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Case Number 28,2022D

IN THE SUPREME COURT OF THE STATE OF DELAWARE

OCEAN BAY MART, INC.,	)	
	)	
Plaintiff-Below, Appellant,	)	
	)	No. 28,2022
v.	)	
	)	On Appeal from C.A. 2019-0467-SG
THE CITY OF REHOBOTH BEACH DELAWARE,	)	in the Court of Chancery of the State of Delaware
	)	
Defendant-Below, Appellee.	)	

APPELLANT'S REPLY BRIEF

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INTRODUCTION

This case asks whether a property owner who:

- knew that a single family condominium project (the Cottages at Philadelphia Place) had already been approved by the City without having to comply with certain subdivision code provisions applicable to non-condominium single family home communities;

- received confirmation from two City officials that a condominium plan need not comply with the subdivision code provisions applicable to conventional single family residential projects;

- after receiving a contrary determination by a successor official, obtained a reversal of that successor official by the City's Board of Adjustment – the final arbiter of all such disputes – meaning that its condominium plan was unquestionably code compliant at that point; and

- spent hundreds of thousands of dollars up to that point in the process,

can rely on the final ruling of the Board (as well as the guidance gathered earlier) and proceed as planned notwithstanding subsequent legislative change?

The Court of Chancery said "no," reasoning, for the first time in Delaware, that the mere fact of a dispute over the proper application of the City's laws puts the landowner on notice that something might change at some time in the future and that his rights can never vest. The Court and City further suggest that the fact that the property owner had not personally read certain provisions of the City's code should matter – as if to say that the guidance obtained by the property owner's experts, who inquired with proper City officials at the owner's request, is irrelevant. And, finally, the Court and City have to reach into the future three

years after the Board's decision to find a legislative enactment that purports to apply retroactively to Ocean Bay Mart's project. Without a reversal by this Court, the doctrine of vested rights will be eviscerated here in Delaware.

At the center of this case lies the difference between (1) a traditional single family residential project, in which each lot is subdivided, separately owned, and must have a separate entrance off a public road; and (2) a condominium project composed of single family homes that share common space and features, including a common driveway providing access to a public road. In the traditional case, as the City repeatedly points out in its Answering Brief, there can be but one main building (*i.e.,* the house) on each lot and that any other structures (*i.e.,* a garage, shed, pool house, etc.) must serve the main building. The owner owns the entire lot with its amenities and may exclude others from it. The houses in a condominium, though, may be exactly the same in appearance, but they sit on a common lot and use driveways, pathways, pools, pool houses and other features in common with their neighbors.

With this distinction in mind, it makes perfect sense not to apply subdivision code provisions intended for traditional single family projects to single family condominium projects. And so, accordingly, in 2005, the City approved the "Cottages at Philadelphia Place," a condominium with individual residences all on

the same lot, despite the Table of Use Regulations, which has been a part of the City Code since its current codification in 2001. A-345.

The only difference between then and now is political, and the politics surrounding this case will forge the end result unless this Court reverses.

ARGUMENT

I. THE PARTIES AGREE ON THE FACTS BUT DISAGREE DRAMATICALLY ON THEIR LEGAL SIGNIFICANCE.

Before responding to the City's arguments, it is important to note the facts and issues which the City does not dispute, including:

The Sullivan/Newcomb Meeting

- The City Building Inspector (Terri Sullivan) met with Ocean Bay Mart's realtor (Kathy Newcomb) to discuss the applicability of the City Code to condominium projects.

- Newcomb and Sullivan confirmed what was said during that meeting in writing. A-99, 100.

- During that meeting, as evidenced by their written correspondence, Sullivan confirmed a number of things about how the City applied its Code to condominium projects, including for example, that there could be one residential dwelling for every 5,000 square feet of the parcel, and that there could be multiple single family homes on one parcel. *Id.*[1]

- In particular, Sullivan made clear in her email that, for a condominium project, the limitation of one main building per parcel did not apply

[1] The City claims that there is no "testimony" that the main building/subordination issue was discussed during the Newcomb/Sullivan meeting. Ans.Br. at 29, 30. However, as the City concedes, Ms. Newcomb was asked at trial if the Table of Use Regulations was discussed, and she responded "only as it relates to the subordinate nature of the structures." A-304. So, it was discussed. Put another way, if the code limitation of one "main" building applied, then all the other buildings would need to be "subordinate." More importantly, Newcomb's letter and Sullivan's response, which were written to summarize and confirm the meeting, both discuss the issue. A-99, 100. If the matter had not been discussed, it would not be in the correspondence. Tellingly, the City did not offer Sullivan as a witness or offer any evidence to dispute Newcomb's testimony or the follow up correspondence.

("[t]he additional dwellings would not be required to be subordinate to the main dwelling").[2]

The Cottages At Philadelphia Place Condominium Project

- The Cottages at Philadelphia Place is a condominium project which, like Ocean Bay Mart's project, has multiple individual buildings, each its own home, on one parcel.

- The Cottages project was approved in 2005, and the language in the Table of Use Regulations, which the second Building Inspector claimed rendered Ocean Bay Mart's plan impermissible, dates back to at least the year 2001, A-345, meaning that if the second Building Inspector was

[2] The City does not dispute what the email states; instead the City suggests the email may be disregarded because it did not specifically mention the Ocean Bay Mart property, and that another property was discussed during the meeting which has a "C-3" zoning designation, as compared to the "C-1" designation for Ocean Bay Mart's property. Ans.Br. at 12. But, the language in the Table of Use Regulations applies to all zoning classifications the same way. Thus**, it doesn't matter if the Ocean Bay Mart property itself was mentioned because the rules are exactly the same** – and the City has *never* claimed the code provision applies differently to a "C-1" zoned property as compared to a "C-3" zoned property.

Finally, in a claim never before advanced, the City argues that reference to the word "subordinate" in Newcomb's testimony and the Sullivan/Newcomb correspondence is not a reference to the Table of Use Regulations, but an allusion to the term "accessory uses" which appears elsewhere in the City Code. Ans.Br. at 30. This makes no sense. The term "subordinate" does not appear in the definition of "accessory use." As defined by the City Code, an "accessory use" is a use "customarily incidental" to a "permitted use." City Code §270-4. Residential dwellings are a "permitted use" in all residential and commercial zoning classifications in Rehoboth; and, one does not have a "permitted use" that is "accessory" to a "permitted use." Instead one has two permitted uses. The reference to "subordinate" in Newcomb's testimony and the Sullivan/Newcomb correspondence was a reference to whether the other dwellings in a condominium project had to be "subordinate" to a "main" dwelling. Sullivan's email was clear on this point: "[t]he additional dwellings would not be required to be subordinate to the main dwelling." A-100.

correct, the Cottages (and similar projects) should not have been approved.

The Schrader/Mandalas Conversation

- The City's attorney (Glenn Mandalas) told Ocean Bay Mart's attorney (Dennis Schrader) that a condominium plan was not a "subdivision."

The Board of Adjustment Decision

- The City was a party to Ocean Bay Mart's appeal to the Board of Adjustment.

- The Board of Adjustment ruled in Ocean Bay Mart's favor.

- Once the Board ruled in Ocean Bay Mart's favor, any question as to its plan's compliance with the Code was put to rest, meaning that, in accordance with Delaware case law, the plan was entitled to approval.

- The City did not appeal the Board's decision, meaning it became final.

The 2016 Ordinances & 2019 Ordinance

- The 2016 Ordinances both provide that, after their introduction and the scheduling of a hearing, the City's Building and Licensing Department must reject "any new application."

- Ocean Bay Mart's plan was not a "new" application when the 2016 Ordinances were adopted.

- The City did not apply the 2016 Ordinances to Ocean Bay Mart's plan. Rather, 3 years later, the City adopted a new ordinance which purported to apply the 2016 Ordinances retroactively to Ocean Bay Mart's plan.

Ocean Bay Mart's Costs, Expenses And Foregone Rents

- The City has never challenged the expenses incurred and rents foregone by Ocean Bay Mart as set forth in The Stipulated Timeline. A-031-040.

With these salient facts in mind, the City's arguments lack force or raise points which are not relevant.

A. Whether A Property Owner Has *Personally* Read Every Applicable Code Provision Or Not Is Irrelevant – This Is Why A Property Owner Hires Engineers And Other Professionals.

The City begins with the incredible claim that in order to obtain vested rights, the property owner himself must have *personally* read the applicable code provisions at issue, and that failure to do so means the property owner cannot obtain such rights. Ans.Br. at 1 ("Monigle testified at trial that he had never read this language"). But, of course, no property owner *personally* reads every zoning code provision; rather, property owners rely upon the professionals they hire to know the applicable code provisions, rules and regulations, and that was clearly the case here where Ms. Newcomb discussed the issue with Ms. Sullivan. *See*, *e.g.*, A-99, 100, 304. Indeed, under the ordinary rules of an agent-principal relationship, the knowledge of the agent is imputed to the principal. *See, e.g., Albert v. Alex. Brown Mgmt. Servs., Inc.*, 2005 WL 2130607, at *11 (Del.Ch.). Mr. Monigle's lack of *personal* knowledge is of no moment, and the City cites no case law to suggest otherwise.

B. This Is Not A Case Where A Property Owner Only Relied On An "Ambiguous" Statute And Hoped Its Interpretation Was Correct; Rather The Property Owner Relied On A Written Statement Of The Appropriate Government Official *And* Prior Approved Projects.

The City takes the further view that a property owner cannot rely in good faith on an "ambiguous" statute and vested rights can never accrue with respect to an "ambiguous" statute. Ans.Br. at 26-27 ("One simply cannot detrimentally rely on a statute where the meaning of it is uncertain"). But, whatever one may think of that argument, *it is not this case*.[3] Here, Ocean Bay Mart specifically discussed the code provision at issue with the City Building Inspector. Here, Ocean Bay Mart was told, *in writing*, that the one main building requirement from the Table of Use Regulations did not apply to condominium projects. Here, that interpretation was consistent with the City's past approval of the Cottages at Philadelphia Place and

[3] Of course, there is no sound reason why a property owner should not be able to rely upon an "ambiguous" statute. The rule is clear. If a statute is ambiguous, meaning that it is capable of more than one reasonable interpretation, then the interpretation which favors the property owner will be followed. *See Mergenthaler v. State*, 293 A.2d 287, 288 (Del. 1972) ("zoning laws are to be interpreted in favor of the occupants of the land"); *Chase Alexa LLC v. Kent County Levy Court*, 991 A.2d 1148, 1152 (Del. 2010); *Dewey Beach Enterprises, Inc. v. Board of Adjustment of Town of Dewey Beach*, 1 A.3d 305, 310 (Del. 2011) ("to the extent that there is any doubt as to the correct interpretation, that doubt must be resolved in favor of the landowner"). Knowing that rule, a property owner should be entitled to rely on it, just as he or she is able to rely on any other rule of law. But, here, Ocean Bay Mart did more than rely on the statute itself. It relied on the City's past approvals of condominium plans and a written interpretation from the City Building Inspector. Reliance which the City's Board of Adjustment upheld.

other condominium projects. Thus, while the City is eager to characterize this as a case where a property owner merely relied on a "statute where the meaning is uncertain," that characterization is simply not true, and the City's citation (Ans.Br. at 26 n.42) to *Lowe's Home Centers, Inc. v. Old Meadow Properties, L.L.C.*, 2001 WL 1729123 (Del.Super.) for the proposition that "any hardship to Plaintiff was created by Plaintiff's failure to make an effort to confirm its own interpretation of the code" is misplaced. Ocean Bay Mart did exactly what any responsible property owner would do – it sat down with the appropriate government official and confirmed in writing how the code provision in question would be applied. And that official was correct – as the Board of Adjustment held.

C. A Legislative Body's Ability To Change Its Zoning Code And Have That Change Apply To A Pending Application Is Always Subject To The Doctrine Of Vested Rights.

The City believes it has the unfettered right to change its code at any time for any reason and have that change apply to any pending application. *See* Ans.Br. at 2 ("The government may change the law that applies to a given property or application at any time in the land use approval process"). This belief, though, fails to account for vested rights. Indeed, the common law doctrine of vested rights was created precisely for situations such as here: to protect a property owner who has substantially relied in good faith on existing ordinances. *See In re: 244.5 Acres of Land*, 808 A.2d 753, 757-8 (Del. 2002) ("[i]n the final analysis, good faith

reliance on existing standards is the test"). And here, Ocean Bay Mart did rely in good faith. It relied on prior plan approvals. It relied on a meeting with, and the written interpretation of, the City Building Inspector. By the time the City adopted the 2019 Ordinance, Ocean Bay Mart had incurred expenses and foregone rent in excess of $1.1 million. Even before that date, in the words of the Court of Chancery, Ocean Bay Mart had "made a significant and material investment." *Ocean Bay Mart, Inc. v. City of Rehoboth Beach*, 2021 WL 4771246 at *12 (Del.Ch.). Good faith reliance is the test. Ocean Bay Mart has satisfied it. A local government's passage of new legislation is always subject to a property owner's vested rights.

D. The City Board Of Adjustment Ruled In Ocean Bay Mart's Favor, And The City Is Bound By That Decision With Respect To Ocean Bay Mart.

The City goes so far in its claim of unfettered power to change applicable zoning provisions that it argues it can reverse an unfavorable judicial determination (*i.e.*, an adverse Board of Adjustment ruling to which it is a party) through a legislative amendment and have that amendment apply to the successful party before the Board. Ans.Br. at 27. The City, of course, cites no case law for such assertion. Nor can it. Indeed, if true, then the question becomes: why even bother with the Board of Adjustment? If, going forward, a council can "reverse" a Board decision whenever it likes with new legislation that applies to a successful Board

applicant, then no city or county need ever again appeal an adverse board decision to the Superior Court, which is the method established by the General Assembly for review of a Board decision. *See* 9 *Del.C.* §§1314, 4918, 6918; 22 *Del.C.* §328.[4]

It is, of course, one thing for a local government to pass a law with prospective application. That happens all the time. But, simply put, no local legislative body, bound by a Board of Adjustment decision or any other judicial or administrative decision, is free to pass new legislation that reverses by legislative fiat the very decision to which it is bound. If the City's argument were accepted, going forward, a legislative body, faced with an adverse ruling, will simply change the result by passing new legislation retroactively applicable to the very matter that was before the Board.

[4] The City admits that it "could have appealed the decision" of the Board and then boldly claims "it probably would have won," as if that justifies its non-appeal. Ans.Br. at 27. Had it appealed and won, that decision would, of course, be binding on Ocean Bay Mart. But, instead, the City let the decision stand, meaning that it was bound by the decision with respect to Ocean Bay Mart's plan. Of course, under the City's view, if it had appealed to the Superior Court and lost, it could have reversed any adverse Superior Court decision as well, simply by amending its code and having that application apply retroactively.

E. The 2016 Ordinances, By Their Terms, Did Not Apply To Ocean Bay Mart's Site Plan, And That Is Why The City Adopted The 2019 Ordinance.

Although the City quotes at length from the 2016 Ordinances, and claims that they were "effective upon adoption," the City fails to quote other important language which both ordinances contain. Section 2 of each ordinance states that:

> Upon [this ordinance's] introduction and the scheduling of a public hearing by the Mayor and Commissioners, the City's Building and Licensing Department shall ***thereafter reject*** any ***new*** application that is inconsistent with the amendments to Chapter 270 provided in the Ordinance until such time as the Mayor and Commissioners take action on the Ordinance.

A-172, 174 (emphasis added). Each ordinance makes clear, then, that only "new" applications inconsistent with the amendments are to be rejected – meaning, of course, that pending applications are unaffected.

The City tries to minimize the import of this language by claiming that it only applied while the ordinances were pending, and that, once adopted, the ordinances applied to all plans, even those pending when the ordinances were introduced. Ans.Br. at 37. But, if so, then any "protection" offered by the language would be entirely illusory because all the City need do (as happened here) is hold up any further action or approval on a pending unpopular plan, pass an ordinance which prohibits the unpopular plan, and then claim the ordinance applies to the still-pending plan. This approach is clearly inconsistent with the

language of Section 2 in the ordinances, which protects pending applications[5] – however, the Court need not take Ocean Bay Mart's word on this subject.

Actions speak louder than words. And, following the Superior Court's decision and remand concerning the Delaware Uniform Common Interest Ownership Act ("DUCIOA"), the City did *not* apply the 2016 Ordinances to Ocean Bay Mart's plan. Rather, the City further amended its Code to specifically prohibit the plan. If the 2016 Ordinances applied to Ocean Bay Mart, the 2019 Ordinance was wholly unnecessary and a nullity. The City's actions concede the point: because the 2016 Ordinances did not apply to Ocean Bay Mart's plan, the City passed a new ordinance to prohibit the plan.

F. The Delaware Uniform Common Interest Ownership Act Is Irrelevant To The Issues Before The Court.

At various points in its brief, the City chides Mr. Monigle for not being aware of DUCIOA prior to filing the Ocean Bay Mart plan, implying that Ocean Bay Mart cannot have vested rights as a result. *See, e.g.,* Ans.Br. at 9. However,

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[5] Ocean Bay Mart cannot help but note the irony of the City's position regarding this language. In its brief, the City argues at length about "intent" in construing legislation. Ans.Br. at 34 ("the primary goal of statutory construction is to ascertain and give effect to the intent of the legislature"). Here the 2016 Ordinances allowed pending applications to proceed unaffected, and directed that only "new" applications be "rejected." Thus, the ordinances were only intended to apply prospectively – an intent consistent with the statements of the Mayor and City Commissioner that the 2016 Ordinances would not apply to Ocean Bay Mart. *See* Op.Br. at 18-19.

the Superior Court made clear that DUCIOA does not apply and any reference to the statute is nothing more than mere distraction. *See Ocean Bay Mart, Inc. v. City of Rehoboth Beach*, 2019 WL 1126351 at *6 (Del.Super.).

G. The City's Characterization Of The *Tony Ashburn* And *Delta Eta* Cases Actually Proves Ocean Bay Mart's Claim – Ocean Bay Mart Was Entitled To Approval Once The Board Of Adjustment Ruled In Its Favor.

In *Tony Ashburn & Son, Inc. v. Kent County Regional Planning Comm'n*, 962 A.2d 235, 241 (Del. 2008) (*en banc*), this Court made clear that when people own land zoned for a specific use, "they are entitled to rely on the fact that they can implement that use provided the project complies with all of the specific criteria found in ordinances and subject to reasonable conditions which the Planning Commission may impose." *See also Delta Eta Corp. v. City Council of City of Newark*, 2003 WL 1342476 (Del.Super.). In its Answering Brief, the City pooh-poohs any citation to these cases, claiming they simply "stand for the proposition that a code compliant subdivision plan presented to the approval body must be approved." Ans.Br. at 32. But, that is precisely this case. Once the Board of Adjustment ruled in Ocean Bay Mart's favor, there was no question that Ocean Bay Mart's plan was code compliant, and, in the City's own words, "entitled to approval." If the City's actions are condoned in this case, the law of vested rights in Delaware is no more.

II. THE LONG-STANDING RULE THAT AMBIGUOUS STATUTES ARE INTERPRETED IN FAVOR OF PROPERTY OWNERS – AN IMPORTANT SAFEGUARD FOR PROPERTY OWNERS – SHOULD NOT BE CAST ASIDE.

The Delaware Chapter of the American Planning Association and the Delaware League of Local Governments (the "*Amici*") have filed an *Amicus* Brief which speaks as if the notion of vested rights is already dead. Ignoring the fact that we are now several years and hundreds of thousands of dollars since Ocean Bay Mart received a definitive and binding decision in its favor, the *Amici* ask this Court to reverse well-settled law and legislate from the bench, giving them the freedom to enact imprecise and ambiguous land use statutes that can be applied however and whenever they choose.

As pointed out in Ocean Bay Mart's Opening Brief, Op.Br. at 3, 28-29, the underlying foundation of the Court of Chancery's decision (that a property owner cannot obtain "vested rights" where a statute is deemed "ambiguous") would eviscerate the long-standing rule of statutory construction that an "ambiguous" land use statute is interpreted in favor of the property owner.[6]

The *Amici* claim the rule is "outdated" and leads to "mischievous and absurd results." *See, e.g., Amici* Br. at 4, 12. Such hyperbole, though, conveniently

[6] *See Mergenthaler,* 293 A.2d at 288 ("zoning laws are to be interpreted in favor of the occupants of the land"); *Chase Alexa LLC*, *supra*; *Dewey Beach Enterprises*, 1 A.3d at 310 ("to the extent that there is any doubt as to the correct interpretation, that doubt must be resolved in favor of the landowner").

overlooks the fact that no statute is ever interpreted so as to lead to an absurd result. *See, e.g., Chase Alexa*, 991 A.2d at 1152 (statute will not be construed to create an absurd result). Moreover, putting aside their claim that the Board of Adjustment's decision was "absurd" (a word the *Amici* use frequently), the *Amici* cite no examples – not one – where the rule of *Mergenthaler* and its progeny has led to an "absurd" result in Delaware (or elsewhere).

Perhaps most importantly, the *Amici* completely ignore the reason for such an important rule. Zoning regulations are in derogation of the common law, under which a property owner was free to make use of his or her property subject only to the law of nuisance. *See, e.g., Cardillo v. Council of South Bethany*, 1991 WL 113627 at *3 (Del.Ch.) ("It is well settled [in Delaware] that since zoning ordinances are in derogation of one's common law right to use his property as he sees fit, they must be construed in case of doubt in favor of the unrestricted used of the land") (citations omitted); *Walker v. Williams*, 2016 WL 6555886 at *5 (Del.Ch.) ("At common law, otherwise-lawful activities by a landowner on his property were limited only insofar as they invaded the property rights of his neighbors—that is, they were limited under nuisance doctrine"). Accordingly, if the government wants to restrict a property owner's right to use his or her property, the government must do so with clarity – hardly an "absurd" notion. As the Court

of Chancery once observed in discussing *Mergenthaler*, *Chase Alexa*, and *Dewey Beach Enterprises*:

> The regulatory body may, as a general matter, draft its regulations as it sees fit. With that drafting freedom, however, comes the consequences of any ambiguity.

Norino Properties, LLC v. Mayor and Town Council of the Town of Ocean View, 2011 WL 1319563 at *2 n. 9 (Del.Ch.).

As part of their argument to reverse *Mergenthaler*, *Chase Alexa*, and *Dewey Beach Enterprises*, the *Amici* claim the Board of Adjustment's decision here was an "absurd result," because "the placement of 63 buildings on a single lot is certainly not what the legislature intended," and because "it effectively eliminates the 'no more than one main building . . . on a lot' limitation" from the City Code. *Amici* Br. at 10-11. Neither claim is accurate or fair.

First, as to the argument about 63 buildings on a single lot not being "what the legislature intended," it is all a matter of size and perspective. The Code allows a residence for every 5,000 square feet of a lot. City Code §270-23. By way of example, Ms. Sullivan wrote that "five single family attached or detached dwellings would be allowed on a 25,000 sq.ft. lot." A-100. No one has ever questioned that portion of Ms. Sullivan's email. The Cottages at Philadelphia Place has eight dwellings on a lot just over 40,000 sq.ft. in size. A-247. The Ocean Bay Mart property, at 7.71 acres, or 335,847.60 sq.ft. in size, would allow

67 residences, although only 63 are proposed. *Id*. Thus, while the *Amici* claim that 63 buildings on a lot could not have been intended, the proposed number of residences is slightly less than the code allows.

As to the claim that the "no more than one main building" language is "eliminated," the *Amici* ignore the fact that, in this case, the rule gives way only in the context of a condominium, in which multiple residences may be placed on one parcel. The limitation will still apply to conventional single family residential lots, and thus the restriction will still have teeth.

In addition to repeating a number of arguments made by the City (which will not be addressed again), the *Amici* make a few new arguments. The *Amici* claim that Ocean Bay Mart cannot rely on a mistaken interpretation by a government official, *Amici* Br. at 15; but, here, the Board of Adjustment held that Ms. Sullivan's interpretation was the correct one. It was the second building inspector who erred.

The *Amici* also make the curious argument that if a property owner could rely on an ambiguous statute, "a property owner could . . . declare a statute ambiguous and detrimentally rely upon it." *Amici* Br. at 16. Not true. There would be no good faith under such circumstances, and such a scheme would require a board or court to agree the statute was ambiguous.

Finally, the *Amici* suggest that the "standard advocated by the Committee of 100 would place a terrible burden on municipal officials . . ." *Amici* Br. at 17. But all the Committee of 100 and Ocean Bay Mart ask for is clarity and not ambiguity, which is not a burden at all and which is the duty and responsibility of municipal officers to provide.

CONCLUSION

Despite Ocean Bay Mart's good faith reliance on Sullivan's statements and email, and despite the Cottages at Philadelphia Place, and despite the Board of Adjustment's decision upholding Sullivan's interpretation and statements, the Court of Chancery rejected any vested rights claim because:

> The Plaintiff's lack of knowledge regarding the Rehoboth Code and later arguments that the Rehoboth Code itself is ambiguous regarding its project preclude me from finding that the Plaintiff's reliance was reasonable.

Ocean Bay Mart, 2021 WL 4771246 *12.

The Chancery Court's decision is premised on legal error and must be reversed. While Monigle may not have read the Code personally, his team of professionals had and the issue was subject of the Sullivan/Newcomb meeting and correspondence. There is no requirement that a developer must be *personally* aware of every applicable code provision. In addition, the mere fact that a statute might be deemed "ambiguous" is no reason to deny vested rights, and, indeed, eviscerates the long-standing rule of *Mergenthaler*, *Chase Alexa*, and *Dewey Beach Enterprises.* The rule is not "outdated" nor does it lead to "absurd" results. Rather, the rule protects property owners and merely requires local governments to pass laws with clarity. If an ordinance is capable of more than one construction, and neither construction is absurd, the construction which favors the property

owner should be followed. Nothing more. Nothing less. To hold otherwise would result in "the imposition of uncertainty on all landowners."

Property owners and developers come face to face with ambiguous statutes all the time. The City's arguments, and the Court of Chancery's ruling, now mean that whenever there is any ambiguity, a property owner proceeds entirely at their own risk, and subject to a possible "clarifying" ordinance at any time, notwithstanding past applications of the ordinance and written interpretations of the ordinance, and notwithstanding the substantial investment and expenditures the property owner may have made. The protection of *Mergenthaler, Chase Alexa,* and *Dewey Beach Enterprises* is stripped away.

For the reasons set forth herein and in Ocean Bay Mart's Opening Brief, Ocean Bay Mart prays that the Chancery Court's decision be reversed.

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