



May 1, 2024

MEMORANDUM

To: Chesapeake Beach Board of Appeals

Re: Case #2023-03 Rod n Reel, Inc/Donovan Estates, LLC

Rebuttal Comments received from the following Parties of Record:

1. 4/22/2024 Daniel Duvall
2. 4/26/2024 Laura Blackwelder
3. 4/29/2024 Kathleen Berault
4. 4/30/2024 Eric Blitz
5. 4/30/2024 Holly Wahl
6. 4/30/2024 Mayor Patrick Mahoney

Sharon Humm

From: Dan Duvall [REDACTED]
Sent: Monday, April 22, 2024 8:08 AM
To: Sharon Humm
Subject: Board of appeals case No. 2023-03

Good morning Sharon,

Would you please confirm and submit the following

Jody Hoon-Starr, Chair
Town of Chesapeake Beach
Town Hall
8200 Bayside Road
P.O. Box 400
Chesapeake Beach, MD 20732

Board of Appeals
Case number 2023-03

I would like to enter the following as
Exhibit # 69

Dear Mr. Chair,

I a person who is a Party of Record that was in attendance 9/19/2023 Board of Appeals hearing Case No. 2023-23 and with this hearing now entering into the 7th month. I have watched the hearings while also submitting correspondence, objections, information and requests.

One such request I submitted by way of an email was to ask that the public be provided the submitted documents and given the time to question a witness when said witness was called to the stand.

The public was not given that opportunity at the first hearing and I did have questions for the witness who was called by the applicant in regard's to that line of questioning.

- I would like to Thank this Board for hearing my concerns with the acknowledgment that the public is a party to this Public Hearing.

- It is shown within exhibit 64 that the cost of at least two attorneys of this hearing are being paid by for taxpayers by way of the Town of Chesapeake Beach.

Mr. Todd Pounds esquire
and
Mr. Fred Sussman esquire

It should also be noted

Mr. Eric Blitz esquire was previously the attorney of record for the Town of Chesapeake Beach, Md

It has also been acknowledged that the previous Town engineer was also involved on both sides.

- This is not to say or imply wrong doings but to bring attention to the unfair platform and potential internal conflicts.

- It is not reasonable to expect the public to have a fair involvement without the full case knowledge and appropriate legal representation equal to the other parties within this hearing.

- This is a Public hearing that has been acknowledged as unprecedented.

- The Public is at a disadvantage by not being fully included and equally represented.

- I ask this Board of Appeals to take these pleas into consideration and make adjustments accordingly to ensure the public is provided a fair and legal representation moving forward as outlined within this exhibit to be included in the record.

- I plead with this Board of Appeals to place a "Stay of Proceedings" on case No. 2023-03 to provide time for the following.

- To allow for the time to submit a request that the Town of Chesapeake Beach Town Council approve and fund the legal counsel of the attorneys for the public a party of record is needed to be properly represented by legal representation whose cost is paid for by the taxpayer by way of Town of Chesapeake Beach, Md just as mentioned in exhibit 64

And/ Or

- To ask/ request if the Town Council denies such request that the applicant (Rod & Reel) be afforded the opportunity to fund this cost for the legal counsel of the attorneys for the public a party of record is needed to be properly represented. With the cost to be reimbursed to the applicant (Rod & Reel) in full if the Board of Appeals rules in favor of the applicant.

Or

-To dismiss this case because of the actions outlined within the Memorandum addressed to Parties of record dated April 18, 2024

Consisting of exhibits 64, 65, 66, 67 and 68

- I believe it to be abundantly obvious and within reason for this Board of Appeals and the Town of Chesapeake Beach to see that the cost that this Board of Appeal hearing is having to the public without providing the public with legal representation is unjust.

- I also believe it to be unfair and in bad faith to expect that the public would be able to understand and follow along something as complex as case No. 2023-03 in conjunction with the multiple conflict of interest that have arisen.

Very truly yours,

Daniel Duvall
3610 Chesapeake Beach Road
Chesapeake Beach, MD 20736

From:

4/26/2024

Laura Blackwelder
3256 Cannoncade Ct.
Chesapeake Beach, MD 20732

Good Afternoon Chairman Hoon Star and Members of the Board of Appeals,

I am writing to provide rebuttals to communications that have been provided to me by the Town related to Board of Appeals Case #2023-03, and to:

1. Request clarification on the procedures of your hearing related to communications and relief requested by Mr. Eric Blitz on April 17, 2024 for alleged damages to his client's case.
2. Request that letters, written by myself, that were sent to the Board of Appeals through the Town Clerk prior to March 14, 2024, be placed on the record and distributed to all parties for rebuttal in the same manner that letters from Mr. Todd Pounds have been.

Rebuttals

Regarding Exhibit 64, letters to Jody Hoon-Starr, Chair March 26, 2024:

Mr. Paul Woodburn is a key witness in this case and Mr. Pounds has justifiably identified a need to explore issues related to the conflict of interest that arises from Mr. Woodburn having been simultaneously employed by both the Town of Chesapeake Beach and by Donovan Estates, LLC while working on projects subject to this case.

More significantly, Mr. Pounds has justifiably identified a need to explore issues related to the conflict of interest that arises from Mr. Blitz having been simultaneously employed by the Town of Chesapeake Beach as the Town Attorney and the Planning Commission Attorney, and also by Donovan Estates, LLC while working on projects subject to this case.

Testimony from these two witnesses is central to the case of each party for different reasons.

Because the nature of the conflicts of interest described above is unique and highly impactful to this case, a situation in which these conflicts of interest cannot be fully explored should result in a denial of this appeal. Simply striking the testimony of these two witnesses would be insufficient for protecting the health and welfare of the Town for the public.

Additionally, both Mr. Woodburn and Mr. Blitz put forth arguments and gave testimony describing the actions and reasoning of another key witness to this case, the former Town Planning and Zoning Administrator, Mr. Christopher Jakubiak. Mr. Jakubiak's testimony in response to assertions made by Mr. Woodburn and Mr. Blitz is an essential component to justly deciding this case.

If the Board of Appeals does not have the authority to subpoena all key witnesses to this case, it should rule that it would be irresponsible to grant the relief sought by the appellant in the absence of key information.

The appellant can seek relief through the court system, as described in 290-32 M, where the case can be properly litigated.

Regarding alleged conflicts of interest related to legal opinions about the moratorium enacted by the Town Council, I object to any lawyer advising the Board of Appeals that they are responsible for deciding on questions of legality related to a moratorium.

Regarding Exhibit 65, Letter to Jody Hoon-Starr, Chair March 28, 2024 and attached letter to Holly Wahl, February 7, 2024:

I object to any consideration by the Board of Appeals of any monetary figures cited in letters providing notice of claims.

I agree that sending a notice of claims to the Town/Board of Appeals during this hearing could be considered intimidation.

There is no evidence that the appellant is entitled to any claims. Additionally, it is hearsay to suggest that the Rod & Reel "would have been granted regulatory approvals in ordinary course under existing law."

Consideration of monetary claims made by the appellant in deciding this case in the absence of a court award of such claims would be entirely inappropriate.

Regarding Exhibit 66, letter April 12, 2024:

I agree that it is important to protect the public from potential harm caused by development that could put a strain on public services.

If the Board of Appeals has the authority to issue Mr. Woodburn a subpoena, I support recalling Mr. Woodburn. However, I believe that the appropriate venue to litigate the issues of an appeal of this scope is a court of law- and not the Board of Appeals.

If the Board of Appeals has the authority to issue a subpoena to recall Mr. Woodburn, the Board of Appeals should also issue a subpoena to Mr. Christopher Jakubiak to receive his testimony.

I object to any decision in favor of the appellant in the absence of Mr. Jakubiak's testimony.

If the Board of Appeals does not have the authority to subpoena all key witnesses to this case, it should rule that it would be irresponsible to grant the relief sought by the appellant in the absence of key information.

Regarding Exhibit 67, letter April 15, 2024:

I object to any lawyer advising the Board of Appeals that they are responsible for deciding on questions of legality related to a moratorium.

290-32 E (1) confines the powers and duties of the Board of Appeals regarding interpretation to questions "involving interpretation of any provision of this chapter." R-21-3, R-21-8, and the Town Charter are not contained within Chapter 290 of the Town Code, and therefore are not subject to decisions by the Board of Appeals.

It would be improper for the Board of Appeals to cite concerns related to the moratorium as reasoning to support deciding this case in favor of the appellant in the absence of judgement, issued by a court of law, stating that the moratorium on Category 1 site plan review enacted by the Town Council was not legal.

Additionally, I object to any lawyer advising the Board of Appeals that it would be necessary to grant the relief sought by the appellant if it is found or believed that the Town Council used an improper mechanism to implement a moratorium.

Many factors can determine when a Zoning Administrator might schedule the review of a Category 1 site plan. Chapter 290, Article VI Site Plans, which includes 290-23, 290-24, and 290-25, describes a process but not a time period by which Category 1, multifamily development site plans must be submitted by the Zoning Administrator to the Planning Commission for review.

It is unclear how the appellant intends to prove that the site plans that are subject to this case, submitted with a zoning permit application, constituted “complete” applications when the Zoning Ordinance allows the Zoning Administrator some discretion in determining this.

290-32 E (2) confines the powers and duties of the Board of Appeals related to interpretation, to questions where it is alleged that there is an error made “in the enforcement of this chapter.”

Even if the appellant were to have come to the Board of Appeals with a legal verdict stating that the moratorium was not legal, the Board of Appeals could still find that no error in enforcement was committed.

Request for Clarification

Mr. Blitz’s requests for relief, as I understand them, were as follows:

That the board place on the record, all ex parte communications from all parties, for all parties to review, and to grant the following relief:

1. (All parties) we be able to make a rebuttal of the letters prior to any supplemental arguments of Mr. Pounds in recognition of the harm introduced by sending ex parte communications.
2. Any information contained within the letters that was not already in the the record as of the end of the last hearing, which was on March, 14 2024, not be admitted into the record as substantive facts.
3. All arguments contained within such letters be stricken from consideration by the board.
4. That Mr. Pounds may offer those facts and arguments on the record in open public hearings, subject to the Rod and Reel and any other parties or the board’s chair or the chairs to make objections to the information as provided.

Mr. Sussman asked the question if the requested remedy was directed to all letters and, Mr. Blitz answered “yes.”

I am requesting clarification for context of the term “all letters,” in this exchange. Was Mr. Blitz referring to all letters sent by Mr. Pound’s, or to all letters submitted outside of the record of the case?

I hope that Mr. Blitz does not intend to strike from the record, or to strike from consideration of the Board of Appeals, all comments provided by the public, all arguments provided by the public, and all evidence provided by the public, communicated to the Board of Appeals in the manner requested by the Board of Appeals.

Request that My Letters, Sent Prior to March 14, 2024 be Placed On The Record and Distributed Appropriately

Mr. Blitz gave the following summarized reasons for requesting relief:

1. Letters have interrupted his case and the Rod N Reel should have the ability to address those first.
2. Letters that contain legal arguments and evidence that was not entered into the record during the public hearing have interrupted his case and have caused harm.

As I have written letters that contain both legal arguments and evidence, and as I would like to present those arguments and evidence for consideration by the Board of Appeals, I am now concerned that Mr. Blitz will claim that his case has been damaged by those of my letters that the Board of Appeals may have received via the Town Clerk prior to March 14, 2024, or that they may be stricken from consideration if not placed on the record and submitted for rebuttals as Mr. Pound's letters have been.

I am requesting that all of my letters previously submitted through the Town Clerk to the Board of Appeals be treated in the same manner as letters sent by Mr. Todd Pounds.

Those letters are addressed to Chairman Hoon Starr and Members of the Town of Chesapeake Beach Board of Appeals and were dated as follows:

September 19, 2023

September 25, 2023

December 6, 2023

January 4, 2024

In closing, please ensure to the best of your ability that the interests and rights of all parties to this case are protected equally. Parties of record, such as myself, are not permitted to participate in the scheduling of the many hearing dates that are worked out between the Town, the Board of Appeals, and the Appellant. It would be extremely unjust to create a situation that would render public comments void for consideration by the Board of Appeals, or to create a situation that would prevent public comments from being forwarded as part of the record that would be considered by a judge during a future case.

Sincerely,

Laura R. Blackwelder

Sharon Humm

From: Kathleen Berault <
Sent: Monday, April 29, 2024 8:26 AM
To: Sharon Humm; Kathleen Berault
Subject: Case No. 2023-03 Rod N Reel, Inc.

Good Morning,

This email offers my public comments as a person of record in Case No. 2023-03.

I agree to the following points:

The Town's Planning and Zoning Commission has taken the necessary action to restrict development in the floodplain to protect and safeguard the Town of Chesapeake Beach. Development in a floodplain threatens the health and safety of residents, occupants, who are at risk for flooding as well it often destroys natural resources such as the wetlands that absorb floods. Also, the wetlands shelter communities from pollutants and provide wildlife habitats.

Zoning amendments are unequivocally in the purview of the Planning and Zoning Commission. The 2024 Comprehensive Plan is a well researched, well thought strategy that the Planning and Zoning Commission studied and developed over months and months. It provides an excellent guide to protect the treasure of the Chesapeake Bay, community resources and the quality of life while retaining small town charm for the Town of Chesapeake Beach.

Lastly, I concur the Board of Appeals does not have the authority to: overrule the Town Council, direct a Town Official what to do, what action to take, tell the Planning and Zoning Commission what law to take or how to address Town codes and ordinances. The Board of Appeals does not have the mandate to determine the outcome requested by the Rod N Reel. In over 22 hours of testimony to date, the presentation of Case 2023-03 has been allowed to continue much too long and has wasted the Town's resources and time. The conclusion of the case is long overdue and has frustrated the residents of the Town. By a protracted hearing which the Townspeople believe is meant to wear them out so they will lose their motivation to testify and protect the beauty and wonder of the Town. The Town residents do not wish Chesapeake Beach to be overdeveloped and commercialized.

Respectfully,

Kathleen Berault
7409 B Street
Chesapeake Beach, Maryland 20732

Sent from [Mail](#) for Windows

**Rebuttals to Ex Parte Communications
Rod & Reel, Inc. and Donovan Estates LLC, Appellants
Chesapeake Beach Board of Appeals Case 2023-3**

To: Chesapeake Beach Board of Appeals

From: Eric J. Blitz, Esquire, on behalf of Appellants Rod & Reel, Inc. and Donovan Estates, LLC

Date: April 30, 2024

1. Letter dated March 26, 2024 from Todd Pounds to Chair Hoon-Star re: “Mr. Woodburn as a Witness”

- A. Mr. Pounds argues that the Board compel Paul Woodburn to provide further testimony on a topic already covered by cross-examination. Mr. Pounds does not specify whether that is as further cross-examination or as direct testimony in Mr. Pounds case. If it is as cross-examination, Mr. Pounds and members of the public had ample opportunity to cross-examine Mr. Woodburn, including on the allegation of a conflict of interest. Mr. Pounds was given a full hour to cross-examine Mr. Woodburn at the February 8, 2024 hearing and he asked 11 questions related to a potential conflict of interest on the part of Mr. Woodburn. Mr. Pounds was given adequate time and opportunity to question Mr. Woodburn on this topic and all others. In addition, Ms. Laura Blackwelder asked 6 questions of Mr. Woodburn about potential conflicts of interest. Other members of the public had the opportunity to provide questioning at the end of Mr. Woodburn’s direct examination. Mr. Woodburn testified that other engineers were hired to represent the town during any engineering review for the project applications in the relevant time. Mr. Pounds cross-examined Mr. Woodburn on that topic already.

The Rod & Reel does not have to keep providing witnesses for cross-examination by Mr. Pounds when he already had ample opportunity to do so. Parties to the case must be prepared to make their relevant presentations and cross-examination as they occur in the ordinary course of the proceeding. It was incumbent upon Mr. Pounds to be prepared to ask his questions in cross-examination of Mr. Woodburn at the end of the direct examination, just as the Applicant must be prepared to cross-examine any witnesses of any other parties, including Mr. Pound’s client. This obligation to be prepared is especially relevant to this issue because Mr. Woodburn was brought back to the hearing on February 8, 2024 for the specific purpose of cross-examination by Mr. Pounds. Mr. Pounds and others had two full weeks between the January 25, 2024 hearing and the February 8, 2024 hearing to prepare for their cross-examination of Mr. Woodburn. As noted, they then did ask many questions, including on the allegation of a conflict of interest. Mr. Pound’s client does not get a second bite at the apple.

Mr. Pounds then makes the truly bizarre argument that the validity of previous permits for prior versions of the five projects which are the subject of this appeal (but not specifically the same) can be questioned because of this bare allegation of a conflict of interest on the part of Mr. Woodburn. This argument starts with the false premise that Mr. Woodburn issued these permits (from the letter: “However, it appears that these approvals were given by Mr. Woodburn when he was. . .”). The Town Engineer does not issue zoning permits, the grading permits, or the site plan approvals and Mr. Woodburn did not issue any of the approvals. As you can see from Exhibit’s 57, 58 and 59, the zoning permits were approved by William

Watson (who was the public works administrator/zoning administrator at that time). The preliminary site plan for the Harbor Vista South project in 2016 was issued by the Planning & Zoning Commission was also obviously not under the authority of the Town Engineer, but the Planning & Zoning Commission. We do not even have any evidence in the record that Mr. Woodburn was asked to provide input on behalf of the Town on these zoning permits issued by Mr. Watson

Mr. Pounds misstates the relevance of any alleged conflict of interest to the issues in this case. The Rod & Reel does not argue that the prior approvals of similar projects to those at issue in this case somehow bind the Town, the Zoning Administrator, or the Planning & Zoning Commission to approve the five project applications which are the subject of this appeal. Nor could we, the prior approvals simply do not have that effect (prior mitigation credits would be an issue, but not 'binding' except perhaps with respect to Harbor Vista South as those credits were specifically created between two projects). If they did, there would have been no need to file the five applications in 2021. The probative value of the prior permits and site plan approvals, as well as the evidence that the 2010 comprehensive plan noted and planned for all five of these projects (almost to the precise unit counts and expected population impacts on infrastructure), is because it informs the Board about the unfairness and injustice of the treatment of the Rod & Reel following its filing of the five site plan applications on January 29, 2021. The Zoning Administrator in his email of February 5, 2021 (Exhibit 7) made the claim that these applications were 'unprecedented and imposes a significant challenge to the Planning Commission and the Town's planning, zoning and project review functions.'" The Planning & Zoning Commission in its resolution in support of a moratorium (Exhibit 12) echoed this claim (fourth whereas clause on page 3).

The prior permitting and the planning for these projects in the comprehensive plan were offered to show that the projects submitted on January 29, 2021 were not unprecedented at all, but a part of the expected development in Town. They show that the rationale given for failing to process site plans was predicated in part upon false claims that these projects were somehow a surprise. They show that these projects had been planned for a very long time and that the Town's zoning authorities were aware of them prior to the filing of the applications on January 29, 2021. None of that has anything to do with the validity of prior permits, which the Rod & Reel, Inc. (and Mr. Woodburn in his testimony) acknowledge have all expired.

Any potential conflict of interest (which has been made by merely baldly allegation and refuted by Mr. Woodburn's testimony) has nothing to do with the relevance of those prior permits. The only way it is in any way possibly relevant to this case is to challenge the credibility of a witness. Given that Mr. Woodburn has already answered those questions during cross-examination, no further cross-examination should be allowed. Will the Applicant be given similar chances to relitigate issues already decided, or continue cross-examination indefinitely over several days of hearings, based upon such a tangential relevance as the allegation of a conflict of interest? I should think not and I would not expect the ability to do so. What Mr. Pounds seeks to do is throw mud and since he has had that opportunity already, he should not be given additional time to throw more.

- B. If Mr. Pounds request is to compel Mr. Woodburn to return to testify in his case, then the letter argues for a power the Board does not possess, the power to compel a witness to testify. The Board does not have subpoena power. While a Board of Appeals can be given that power by a local legislature, the Town has not done so. There is no statute of the Town that provides the Board to process and authority to issue subpoenas. There is no rule of procedure of the Board to request such a subpoena. The Applicant has been required to prepare and present its case without the ability to subpoena witnesses. There are some rather obvious witnesses who the Applicant could have sought subpoenas for in this case, such as Mr. Jakubiak and the Chair and/or members of the Planning & Zoning Commission. A subpoena power cannot be created by the Board on its own. Furthermore, creating such a power in the middle of the case would be a gross injustice and violation of the due process rights of the Applicants. Because a subpoena (an administrative subpoena in this context) compels the attendance of a third party, it must be passed by legislative enactment to be enforceable and it must provide the specific process for the means of requesting, issuing, and enforcing such a subpoena. Furthermore, such a process must have been created before the hearing starts, so that all parties can make use of such a power.
- C. Mr. Pounds argues that the relief for Mr. Woodburn deciding not to return would be that his entire testimony be stricken. That is woefully overbroad and demonstrates just how silly this entire debate has become. The vast majority of Mr. Woodburn's testimony had nothing to do with prior permitting. As explained above, the prior permitting is itself a very limited issue and any potential conflict of interest of Mr. Woodburn has no bearing the Most of the validity of the permits themselves, as the validity of the permits are not necessary issues. Consider what kind of finding in issuing a ruling on Applicant's appeal that challenges the failure to process five site plans filed on January 29, 2021 could be possibly be made about the effect of an alleged conflict of interest for permits issued over a decade earlier for similar projects? It simply is not a dispositive issue.
- D. In the last paragraph of this letter, Mr. Pounds seeks to throw more mud, this time at me, the attorney for the applicant, by suggesting that my representation of the Town (which ended in 2008) somehow created a conflict of interest such that my testimony could be compelled. Furthermore, Mr. Pounds presumes that I represented the Rod & Reel with respect to the applications filed in prior years. Despite all the prior theatrics about whether I, as the attorney for the Applicants, needed to be sworn in during this hearing, I have not testified at all about any prior permits. Mr. Pounds has created this false narrative that by doing what all attorneys do, make presentations, provide legal arguments, submit exhibits, and ask questions of witnesses, that somehow, I became a witness to this case. I am not going to play this game anymore. No court in the country would compel me to be cross-examined under oath about questions that are not only irrelevant, but for which I offered no testimony, when I am the attorney for the Applicants. If there is any specific fact that I offered during my presentation that comes from my personal experience as distinguished from another witness or documentary evidence I provided in my presentation as the Applicant's lawyer, I will answer questions about that

specific fact. I do not believe there were any, but if such intermittent facts did come into the record by mistake, that does not convert me into a witness to be asked any question by Mr. Pounds or other intervening parties. I have provided no such facts that relate to the prior permits.

Furthermore, I will proffer but not testify, that:

PROFFER:

During my representation of the Town of Chesapeake Beach, to best of my knowledge, recollection, and belief, I did not represent either the Town or the Rod & Reel when issues arose that would create a potential or actual conflict of interest between those two parties (or Gerald Donovan/Donovan Estates, LLC). During my representation of the Town, we established a vigorous process of recusal and other attorneys were brought in to represent the Town when the rights and responsibilities of the Rod & Reel were at issue. There were many instances when other attorneys represented the Town. In addition, Gerald Donovan, the Mayor, and an owner of the Rod & Reel, would similarly recuse himself from participation as Mayor in any deliberations. If the Rod & Reel had a proposal before the Town, in addition to recusing myself from representing the Town on that proposal, I did not represent the Rod & Reel either.

As an example, in November of 2006 the issue of the growth allocation (already in the record) for the Home Place property came before the Town Council. As shown by the minutes attached hereto as Proffer-Exhibit A and B, Anthony Gorski represented the Town and I recused myself. What is not shown in the minutes is that recusal meant I left the meeting hall room. Gerald Donovan had already recused himself and was not present at all, with the Council Vice-President Bruce Wahl conducting the hearing.

As a second example, in roughly that same time period, the coordinated efforts of the Town, State Highway Administration, and the Rod & Reel to raise the roads and the Rod & Reel Stinnett property to the proper elevation to alleviate flooding on public properties, the Town was represented by Richard Lloyd, Esquire, because I recused myself from representing either the Town or the Rod & Reel. Mr. Lloyd prepared a series of easements and I did not represent any of the parties.

Again, none of the facts in this proffer are relevant to any issue in this appeal. Mr. Pounds is merely making a potentially slanderous accusation that some conflict of interest existed for permits (many of which were issued after 2008 when I was no longer representing the Town) with the hope of seeing what mud might stick. Remember, the evidence already submitted was that the earliest permits for the Harbor Vista projects were initially obtained by Fishing Creek Landings Corp., when it owned the marina property. It was not until later that the Rod & Reel purchased the marina property and took over those permits. During that permitting by Fishing Creek Landings, there would have been a conflict of interest. There is no finding of fact the Board could make that would determine the outcome of this appeal that is relevant to Mr. Pound's allegation.

- E. See the attached yellow-markup of this letter, with the yellow indicating the introduction of facts not in the record through an ex parte communication and which should be stricken.
2. Letter dated March 26, 2024 from Todd Pounds to Chair Hoon-Star re: “Mr. Sussman as a Witness”

Mr. Pounds argues that the Board compel Fred Sussman to provide testimony. While the Board may have already resolved this issue, I make the following points:

- A. Mr. Pounds alleges an opinion on the part of Mr. Sussman about an issue in this case (the need for an ordinance to pass a zoning moratorium) and that he should have shared that opinion with the Town. Mr. Sussman represented the Board of Appeals, not the Mayor and Town Council, Planning & Zoning Commission and Zoning Administrator. It is not even clear when he had supposedly formed this opinion but it presumably was not in February/March of 2021 when the moratorium was first proposed and then passed. Mr. Sussman would be under no obligation to do Mr. Pounds job (who did represent such parties) and interfering in the process in a case that could come before the Board would have been improper.
- B. Whatever occurred in Annapolis has no relevance to this case. Each city has different authorities and any action by one does not set a legal precedent for any other city. The argument that Mr. Sussman should have reached out to the attorneys of another jurisdiction and why Mr. Sussman did not walk down the street to inform the lawyers for Annapolis why they were in error is ridiculous. It is certainly no evidence of any bias on the part of Mr. Sussman.
- C. The most troubling aspect of this letter is in the second paragraph on the last page, wherein Mr. Pounds makes the false claim that I have had communications with Mr. Sussman about some memorandum. I did not have such communications with Mr. Sussman. I have communicated to Mr. Sussman about an exhibit list that was requested by Sharon for distribution to the Board, which Mr. Pounds knows because he was copied on those emails. I was responding to a request by the Secretary to the Board and making sure that Mr. Sussman could review that list before it was submitted to the Board, as I was trying to prevent that being considered an ex parte communication to the Board. Mr. Sussman and I have not discussed the ordinance requirement outside the context of the open record. What is also evident from the letter is that Mr. Pounds, representing a party to this case, has invaded the privacy of the billing records of Mr. Sussman, compromising the independence of the Board’s counsel. That is serious and outrageous conduct. I do not know what those billing records show (nor should I), yet one party is being given access to such documents and then writing a letter such as this. It is not as if Mr. Pound’s representation of “the municipal corporation of Chesapeake Beach” in this case has been as some neutral party. He has quite evidently represented that party in rigorous opposition to the Applicant’s appeal.
- D. In the final paragraph, Mr. Pounds repeats the unfounded statement that Mr. Sussman has been communicating with me and exchanging memos which were not provided to me.
- E. See the attached yellow-markup of this letter, with the yellow indicating the introduction of facts not in the record through an ex parte communication and which should be stricken.

3. Letter dated March 28, 2024 from Todd Pounds to Chair Hoon-Star

- A. This letter advises the Board to be aware of a notice made under the Local Government Tort Claims Act. It attaches a letter dated February 7, 2024 to the Town (not the Board) by Kurt J. Fischer, Esquire. That the letter was received by the town and the content of the letter is not a part of the record in this case.
- B. If Mr. Pounds wanted to submit this letter during his case, I suppose he could. What is most upsetting is the disingenuous commentary about the notice from Mr. Pounds in his second paragraph. Mr. Pounds knows or should know that under the Local Government Tort Claims Act, certain claims against the Town require a notice. This notice is not a part of this case. What is disingenuous is the allegation that the timing of this required notice is somehow an attempt at intimidation to the Town, Town Council, or this Board of Appeals. It is a required notice for certain types of claims against the Town, not the Board of Appeals. Furthermore, with respect to this Board, such a notice could not possibly be an attempt at intimidation when it was not sent to the Board, was not introduced by the Applicant in this case, and the only way it has made its way to the Board is by Mr. Pounds sharing it. Who is seeking to intimidate who?
- C. See the attached yellow-markup of this letter, with the yellow indicating the introduction of facts not in the record through an ex parte communication and which should be stricken. The entire notice dated February 7, 2024 should be stricken.

4. Letter dated April 12, 2024 from Todd Pounds to Board of Appeals

- A. This letter attempts to raise arguments by a motion about the floodplain that can be made during Mr. Pounds opportunity to be heard. It is an inappropriate attempt to raise arguments in the middle of the Rod & Reel's case, and should be denied.
- B. Mr. Pounds reiterates his desire for further cross-examination of Mr. Woodburn and to cross-examine me, the attorney for the Applicant, the substance of which I already addressed in number 1 above and so incorporate those arguments by reference. However, in this letter, Mr. Pounds go the extra step of requesting a subpoena be issued to Mr. Woodburn and I do need to reiterate that the Board has not been granted the statutory authority or process for Mr. Pounds (or the Applicant and other parties) to request subpoenas. That request should be denied.
- C. In the last paragraph on page one of this letter, Mr. Pounds makes arguments about the Board's authority which he is free to make during his presentation, but should not be made by ex parte communications and should be disregarded. He also makes a misrepresentation of fact in that he said that the Zoning Administrator has said no to houses in the floodplain and that the Town Council has made that same statement. Neither of those are in the record.
- D. The second page of this letter makes an argument that Mr. Pounds is free to make during his presentation, but is inappropriate in the middle of the Rod & Reel's case and in no way supports a 'motion.' As I noted earlier, there is no rule of procedure of the Board of Appeals that allows such substantive motions. There is no requested relief that is in any manner related to the Board's authority. He also introduces facts which are not in the record. I have presented the

Board's authority in both Town and State law during my presentation. At this point in the proceeding, I was reviewing the requested relief and my arguments in support of the Board's authority, but for some reason Mr. Pounds wants to interrupt that with his own arguments via a letter.

- E. The Board does have the authority to instruct and issue an order in this case, that is literally the entire point of an appeal alleging error by administrators. The Board can exercise the authority of the administrators upon finding error under both Town and State law, or it can order the administrators (Zoning Administrator and Planning & Zoning Commission) to undertake the review denied to the Rod & Reel consistent with the requirements of the Board's opinion. However, Mr. Pounds goes on to suggest that the argument the Rod & Reel makes with respect to the Board's authority over the zoning process implies a power of the Board to issue orders to other Town officials, including to Mr. Pounds as Town Attorney, and that they Board should terminate Mr. Pounds as Town Attorney. The Rod & Reel does not take the position that the Board could terminate Mr. Pounds as Town Attorney, nor has it implied such. From such a bizarre premise, Mr. Pounds then argues the inverse, that because the Board has not terminated Mr. Pounds as Town Attorney, the Board is aware that it does not have that authority. This is a circular argument intending to have you question your authority in this case, which is limited to the Zoning Administrator and Planning & Zoning Commission. He then finishes up with an allegation that you would be countering something to do with the floodplain that has not occurred.
- F. Mr. Pounds extends this nonsensical circular argument to the Town Council. The Rod & Reel has not argued that the Board has any authority to order the Town Council to do anything. Mr. Pounds is making this up entirely. The Board does have the authority to declare the moratorium passed by the Town Council as void or inoperative and find that it was an legally improper reason to deny the review of the Rod & Reel's zoning applications, and if Mr. Pounds wishes to make the argument that the Board does not have that authority, he can make that argument during his presentation. It is entirely improper and prejudicial to the Rod & Reel's case to allow Mr. Pounds to make such counterarguments in the middle of the Rod & Reels, by a 'motion' that does not actually ask for any specific relief and is merely a veiled method of introducing counterarguments before it is appropriate to do so.
- G. In the last paragraph on page 2 Mr. Pounds again repeats arguments that are inappropriate. The Rod & Reel certainly did not argue the Board has unlimited authority. We used the appropriate term, which reflects the reality of Maryland law, that the Board has a broad authority to step into the shoes of the administrative agencies who committed error (assuming that error is proven) in crafting relief. Mr. Pounds also makes the same argument he has alluded to before, that somehow the applicants were required to go before the Planning & Zoning Commission to discuss these applications without a hearing being set by the Commission. We reviewed the exact zoning provision that sets forth the process of setting up a hearing after the applications are filed. The Rod & Reel undertook all the requisite actions by filing its applications and this case is about the failure of the administrators to fulfill their responsibilities upon receipt of those applications. The Rod & Reel could not have just shown up, without various notices being published, the properties being posted and hearing dates being established, to 'discuss' its applications with the Planning & Zoning Commission. That is not the way the process works.

- H. To the extent Mr. Pounds letter can be viewed as a motion for the Board to terminate Mr. Pounds as the Town Attorney or to make an order to the Town Council of Chesapeake Beach, it is not appropriate relief in this case and we therefore ask that motion be denied.
- I. See the attached yellow-markup of this letter, with the yellow indicating the introduction of facts not in the record through an ex parte communication and which should be stricken.

5. Letter dated April 15, 2024 from Todd Pounds to Board of Appeals

- A. This letter attempts to couch more information not in the record as a motion and is largely a re-argument of the arguments about the Board's power included in the April 12, 2024 letter. Again, what other municipalities do have no precedential value and do not impact this case. They are entirely irrelevant and ask you to assume that those jurisdictions followed the law. You do not have the power to judge whether in their fact-specific cases, a moratorium was required to be undertaken by an ordinance or a resolution. You are required to judge whether the moratorium that was used by the Zoning Administrator of Chesapeake Beach and the Planning & Zoning Commission of Chesapeake Beach as justification for denying the Applicants zoning permit and site plan review was lawful under the Town's laws, the Town Charter, and Maryland law. Any arguments about what another jurisdiction does is not relevant to this issue raised in this appeal. Offering ex parte statements that Annapolis passed a moratorium by a resolution with respect to cannabis is not only not in the record, but irrelevant. It is allowing a party to offer irrelevant evidence, ex parte, to have the Board question its authority because of the way a separate municipality complied (or did not comply, that we do not know nor do you have any of the required information necessary to make that judgment) with its own laws or Maryland law. That Mr. Pounds concludes that you should be informing the City of Annapolis of their error or that you should overturn or veto their action is wildly inappropriate.
- B. In the first paragraph of the last page of this letter, Mr. Pounds returns to slinging mud at me. Mr. Pounds seems unable to distinguish between actual testimony, where facts based upon the personal knowledge of the witness (or belief with respect to opinion evidence) are offered into evidence, and a lawyer's role in presenting the applicable laws and making arguments about the facts in evidence from other sources (such as the voluminous documentary evidence we have submitted, Mr. Woodburn and Mr. Donovan's testimony). I do not want to belabor this point as it was already discussed in 1 above, but Mr. Pounds is asking you to ignore this distinction and conclude that the entire presentation by the attorney for the Rod & Reel was somehow 'testimony' that enables cross-examination. I will not allow Mr. Pounds to get away with something he could never get from a Court simply by badgering this Board to ignore the distinction. He then mixes in more argument about the floodplain, and while those arguments do not make any sense, it is inappropriate for him to raise it through ex parte communications in the middle of the Rod & Reel's case. He can raise such an issue in his case, with his witnesses.
- C. See the attached yellow-markup of this letter, with the yellow indicating the introduction of facts not in the record through an ex parte communication and which should be stricken.

Finally, although the copies of the letters show the factual matters that should be stricken from the record because they were offered ex parte, all of the arguments should similarly be stricken and if Mr. Pounds (or anyone else) wants to present them, then they should be presented on the record. They should not be adopted by these letters. That can become important later if the question of whether an issue has been properly presented and addressed by this Board becomes an issue.

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6710 Oxon Hill Road, Suite 330
Oxon Hill, Maryland 20745

March 26, 2024

Jody Hoon-Starr, Chair
Town of Chesapeake Beach
Town Hall
8200 Bayside Road
P.O. Box 400
Chesapeake Beach, MD. 20732

Re: Mr. Sussman as Witness

Dear Mr. Chair:

I would like to make an unusual request to call Fred Sussman as a witness to these proceedings. There is a current issue regarding the power of the Board of Appeals to overrule Town Council as to whether the Town Council should have established the moratorium by an ordinance or a resolution. I am not in any way conceding that the Board of Appeals can make that decision to in any way overrule Town Council. However, Mr. Sussman and I discussed this issue many months ago. It is my understanding that his belief was that it probably should have been performed by an ordinance. This brings me to the purpose of this letter and my request to call Mr. Sussman as a witness. It is undisputed that Mr. Sussman is a fiduciary for the Town. He is representing the Town and he is being paid by the Town. He is under an obligation to do what is in the best interest of the Town. This brings me to the primary question in that if Mr. Sussman truly believed that the Town Council should have passed an ordinance rather than a resolution, why did he not inform the Town Council when this occurred which he believed to be an error. He could have easily told the Town Council, informed me, or informed Ms. Wahl of this opinion rather than letting substantial time pass which becomes a critical question in the opinion of the applicant as to the proper procedure of the Town Council. Thus, it is important that if Mr. Sussman truly believes that his opinion is correct, why did he not inform the Town Council or someone from the Town pursuant to his fiduciary obligations to act on behalf of the Town instead of maintaining his silence until some late juncture in this hearing before the Board of Appeals. This is certainly reasonable and factually needed. I remain in the opinion that Mr. Sussman's opinion is not correct. While I am not accusing Mr. Sussman of any wrongdoing at all, I am questioning the failure to communicate his concerns when he had a fiduciary obligation to speak. I am fulfilling my fiduciary obligation by addressing this concern.

Also, about a month ago the City of Annapolis passed a moratorium regarding the issuance of cannabis licenses. The City Council passed their moratorium by a resolution in the same manner as the Town of Chesapeake Beach. I contacted Mr. Sussman to make sure he was aware of this action by the City. I was concerned that there was not any mention at the recent BOA hearing. The City of Annapolis has a team of in-house lawyers and the City Attorney for Annapolis is Michael Lyles, Esq. Mr. Sussman, Mr. Lyles, and myself all belong to an organization and thus we are familiar with each other. If Mr. Sussman truly believes his opinion that both the Town Council of Chesapeake Beach and also now the City of Annapolis have used the wrong mechanism, I would like to inquire as to why Mr. Sussman has not walked down the street from his office to the

city offices of Mr. Lyles to inform him of what he perceived to be an error. This becomes important as to the basis and any possible bias of Mr. Sussman in his opinion when multiple jurisdictions and attorneys feel otherwise. Thus, if Sussman believes he is correct, then why is he maintaining his silence until a late juncture in a Board of Appeals hearing when he has a fiduciary duty to identify and correct errors. His failure to speak creates issues which create a direct impact on evidence before this Board, which makes it extremely appropriate to call him as a witness.

It has also come to my attention that Mr. Sussman has been doing research on this issue and billing the Town. Obviously, it is important to know why this is occurring now. It has also come to my attention that Mr. Sussman and Mr. Blitz have been discussing a particular memorandum in which the substance of that document is unknown. Any such information with regard to the research and any possible memorandum between Mr. Sussman and Mr. Blitz has not been provided to me. As a result, Mr. Sussman has certainly interjected himself as a factual witness to this proceeding, or at the very least, indicated a particular bias which certainly needs to be examined under oath. The above information should have been communicated to this Board as well as communications and research between Counsel. All of this is especially true in that Mr. Sussman remains a fiduciary of the Town, and after other Councils and attorneys believe he is wrong in the mechanism for the moratorium. The Town Council and the City of Annapolis believe that the resolution would be the appropriate mechanism and the only ones who believe otherwise appear to be Mr. Sussman and Mr. Blitz. This information should have been brought before the Board of Appeals.

Also, apparently Mr. Sussman has been communicating with Mr. Blitz and exchanging memos which were not provided to me.

Very truly yours,

Todd K. Pounds

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Admitted to Practice in State

March 26, 2024

Jody Hoon-Starr, Chair
Town of Chesapeake Beach
Town Hall
8200 Bayside Road
P.O. Box 400
Chesapeake Beach, MD. 20732

Re: Mr. Woodburn as Witness

Dear Mr. Chair:

Pursuant to your request of the last meeting, I would like to request that Mr. Woodburn be returned to testifying about issues regarding a possible conflict of interest.

Mr. Woodburn was the Town Engineer and paid by the Town. Mr. Woodburn was also the engineer for the RNR projects. When questioned, Mr. Woodburn indicated that other engineers in Town had been reviewing these RNR applications. It appears from the Town that no other engineers were working on these projects but him. Thus it appears that Mr. Woodburn was preparing the applications and also reviewing them on behalf of the Town. This becomes important in that the applicant has submitted various permits for projects in which they are now claiming were previously approved. However, it appears that these approvals were given by Mr. Woodburn when he was preparing the applications and also reviewing them on behalf of the Town. This greatly questions the validity of these permits which are exhibits. Also that truly becomes a question as to the extent that Mr. Woodburn is acting on behalf of the Town in a fiduciary basis with the Town's best interest when he is also preparing and working for RNR on these same projects. This obviously relates directly to the evidence and testimony with regard to those previous permits. Thus, it is important that Mr. Woodburn returns to further clarify whether there are any conflict of interest issues. If Mr. Woodburn decides not to return to further testify and clarify these issues, I would move that his entire testimony be stricken.

The same issue applies to Mr. Blitz, since during that time, he was acting as the Town Attorney, attorney for the Planning Commission, and also representing RNR with regard to these applications. I believe it is important for Mr. Blitz to be able to reiterate how he is acting in the best interest of the Town when he is also representing RNR and presumably acting in the best interest of his client on these same projects.

Very truly yours,

Todd K. Pounds

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6710 Oxon Hill Road, Suite 330
Oxon Hill, Maryland 20745

March 28, 2024

Jody Hoon-Starr, Chair
Town of Chesapeake Beach
Town Hall
8200 Bayside Road
P.O. Box 400
Chesapeake Beach, MD. 20732

Dear Mr. Chair

I want to make the Board of Appeals aware of a recent notice we have received from RNR with regard to potential litigation.

I am sending you a copy of this notice to make you aware of this additional potential litigation with regard to this matter. I am concerned at the timing of this notice which is occurring in the middle of a hearing and how that potentially could be viewed as intimidation to the Town, Town Council, and/or Board of Appeals. Such a notice certainly will make everyone aware that everyone can potentially be a witness in this potential new litigation.

While, legally, this notice may be late, it is an aspect in which you should be aware especially as it relates to who may be potential witnesses in the future.

Very truly yours,

Todd K. Pounds

February 7, 2024

Kurt J. Fischer

t 410.494.6353
f 410.821.0147
KJFischer@Venable.com

Holly Kamm Wahl
Town Administrator
8200 Bayside Road
P.O. Box 400
Chesapeake Beach, MD 20732

Pat Mahoney
Mayor and Town Council President
8200 Bayside Road
P.O. Box 400
Chesapeake Beach, MD 20732

Re: Local Government Tort Claim Act Claim Notice of Claim

Dear Ms. Wahl:

I write to submit a formal notice of claims, pursuant to the Local Government Tort Claims Act Md. Code Ann., Cts & Jud. Proc. (“C&J”), § 5-304(b) on behalf of Rod & Reel, Inc. and Donovan Estates, LLC (collectively “Rod & Reel”) against the Town of Chesapeake Beach (the “Town”).

Rod & Reel’s claims are based on the Town’s unlawful and unconstitutional imposition of a moratorium on development approvals, including site plan approvals, that was unreasonable and unlimited in duration and scope. The imposition of this moratorium prevented Rod & Reel from (1) making beneficial use of five properties described on the attached list, and (2) receiving regulatory approvals that would have been granted in the ordinary course under existing law allowing the properties to be developed to their highest and best use.

On March 18, 2021, the Town Council of Chesapeake Beach adopted Resolution R-21-3 to impose a moratorium of development approvals, including site plan approvals, for the purpose of permitting the Town Council and Planning Commission to consider and adopt a new comprehensive plan and comprehensive zoning ordinance. The Planning Commission had recommended a moratorium of one year, but the Town Council approved only a period of nine months. The adoption of a resolution, as apposed to an ordinance, was a violation of the Town Charter and Md. Code Ann., Land Use, § 4-203 and denied the public adequate notice and an opportunity to be heard. Subsequently, the Town Council adopted Resolution R-21-8 in which it extended the moratorium by an additional three months. This extended moratorium expired by its

February 7, 2024

Page 2

terms on March 18, 2022, and the Town Council did not extend it. Following the expiration of the moratorium, Rod & Reel sought to process its site plan applications but was denied the right to do so on grounds that the comprehensive plan and comprehensive Zoning ordinance were still being developed, even though no moratorium was in place. The Town's unilateral and unauthorized extension of the moratorium made the moratorium of unlimited duration and prevented Rod & Reel from obtaining approvals that would have permitted the development of the property to its highest and best use. Rod & Reel is conducting its valuation analysis and will seek just compensation in an amount not less than \$2 million.

The Town's actions in imposing this moratorium and allowing it to be indefinite and overly broad in scope violated Rod & Reel's Federal and State rights constitutional to substantive due process and constituted a taking under the 14th Amendment to the United States Constitution and Article III, § 40 of the Maryland Constitution.

Very truly yours,



cc: Todd Pounds, Esquire

Properties:

Harbor Vista West Site Plan

3840 Gordon Stinnett Avenue, Chesapeake Beach, MD 20732

Tax ID: 03-153614

Map 103

Grid 20

ABE 4, Plat 293/294

Parcel: J

Harbor Vista South Site Plan

8016 Bayside Rd, Chesapeake Beach, MD 20732

Tax ID: 03-153517

Plat Book AB4; Plat 293

Parcel: Remainder Parcel A

Harbor Vista North Site Plan

18259 S. Harbor Vista North, Chesapeake Beach, MD 20732

Tax ID: 03-252568

Plat Book AB4; Plat 293

Parcel: Land Unit 1 and residue Parcel J

Home Place Site Plan

3418 Cox Road, Chesapeake Beach, MD 20732

Tax ID: 03-146154

TM: 101

Parcel: 57

Lot: 1 & 2

Stinnett Place Site Plan

8617 Bayside Rd., 8715 Bayside Rd., 8709 Bayside Rd., Chesapeake Beach, MD 20732

Tax ID: 03-042103; 03-042278; 03-042162

TM: 101

Block: 15

Lot: 6, 8, 10, 11, 12A & an unlabeled strip between Lots 9 & 10, Block 13, Baycrest Subdivision
Lots 34-39 of L.E. Walker Subdivision

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6710 Oxon Hill Road, Suite 330
Oxon Hill, Maryland 20745

April 12, 2024

Town of Chesapeake Beach
Town Hall
8200 Bayside Road
P.O. Box 400
Chesapeake Beach, MD. 20732

Dear Board of Appeals:

Please accept this Formal Motion to address a number of procedural aspects of the current hearing that need to be addressed. As you know, this hearing is discussing various applications to have residential houses to be constructed in areas which have been designated as floodplain. This fact was supported by the testimony of both Mr. Donovan and Mr. Woodburn, both of whom testified under oath.

Please be advised that the Town has issued to me a mandate to protect the public. This goes beyond just representing a client, but, goes to doing what is in the best interest of the public and includes preventing a public health issue which will ultimately harm the public and put a strain on public services addressing areas in which everyone, including the applicant, who knows that the area of these applications will flood. The candor and honesty of Mr. Donovan and Mr. Woodburn should be commended in admitting to this floodplain.

The applicant is placing emphasis on the fact that permits were issued many years ago for these projects. I have filed a motion with this Board to have Mr. Woodburn return to further testify with regard to these prior permits when he was acting as the engineer for the applicant and also acting as the engineer for the Town. He testified that some other engineer reviewed the application for the Town which appears to be untrue. This conflict of interest needs to be further explored as to the validity of this evidence of prior permits which has been submitted before this Board. Mr. Blitz was also the attorney for the applicant and also the attorney for the Town of Chesapeake Beach and also the Planning Commission. This issue will also be discussed with Mr. Blitz during his cross-examination regarding these prior applications and permits. If the Board decides not to return Mr. Woodburn to testify, I am formally requesting a subpoena to be issued and I will serve it upon Mr. Woodburn. If Mr. Woodburn is not recalled, I will insist on a specific reasoning which will be addressed in a subsequent action.

I also submitted to this Board a number of different letters in which I am including in this Motion by reference to be addressed as procedural matters to be reviewed. I am making a formal request that all of the letters previously submitted to be made part of the record for future action.

Over the past 20 plus hours, this Board has been told again, again and again, with regard to power and authority that the applicant wants you to believe that you have. In reality, you simply do not have that authority to perform. The reason we are before the BOA is that the Zoning Administrator said no to houses in the floodplain, the Planning Commission said no to houses in the floodplain, and the Town Council also said no to houses in the floodplain. Furthermore, it appears that the applicant believes that if one tells the BOA enough times that they have authority and power, then, they will simply believe it.

Also, the BOA does not have the authority to instruct or order any "person" to do anything. Town Council also does not have any actual authority to instruct or order any person to do anything, however, Town Council can terminate an employment through their budgetary authority which the BOA does not have. Thus, the BOA does not have the authority to tell anyone to do anything for any person and especially any Town Officials as it is being requested to the Zoning Administrator. If the BOA believes it has all of the authority that the applicant wants you to have then the BOA should put that authority to the test with regard to this Motion right now. The BOA should make a Motion immediately to terminate me as Town Attorney and as a Town Official. The BOA is being requested that it require another town official, the Zoning Administrator, to perform an act when the BOA does not have the authority to require that town official or any Town Official to do anything. For the purposes of this motion, I'm ignoring the part of the requests that the BOA is also supposed to instruct another administrative agency, the Planning Commission, in the Town to perform an act, as well as, to follow a particular law in performing that act. Thus, in addressing the first issue as to whether the BOA as the authority to tell a town official to perform any act whatsoever, I would suggest that the first thing the BOA do is to terminate me.

Be advised, for the entity that truly runs the Town, the Town Council, insubordination would not be tolerated and may lead to immediate termination. Thus, if you truly believe that you have authority to dictate to other town officials that they are required to perform certain actions, then exercise that authority immediately upon me and terminate me as Town Attorney. However, your failure to do so strongly indicates that you are fully aware that you do not have such authority and that any further and future actions are with full actual knowledge and intent that you do not have such authority. This is regardless of multiple statements that have been made that you have the authority to set up a process for houses to be built in the floodplain, as testified to by Mr. Donovan, and overturn actions by Council or exercise your supposed veto authority over Council.

Furthermore, I am sure that the BOA will be reviewing the Town's Coastal Resiliency Plan and the new Hazard Mitigation Plan and any and all other matters that have or may come before Town Council which would interfere with this requested floodplain development which is being advocated. It is important for the BOA to take these veto actions over Town Council immediately, especially since you have been told many many times that you have this authority. The BOA needs to exercise their authority over Town Council and stop and overrule these protective measures for the public so that houses can be built in the floodplain as indicated by Mr. Donovan and Mr. Woodburn. The BOA will need to act immediately to overturn action by Town Council and protect this floodplain housing development project.

Thus, if you think that you do have that unlimited authority, then start with me and I will perform any insubordinate conduct that you request so you will take this action that you perceive or are told many times that you have over a Town Official or Town Council. You should take this action regardless of any potential consequences or penalty which may occur by such actions. If you have the authority then use it, otherwise, the only assumption that can occur is that you are fully aware that you do not have the authority to dictate to another individual, much less another town official, to perform a particular action. Of course, it still needs to be established how the BOA can tell the Planning Commission to perform a particular task or conduct and/or which law they are to follow which will be addressed in future motions and actions. For the purposes of this motion, we will ignore the fact that the applicant did not go before the Planning Commission to discuss these applications and any other estoppel issues during the Comprehensive Plan process as testified by Mr. Donovan and Mr. Woodburn.

Again, please accept and review this Motion and these issues with regard to procedural aspects of this case which must be addressed as well as the other letters that I've previously submitted to be incorporated by reference into this Motion to be reviewed by the Board. Please have all of these documents placed in the record for further action.

I take my mandate of protecting the public very seriously and fully intend to take whatever actions to prevent the public from being harmed by having residential houses in a floodplain where from the beginning everyone knows that public will be harmed.

Very truly yours,

Todd K. Pounds

Todd K. Pounds

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6710 Oxon Hill Road, Suite 330
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April 15, 2024

Town of Chesapeake Beach
Town Hall
8200 Bayside Road
P.O. Box 400
Chesapeake Beach, MD. 20732

To the Board of Appeals:

Please accept these additional motions to the BOA and make all of the motions part of the record. I am submitting this formal notice to the BOA. This BOA been told many, many times that the moratorium passed by the Town Council should have been by an ordinance as opposed to a resolution. The BOA should be informed, with this formal notice, that the City of Annapolis recently passed its own moratorium as a relates to cannabis issues. That municipality likewise passed that moratorium with a resolution as opposed to an ordinance. Thus, it appears that multiple municipalities as well as a number of their municipal attorneys indicated that the proper mechanism for this moratorium was indeed a resolution as opposed to an ordinance that has been indicated to this BOA. I want to file this formal notice to make sure that the BOA is informed and, that the record is accurate, as to the apparent statements of Mr. Blitz as to the actions of these municipalities and their municipal attorneys as to his incorrect opinions as to the actions of Council.

However, I remain concerned at the apparent new power and authority of the BOA as it is being communicated, which I can assure you does not exist, and especially as it relates to the apparent power and authority to overrule and veto the Town Council. Unfortunately, it has not been fully identified whether this apparent unlimited power and authority is just within the Town or actually extends beyond the Town of Chesapeake Beach to other municipalities, including the City of Annapolis. If the BOA does have the actual authority to overturn and veto such resolutions this Board should immediately contact the City of Annapolis to inform them of their error with regard to their improper mechanism which is being advocated to this Board by Mr. Blitz or simply veto their resolution. Of course, for some reason, it is my understanding that Town Council for Chesapeake Beach still believes that they are the appropriate body that runs the Town without the BOA having overriding and veto authority. The Town Council needs to be informed of their error immediately by the BOA, and, also, inform the City of Annapolis of their error or simply overturn or veto their action.

Furthermore, the Planning Commission is being included on all of these matters being presented before the BOA since they are becoming an integral part of the decisions of the BOA which will affect their decision-making process. The Planning Commission needs to be informed that the BOA will be informing them how they will make their decisions, and, at the very least, what law they are to follow. It is important for the Planning Commission to be aware that under this new apparent power they are subordinate to the BOA as it is being advocated even if the BOA does not have the actual authority to do so other than the opinion of the applicant.

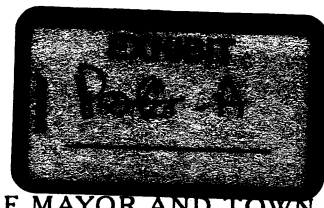
Also, as this Board is aware, this Board spent almost one whole meeting night, almost 2 hours, on the issue of whether witnesses, and specifically, Mr. Blitz, was sworn in and whether his 22+ hours of narrative was actually testimony which was subject to cross-examination or otherwise. Mr. Sussman has already indicated that Mr. Blitz will be subject to cross-examination as a result of his giving testimony. However, at the end of the previous meeting, Mr. Blitz indicated that during certain parts of his presentation, it was not testimony and he was not under oath. This creates a major issue as to transparency and the proper function of government when a witness is permitted to decide when they are under oath and when they are not at their whim. To make sure that the public is completely and adequately and accurately informed as to when there is testimony, I would suggest that when Mr. Blitz is testifying, and under oath, that he raise his right hand so that we know that he is now under oath and telling the truth, and raises left-hand when he is not. Or, any other similar method which would be developed by the BOA will be acceptable.

However, it cannot be stressed enough that I absolutely and specifically will be assured that there is transparency with the public and that I fully intend to protect the public interest throughout this entire process including, specifically, that the purpose of this application is to place residential houses in a floodplain which seems to be consistently overlooked during this process and this hearing and the severity of this public health issue. The BOA should make it clear to the public that the purpose of this application is to put houses in the floodplain as testified by both Mr. Donovan and Mr. Woodburn and that this concept has previously been rejected by the Zoning Administrator and Town Council and that this issue was never brought before the Planning Commission to even consider but with the rezoning was rejected.

I can assure this BOA that transparency will be maintained and all of the issues in these motions will be addressed.

Very truly yours,

Todd K. Pounds
Todd K. Pounds



PUBLIC HEARING MINUTES

November 16, 2006

- I. Bruce A. Wahl, Vice-President, called the meeting to order at 7:50 p.m. In attendance were: Dr. Valerie L. Beaudin, Stewart B. Cumbo, Barbara Jo Finch, Patrick Mahoney and Dr. James Parent, Council Members, Michelle A. Jenkins, Town Administrator, Sharon L. Humm, Assistant Town Clerk, Leslie Barrett, Treasurer, Cheri Beard, Assistant Treasurer, Wilson Cochran, Superintendent of Public Works, James Berry, Assistant Superintendent of Public Works, William Watson, Planning and Zoning Administrator and Code Enforcement Officer. Sergeant Tim Buckmaster, Eric Blitz, Town Attorney, and Dr. Richard Holler, Management Consultant. Absent was: Gerald W. Donovan, Mayor.

Ordinance O-06-14, an Ordinance of the Town Council of Chesapeake Beach, Maryland, amending the Town's local critical area program and Chapter 50, Zoning Code, by adopting the Forest and Developed Woodland Master Plan and introduce recommendations contained therein, amending the buffer and buffer exemption regulations, amending the woodland reforestation and afforestation standards, amending the Limited Development Area district regulations, and establishing a fees-in-lieu of mitigation program.

The Town Attorney explained the purpose of this Ordinance.

Ordinance O-06-15, an Ordinance of the Town Council of Chesapeake Beach, Maryland to establish 3.44 acres of The Home Place as a Growth Allocation District within the Critical Area, consistent with the prior approval of the State of Maryland Critical Area Commission.

Town Attorney, Eric Blitz recused himself and Anthony Gorski, Acting Attorney for the Town, resumed the meeting. Mr. Gorski explained this Ordinance. Mr. Wahl elaborated on the Ordinance.

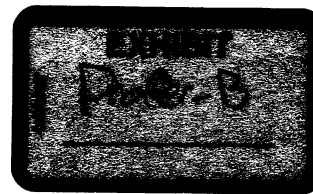
Mr. Mahoney had concerns about the traffic. Dr. Beaudin raised the issue of sewer taps and Mr. Cumbo was concerned about the parking.

There being no further comments, the meeting adjourned at 8:18 p.m. on a motion by Mrs. Finch. Seconded by Dr. Beaudin, all in favor.

Submitted by,

Sharon L. Humm
Assistant Town Clerk

8200 BAYSIDE ROAD, P.O. BOX 400, CHESAPEAKE BEACH, MARYLAND 20732



MINUTES OF
TOWN COUNCIL MEETING
November 16, 2006

I. Bruce Wahl, Vice-President called the meeting to order at 8:00 p.m. In attendance were: Dr. Valerie L. Beaudin, Stewart B. Cumbo, Barbara Jo Finch, Patrick Mahoney, and Dr. James Parent, Council Members, Michelle A. Jenkins, Town Administrator, Sharon L. Humm, Assistant Town Clerk, Leslie Barrett, Treasurer, Cheri Beard, Assistant Treasurer, Kathy Johnson, Receptionist, Wilson Cochran, Superintendent of Public Works, James Berry, Assistant Superintendent of Public Works, Sergeant Tim Buckmaster, Eric Blitz, Town Attorney, Anthony Gorski, Attorney, William Watson, Planning and Zoning Administrator and Code Enforcement Officer and Dr. Richard Holler, Management Consultant. Absent was: Gerald W. Donovan, Mayor.

II. **Pledge of Allegiance.** Mr. Wahl asked newly elected North Beach Mayor Michael Bojokles to lead the pledge of allegiance.

III. **Approval of the minutes of the October 19, 2006 Town Council Meeting and Public Hearing as written.**

MOTION: Dr. Beaudin moved to approve the minutes of the October 19, 2006 Town Council Meeting and Public Hearing as written. Seconded by Mrs. Finch, all in favor.

IV. **Petitions and Communications**

A. **Beach Elementary School** – Students from Beach Elementary School read letters to the Mayor and Town Council thanking them for the water park passes and asked for the Town's continued support.

B. **Deputy's Report** – Sergeant Buckmaster gave the report.

C. **Public Works Report** – Mr. Cochran read the attached report.

D. **Engineer's Report** – Mrs. Jenkins read the attached report.

E. **Code Enforcement Officer's Report**- Mr. Watson read the attached report.

F. **Vice President's Report** – Mr. Wahl introduced Councilman Randy Hummel and newly elected North Beach Mayor Michael Bojokles. Mr. Bojokles stated that they would be having their oath of office, November 17, 2006 at the North Beach Community Center and welcomed all to come.

V. **Resolutions and Ordinances:**

A. **Vote on Ordinance O-06-14, an Ordinance of the Town Council of Chesapeake Beach, Maryland, amending the Town's local critical area program and Chapter 50, Zoning Code, by adopting the Forest and Developed Woodland Master Plan and introduce recommendations contained therein, amending the buffer and buffer exemption regulations, amending the woodland reforestation and afforestation standards, amending the Limited Development Area district regulations, and establishing a fees-in-**

lieu of mitigation program. Mr. Blitz stated that there were several amendments added to the Ordinance.

MOTION: Mr. Cumbo moved to adopt the amendments to Ordinance O-06-14. Seconded by Mr. Mahoney, all in favor.

MOTION: Dr. Parent moved to approve Ordinance O-06-14, as amended, an Ordinance of the Town Council of Chesapeake Beach, Maryland, amending the Town's local critical area program and chapter 50, Zoning Code, by adopting the Forest and Developed Woodland Master Plan and introduce recommendations contained therein, amending the buffer and buffer exemption regulations, amending the woodland reforestation and afforestation standards, amending the Limited Development Area district regulations, and establishing a fees-in-lieu of mitigation program. Seconded by Mr. Mahoney, all in favor.

- B. Vote on Ordinance O-06-15, an Ordinance of the Town Council of Chesapeake Beach, Maryland to establish 3.44 acres of The Home Place as a Growth Allocation District within the Critical Area, consistent with the prior approval of the State of Maryland Critical Area Commission.** Town Attorney, Eric Blitz, recused himself and Anthony Gorski resumed as Acting Attorney for the Town.

MOTION: Dr. Beaudin moved to amend the Ordinance to state that the number of planned units shall not exceed 26 units as previously approved by the Planning and Zoning Commission. Seconded by Mr. Mahoney. 3 ayes – Dr. Beaudin, Mrs. Finch, and Mr. Mahoney, 2 nays – Mr. Cumbo and Mr. Parent. The motion carried.

MOTION: Dr. Parent moved to approve Ordinance O-06-15, as amended, of the Town Council of Chesapeake Beach, Maryland, to establish 3.44 acres of The Home Place as a Growth Allocation District within the Critical Area, consistent with the prior approval of the State of Maryland Critical Area Commission. Seconded by Dr. Beaudin, all in favor.

Mr. Blitz returned to the meeting to resume as the Town Attorney.

- C. Introduce Ordinance O-06-16, an Ordinance of the Town Council of Chesapeake Beach, Maryland, amending the budget for the fiscal year July 1, 2005 to June 30, 2006 to reallocate budget appropriations and ratifying all prior expenditures consistent with said reallocations.** A public hearing will be scheduled for 7:58 p.m. prior to the next regularly scheduled meeting.

VI. Report of Officers, Boards and Committees:

- A. Planning & Zoning Commission** – There was a meeting held November 14, 2006.
- B. Board of Appeals** – There was a hearing held on November 6, 2006.

VII. Unfinished Business:

VIII. New Business:

- 11-1 Ed Francischelli of 2205 Eagle View Court stated his concerns about the speeding problem in Richfield Station and asked for more police presence. Mr. Cochran was directed to install additional speed limit signs.
- 11-2 John Bacon of 8717 C Street was present to inquire on the status of State Highway's timeline on the streetscape program.
- 11-3 Mrs. Finch announced that the Lighting Ceremony for the Brightest Beacon on the Bay program would be held at Town Hall, November 26, 2006 at 6:00 p.m.
- 11-4 Mr. Cumbo asked the status of the hiker biker trail.

The meeting was closed at 8:55 p.m. for a Closed Session pursuant to State Government Article 10-508(a)(7)(8) to consult with counsel to obtain legal advice on a legal matter and to consult with staff, consultants, or other individuals about pending or potential litigation on a motion by Mrs. Finch. Seconded by Mr. Mahoney, all in favor.

The meeting was re-opened at 9:20 p.m.

There being no further business, the meeting adjourned at 9:21 p.m. on a motion by Mr. Mahoney. Seconded by Mr. Cumbo, all in favor.

Submitted by,



Sharon L. Humm
Assistant Town Clerk



Holly K. Wahl, MBA
8200 Bayside Rd.
Chesapeake Beach, MD 20732

Re: Case No. 2023-03

April 30, 2024

Dear Chairman Hoon-Star and Town of Chesapeake Beach Board of Appeals Members,

I am responding to the Board of Appeals' April 18, 2024, memo on Case No. 2023-03, "Rod n Reel, Inc. / Donovan Estates, LLC." and your call for rebuttals to Mr. Pounds's documents that are entered into the record as Exhibit 64, 65, 66, 67, and 68. I agree with Mr. Pounds's statements and recognize the significance of the issues that he has brought to the Board of Appeal's attention.

During several Board of Appeal hearings, the Appellant's attorney in the referenced case testified that the Town of Chesapeake Beach Board of Appeals has the authority to overrule the Town's Planning and Zoning Commission, *and* to overrule the authority of the Town Council. As the appointed official of the Town of Chesapeake Beach responsible for carrying out the day-to-day operations of the Town, it is essential for you to know that I am *not authorized* to conduct *any action* that is not in accordance with the Town Council's legislation; furthermore, the Board of Appeals cannot order me to do so. Therefore, the Appellant's remedy of *ordering* "the Zoning Administrator and Planning and Zoning Commission (to) immediately commence and prioritize the processing and review of the relevant site plans submitted by Rod & Reel, Inc./Donovan Estates, LLC and that the Zoning Administrator and Planning and Zoning Commission be *ordered* to apply the Zoning ordinances in effect as of January 29, 2021, when the applications were submitted, and for such other and further relief as the nature of their cause requires" is not possible because the Board of Appeals has no such authority. As an appointed official of the Town of Chesapeake Beach, I cannot be *ordered* by the Board of Appeals to perform a particular action that is contrary to the legislation adopted *and currently in place* by the Town of Chesapeake Beach Town Council.

I thank the Town of Chesapeake Beach Board of Appeals for informing the "Parties of Record" of Mr. Pounds' exhibits. On January 5, 2024, I submitted my concerns in writing to the Chair of the Board of Appeals and the Attorney for the Board of Appeals related to the "Parties of Record" not being provided with the proper engagement outlined per Section 11 of the Board of Appeals Rules and Procedure "Cross Examination." Whereas the Board of Appeals Rules of Procedure state that the "Chairman ***shall permit any party of record to ask questions of a witness after that witness testimony.***" In subsequent hearings, the



Board of Appeals provided direct notice during the hearing to the "Parties of Record" that they had the right to cross-examine witness testimony. From that point forward, the "Parties of Record" have taken this opportunity to engage in the hearing process per the Board's Rules of Procedure. On January 5, 2024, I also submitted my written concerns related to the testimony of the Appellant's attorney. Throughout the hearing process, it has remained unclear what portion of the Appellant attorney's statements are legal arguments, opinion, or testimony. When I addressed this concern with the Attorney for the Board of Appeals, it was stated that **all** the Appellant's attorney's presentation would be subject to "Parties of Record" cross-examination once the presentation is complete. I understand the Appellant's Attorney expects to complete his presentation on May 29, 2024. This due process, in accordance with the Rules of Procedure of the Board of Appeals, is essential to the "Parties of Record" and members of the public.

Thank you for your time, efforts, and dedication to the Town of Chesapeake Beach.

Sincerely,

A handwritten signature in black ink that reads "Holly K. Wahl". The signature is written in a cursive, flowing style.

Holly K. Wahl, MBA
Town Administrator
Town of Chesapeake Beach



Patrick J. Mahoney
8200 Bayside Rd.
Chesapeake Beach, MD 20732

April 30, 2024

Dear Chairman Hoon-Star and Board of Appeals Members,

I am writing in response to the Board of Appeals' April 18, 2024, memo related to Case No. 2023-03, Rod n Reel, Inc. / Donovan Estates, LLC. The memo pertains to the Board of Appeals' call for rebuttals to Mr. Pounds' letters shown in the referenced case as Exhibits 64, 65, 66, 67, and 68.

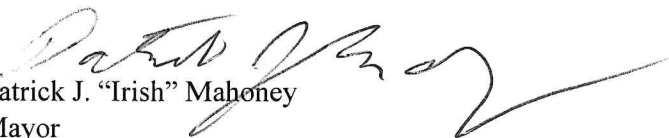
I agree with all statements made by Mr. Pounds in Exhibits 64, 65, 66, 67, and 68.

The appellant's attorney has spent approximately twenty hours (20) testifying to the Board of Appeals to convince you that the Board of Appeals has the authority to overrule the Town of Chesapeake Beach Planning and Zoning Commission and the Town Council's legislative actions; however, these statements are inaccurate. The Board of Appeals has no such authority. Further, the Board of Appeals cannot tell a Town Official what to do or require a Town official to perform a particular action contrary to legislation adopted by the Town Council. Further, the Board of Appeals cannot tell the Planning and Zoning Commission *what law* they are to follow.

The action before the Board of Appeals attempts to change a law in a manner that the Board of Appeals does not have the authority to overrule.

Thank you for your continued service to the Town of Chesapeake Beach.

Sincerely,


Patrick J. "Irish" Mahoney
Mayor
Town of Chesapeake Beach