas

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Dated: May 7, 2009