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IN THE SUPREME COURT OF THE STATE OF DELAWARE

PIKE CREEK RECREATIONAL SERVICES, LLC, a Delaware Limited Liability Company,	)	No. 309, 2020
Plaintiff Below / Appellant,	)	Court Below: Delaware Superior Court
	)	C.A. No. N19C-05-238 PRW
v.	)	
NEW CASTLE COUNTY, a Political Subdivision of the State of Delaware,	)	
Defendant Below / Appellee.	)	

OPENING BRIEF

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NATURE OF THE PROCEEDINGS[1]

Plaintiff Below / Appellant Pike Creek Recreational Services, LLC ("PCRS") seeks this Court's assistance in resolving the parties' competing interpretations of certain restrictive covenants and the impact of subsequently-adopted zoning laws, in which the trial court erroneously rejected PCRS's plain language interpretation in favor of a result that violates not only the express language of the covenants and the zoning laws, respectively, but also ignores the multiple and independent bases for PCRS's requests for relief.

The decision of the Delaware Superior Court to enter judgment in favor of Defendant Below / Appellee New Castle County (the "County") on the parties' cross-motions for summary judgment (the "Opinion") reflects a departure from Delaware law. The dispute focuses on the County, which has derived significant benefit from the Agreement for more than fifty (50) years and exercised its authority to legislatively provide that "[n]o prior restrictive covenant … shall be altered by the provisions of the [Unified Development Code (UDC)]."[2] Despite this clear and unambiguous expression of legislative intent, the County adopted numerous restrictions which altered and are otherwise hostile to the Agreement. The Opinion

[1] The Introduction and Summary of the Argument sections incorporate defined terms from the Fact section of the Opening Brief.

[2] NEW CASTLE CTY. CODE § 40.01.150.

attempts to shield the County from the lawful consequences of its own legislation. In doing so, the trial court committed reversible error in failing to: (1) give effect to the plain language meaning of the Agreement and Section 150; and (2) address multiple, dispositive arguments capable of establishing PCRS's right to relief. The trial court's errors in this regard fail to honor the parties' intent or allow for the logical consequence of the Agreement, which is the construction of 5,454 units, expiration or conclusion of the Agreement, and implementation of the existent County regulations. Rather, the Opinion permits the County to subject the PCRS Property to the restrictions of the Agreement and the UDC in perpetuity, while denying PCRS the prescribed density. For these reasons, the Court should reverse and remand this Action to the trial court with the instruction to enter judgment in favor of PCRS as a matter of law.

SUMMARY OF THE ARGUMENT

I. The Trial Court Committed Reversible Error In Its Interpretation Of The Statutory Prohibition Against Altering Prior Restrictive Covenants.

A. The Agreement conferred certain rights and responsibilities upon PCRS, in which the County is a named beneficiary.

B. The County sought to preserve the Agreement through its adoption of the UDC, which created legislative carve outs or exclusions for those prior restrictive covenants which named the County as a third party beneficiary.

C. One exclusion to the application of the UDC is Section 150.

D. The Agreement falls within the scope of Section 150, because it is a prior restrictive covenant, which names the County as a third party beneficiary, and the UDC altered its requirements.

E. The trial court erroneously interpreted Section 150 in a manner that defies the plain language of the law and common sense.

F. The trial court erred by construing the Agreement in a manner that renders material sections of the Agreement meaningless and deprives PCRS of its contractual rights.

G. The trial court's analysis violates black letter law concerning the construction of legislation and contracts alike, and thus, the Court should reverse the Opinion.

II. The Trial Court Committed Reversible Error In Failing To Address Multiple, Dispositive Arguments Capable Of Establishing PCRS's Claims For Relief.

A. In issuing the Opinion, the trial court not only committed reversible error in its interpretation of the Agreement and Section 150, but also erred as a matter of law by failing to address arguments independently capable of establishing PCRS's claims for relief.

B. Sections 40.01.300D1 and 40.01.300D2 of the UDC insulate the ordinances approving the 1964 Agreement and 1969 Amendment from attack, yet the County (and the trial court) ignored this legislation in denying PCRS its rights under the Agreement.

C. Although the Compromise Plan complies with the Comprehensive Development Plan, the County (and the trial court) rejected the premise out of turn and without consideration for its lawful authority to bind the County.

D. The ordinance, which adopted the Comprehensive Development Plan, repealed all previously-enacted legislation that conflicts with the Comprehensive Development Plan, but the County continues to enforce these ordinances to PCRS's detriment.

E. As a named third party beneficiary, the County was obligated to accept the benefits and the burdens of the Agreement under well-accepted principles of Delaware law.

F. Any one of these arguments establishes PCRS's right of recovery, or at bare minimum, bars the entry of judgment in favor of the County. Despite the dispositive nature of these arguments, the trial court failed to address each of these points in awarding the County summary judgment. Accordingly, the Opinion should be reversed.

STATEMENT OF FACTS

In 1964, Mill Creek Venture and Frank A. Robino, Inc. (collectively, the "Developer") sought to develop a 1,141 acre tract in Pike Creek Valley (the "Property") [A0075]. To that end, the Developer sought to increase the development density of the Property, which was at that time limited to an R-2 zoning classification (low-density residential) [A0140]. Ultimately, on December 8, 1964, the Developer was successful in obtaining, *inter alia*, an up-zoning of the Property from the New Castle County Levy Court (the "Levy Court") to a higher residential density [*Id.*].

On that very same day, an Agreement executed by the Developer was recorded in the Office of the New Castle County Recorder of Deeds (the "1964 Agreement") for the "benefit" of the Developer and the Levy Court [A0075]. While the up-zoning of the Property provided a much greater residential density per acre than the original R-2 zoning, the 1964 Agreement limited the maximum development density to 4,500 units (or approximately four (4) family dwelling units per acre) [A0081, A0197, A0208]. In exchange for the up-zoning, the Developer agreed, *inter alia*, to set aside 158 acres as "open space" [A0080].

Approximately five (5) years later, the Developer proposed an amendment to the 1964 Agreement (the "1969 Amendment," along with the 1964 Agreement, the "Agreement"), which increased the size of the Property to 1,363 acres and increased the number of family dwelling units to 5,454 [A0091-92]. New Castle County

Council, as successor to the Levy Court, approved the 1969 Amendment [A0142]. Notwithstanding the increase in acreage and number of family dwellings, the average residential density remained unchanged at four (4) family dwelling units per acre [A0091-92, A0142].

In 1970, a special exception was granted by the Board of Adjustment to permit the commercial use of the 130 acres set aside for golf course purposes [A0027]. Subsequently, in 1971, the Developer sold its interest in a portion of the Property to Pike Creek Valley Country Club being 212.206 +/- acres.[3] In 1982, Three Little Bakers, Inc. acquired a portion of the same 212.206 +/- acre tract, being 173.957 +/- acres.[4] Then, in 2008, PCRS acquired this same 173.957 +/- acres from Three Little Bakers, Inc. (the "PCRS Property").[5] Today, PCRS remains the lawful owner of the PCRS Property and successor-in-interest to the Developer, as contemplated and otherwise permitted by the Agreement.[6]

[3] *See New Castle Co. v. Pike Creek Rec. Servs., LLC*, 82 A.3d 738, 738 (Del. Super. 2013) ("*PCRS I*").

[4] *See id.* at 739.

[5] *See id.* at 740.

[6] *See id.*

I. The Adoption of the UDC.

On December 31, 1997, the Council adopted the UDC into law. The UDC was a massive rehaul of the County's zoning maps and related zoning and subdivision regulations. As of the UDC's adoption, 89% of the 5,454 units reserved in the Agreement had been approved by the County (i.e., 4,854 of the 5,454 units) and largely constructed [A0196, A0207]. The UDC imposed new zoning and subdivision restrictions across the County including, but not limited to:

1. A new official zoning map;[7]
2. A new residential zoning classifications that served to down-zone certain land (including the PCRS Property);[8]
3. New bulk standards including "minimum site areas[;]"[9] and
4. A new "site capacity" calculation mechanism based upon the new UDC standards and new zoning map classifications to determine future development density, including a specific provision that requires the subtraction of "land previously dedicated as open space."[10]

[7] *See* NEW CASTLE CTY. CODE § 40.01.100.

[8] *See* NEW CASTLE CTY. CODE § 40.01.110.

[9] *Id.*

[10] NEW CASTLE CTY. CODE § 40.05.421.

In 2003, the County amended the UDC to, *inter alia*, prevent golf courses from being treated as open space for purposes of calculating density [A0312].

Following the adoption of the UDC, the County adopted a series of Comprehensive Development Plans, notably in 2007 and 2012 (the "Comprehensive Development Plan") [A0412-14, A0436-616]. The Comprehensive Development Plan is prepared by the Department of Land Use (the "Department") and approved by the Planning Board (the "Board") [A0412-14]. Once approved, the County will adopt the Comprehensive Development Plan and the Governor shall certify that it conforms with state law [*Id.*]. The Comprehensive Development Plan provides a framework for the future development of the County, in which the 2012 version remains in effect through June 30, 2022 [*Id.*].

II. PCRS Submits Plans For Development Of The PCRS Property.

In 2010, PCRS made its first application to develop the PCRS Property, which proposed 288 units and 62,088 square feet of commercial space (the "2010 Plan") [A00029, A0197, A0208]. At that time, it was erroneously believed that a total of 5,263 units had been approved, leaving 191 units to be constructed pursuant to Paragraph 9 of the Agreement [A0196, A0208]. However, it is now acknowledged and stipulated that only 5,000 of the 5,454 units have been approved [A0225].

On November 9, 2010, the County filed a complaint against PCRS in the Delaware Court of Chancery, in which it argued that the 2010 Plan violated

applicable restrictions, covenants, and dedications.[11] In response, PCRS filed a petition in the Delaware Superior Court for the entry of an order requiring the County to review its application.[12] The competing actions were consolidated (the "Consolidated Action"), and the Delaware Superior Court ultimately entered judgment in favor of the County as a matter of law.[13] This Court affirmed the ruling on appeal.[14]

III. PCRS Develops The Compromise Plan.

On July 5, 2016, the parties stayed the Consolidated Action to allow PCRS to present a compromise plan of 224 units (the "Revised Plan") [A0223]. PCRS proposed the Revised Plan to a volunteer community working group consisting of residents who lived in neighborhoods contiguous to the PCRS Property [A0291-95]. The Revised Plan reflected the court's findings in *PCRS I*, for example, the preservation of 130 acres of the former Pike Creek Golf Course, along with an additional 20 acres, for a total of 150 acres of open space [A0197, A0208]. The

[11] *See PCRS I*, 82 A.3d at 735.

[12] *See id.*

[13] *See id.* at 767. Following the entry of judgment, each of the parties filed additional motions, which the Delaware Superior Court denied in large part. *See New Castle Co. v. Pike Creek Rec. Servs., LLC*, 2013 WL 6904387 (Del. Super. Dec. 30, 2013) ("*PCRS II*").

[14] *See Pike Creek Rec. Servs., LLC v. New Castle Co.*, 105 A.3d 990 (Del. 2014) ("*PCRS III*").

Revised Plan was also based on the current zoning pattern in the area of the PCRS Property, along with the existing housing types [*Id.*]. Further, PCRS relied upon the remaining density reserved in the Agreement [A0091-92, A0197, A0208]. However, the proposed number of units was far less than the remaining 454 units permitted thereunder [A0223-25].

After a number of working group meetings and multiple revisions to the Revised Plan, an official exploratory plan was submitted to the County (the "Compromise Plan") [A0116]. The Compromise Plan was the byproduct of not less than eleven (11) meetings with the working group and a public meeting of approximately 300 persons, which permitted members of the public to ask questions and provide comment [A0291-95]. On November 29, 2018, the community working group voted to approve the Compromise Plan, which promised the construction of 224 units, the preservation of 150 acres of open space, a $1,000,000 endowment to help maintain the open space (and any open space improvements), and the ability to provide private open space access easements to immediate neighbors (and other interested parties) [A0294].

IV. The County Rejects The Compromise Plan.

Following the working group's approval of the Compromise Plan, PCRS submitted its application to the County (the "Application") [A0116]. On December 4, 2018, the Department and the Board held a public hearing on the Application [*Id.*].

More than two (2) months later, the Department issued its Recommendation Report (the "Report"), which recommended that County Council deny the Application [A0116-26]. The Department relied on sections of the UDC, which conflict with the Agreement:

1. Citing UDC Table 40.05.420, the Report concluded that PCRS could only obtain approval under the UDC for approximately sixty (60) units;
2. Citing Article 27 of the UDC, the Report concluded that the 130 acres of former golf course open space making up the Compromise Plan could not be made available for use by neighboring property owners for recreational purposes; and
3. Citing UDC Table 40.10.210, the Report concluded that golf courses and driving ranges are not permitted in community area open space or natural resource area open space—the only types of open space permissible under the UDC.

[A0125]. The Report also triggered a new supermajority vote requirement of County Council that PCRS must satisfy before County Council may approve the Application [A0126].

V. PCRS Commences This Action.

Following the issuance of the Report, PCRS and the County entered into a stipulation to permit PCRS to bring suit in the Delaware Superior Court to determine the scope of the parties' rights and obligations [A0223-25]. On May 23, 2019, PCRS filed a complaint against the County, in which PCRS sought a declaration of its rights and responsibilities under the Agreement and the UDC, respectively [A0066]. The County filed its Answer to the Complaint on June 14, 2019 [A0128]. In light of the parties' stipulation, PCRS moved for summary judgment on August 9, 2019 (the "Motion") [A0012]. The County responded to the Motion and cross-moved for the entry of summary judgment (the "Cross-Motion") [A0296]. The parties completed briefing on January 22, 2020 [A0617], and the Court heard oral argument on February 14, 2020 [A0691]. Three (3) weeks later, the Court held a status conference, at which time, the Court announced its decision as to specific claims and defenses [A0758]. More than five (5) months later, on August 17, 2020, the Court issued the Opinion, in which the Court denied the Motion, but granted the Cross-Motion.[15]

This appeal concerns the legal errors set forth in the Opinion.

[15] *See Pike Creek Rec. Servs., LLC v. New Castle Co.*, 238 A.3d 208 (Del. Super. 2020) ("*PCRS IV*").

LEGAL ARGUMENT

I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ITS INTERPRETATION OF THE STATUTORY PROHIBITION AGAINST ALTERING THE TERMS OF PRIOR RESTRICTIVE COVENANTS.

A. Question Presented

Whether the trial court erred in its interpretation of Section 40.01.150 of the UDC ("Section 150") by concluding that the UDC did not 'alter' the Agreement?[16]

B. Scope of Review

The Court shall review questions of statutory and contractual interpretation under a *de novo* standard of review.[17]

C. Merits of the Argument

A plain language reading of Section 150 establishes a clear and unambiguous limitation on the County's authority to alter a prior restrictive covenant, which the County has violated. Even though the trial court correctly concluded that the Agreement falls within the scope of Section 150, it inexplicably found that the UDC does not 'alter' the Agreement. The trial court's finding that the UDC did not 'alter' the Agreement is not the product of well-accepted principles of statutory and

[16] PCRS raised this issue below at A0038 and A0694.

[17] *See Spintz v. Div. of Family Servs.*, 228 A.3d 691, 696 (Del. 2020).

contractual construction, in which the trial court ignored the plain language meaning of Section 150 and failed to interpret the Agreement in its entirety.

1. The Trial Court Failed To Interpret The Plain Language Meaning Of Section 150.

The standard for statutory construction is well-accepted,[18] in which the focus is on Section 150:[19]

> **Section 40.01.150 Prior Restrictive Covenants**
>
> No prior restrictive covenants that have been entered into in which New Castle County is a beneficiary shall be altered by the provisions of this Chapter. Where such covenants restrict the type of uses under former New Castle County zoning districts, those uses shall remain restricted regardless of the rezoning of the district.[20]

The word, "altered[,]" commands center stage in the Court's analysis. Although the UDC does not define the word, neither party argues that it is ambiguous. Thus, the

[18] The court is responsible for "ascertain[ing] and giv[ing] effect to the intent of the legislators, as expressed in the statute." *Id.* at 698. When interpreting a statute, the Court must first determine whether the statute is ambiguous. *See id.* "When the language and intent of a statute are clear, no ambiguity exists and the [c]ourt will not engage in construing or interpreting the statute." *Id.* In such instance, the plain language meaning shall control. *See id.*

[19] The trial court rejected the County's argument and found that Section 150 applies. *See PCRS IV*, 238 A.3d at 215. The County did not appeal the Opinion.

[20] NEW CASTLE CTY. CODE § 40.01.150.

Court is tasked with giving the word its plain language meaning.[21] Citing the definition of "alteration" from Black's Law Dictionary, the trial court initially interpreted the word, "altered[,]" to mean change.[22] The trial court then deviated from the word's plain language meaning and the statutory text by interjecting a materiality component, in which "an alteration is material if it would change the burdens, liabilities, or duties of a party or changes the operation of any of its terms."[23] The County Council did not modify the word, "altered[,]" through the inclusion of an adverb in the legislative text, let alone the use of 'material' or 'materially.'[24] "Altered" appears in Section 150 by itself. The trial court strayed further from the well-worn path of statutory construction by finding that "Section 150 is implicated if the UDC purports to ban what the [Agreement] grants, or forbid what the [Agreement] requires[,]"[25] thereby imposing additional requirements that do not find a basis of support in the statutory text or comport with the plain language meaning of "altered[.]"

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[21] *See Spintz*, 228 A.3d at 698. *See also* NEW CASTLE CTY. CODE § 1.01.003 ("Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the English language.").

[22] *See PCRS IV*, 238 A.3d at 215-16.

[23] *Id.* at 216.

[24] *See* NEW CASTLE CTY. CODE § 40.01.150.

[25] *PCRS IV*, 238 A.3d at 216.

The trial court's construction of the word, "altered[,]" constitutes legal error. Altered is a verb, which means to make different.[26] The difference need not be significant or material.[27] Further, the difference need not rise to the level of a ban or prohibition.[28] A difference can be an improvement or addition, or in the alternative, a limitation, restriction, impairment, or modification.[29]

The trial court erred in its construction of Section 150 through its distortion of the plain language meaning of "altered[.]" The County Council did not modify "altered" in the statutory text through the use of an adverb, and it certainly did not reference a ban or prohibition, yet the trial court exceeded the scope of its authority by interjecting extraneous language into the statute and imposing new

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[26] The Merriam-Webster Online Dictionary defines "alter" as "to make different without changing into something else." *See* *www.merriam-webster.com/dictionary/alter?src=search-dict-hed* (last visited: October 27, 2020). *See, e.g.*, *Ingram v. Thorpe*, 747 A.2d 545, 548 (Del. 2000) ("Dictionary definitions of undefined terms can be useful in construing statutes …").

[27] "[T]o the extent that there is any doubt as to the correct interpretation, that doubt must be resolved in favor of the landowner." *Dewey Beach Enterp., Inc. v. Bd. of Adjustments of Dewey Beach*, 1 A.3d 305, 310 (Del. 2010). *See also Chase Alexa LLC v. Kent County Levy Court*, 991 A.2d 1148, 1152 (Del. 2010) ("[I]f there are two reasonable interpretations of [a zoning] statute, the interpretation that favors the landowner controls.").

[28] *See id.*

[29] *See Service Corp. of Westover Hills v. Guzzeta*, 2007 WL 1792508, *4 (Del. Ch. June 13, 2007) (finding that any modification represents a reasonable interpretation of the word, "alteration," based on a dictionary definition).

requirements.[30] As a result, the trial court did not give effect to legislative intent, but rather rewrote Section 150 to permit the County to evade its own legislative act.[31] The trial court's deviation from well-accepted standards of statutory construction constitutes legal error.

The trial court's error is material and prominently reveals itself in the finding that "[b]ecause the [Agreement] is solely restrictive, the UDC does not work an alteration on it unless it imposes a requirement mutually irreconcilable with one already in the [Agreement]."[32] As set forth above, the trial court's finding does not

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[30] The courts do not "sit as a super legislature to eviscerate proper legislative enactments. If the policy or wisdom of a particular law is questioned as unreasonable or unjust, then only the elected representatives of the people may amend or repeal it." *Leatherbury v. Greenspun*, 939 A.2d 1234, 1238 (Del. 2007) (quoting *Ewing v. Beck*, 520 A.2d 653, 660 (Del. 1987)). "Regardless of one's views as to the wisdom of the statute, our role as judges is limited to applying the statute objectively and not revising it." *In re Adoption of Swanson*, 623 A.2d 1095, 1097 (Del. 1993).

[31] "It is well established that '[c]ourts have no authority to vary the terms of a statute of clear meaning or ignore mandatory provisions.' 'If a statute is not reasonably susceptible to different conclusions or interpretations, courts must apply the words as written …'" *Bd. of Adjustment of Sussex Co. v. Verleysen*, 36 A.3d 326, 331 (Del. Ch. 2012) (quoting *Leatherbury*, 939 A.2d at 1234). *See generally Arnold v. State*, 49 A.3d 1180, 1184 (Del. 2012) ("The General Assembly could have narrowed the statute to mandate expungement only where the pardon is granted for certain crimes. But it did not, and we must apply the unambiguous language of the statute as written."); *Leatherbury*, 939 A.2d at 1238 ("We have no alternative but to enforce Section 6856 in accordance with its plain terms despite the somewhat unfortunate result produced.").

[32] *PCRS IV*, 238 A.3d at 216.

reflect a plain language interpretation of an unambiguous statute in violation of Delaware law. Even if the Court accepted the trial court's flawed construction, the trial court failed to correctly apply its erroneous interpretation in the Opinion.[33] Under the trial court's logic, a restrictive covenant could not confer any rights upon a developer or landowner in relation to the County.[34] A restrictive covenant may only be "restrictive."[35] Because a restrictive covenant "is solely restrictive," the trial court implicitly concluded that Section 150 could never alter a prior restrictive covenant, thereby rendering Section 150 meaningless.[36] While the County may counter that the trial court gave effect to the statute to the extent that the UDC "imposes a requirement mutually irreconcilable with one already contained in the [Agreement,]"[37] its reliance on this phrase is equally flawed. 'Alter' does not equate

[33] *Compare id.* ("A provision of the UDC would alter the Covenant if application of the UDC would *change the meaning* of the instrument. Such an alteration would be material *if it would change the burdens, liabilities, or duties of a party or changes the operation of any of its terms*.") (emphasis added); *id.* ("[T]he UDC does not work an alteration on [the Agreement] unless it imposes a requirement *mutually irreconcilable* with one already contained in the [Agreement].") (emphasis added).

[34] *See id.* at 215-17.

[35] *Id.* at 216.

[36] *Id.*

[37] *Id.*

to "mutually irreconcilable."[38] To alter is to make different, and although a difference could be irreconcilable, a worsening, aggravation, exacerbation, magnification, or intensification would also suffice.[39] This is not a mere play on words, as the latter reflects a common understanding of the meaning of "altered[,]"[40] while the former interjects requirements, levels of severity, and discretion not found within the body of Section 150 (and inconsistent with the trial court's prior construction).[41] Further, the County's litigation stance in this Action contradicts its long-standing, legal position that the County "is bound by the terms of the

[38] *Id. See generally Linn v. Del. Child Support Enforcement*, 736 A.2d 954, 964 (Del. 1999) ("Modification is not defined in UIFSA (1992); therefore the ordinary meaning of the word applies. In Black's Law Dictionary modify is defined: '[t]o alter; to change in incidental or subordinate features; enlarge, extend; amend; limit; reduce. Such alteration or change may be characterized, in quantitative sense, as either an increase or decrease.") (quoting BLACK'S LAW DICTIONARY 1004 (6th ed. 1990)).

[39] *See Service Corp. of Westover Hills*, 2007 WL 1792508, at *4. For example, a hypothetical law states that only citizens of the United States, who are eighteen years or older as of the date of the national election, can cast a ballot in such election. The law is subsequently amended to require that only citizens of the United States, who are eighteen years or older as of the date of the nation election and possess a state-issued identification card, can cast a ballot in such election. Under the trial court's logic, the amendment did not alter the original law, because the state-issued identification card requirement is not "mutually irreconcilable." However, the amendment creates an additional requirement or obstacle to casting a ballot, which clearly constitutes an alteration of a citizen's eligibility to vote.

[40] *See id.*

[41] *See supra* n. 26, 29, 38.

[Agreement]"[42] and its prior position before this Court in the Consolidated Action, in which the County asserted that "the case law makes clear that a zoning change does not impact prior restrictive covenant. The UDC codifies this rule …"[43]

2. PCRS's Construction Of Section 150 Is Reasonable.

PCRS's interpretation of the word, "altered[,]" is reasonable and reflects a consistency with other sections of the UDC.[44] The intent of County Council in adopting Section 150 is clear[45]—appreciating the benefits afforded the County under various restrictive covenants, the government sought to preserve these protections by creating a legislative carve-out for prior restrictive covenants, in which the County is a "beneficiary."[46] The express language of Section 150 allows for no other conclusion, in which the first and second sentence of the statute each preserve the conditions created by those prior restrictive covenants. A plain language

[42] In a legal opinion prepared by Assistant County Attorney, Pamela J. Scott, Esquire, at the request of the Board, the County Law Department opined that the County "is bound by the terms of the 1964 and the 1969 Agreements, as well as the Master Plan" [A0192].

[43] A0365. *See also* A0369, A0372.

[44] *See Leatherbury*, 939 A.2d at 1293 (holding that a literal interpretation of 18 DEL. C. § 6856 would not produce an absurd result).

[45] *See id.* at 1290 (holding that the legislative intent can be gleamed from, *inter alia*, the statutory text).

[46] NEW CASTLE CTY. CODE § 40.01.150.

interpretation of Section 150 also comports with the statutory framework,[47] as Sections 40.01.100 and 120 of the UDC establish additional exceptions to its application.[48] Section 40.01.300D provides further support for the premise that the County sought to create a carve-out to the UDC, in which subsection 1 states that "[t]he repeal of prior ordinances, resolutions, rules and regulations … shall not affect any act done …"[49] Subsection 2 further provides that "[a]ll the provisions of ordinances, resolutions, rules and regulations repealed by the ordinance adopting this Chapter shall be deemed to have remained in force from the time when they began to take effect, so far as they may continue to apply to … any transaction or event or any limitation or any right or obligation or the construction of any contract already affected by such ordinances, resolutions, rules and regulations …"[50] These

[47] The County did not appeal the Opinion. To the extent that the County argues on appeal that Section 40.01.160 of the UDC trumps the Agreement, the trial court implicitly rejected the argument. *See PCRS IV*, 238 A.3d at 215 ("So, no doubt, [Section 150] applies."). Further, a plain language reading of Section 40.01.160 establishes that the statute does not affect, modify, or touch upon Section 150, in addition to the fact that Section 40.01.160 only applies to land applications and restrictive covenants not less than five years old at the time of the UDC's adoption. *See* NEW CASTLE CTY. CODE § 40.01.160.

[48] *See* NEW CASTLE CTY. CODE §§ 40.01.100, 40.01.120.

[49] NEW CASTLE CTY. CODE § 40.01.300D1.

[50] NEW CASTLE CTY. CODE § 40.01.300D2.

subsections establish that the ordinances approving the 1964 Agreement and 1969 Amendment "remain[] in force" despite the adoption of the UDC.[51]

3. The Trial Court Erroneously Construed The Agreement.

The trial court committed further error in its construction of the Agreement and application of Section 150, in which it focused exclusively on Article 9 at the expense of the remainder of the Agreement. "Delaware adheres to the 'objective' theory of contracts, i.e., a contract's construction should be that which would be understood by an objective, reasonable third party."[52] The court "will read a contract as a whole and [it] will give each provision and term effect, so as not to render any part of the contract mere surplusage."[53] The court must "not read a contract to render a provision or term "meaningless or illusory."[54] The court favors this traditional method of construction in the context of restrictive covenants, which will be "recognized and enforced … where the parties' intent is clear and the restrictions are reasonable."[55]

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[51] *Id. See also PCRS I*, 82 A.3d at 738.

[52] *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1160 (Del. 2010).

[53] *Id.*

[54] *Id.*

[55] *PCRS I*, 82 A.3d at 745.

The trial court wore blinders with respect to PCRS's argument, specifically its focus on PCRS's right to construct 5,454 units. The trial court concluded that Article 9 of the Agreement did not constitute a cap on the number of units permitted to be constructed on the Property. The express language of the Agreement undermines this legal finding, in which the Developer sought to develop the Property "under and pursuant to a comprehensive master plan, applying the principles of a planned unit development."[56] Conditions imposed on the use of the Property were "for the benefit of" the Developer and the County alike.[57] The Developer agreed "to cause the preparation of an updated master plan of the entire SUBJECT ACREAGE, … subject to reasonable and beneficial variations or changes approved by the Levy Court."[58] The development was subject to Article 9, which stated:

> The DEVELOPER, on its own behalf and on behalf of its successors and assigns, covenants and agrees that not more than 4500 family dwelling units will be constructed or erected on the SUBJECT ACREAGE known as Pike Creek Valley, subject only to the qualification that the number of family units may be increased in accordance with the provisions of Article 8, if land set aside for school and church purposes is unclaimed and unused.[59]

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[56] A0075.

[57] A0077.

[58] A0079.

[59] A0081.

Notably, the number of units was subsequently increased to 5,454.[60] Article 16 provided further:

> DEVELOPER covenants and agrees that in the event that provision shall be made in the applicable zoning law for planned unit development districts or similar types of zoning the SUBJECT ACREAGE may be appropriately zoned thereunder, provided that such rezoning would permit DEVELOPERS to accomplish all of the aspects of the preliminary, tentative comprehensive plan and of the updated master plan and would not be more restrictive than the limitations imposed upon DEVELOPER by the terms of this agreement.[61]

The Agreement was set to expire within twenty (20) years "or until the last dwelling unit is constructed on the SUBJECT ACREAGE within the permissible limits set forth in this Agreement."[62]

The Agreement created a right to construct 5,454 units on the Property.[63] The right to construct 5,454 units is evident from Article 9, when read in conjunction with the Recitals and Articles 3, 15, and 16 of the Agreement.[64] Under Article 15,

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[60] A0092.

[61] A0084.

[62] A0083-84.

[63] The Property had an R-2 zone designation at the time of the 1964 Agreement. *See* A0140. As a result of Ordinance 64-932 and the 1964 Agreement, the Property was up-zoned, *see id.*, thereby permitting the construction of approximately 4 units per acre, *see* A0075, A0078, A0197, A0208. The 1969 Amendment further evidenced the four (4) unit per acre density. *See* A0089-91.

[64] The Agreement must be construed as a whole, *see PCRS I*, 82 A.3d at 747, and in light of the court's preference in "favor [of] the free use of land." *Id.* at 745. Because

the Agreement provides for its own termination upon the Developer constructing "the last dwelling unit … within the permissible limits set forth in [the] Agreement[,]" i.e., 5,454 units.[65] If the Developer (or its successors, like PCRS) were barred from constructing 5,454 units, the Agreement would continue in perpetuity contrary to the Developer's express intent. Further, any impediment to the construction of 5,454 units would constitute not only an unilateral amendment of the Agreement,[66] but also a "more restrictive" limitation in violation of Article 16.[67] The trial court's construction thus renders multiple sections of the Agreement meaningless despite the expansive body of Delaware law prohibiting such result.[68] This error is

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restrictive covenants restrict the free use of land, the court must strictly construe the language in favor of freedom, i.e., in favor of using the land. *See id.*

[65] A0081.

[66] *See* A0078.

[67] A0081. *See PCRS I*, 82 A.3d at 746 ("Courts generally favor the free use of land.").

[68] *See id.* at 747 ("The restrictive covenant must be construed as a whole so that none of the individual provisions of the covenant themselves becomes 'illusory or meaningless.'") (quoting *Stetcher v. Tate*, 1993 WL 287618, *3 (Del. Super. July 28, 1993)). *See, e.g., Chase Alexa LLC*, 991 A.2d at 1152 (holding that a plain language interpretation of a statute was the only way that would "make sense" and prevent statutory text from being surplusage); *Tang Capital Partners, LP v. Norton*, 2012 WL 3072347, *8 (Del. Ch. July 27, 2012) (rejecting plaintiff's interpretation of an indenture, which would have permitted a noteholder to avoid standing requirements); *Bernstein v. TractManager, Inc.*, 953 A.2d 1003, 1013 (Del. Ch. 2007) (rejecting plaintiff's interpretation of a corporate bylaw which rendered language concerning a director's right to advancement meaningless).

significant, because the County's subsequent adoption of the UDC prevents PCRS from constructing the remaining 454 units, thereby altering the Agreement in violation of Section 150.

Even if the Court rejects PCRS's right to construct 454 additional units, it must still conclude that the County violated Section 150. Article 7 of the Agreement designates that certain acreage shall be set aside for a specific purpose, including 158 acres for open space.[69] The 1969 Amendment revised Article 7 "to read as follows … Open spaces (including 130 acres set aside for an 18-golf course and 85 acres [10% of net residential lands shall be non-golf open space]) 215 acres."[70] This grant was not gratuitous. The language was not accidental. The Agreement was the product of a deliberate process, in which the golf course counted as open space for purposes of calculating density.[71] Pursuant to the Agreement and the County's approval or ratification thereof, a golf course was developed and operated, while residential construction continued. The County's subsequent enactment of the UDC, as amended by Ordinance 03-045, prohibits the golf course from being treated as

[69] *See* A0079.

[70] A0090.

[71] *See* A0078, A0090. *See also* A0092 ("If for any reason construction of the golf course is not commenced within five years from the date hereof *the open space set-aside* for the same shall be devoted to uses approved by the Department of Planning and the New Castle County Council.") (emphasis added).

open space. This legislative act imposed a new and additional burden on the Property. As a result, the development of the PCRS Property is purportedly limited to the remaining 43.957 +/- acres (173.957 +/- acres minus the 130 acre golf course)[72] and "the last dwelling unit [can never be] constructed," thereby restricting the PCRS Property in perpetuity in violation of the Agreement.[73] Even under the trial court's flawed reasoning, the UDC still "altered" the Agreement.[74]

The Court should reverse the Opinion and remand this Action to the trial court with the instruction that summary judgment be entered in favor of PCRS. The trial court committed reversible error in its construction of Section 150 by failing to adopt a plain language meaning of the statutory text and imposing additional obligations not required under the law. Applying a plain language meaning of the word, "altered[,]" which is to make different, the Court can find that the UDC impaired PCRS's rights (Articles 9, 15, and 16 of the Agreement) and imposed an increased

[72] The Department relied on this restriction – for the first time relative to the PCRS Property – in denying the Compromise Plan. *See* A00116-26.

[73] A0083.

[74] *See* NEW CASTLE CTY. CODE § 40.01.150. *See also PCRS IV*, 238 A.3d at 216 ("Such an alteration is material if it … changes the operation of any of [the Agreement's] terms. Thus, Section 150 is implicated if the UDC purports to ban what the [Agreement] grants …").

or larger burden on PCRS's use of the land (Articles 7 and 15 of the Agreement) in violation of Section 150.

II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FAILING TO ADDRESS MULTIPLE, DISPOSITIVE ARGUMENTS CAPABLE OF ESTABLISHING PCRS'S CLAIMS FOR RELIEF.

A. Question Presented

Whether the trial court erred in granting the County judgment as a matter of law, even though it failed to address multiple, dispositive arguments capable of establishing PCRS's claims for relief?[75]

B. Scope of Review

The Court shall review questions of statutory and contractual interpretation under a *de novo* standard of review.[76]

C. Merits of the Argument

PCRS puts forth numerous arguments for the entry of judgment as a matter of law, which the trial court failed to address. Each of these arguments were independently capable of establishing PCRS's right to the entry of judgment as a matter of law. The trial court wholly failed to address these arguments in granting the Cross-Motion. The trial court's material omission constitutes reversible error.

[75] PCRS raised these issues below at A0037-53, A0369, A0373-79, A0434, A0697, A0710-11, A0713.

[76] *See Spintz*, 228 A.3d at 696; *GMG Cap. Inv., LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 779 (Del. 2012).

1. Sections 40.01.300D1 And 40.01.300D2 Of The UDC Uphold The Agreement And Create A Separate Exception To The Application Of The UDC.[77]

Sections 40.01.300D1 and 40.01.300D2 of the UDC each create a legislative carve-out to protect the Agreement from the application of the UDC to the PCRS Property. The Levy Court and the County Council, as successor to the Levy Court, approved the 1964 Agreement and the 1969 Amendment by ordinance. Subsection D1 states that the adoption of the UDC "shall not affect any act done …"[78] Subsection D2 expressly states that "[a]ll the provisions of ordinances, resolutions, rules, and regulations repealed by the ordinance adopting this Chapter shall be deemed to have remained in force …"[79] Section 40.01.300 of the UDC falls under the heading of "Continuation, Conflict and Severability."[80] Subsection D falls under the heading of "Continuation of existing institutions, rights and liabilities."[81] The headings, along with the statutory language, evidence the intent of the County to address potential areas of conflict between existing law and the UDC, in which subsections D1 and D2 unambiguously provide that the adoption of the UDC shall

[77] PCRS raised this issue below at A0039-40, A0369, A0710.

[78] NEW CASTLE CTY. CODE § 40.01.300D1.

[79] NEW CASTLE CTY. CODE § 40.01.300D2.

[80] NEW CASTLE CTY. CODE § 40.01.300.

[81] NEW CASTLE CTY. CODE § 40.01.300D.

not undo the County's prior legislative acts. As a legal consequence, the ordinances approving the 1964 Agreement and the 1969 Amendment survive and the rights, privileges, and responsibilities provided thereunder "remain[] in force[,]" [82] including, but not limited to the authority to construct 5,454 units, the limited duration of the Agreement, and the freedom from "more restrictive … limitations."[83] Accordingly, the trial court should have entered judgment in favor of PCRS.

2. PCRS Satisfies The County Comprehensive Development Plan. [84]

PCRS seeks to develop the PCRS Property in compliance with the Comprehensive Development Plan. As a matter of Delaware law, County Council lacks the "inherent power to regulate land use in the [C]ounty."[85] The authority rests exclusively with the State,[86] in which the General Assembly has delegated a portion of this power to county government pursuant to Title 9, Chapter 26 of the Delaware Code.[87] As a result, the County must develop the Comprehensive Development

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[82] *Id.*

[83] A0081. Notably, Ordinance 69-75, which approved the 1969 Amendment, recognized the land set aside for a golf course as "open space." *See* A0143.

[84] PCRS raised this issue below at A0031-32, A0373, A0376, A0710-11.

[85] *Green v. Cty. Council of Sussex Cty.*, 508 A.2d 882, 889 (Del. Ch. 1986), *aff'd*, 560 A.2d 480 (Del. 1986).

[86] *See id.*

[87] *See id.* ("[T]he statute conferring the power on County Council to regulate land use in the county makes plain that that power may only be exercised to adopt or

Plan.[88] Once approved, the Comprehensive Development Plan carries "the force of law, [in which] … no development … shall be permitted except in conformity with the land use map or map series …"[89] The conformity requirement is "no mere technicality. Indeed, the [conformity] requirement is a fundamental feature of the scheme of delegation of zoning authority to municipalities by the State."[90] Pursuant to the delegation of authority, county governments were also required to prepare a land use map or map series.[91] The land use map or map series becomes part of a comprehensive development plan "and has the force of law."[92] County government "may not permit development contrary to that provided for in the land use map."[93]

The interplay between the Comprehensive Development Plan and county ordinance has been the subject of the Delaware Court of Chancery's frequent analysis. In *Brohawn*, the court found that the rezoning of the relevant real property

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amend regulations that are in accordance with the 'approved,' … 'adopted' … comprehensive development plan."). *See also* 9 DEL. C. § 2659(a).

[88] *See Farmers for Fairness v. Kent Cty. Levy Ct.*, 2012 WL 295060, *1 (Del. Ch. Jan. 27, 2012).

[89] 9 DEL. C. § 2659(a).

[90] *Brohawn v. Town of Laurel*, 2009 WL 1449109, *5 (Del. Ch. May 13, 2009).

[91] *See Farmers for Fairness*, 2012 WL 295060, at *4.

[92] *Id.*

[93] *Id.*

pursuant to the ordinance at-issue conflicted with the applicable comprehensive development plan, and thus, the ordinance was invalid.[94] Several years later, in *Farmers*, the court found that the land use map, in addition to the comprehensive development plan is capable of rezoning land.[95] Accordingly, the County may not permit development in a manner inconsistent with the land use map.[96]

In this instance, the land use map for the Comprehensive Development Plan designates the PCRS Property for development as 'Low Residential Density,' which permits 1-3 units per acre. The PCRS Property consists of 173.957 +/- acres. According to the land use map, PCRS would be permitted to construct approximately 173-519 units. PCRS seeks to construct only 224 units, which is well within the limits of the land use map[97] and Article 9 of the Agreement. The proposed construction would even provide for the continued existence of the golf course consistent with *PCRS I*.

Although the Comprehensive Development Plan was part of the record before the trial court,[98] the Opinion ignores its application. The trial court's omission is

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[94] *Brohawn*, 2009 WL 1449109, at *5-6. *See also Green*, 508 A.2d at 891-92.

[95] *See Farmers for Fairness*, 2012 WL 295060, at *5.

[96] *See id.*

[97] *See* 9 DEL. C. § 2659(a).

[98] PCRS raised this issue below at A0373-76, A0434, A0710.

material, because the trial court could have found that the UDC and the Comprehensive Development Plan treat the PCRS Property in a nonconforming manner, in which case, the Comprehensive Development Plan must control.[99] This finding would critically undermine the legal authority for the Department's rejection of the Compromise Plan,[100] including, but not limited to density requirements and the classification of open space. The Department's decision reflects a failure to permit development "in conformity with the land use map or map series and with land development regulations enacted to implement the other elements of the [Comprehensive Development Plan]."[101] Based thereon, the trial court should have entered judgment in favor of PCRS as a matter of law, or at bare minimum, denied the Cross-Motion. Because the trial court failed to undertake the analysis, the Opinion is the product of legal error.

3. The Ordinance Adopting The Comprehensive Development Plan Repealed Prior, Inconsistent Legislative Acts.[102]

Ordinance 11-109, which adopted the Comprehensive Development Plan, repealed all prior ordinances, resolutions, or parts thereof "that may be in conflict

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[99] *See Brohawn*, 2009 WL 1449109, at *5-6; *Farmers for Fairness*, 2012 WL 295060, at *5.

[100] *See* A0116-26.

[101] *See* 9 DEL. C. § 2659(a).

[102] PCRS raised this issue below at A0374-76, A0711.

herewith …"[103] Notwithstanding this express language, the County insists on enforcing ordinances against PCRS, which are more strict than or inconsistent with the Comprehensive Development Plan, for example, Ordinance 03-045. As described above, Ordinance 03-045 bars a party from treating a golf course as open space for purposes of calculating density. By applying Ordinance 03-045, the County barred the development of the PCRS Property consistent with the 1-3 unit per acre provided under the Comprehensive Development Plan. The County's conduct violates Delaware law,[104] yet the trial court failed to address the argument. Like each of the arguments set forth in Section II herein, a proper analysis could have resulted in the entry of judgment in favor of PCRS, and thus, the case should be remanded.

4. The County Must Accept The Benefits And The Burdens.[105]

Delaware law provides that the County, in its capacity as a named third party beneficiary, takes the Agreement "as [it] finds it."[106] The rights and responsibilities

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[103] A0434. Ordinance 06-140, which adopted the 2007-2012 Comprehensive Development Plan, includes similar language regarding the appeal of prior ordinances and resolutions. *See* A0614-16.

[104] *See* 9 DEL. C. § 2659(a); *Brohawn*, 2009 WL 1449109, at *5.

[105] PCRS raised this issue below at A0041-48, A0377-79, A0713.

[106] *Rumsey Elec. Co. v. Univ. of Del.*, 358 A.2d 712, 714 (Del. 1976). *See also* RESTATEMENT (SECOND) OF CONTRACTS § 309; 17A AM. JUR 2D Contracts § 438.

of a third party beneficiary are "infected with all the infirmities of the contract as between the parties to the agreement."[107] A third party beneficiary may not cherry-pick those provisions, which it finds beneficial and leave the burdens on the vine.[108] It must accept the benefits with the burdens.[109] The County maintained this position for more than thirty (30) years, as evidenced by the 1987 opinion from the County's Law Department,[110] until this position failed to serve its interests.[111]

The County's actions reflect an intent to honor certain favorable provisions of the Agreement at the expense of less beneficial provisions. In 2010, the County commenced legal action to enforce, *inter alia*, Article 7 of the Agreement related to the Developer's obligation to set aside land for a golf course.[112] After obtaining a

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[107] *Id.*

[108] *See Hadley v. Schaffer*, 2003 WL 21960406, *6 (D. Del. Aug. 12, 2003).

[109] *See id.*

[110] *See* A0191-93. *See also* A0219 (The Department acknowledges "the 5,454 unit maximum permitted by the [1969 Amendment.]").

[111] Pamela J. Scott, Assistant County Attorney, opined that "the County is bound by the terms of the 1964 and 1969 Agreements, as well as the Master Plan. This is demonstrated by the terms and conditions of the [1964] Agreement and [the 1969 Amendment], and even more clearly by the recommendation report for Ordinance 69-75 …" A0192. *See also* A0142-43. More recently, litigation counsel argued that "if you're looking at the rights, I think you have to read the [Agreement] as a whole." A0044.

[112] *See, e.g., PCRS I*, 82 A.3d 731.

successful result in the Consolidated Action, in which the County sought to enforce the terms and conditions of the Agreement, the County now seeks to evade less favorable provisions and the legal consequences thereof by denying the validity of the Agreement.[113]

Article 9 of the Agreement permits the Developer to construct 5,454 units.[114] The County ratified this figure through its adoption of Ordinance 69-75.[115] The County made additional admissions concerning its duty to honor the Agreement in the County Law Department's 1987 opinion[116] and the Department's 2011 Exploratory Sketch Plan Review Report.[117] Despite these prior approvals, the County now disputes the terms and conditions of the Agreement in reverse of a thirty (30) year old (if not fifty (50) year old) position.[118] Even if the Court turned a blind eye to the County's numerous admissions, it cannot overlook the textual support for

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[113] *See PCRS II*, 2013 WL 6904387, at *3 (finding that the County has duties under the Agreement as a third party beneficiary).

[114] *See* A0078, A0092.

[115] *See* A0142.

[116] *See* A0191-93.

[117] *See* A0217-221. In 2011, both of the parties were under the erroneous belief that 5,263 units had been constructed, thereby leaving only 191 units to be built. The parties have since discovered the error and stipulate that only 5,000 units have been constructed. *See* A0225.

[118] *See* A0140, A0142.

5,454 units in the Agreement. First, the figure is consistent with the density requirements set forth in the Agreement. In fact, the Agreement provided for the possibility of constructing additional units under certain circumstances.[119] Second, the body of the Agreement evidences the Developer's intent that the Property be developed in a specific manner.[120] In the absence of the density provided under the Agreement, no reasonable developer would agree to unilaterally encumber its property and limit its ability to maximize value.[121] The subsequent amendment of Article 9 to increase the number of units from 4,500 to 5,454 leaves no room for doubt as to the Developer's intent.[122] Third, should the Court interpret the Agreement to deny PCRS the ability to construct the remaining 454 units,[123] it would render Article 15 meaningless in violation of Delaware law.[124] The Court cannot

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[119] *See* A0078.

[120] *See, e.g.,* A0081.

[121] *See Osborn*, 991 A.2d at 1160 (An unreasonable interpretation of a contract would "produce[] an absurd result or one that no reasonable person would have accepted when entering [into] the contract.").

[122] *See* A0092.

[123] The parties agree that only 5,000 units have been constructed to date, thereby allowing PCRS to construct 454 additional units. *See* A0225.

[124] *See Osborn*, 991 A.2d at 1160.

sanction this absurd result in contravention of the Developer's intent and the County's long-standing position.

Article 16 of the Agreement further provides that the Property shall not be subject to limits "more restrictive than the limitations imposed upon the [Developer] by the terms of this agreement."[125] The language is unambiguous, and the Court should give effect to its plain language meaning. As set forth above, the County approved the Agreement by ordinance and took a legal position on multiple occasions that it must and would honor the Agreement. The trial court in *PCRS II* agreed.[126] Despite this acceptance, the County adopted a series of ordinances as well as a statutory framework,[127] which it admits[128] pose a "more restrictive … limitation[,]"[129] in which the County has down-zoned the Property and barred the treatment of a golf course as open space for purposes of calculating density. These actions not only constitute a breach, but as set forth above, a violation of the

[125] A0081.

[126] "The Court has fulfilled its role given the procedural posture of the case, and now the County must carry out its own coextensive *duties* as … a third-party beneficiary of the restrictive covenant that is attached to a portion of that land." *PCRS II*, 2013 WL 6904387, at *3, *aff'd*, 105 A.3d 990.

[127] *See, e.g.*, NEW CASTLE CTY. CODE; A0312-13.

[128] *See* A0326-27.

[129] A0081.

Comprehensive Development Plan. Further, the County has frustrated the purpose of the Agreement. The County must comply with the Comprehensive Development Plan. Equally important, the County must honor the Agreement in its entirety, in which it accepts the benefits with the burdens. The trial court failed to address these points when entering judgment in favor of the County. A finding in favor of PCRS on this issue would necessitate the entry of judgment in favor of PCRS, not the County. Accordingly, the Court committed legal error.

CONCLUSION

The Court should reverse the Opinion and direct it to enter judgment as a matter of law in favor of PCRS where the parties agree that there is no genuine issue of material fact and a plain language reading of Section 150 prohibits the UDC from altering the Agreement, which the legislative framework clearly does. At bare minimum, the Court should reverse and remand the matter back to the trial court to decide the issues based on the evidentiary record.

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