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Case Number 28,2022D

IN THE SUPREME COURT OF THE STATE OF DELAWARE

OCEAN BAY MART INC.,	)	
	)	
Plaintiff Below, Appellant,	)	Case No. 28, 2022
	)	
	)	Upon Appeal From The
v.	)	Court of Chancery
	)	In The State of Delaware
THE CITY OF REHOBOTH BEACH DELAWARE,	)	C.A. No. 2019-0467-SG
	)	
	)	
Defendant Below, Appellee	)	

BRIEF OF THE DELAWARE CHAPTER OF THE AMERICAN PLANNING ASSOCIATION AND THE DELAWARE LEAGUE OF LOCAL GOVERNMENTS AS *AMICI CURAE* IN SUPPORT OF AFFIRMANCE

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STATEMENT AND IDENTITY OF AMICI CURIAE, THEIR INTEREST IN THE CASE, AND THE SOURCE OF THEIR AUTHORITY TO FILE

The APA is a not-for-profit organization with 38,000 members in over 100 countries. The Delaware Chapter ("DEAPA") is one of 47 chapters in the United States. The DEAPA seeks to provide leadership in community development and research, and it provides educational and advocacy resources, including policy guides, for use in local communities. As part of its policy and advocacy mission, the organization files *amicus curiae* briefs in state courts in cases of importance to the planning profession and the public interest. As the DEAPA supports and empowers planning professionals to advocate for smart and sound planning laws and regulations within their local communities, the DEAPA has a significant interest in the land-use questions presented in this case.

The Delaware League of Local Governments ("DLLG") proudly serves Delaware's 57 municipalities and three counties and seeks to improve everyday life for all Delawareans. It seeks to be a unified voice for Delaware's local governments (cities, towns, and counties). It strives to be a dynamic resource for local government advocacy, education, engagement, and best practices. The DLLG has as its goals to protect, preserve and advance the principles of home rule and to ensure that institutions of local democracy can respond to the needs of their constituents. The DLLG has a significant interest in the land-use questions presented in this case.

The DEAPA and the DLLG support the holding of the Court of Chancery, which requires equitable balancing to determine if a property owner has a vested right to avoid a subsequently adopted land use law. In addition, the DEAPA and the DLLG are concerned about the positions advocated by Appellee and the Committee of 100 and believe that, if adopted, the policies they advocate (specifically that one can detrimentally rely on an ambiguous statutory provision) would severely impact local land use planning and be a detriment to all local governments in Delaware. The DEAPA and the DLLG, also believe that the "free use of land" construction for ambiguous land use statutes, as articulated in *Dewey Beach Ent., Inc. v. Board of Adjustment of Town of Dewey Beach*,[1] and *Chase Alexa, LLC v. Kent County Levy Court*,[2] inappropriately precludes consideration of legislative intent in the interpretation of ordinances and believe that the holdings in those cases should be reversed or limited.

Because the vested rights doctrine and the statutory interpretation rules at issue in the case at bar are vitally important to land use planning and to all of Delaware municipalities, the *Amici Curiae* believe that they can provide a real world perspective regarding the issues presented. Pursuant to Supreme Court Rule 28, we ask that the Court accept this brief of the *Amici Curiae.*

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1 1 A.3d 305 (Del. 2010).

2 991 A.2d 1148 (Del. 2010).

SUMMARY OF ARGUMENT

1. The Court should reverse or limit the "free use of land" interpretive rule of construction because, as demonstrated by this case, it can lead to absurd results contrary to legislative intent. If the interpretive rule is not overturned, the *Amici Curiae* request that the Court clarify that the "free use of land" interpretive aid is a rule of last resort.

2. The Appellant and the Committee of 100's positions, specifically that a property owner can rely on a code provision that he did not read prior to application, should be rejected. One cannot argue that a code provision is ambiguous and thereafter claim detrimental reliance based upon an alleged ambiguity.

ARGUMENT

I. THIS COURT SHOULD ELIMINATE THE "FREE USE OF LAND" CONSTRUCTION AS IT CAUSES RESULTS THAT ARE CONTRARY TO LEGISLATIVE INTENT.

DEAPA and the DLLG request that the Court overturn the interpretive maxim that an ambiguous zoning or subdivision codes should be construed in favor of the "free use of land" because it is: (1) outdated; and (2) inconsistent with and antithetical to the primary goal of statutory interpretation – to obtain the intent of the legislature.

It is axiomatic, and this Court has stated on numerous occasions, that the "goal of statutory construction is to determine and give effect to legislative intent."[3] "[I]n cases of ambiguity in contracts, as well as in statutes, courts will lean towards the presumed intention of the parties or the legislature, and will so construe such contract or statute as to effectuate such intention ...."[4] Indeed, this Court has made clear that "'[w]hen interpreting a statute, Delaware courts *must* ascertain and give effect to the intent of the legislature."[5] This Court has long held that ascertaining and giving

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[3] *Harris v. Div. of Family Servs.*, 251 A.3d 115, 2021 WL 1561433, at *2 (Del. Apr. 20, 2021); *Eliason v. Englehart,* 733 A.2d 944, 946 (Del. 1999).

[4] *Murfey v. WHC Ventures, LLC,* 236 A.3d 337, 361 n.107 (Del. 2020) (quoting *Calderon v. Atlas S.S. Co.*, 170 U.S. 272, 280 (1898)).

[5] *Johnson v. State Farm Mut. Auto Ins.*, 189 A.3d 1287, 2018 WL 3156855, at *1 (Del. June 27, 2018) (quoting *State Farm Mut. Auto. Ins. v. Davis,* 80 A.3d 628, 632 (Del. 2013) (citations omitted)) (emphasis supplied).

effect to the intent of the legislature is a "fundamental rule."[6] Legislative intent must prevail "even if preserving legislative intent results in 'an interpretation not consistent with the strict letter of the statute.'"[7]

The fundamental rule of statutory construction is broken virtually any time that any ambiguity in a local land-use statute is construed in favor of the "free use of land." The perils of the "free use of land" rule are plainly evidenced by the facts at bar. The underlying statute that the Board of Adjustment construed was the plain language statement: "no more than one main building may be erected on a single lot." The legislative intent is crystal clear – the legislative body did not want more than one main building on a single lot.

Yet, because the Board of Adjustment somehow found an ambiguity in the statutory language, under the "free use of land" rule, and without regard to legislative intent, the practical effect was to (at the time of the decision) allow 63 buildings and 58 single family houses in a condominium regime on a single lot. This is contrary to this Court's fundamental rule of ascertaining and giving effect to legislative intent.

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6 *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1246 (Del. 1985).

7 *Pizzadili P'rs, LLC v. Kent Cty. Bd. of Adj.*, 2016 WL 4502005, at *4 (Del. Super. Aug. 16, 2016), *aff'd,* 157 A.3d 757 (Del. 2017)(Table); *Mayor & Council of Wilm. v. Dukes*, 157 A.2d 789, 793-94 (Del. 1960); *see also Hayward v. Gaston*, 542 A.2d 760, 768 (Del. 1988) ("If a literal interpretation of a statute leaves a result inconsistent with the general statutory intention, such interpretation must give way to general intent.").

The Court should reject the "free use of land" construct for land-use statutes and require any ambiguity to be resolved by using standard rules of statutory construction on a case-by-case basis – with the fundamental tenet being to ascertain and give effect to the intent of the legislature.[8] Indeed, in lieu of the "free use of land" construct, some standard rules of interpretation that should be applied when an ambiguity is found include:

- Construing the statute as a whole in a manner that will promote its purposes;[9]
- Ascribing a purpose to the use of the statutory language, if reasonably possible;[10]
- Examining the statute's history and drawing inferences concerning the intended meaning from its composition and structure;[11]

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[8] The rule of strict construction of land-use ordinances "has lost much of its force and importance in recent times, since has it become more and more generally recognized that the paramount duty of the judicial interpreter is to put upon the language of the legislature, honestly and faithfully, its plan and rational meaning and to promote its object. Zoning ordinances should be considered in light of their underlying policy, which implements the legislative purpose." 4 Am. Law Zoning § 41:7, *The Intent of the Legislature* (5th ed. 2021).

[9] *Rubick v. Sec. Instrument Corp.*, 766 A.2d 15, 18 (Del. 2000).

[10] *Oceanport Indus., Inc. v. Wilm. Stevedores, Inc.*, 636 A.2d 892, 900 (Del. 1994).

[11] *Id.*; *Clark v. State*, 184 A.3d 1292 (Table), 2018 WL 1956289, at *2 (Del. Apr. 24, 2018) ("When a statute is ambiguous, a court may refer to the legislative history to interpret the statute.").

- Reviewing preexisting law and similar statutes from other jurisdictions dealing with comparable situations, for use as extrinsic aids in construing the legislature's intent;[12]
- Providing a sensible and practical meaning to the statute as a whole;[13]
- Giving every phrase and word weight and consideration;[14]
- Construing the statute in a way that promotes its apparent purpose and harmonizes it with other statutes in the statutory scheme;[15]
- Avoiding literal or perceived interpretations yielding mischievous or absurd results;[16]
- Reading each section in light of all others to produce a harmonious whole;[17]
- Ensuring no word or part of the statute is rendered superfluous or surplusage;[18]

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12 *Hudson Farms, Inc. v. McGrellis,* 620 A.2d 215, 218 (Del. 1993).

13 *E.I. Du Pont De Nemours & Co. v. Clark,* 88 A.2d 436, 438 (Del. 1952)

14 *Mayor & Council of Wilm. v. Riverview Cemetery Co. of Wilm.*, 190 A. 111, 114 (Del. Super. 1937).

15 *Manti Hldgs. LLC v. Authentix Acq. Co.*, 261 A.3d 1199, 1214 (Del. 2021).

16 *One-Pie Invs., LLC v. Jackson,* 43 A.3d 911, 914 (Del. 2012).

17 *Doroshow, Pasquale, Krawitz & Bhaya v. Nanticoke Mem'l Hosp., Inc.,* 36 A.3d 336, 343 (Del. 2012).

18 *Cordero v. Gulfstream Dev. Corp.,* 56 A.3d 1030, 1036 (Del. 2012).

- Considering headnotes and catch lines, which may be utilized to determine legislative intent;[19]
- Considering the synopsis of the bill or ordinance;[20]
- Applying *expression unius exclusion alterius*, and the principle that excluded language cannot be engrafted onto a statute;[21]
- Applying *noscitur a sociis*, that "words grouped in a list should be given related meaning;"[22]
- Applying *ejusdem generis*, which instructs that "where general language follows an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned;"[23]
- Construing the statute in a way that will promote its apparent purpose and harmonize it with other statutes;[24]

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19 *Spielberg v. State,* 558 A.2d 291, 295 (Del. 1989).

20 *Carper v. New Castle Cty. Bd. of Ed.,* 432 A.2d 1202, 1205 (Del. 1981).

21 *Leatherbury v. Greensupun*, 939 A.2d 1284, 1291 (Del. 2007).

22 *Del. Bd. of Nursing v. Gillespie,* 41 A.3d 423, 427-28 (Del. 2012).

23 *Id.* (quoting *Aspen Advisors LLC v. United Artists Theatre Co.,* 861 A.2d 1251, 1265 (Del. 2004)).

24 *J.N.K., LLC v. Kent Cty. Levy Ct.*, 974 A.2d 197, 204 (Del. Ch. 2009) (citing *Eliason v. Englehart,* 733 A.2d 944, 946 (Del.1999)).

- Assuring there is no repeal by implication unless statutes are irreconcilably inconsistent and repugnant to each other;[25]
- Determining on a case-by-case basis whether a statute is discretionary or mandatory;[26]
- Deferring to the interpretation made by the legislative body and not overturning that construction unless the governing body clearly errs;[27]
- Providing due weight to the interpretation made by the administrative agency;[28]
- Ensuring that, in cases of irreconcilable conflict, the later statute prevails over the earlier;[29]
- Construing the statute to avoid constitutional infirmities;[30]
- Reading the statute's language in the context of the entire statutory scheme, in a manner consistent with its purpose;[31] and

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25 *Fraternal Order of Police, Del.-Wilm. Lodge No. 1 v. McLaughlin,* 428 A.2d 1158, 1160 (Del. 1981).

26 *Bartley v. Davis*, 519 A.2d 662, 667 (Del. 1986).

27 *Christiana Town Ctr. LLC v. New Castle Cty.*, 985 A.2d 389 (Table), 2009 WL 4301299, at *3 (Del. Dec. 1, 2009).

28 *Public Water Supply Co. v. DiPasquale,* 735 A.2d 378, 382 (Del. 1999).

29 *Turnbull v. Fink*, 668 A.2d 1370, 1377 (Del. 1995).

30 *State v. Baker*, 720 A.2d 1139, 1144 (Del. 1998).

31 6 McQuillin Mun. Corp. § 20:45, *Applying Rules of Statutory Construction* (2021 Update).

- Interpreting the statute in light of the presumption that the legislature is presumed to have enacted legislation with knowledge of the existence and effect of such prior law.[32]

"Although employing the traditional tools of statutory construction may require some effort,"[33] applying the non-exhaustive list of interpretative rules above establishes legislative intent – and application of the "free use of land" construction for ambiguous provisions does not.

Here, the legislature made an express statement that "no more than one main building may be erected on a single lot." Yet, because the Board of Adjustment found that the statutory language was somehow ambiguous, 63 buildings would have been allowed on a single lot under the "free use" maxim if, in fact, the City did not update its Code to affirm the Building Inspector's interpretation soon after the Board of Adjustment decision. A rule of interpretation that, by fiat, renders permissible the placement of 63 buildings on a single lot is certainly not what the legislature intended. And, the "free use" construction is contrary to other interpretative rules because it impermissibly: (1) renders the language in the code superfluous (because it effectively eliminates the "no more than one main building . . . on a lot"

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32 *State v. Botluck,* 200 A.2d 424, 427 (Del. 1964).

33 *See Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 970 (11th Cir. 2016).

limitation);[34] and it leads to an absurd result not intended by the legislature (because the legislature intended that only one main building could be located on a lot).[35]

The DEAPA and the DLLG submit that the "free use of land" maxim must be overturned because it is for the "legislature, and not the courts, to declare the public policy...."[36] The Court should reject "any approach which results in attribution of false or doubtful legislative intent."[37] For this reason, the DEAPA and the DLLG urge the Court to overturn *Chase Alexa LLC v. Kent County Levy Court*[38] and *Dewey Beach Ent. Inc. v. Town of Dewey Beach,*[39] and hold (as other states have held)[40] that zoning and land use ordinances should be interpreted the same way as other statutes – based upon ascertaining and giving effect to the intent of the legislature. If the Court is not inclined to dispose of the "free use" construction in its entirety, the DEAPA and the DLLG request that the Court clarify that the "free use of land" construction only be used as an interpretive rule of last resort, and only if the

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34 *Keeler v. Harford Mut. Ins.*, 672 A.2d 1012, 1016 (Del. 1996).

35 *See Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1246 (Del. 1985).

36 *Seth v. State*, 592 A.2d 436, 440 (Del. 1991).

37 2A Sutherlands Statutory Construction § 45:5, *Standards of Judgment: Intent of Legislature* (2021 Update).

38 991 A.2d 1148, 1152 (Del. 2010).

39 1 A.3d 305 (Del. 2010).

40 1 Rathkopf's *The Law of Zoning and* Planning § 5:16 (4th ed.) (citing cases from New Jersey, South Dakota, Oregon, Wisconsin, and the District of Columbia); *see also* 4 Am. Law *Zoning* § 41:7, *The Intent of the Legislature* (5th ed. 2021) (citing cases from numerous jurisdictions which interpret zoning ordinances based upon legislative intent).

interpretive rules outlined above cannot resolve the ambiguity consistent with the intent of the legislature. Allowing the "free use of land" interpretive rule to continue causes mischievous and absurd results,[41] and it should be eliminated.[42]

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41 *See Snell v. Engineered Sys. & Designs, Inc.*, 669 A.2d 13, 20–21 (Del. 1995).

42 The Committee of 100 claims that the *Ocean Bay Mart* decision effectively reverses prior cases applying the free use rule of interpretation. 100 Br. at 3, 9-11. Although the *Ocean Bay Mart* decision does not overrule *Dewey Beach* (because the *Ocean Bay Mart* holding deals with vested rights in the context of an ordinance amendment), the DEAPA and the DLLG requests that *Dewey Beach* be overruled on appeal.

II. THE APPELLANT AND COMMITTEE OF 100'S POSITION THAT A PROPERTY OWNER CAN RELY ON AN AMBIGUOUS STATUTE SHOULD BE REJECTED.

The Appellant and the Committee of 100 contend – based on the "free use of land" interpretive maxim – that a property owner should be permitted to detrimentally rely on an ambiguous statute; and further, they contend that the decision of the Court of Chancery overrules precedent. The Court should outright reject the Appellant's and Committee of 100's arguments for a multitude of reasons.

First, as discussed above, the "free use of land" construction of an ambiguous land use statute should be overruled because it is contrary to the fundamental rule of statutory construction, that the courts must ascertain and give effect to the intent of the legislature. The anomalous "free use of land" rule should be rejected in favor of standard rules of statutory construction that are designed to *effectuate* the legislative intent. At minimum, the "free use of land" construction should be relegated to an interpretive maxim of last resort.

Second, the Committee of 100 does not cite a single case – from any jurisdiction – which holds that a property owner can rely on an ambiguous statute to establish detrimental reliance.[43] If a statute is reasonably susceptible to different conclusions or interpretations, then one cannot rely upon it because the meaning is

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[43] 100 Br. at 6.

unclear.[44] If the meaning is debatable, that does not render the statute ambiguous because a disagreement about a meaning does not create ambiguity.[45] It is simply nonsensical to claim that detrimental reliance can be established when the meaning of the statutory provision is unclear or unsettled.

Third, to allow a property owner (who, in this case, never actually read the statute)[46] to detrimentally rely on ambiguous code provision permits a property owner to conclude, on his or her own, that the statute is ambiguous, and then claim detrimental reliance. To state the proposition demonstrates its absurdity. "Statutory interpretation is ultimately the responsibility of the courts."[47] As such, a property owner has no ability to declare that a statute is ambiguous. Until the Courts have interpreted the statute and thereafter ruled that a statutory provision is ambiguous, there can be no detrimental reliance by the property owner because, it is axiomatic that "[t]he fact that the parties disagree about the meaning of the statute does not

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44 *Noranda Aluminum Hldgs. Corp. v. XL Ins. Am., Inc.,* 269 A.3d 974, 978 (Del. 2021).

45 *Id.*

46 The DEAPA and the DLLG wholeheartedly endorse the City of Rehoboth Beach's contention that one cannot detrimentally rely on a statute that the property owner never read prior to making an application. City of Rehoboth Beach's Answering Brief at 26, n.42. *See generally UBEO Hldgs. LLC v. Drakulic*, 2021 WL 1716966, at *10 (Del. Ch. Apr. 30, 2021) ("if a party to a contract could use her failure to read a contract as a way to circumvent her obligations, 'contracts would not be worth the paper on which they are written.'") (citing cases and quotation omitted).

47 *Hirneisen v. Champlain Cable Corp.*, 892 A.2d 1056, 1059 (Del. 2006) (citing cases).

create ambiguity."[48] While a property owner may believe that a statute is ambiguous, it cannot detrimentally rely on that view until a declaration is made by a court because even courts can disagree about whether language is ambiguous or not.[49] An opinion of a property owner that the meaning of a statutory provision is uncertain should, in no way, establish detrimental reliance.

Fourth, the Committee of 100's claim that a property owner can rely on a mistaken interpretation of the code by a governmental official[50] – in a case where the property owner failed to provide the municipality any advanced notice of the development proposal, and when the developer was actively attempting to avoid the statutory scheme – is wrong.[51] It is, and has always been, the property owner's responsibility to know the law applicable to its lands.[52] A mistake of a Building Official does not create any vested rights – especially under the circumstances analyzed by the Court of Chancery in this case.

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48 *Wiggins v. State*, 227 A.3d 1062, 1066 (Del. 2020).

49 *Eagle Indus. Inc. v. DeVilbiss Heath Care, Inc.*, 702 A.2d 1228 (Del. 1997) (while the Court of Chancery held that the contractual provisions were unambiguous, the Supreme Court reversed declaring that the language was ambiguous and remanding and requiring additional evidence because the meaning and application of the contract terms were uncertain).

50 100 Br. at 9.

51 *Ocean Bay Mart, Inc. v. City of Rehoboth Beach*, 2021 WL 4771246, at *8-12 (Del. Ch. Oct. 13, 2021).

52 *Lowe's Home Ctrs., Inc. v. Old Meadows Props., L.L.C.*, 2001 WL 1729123, at *5 (Del. Super. Nov. 30, 2001); *Beiser v. Bd. of Adj. of Town of Dewey Beach*, 1991 WL 236966, at *5 (Del. Super. Oct. 25, 1991).

Fifth, it is axiomatic that, under Delaware law, where the governing body interprets its own statute, that construction will be upheld by the Courts unless the governing body clearly errs.[53] If a property owner could, as the Committee of 100 suggests, declare a statute ambiguous and detrimentally rely upon it, it would forgo the governing body's right to interpret its own statutory provisions. The property owner cannot decide that a provision is unclear and thereafter claim detrimental reliance.[54]

Sixth, the Committee of 100 is wrong when it claims that that the Court can only review the developer's good faith reliance (instead of equitable balancing) under Delaware law. Its brief fails to sufficiently analyze the Court's most recent pronouncement on vested rights – *Town of Cheswold v. Central Delaware Business Park*[55] – attempting to dismiss this Court's precedent as purported *dicta*.[56] In *Cheswold*, the Court clarified what good faith reliance on existing standards means,[57] and prefaced its explanation of what good faith reliance means by noting that the

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53 *Christiana Town Ctr. v. New Castle Cty.*, 985 A.2d 389 (Table), 2009 WL 4301299, at *3 (Del. Dec. 1, 2009).

54 Contrary to the Committee of 100's stance, Councils can and do reserve the right to interpret their own code. *Id.*; *contra* 100 Br. at 11. When they do, their construction of the statute is sustained unless its interpretation clearly errs.

55 188 A.3d 810, 821 n.62 (Del. 2018).

56 100 Br. at 14-15.

57 "[T]he nature, extent and degree of the developer's reliance on the state of the ordinance under which he has proceeded—i.e., the developer's good faith reliance on existing standards...." *Id.*

Court may consider "*among other factors it sees as important.*" The Court went on to list a bevy of considerations in footnote 62 of the Opinion, which demonstrates that the Court must employ equitable balancing in deciding vested rights cases. The Committee of 100 is misreading Delaware law – equitable balancing applies to vested rights claims under *Cheswold*.[58]

Seventh, contrary to the Committee of 100's contentions,[59] as established by the City of Rehoboth Beach's brief, the municipality can *always* change its code to clarify an ambiguity or a perceived ambiguity. There is no vested right to any zoning classification or land-use law[60] – the *Cheswold* balancing test is in place to determine *if* the property owner *obtained* a vested right under the equitable balancing test.

Eighth, to adopt the standard advocated by the Committee of 100 would place a terrible burden on municipal officials who are charged with reviewing plans and

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[58] The Committee of 100 asserts that a "heavy bias exists in favor of a property owner and good faith reliance" and the "property owner should prevail – particularly where a proposed change arises in reaction to an unpopular plan." 100 Br. 4. This is not, and has never been the law – and such a contention should be summarily rejected. The *Cheswold* vested rights test requires equitable balancing of numerous factors, and as stated in the City of Rehoboth Beach's brief, there is no vested right to any zoning classification or other land-use approval. City of Rehoboth Beach Answering Brief at 3. The property owner should *not* prevail on a vested rights claim unless it can demonstrate exceptional circumstances that make it highly inequitable to enforce the ordinance amendment, *and* unless there is minimal governmental interest in the ordinance amendment.

[59] 100 Br. at 3.

[60] The DEAPA and the DLLG adopt and incorporate the case law cited in footnotes 4-10 of the City of Rehoboth Beach's Answering Brief.

land-use applications. If they made a mistake in the interpretation, they would be bound by that mistake for all time – which has never been the law.[61] In addition, if the code is in any way unclear, the property owner could claim detrimental reliance, without regard to any statement by a municipal official and without regard to the position of a municipality. And, even in cases where the property owner and the municipality disagree about an interpretation, the developer's interpretation could establish detrimental reliance – even if the municipal interpretation is ultimately proved to be correct.

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61 *See supra* n. 52.

CONCLUSION

For all of the forgoing reasons, the DEAPA and the DLLG respectfully request that for good land-use planning and the stability of precedent, the decision of the Court of Chancery should be affirmed – and the arguments presented by the Appellant and the Committee of 100 be rejected. Further, to reestablish the fundamental rule that statutes should be interpreted to ascertain and give effect to the intent of the legislature, the Court should overrule the "free use of land" interpretive maxim, or at minimum, clarify that it is an interpretive rule of last resort.

Respectfully submitted,

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