



Ruddertowne lawsuit moves forward

District judge throws out three counts, keeps eight

By SEAN O'SULLIVAN • The News Journal • August 3, 2010

Following a major victory in the Delaware Supreme Court, the owners of Ruddertowne in Dewey Beach won a crucial early test in a federal lawsuit against the town related to its effort to redevelop the landmark shopping and restaurant complex.

Chief District Judge Gregory M. Sleet, in a ruling dated Friday but not made public until Monday, refused a motion by Dewey Beach to toss out a developers' lawsuit charging town officials violated due process in denying their plans to redevelop the property, as well as allegations that the denial was retaliation and an abuse of power.

Sleet also threw out three counts of the lawsuit filed by Dewey Beach Enterprises last year but left eight claims -- a majority of the lawsuit -- intact, allowing the case to go forward.

The lawsuit seeks damages, attorneys fees, a court-ordered bar on certain Dewey officials from voting on the project in the future and a court order to allow developers to build a new commercial and residential complex on the site that could rise as high as 68 feet, or almost double what the Delaware Supreme Court ruled they could build Friday.

Town officials did not return calls seeking comment and an attorney representing the town, Megan Trocki Mantzavinos, had no comment Monday.

Attorneys for Dewey Beach Enterprises said they were pleased with the decision. "Given the court's ruling, we now can proceed forward with discovery and a jury trial regarding the town's unconstitutional conduct, as well as the conduct of the individual defendants," said attorney Shawn Tucker.

"This enables us to get to the discovery phase where the facts can be fleshed out," added attorney

Kathleen Jennings. The discovery phase will allow the owners of Ruddertowne to do things like get copies of town documents and interview key players under oath.

Developers and town officials are involved in several legal battles over plans by Dewey Beach Enterprises to raze the landmark Ruddertowne and re-create it as a larger mixed-use commercial and residential complex.

The nearby Rusty Rudder is under separate ownership and is not involved in the redevelopment.

Perhaps most noteworthy in Friday's ruling is that Sleet declined to dismiss claims against former mayor Dell Tush and former town commissioners David King and Richard Hanewinkel along with Diane Hanson -- who still serves on the town's commission -- as individuals.

The four were seeking immunity as legislators, but Sleet wrote that the civil suit alleges actions that go beyond the scope of a legislator acting in the line of duty, including charges that Tush threatened to fire the town's building inspector if he approved the redevelopment and that King lobbied against the project and refused to recuse himself from a vote despite a finding that he had a conflict of interest.

The lawsuit, filed in July 2009, originally made 13 claims, but the plaintiffs dropped two of those claims -- civil conspiracy and an improper

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regulatory taking -- before Sleet made his ruling. Sleet tossed out charges that Ruddertowne was treated unequally compared with other commercial properties in town.

The federal ruling follows Friday's decision by the Delaware Supreme Court that overturned a lower court and the town's board of adjustment's denials of redevelopment plans.

According to federal court papers, the original "concept plan," submitted to the town in June 2007, included a welcome center, bayside boardwalk, public restrooms, and a 68-foot tall building -- four feet shorter than the Dewey Beach Lighthouse --- that would house a 120 room five-star hotel and condominium complex, convention center and kiddie "funland."

After that was rejected, developers submitted a scaled-down plan in November 2007 with a 35-foot structure, which -- though initially approved by the town's building inspector and town attorney -- was subsequently rejected, as well.

Friday's Delaware Supreme Court decision reversed the denial on this second plan.

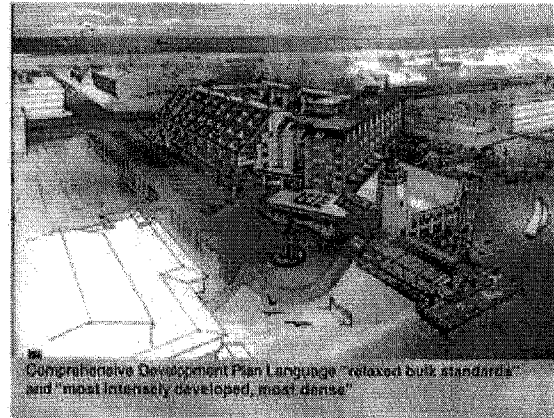
Friday, developers said they did not have details on what they may build on the property, in part because they are waiting to see the outcome of the federal lawsuit and a lawsuit in the Delaware Court of Chancery challenging the town's new zoning laws -- which could allow them to build the original project with the 68-foot-tall, or six-story, structure.

Opponents of the plan charged the town is against the plan because the new structure will be too large and out of character with the town.

Dewey Beach Enterprises partner Jim Baeurle charged that the opposition is fueled by businesses in the town that fear competition.

Developers said even at 35 feet tall, the project will cost an estimated \$100 million and employ 1,500. Tucker said Monday that any redevelopment would maintain Ruddertowne's signature lighthouse and the Crabbers Cove and Que Pasa restaurants.

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An artist's rendering submitted to Dewey Beach in 2007 shows the concept plan for the 68-foot-tall redevelopment of Ruddertowne. The rejected plan is now a subject of a lawsuit. (Courtesy of Dewey Beach Enterprises)

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