



## **Report to the Town of Dewey Beach, Delaware Commissioners and the Public:**

# **Facts and Balance Regarding the Town Council Presentation on Dewey's Participation in the Military Surplus Program**

01.29.2018

Dewey Citizens for Accountability (DCA)

DeweyCitizens.org

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Rehoboth Beach, DE 19971

# Report Card and Summary Analysis

## Bauer's Presentation to Dewey Town Council on the Military Surplus Program

Overview: A comprehensive presentation on the Military Surplus Program was made to Town Council and attendees by Commissioner Bauer on January 13, 2018, with a powerpoint presentation, a video produced by the Federal Government's Military Surplus program, and the display of two pieces of equipment; a laptop and a pair of military boots. No alternative presentation was offered, and no questioning of Mr. Bauer was permitted regarding claims made. The Dewey Beach Citizens for Accountability (DCA) extensively reviewed the videotape of Mr. Bauer's presentation in comparison to the actual program rules and details, and produced a point by point analysis which is summarized here:

Bottom Line

	Assertion	Key Fact Summary	Conclusion	
Full Analysis Reference Assertion #1	Dewey's participation in the Military Surplus 1033 program is fully audited by the federal and state government, including all the non-controlled equipment such as laptops, boots, vehicles and tools	Every two years just 25% of the non-controlled equipment is audited. Then after one year its not audited at all (taken off the books). <b>Most of the items in question are non-controlled and are, therefore, not audited by the federal or state governments.</b> This equipment is not supposed to be sold or removed for personal use, but only for law enforcement purposes.	Non-controlled equipment is only reviewed on a limited basis every other year by the Feds, averaging 12.5 % per year. After just one year, items such laptops, generators, vehicles, flashlights, TVs and boots, and such "non-controlled" property is owned by the Police Dept and NOT subject to any state or federal audit. By program rules it is not supposed to be sold. But some unknown amount was sold, and that remains unaccounted for to this day.	F
Full Analysis Reference Assertion #2	Bauer stated: "We don't need to to "begin" accounting of it because the state LESO office actually does the accounting of it for us." and the Mayor stated:"The federal government is monitoring the things that matter."	In addition to the false information about audits, no review is ever done by the Federal or State of any bank account or proceeds of the sales of the equipment which Dewey's investigator found was going on to fund unknown uses.	Dewey has never had an audit of monies flowing into out of the <u>still unidentified account(s)</u> that holds proceeds of the sales, payments or transactions. Any or all fraud or misuse of the equipment for personal use or sale at auction (as already documented occurred) has not been subject to any review or audit by any agency, and was not even included in the annual town audit done by a CPA.	F
Full Analysis Reference Assertion #4	The Town's use of the Military Surplus Program is "nowhere near the top" of the list of users in the State of Delaware.	In all years since 2014 Dewey, having obtained 2.85 Million of equipment, was #1 per capita of the state in the use of the Military Surplus program, See <b>Appendix B: Charts</b>	The use by Dewey of the Military Surplus Program is "off the charts" compared to other Delaware towns of similar size, having been #1 in the entire state for 2015 and 2017 (2016 the program was temporarily halted.) There is no known reason for this fact other than it being used for purposes other than those for which it was intended or allowed to be used.	F
Full Analysis Reference Assertion #5	The Military "Humvees that we have now are on loan"and use by the town "expires" and then this year some are required to be returned to the State or Federal Government program. "we have two of these. One goes back next week and the other one I'm not sure of the expiration date"	In the federal inventory list, Dewey has five Humvees, not two; Despite the statement by Bauer that a Humvee needed to be returned to the federal government, controlled property usage is decidedly not "on loan" and in fact has no expiration or return date.	The statement that Dewey has two Humvees and that they were on loan are both false. Humvees obtained by Dewey Beach do not have to be returned. There are five of them, one now in a junkyard. Dewey is responsible for the maintenance, safe storage, repairs, fuel, and insurance for the Humvees for an indeterminate amount of time.	F
Full Analysis Reference Assertion #6	"One Humvee was used during the flooding and to pull out vehicles during recent snow storms. A girl ran into the bay that tried to kill herself. We don't have a boat that we can use to go out and do a rescue like that. It would be nice to get a little boat with an engine and be able to run out and do a rescue like that."	The program is defined as for "law enforcement, counter-drug, counter-terrorism, or border patrol activities." National Guard and other agencies provide Dewey assistance in weather and natural disasters, as does Rehoboth (which does not even participate in the Military Surplus Program).	In addition to the state resources, fire and ambulance services in Dewey are provided exclusively by Rehoboth. and the activities regarding floods are not law enforcement related as the 1033 program requires. Dewey has received five boats and seven outboard engines as listed in federal inventories. The Dewey Beach Police Dept has also received 36 vehicles not mentioned by Mr. Bauer.	F
Full Analysis Reference Assertion #10	Town officials knew of and approved of Dewey's participation in the military surplus program as shown by a letter dated 10/23/2015." Jim Dedes' signature was on the original."	No signature by Jim Dedes was on original document approving the program on letterhead. Nor did Dedes have the authority to do so. The letter was clearly an earlier draft of what became a letter of the same date as discussed below.	As described within, neither letter has been authenticated, and they do not appear to be valid. The first letter is draft of the second letter shown during the presentation a few pages later. The first is not on letterhead nor is it signed by Marc Applebaum. It only has Jim Dedes' email written at the top- not his signature.	TBD
Full Analysis Reference Assertion #10	Former Dewey Town Manager Marc Appelbaum knew of and approved the program in a different 10/23/2015 letter which was submitted at some unknown date in connection with the federal 1033 program request for additional controlled military surplus equipment by the Police.	The purported letter bore only a signature stamp by Appelbaum, and contains claims he could not have possibly had made in a writing style his staff stated clearly is not his. Many facts indicate its likely (over 85%) as discussed in Appendix C. be a forgery, and has been referred to the town attorney for investigation, as well as to the federal officials. "	The preponderance of evidence within this report indicates that a letter was drafted without the knowledge of the town manager, who was known to take aggressive efforts in opposing off books revenue or spending, His signature stamp was used, which was known to be kept in an unsecured area, and other details described in Appendix C illustrate the letter is likely not valid.	TBD
Full Analysis Reference Assertion #11	"This program has not been concealed from anyone and has undergone numerous [SIC] biannual Program Compliance Reviews" and "the residents and visitors have seen this equipment in use on many occasions.""I think everybody knew"	The program participation was first identified by the Walton Report in Sept 2017. <i>"for an unknown period of time, the Dewey Beach Police Department has received, stored and sold federal surplus equipment...These Town assets have not been subject to any town audit, and their location, use or sale of this equipment has not been publicly disclosed to the residents at any time up to and including the present."</i>	According to the Walton Report and interviews, there was no widespread knowledge by the public, Council, or the press about Dewey's participation in the program. The Walton report proves false any claims that there was widespread knowledge. To this day, only two vehicles out of the over 36 acquired were ever known to be seen or used in Dewey. The long time storage. use and location of \$2.8m of equipment remains a mystery to this day, as does bank account(s) associated with this program.	F

**Introduction:** This research paper looks at participation in the Military Surplus Program 1033 program by the Town of Dewey Beach, Delaware, reviewing public documents to determine facts of why and how the small town, with under 400 full time residents and whose size is less than a third of a square mile, received \$2.85 million in surplus Military hardware since 2014.<sup>1</sup> The accounts of Dewey Beach relating to the sale of this equipment are held by the Police Department off-budget, and are held in accounts outside the review of even the town's own auditors, as well as the residents. This program came to the attention of the public after it was identified in the course of an outside investigation looking into allegations relating to another town matter from July thru September, 2017. The investigator, attorney Max Walton, determined some "undetermined amount" of equipment received by Dewey through the program had been sold by the Dewey Police Dept without knowledge of the town.<sup>2</sup> As of late January 2018, the Town Council and Police Department have not issued any information on which items were sold, what was done with the funds from those sales, or the use of the \$2.85 million worth of equipment placed in service which included 36 military vehicles and a seemingly endless list of tractors, generators, outboard motors, and the like.

Instead of releasing information to the public on sales and use of the equipment as demanded by an earlier resolution of Town Council, a member of the Town Council made a presentation on the Military Surplus program before town Council on January 13, 2018 defending the Police Department's use of the program, detailing use of one or two vehicles, and two transactions which only serve to raise further concern over the monies flowing through the program. As indicated in the following facts, all pulled from public records at the state and federal level, the presentation by Commissioner Paul Bauer was materially incorrect, not based on actual facts of the 1033 program, stated the program rules wrongly, and omitted other key facts. It requires numerous corrections as the presentation was regarding an important issue for Dewey Beach. But of equal concern, the Bauer presentation came during a council-approved outside auditor review of the town's procedures regarding the 1033 program.<sup>3</sup>

The Dewey Citizens for Accountability, formed in October 2017, undertook this research to set the record straight on the 1033 program, given Commissioner Bauer's inaccurate presentation, and its likely interference with the council-approved outside review of the Dewey Police Department's participation in the military surplus program. It would be a great disservice for the public and the town for the Bauer Presentation to be relied on, but it's the only presentation so far put before Council. There was limited public comment allowed at the mid January meeting, but no questions were allowed of Mr. Bauer following the presentation.<sup>4</sup>

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<sup>1</sup> [The Federal Inventory of equipment and valuation of \\$2.85 Million is listed here](#)

<sup>2</sup> See Appendix A attached for the relevant text of the Walton Report relating to his findings

<sup>3</sup> An outside firm, TGM, was hired by Council and began January to undertake an "agreed upon procedures review" of the program

<sup>4</sup> Following Bauer, The Mayor at 1:17 of the Council Meeting: "*It won't be a question and answer period at this time*"

The following are the facts of the program, referencing actual documents, contrasted with the most egregious materially false assertions made relating to Dewey's Participation and the Military Surplus program published rules.

**1. Assertion:** That equipment received by Dewey through the Military Surplus Program is audited by the federal and state government. To elaborate, Mr. Bauer also stated that in 2017 there were two Federal Representatives and the State Representatives and they *"they came through and touched every piece of equipment."*<sup>5</sup> He stated, as have others,<sup>6</sup> Dewey was audited "biannually"<sup>7</sup> which is defined in dictionary.com as "twice a year."

**Fact:** Non-controlled equipment is only reviewed on a limited basis every other year by the Feds and only 24.46% was physically reviewed in 2017.<sup>8</sup> Delaware has not completed a physical review of any of the property of Dewey Beach Police Department since at least 2015 as prior reviews were unavailable. In fact, Delaware is only required to complete a physical review of at least 5% of the Towns (2 of 32 at this time) annually.<sup>9</sup> And after one year, it is not audited at all because it is no longer the property of the Federal Government and therefore not included in a Program Compliance Review.<sup>10</sup> The LESO (Law Enforcement Support Office) program does not use that word, it uses "every two years."<sup>11</sup> Why Mr. Bauer transposed that into biannually indicates a clear misunderstanding of the word or an effort to mislead on the fact that the audits are infrequent. This assertion is materially incorrect and the new word used by Mr. Bauer does not exist in the LESO program. The term for once every two years is biennial.

Therefore, the statement was materially incorrect and misleading from any perspective.

**2. Assertion:** *"We don't need to to "begin" accounting of it because the state LESO office actually does the accounting of it for us."*<sup>12</sup>

**Fact:** No bank deposit accounts from revenues are reviewed or audited by the LESO either at the state level or the federal level, or have ever been. Whatever accounts held by the Police Department were not even known by the Dewey Auditors during the last audit of the town, and despite FOIAs our researchers were not able to identify any of the accounts, which were termed "restricted accounts" by Mr. Bauer during the presentation. As detailed by the Walton Report: "the transactions have been completely separate from the Town's administration, have

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<sup>5</sup> At 51:52 - 53:14 of Video of Town Council Presentation (available on townofdeweybeach.com)

<sup>6</sup> See Cape Gazette article of January 22, 2018 - Appendix A part C

<sup>7</sup> [LESO 1033 Program Powerpoint](#) slides 6 and 16

<sup>8</sup> Source: [Delaware PCR DAR Inventories](#) page 1 and

<sup>9</sup> Source: [2017 LESO Program Compliance Review Checklist](#) page 7

<sup>10</sup> Source: [Dewey Beach Police Department State Plan of Operation July 26, 2016](#). III. General Terms & Conditions (K)

<sup>11</sup> Source: [Dewey Beach Police Department State Plan of Operation July 26, 2016](#). VI. Program Compliance Reviews (A)

<sup>12</sup> At 53:52 of Video of Town Council Presentation (available on townofdeweybeach.com)

not been included in the Town's books and records, and have not been subject to audit." <sup>13</sup> The funds have come from the sale of non-controlled equipment for which there is no oversight or control. The report stated "proceeds are not distributed to the Town, and the money is used at the [Police] department's exclusive discretion." And the federal program, LESO, does not regulate the sale or gifting of non-controlled property; it only states that "*LEAs (law enforcement agency) (towns) receive title and ownership of DEMIL "A" items as governmental entities. Title and ownership of DEMIL "A" property does not pass from DOD (Department of Defense or Defense Logistics Agency) to any private individual or LEA [Town] official in their private capacity. Accordingly, such property should be maintained and ultimately disposed of in accordance with provisions in state and local law that govern public property.*" <sup>14</sup>

**3. Assertion:** The Federal audit that Mr. Bauer included as an example of the laptop(s) being audited, "*Our last PCR [Audit] was August 17 of this year, and when they came in and said: 'okay let me see that laptop, okay, let me look at the serial number, scan the barcode, here you go,' and if by chance you don't have any of those things, you fail your audit.*" Commissioner Bauer then pointed to the program laptop he brought to the Council Presentation, and stated "*but you have to physically hand over each piece of equipment*" as part of the audit. <sup>15</sup>

**Fact:** In truth, zero laptops of any kind were audited in the Federal Program Compliance Review of 2017 in Dewey Beach. There is a list published showing this. And zero audits are performed on the laptops (and all other non-controlled equipment) from the one year point on (since they are now the "property" of the Dewey Beach Police Department). The fact that Mr. Bauer specifically referred to the laptop in front of him as having been audited is a materially false statement made to the Commissioners and the public. Further it should be pointed out the town itself does not hold currently hold title to any of this equipment. The Police Department appears to, but the Police have not responded to Town Council's requests for such inventories. As the Walton Report stated: "we are concerned that this practice may not satisfy required disclosure and accounting standards and needs to be reviewed immediately. Equipment obtained through the program should be titled in the Town's name when acquired, storage and use should be approved, the sale of equipment should be approved, and proceeds should be accounted for."<sup>16</sup>

**4. Assertion:** Bauer stated: "we are nowhere near the top." [of the users of the Military Surplus Program in Delaware] <sup>17</sup>

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<sup>13</sup> Independent Investigation of the Town Manager of the Town of Dewey Beach Sept 20, 2017 (See Appendix A)

<sup>14</sup> Source: [Dewey Beach Police Department State Plan of Operation July 26, 2016](#). III. General Terms & Conditions (J) (4)

<sup>15</sup> At 52:10 Video of Town Council Presentation, January 13, 2018 (available on townofdeweybeach.com)

<sup>16</sup> Independent Investigation of the Town Manager of the Town of Dewey Beach Sept 20, 2017 (See Appendix A)

<sup>17</sup> At 36:04-08 48:19 Presentation, January 13, 2018 (available on townofdeweybeach.com)

**Fact:** For all years which data was released, Dewey’s per capita use of the Military Surplus Program in Delaware, in all years since 2014, puts **Dewey as #1 every single year including for 2017**<sup>18</sup> Far more than Laurel which Bauer identified as a heavy user. Far more than even Harrington (a gambling town with arguably more needs). Its possible and the subject of additional research, to determine if Dewey is the #1 per capita user of the program in the United States. Even among beach towns along the Delaware coast, Dewey stands far above as the charts in **Appendix B** show.

**5. Assertion:** Bauer stated: *“These Humvees that we have now are on loan. So, I think one goes back next week, we have two of these. One goes back next week and the other one I’m not sure of the expiration date on that.”*<sup>19</sup>

**Fact:** In the federal inventory list, Dewey has five Humvees, not two; despite the statement by Bauer that a Humvee needed to be returned to the federal government, controlled property usage is decidedly not “on loan” and in fact has no expiration or return date.

In truth, the one Humvee Bauer refers to as going back was found by the LESO Program Compliance Review *“in a junkyard with weeds growing through it”*.<sup>20</sup> The controlled property must be turned in when the LEA (Law Enforcement Agency, Police Department) has no use for it or should LESO recall it. *“When the LEA no longer has legitimate law enforcement uses for controlled property, the LEA must notify the State, who will then notify the LESO, and the controlled property must either be transferred to another enrolled LEA (via standard transfer processor or returned to the DLA (Defense Logistics Agency) Disposition Services for disposal.)”*<sup>21</sup> Such a recall has *never happened* in any known cases in all the materials, inventories and years that have been reviewed by our researchers.

**6. Assertion:** Bauer: *“One Humvee was used during the flooding and to pull out vehicles during recent snow storms. A girl ran into the bay that tried to kill herself. We don’t have a boat that we can use to go out and do a rescue like that. It would be nice to get a little boat with an engine and be able to run out and do a rescue like that.”*<sup>22</sup>

**Fact:** In fact, Dewey has received five boats and seven outboard engines as listed in federal inventories.<sup>23</sup> The Dewey Beach Police Department has also received 36 vehicles since 2013 from the 1033 program including: 5 Humvees, 4 Tractors, 10 ATVs, 2 Dump Trucks, 1 Wrecker Truck, 2 Cargo Trucks, assorted motorized carts, and numerous trailers. Those were not mentioned either by Mr. Bauer.

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<sup>18</sup> [2014 Inventory-The Marshall Project](#); [2015 Inventory \(updated in 2016\)](#)-Washington Post; [2017 Inventory as of 9/30/17](#)- DLA LESO

<sup>19</sup> At 43:05 Video of Town Council Presentation, January 13, 2018 (available on townofdeweybeach.com)

<sup>20</sup> Source: [Delaware PCR DAR Inventories](#) page 37

<sup>21</sup> Source: [Dewey Beach Police Department State Plan of Operation July 26, 2016](#) III. General Terms & Conditions (J)

<sup>22</sup> At 45:34 of Video of Town Council Presentation, January 13, 2018 (available on townofdeweybeach.com)

<sup>23</sup> DE Dewey Beach Justifications ALL received from FOIA Request to the LESO January 19, 2018.

The incorrect statement that it would be “nice to get a little boat with an engine” illustrates a key point: its possible that the boats and engines were sold by the Dewey Police Dept and revenue obtained and used in some manner currently unknown to Dewey’s Council, Town Auditors and residents. It was first identified in the Walton Report which stated: “proceeds are retained by the police department. After one year it’s off the federal inventories and not tracked by any audit (neither federal or state) as per fact #1 above.”<sup>24</sup> Furthermore, Rehoboth Bay is not defined as the jurisdiction of the Dewey Police, but instead Rehoboth which does these types of rescues.<sup>25</sup>

To be clear, emergencies outside of law enforcement are performed by the Rehoboth Beach Volunteer Fire Department which provides Dewey all fire, ambulance and emergency services.<sup>26</sup>

**7. Assertion:** Bauer stated that “*all the equipment costs zero.*”<sup>27</sup>

**Fact:** The costs of acquisition of the military equipment is far from zero. First, the shipment or transfer of the equipment must be paid by the receiving Law Enforcement Agency per the State Plan of Operation. If the Town picks up the equipment (which Bauer indicated was done), there is far greater cost in travel expenses (fuel, insurance for the trip, per diem expenses etc) and —even more significantly— Police Dept man hours (salary, pension, benefits). In addition most equipment is required to be “fully insured, stored in a safe location, regularly maintained and repaired, and that must be paid for by the Town.”<sup>28</sup> For example, Dewey has 36 vehicles, and the storage of those in the one square mile of Dewey’s town limits is not plausible. The statement that the equipment was or is free is incorrect.

**8. Assertion:** “On 11/4/2016 the Town deposited a check “for \$35,405.00 into the General Fund from the sale of a D7 Bulldozer.”<sup>29</sup> “You can’t move programs from the federal government into general town funds...that’s not legal... the police have a ‘restricted’ account and that’s where that money has now been moved back to, correct? (Mayor TJ Redefer confirms).”<sup>30</sup>

**Fact:** The funds received from the sale are not federal funds, the Dewey Beach Police Department “owned” the D7 Bulldozer after one year from shipment date of May 2015.<sup>31</sup>

**9. Assertion:** “A couple of years back we acquired property over here that used to be called Seasons Pizza and there was a contractor... and you can see here it was \$5,000 to knock down

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<sup>24</sup> Source: [Dewey Beach Police Department State Plan of Operation July 26, 2016](#). III. General Terms & Conditions (K)

<sup>25</sup> Source: [Charter of the Town of Dewey Beach, Section 2 Territory and Limits](#)

<sup>26</sup> Source: [Charter of the Town of Dewey Beach, Section 2 Territory and Limits](#)

<sup>27</sup> At 41:00 Video of Town Council Presentation, January 13, 2018 (available on townofdeweybeach.com)

<sup>28</sup> Source: [Dewey Beach Police Department State Plan of Operation July 26, 2016](#). XIV. Costs & Fees

<sup>29</sup> [LESO 1033 Program Powerpoint](#) slides 11 and 12.

<sup>30</sup> At 47:30 Video of Town Council Presentation, January 13, 2018 (available on townofdeweybeach.com)

<sup>31</sup> Source: [Dewey Beach Police Department State Plan of Operation July 26, 2016](#). III. (J)

the building...Dirt Works will also consider trading the cost of all work to be done for equipment from the military program that Dewey Beach Police Department participates in.”<sup>32</sup>

**Fact:** Dirt Works did not specify on the estimate (#1142) that it was getting a forklift, or the value of what it was receiving as would be required for an invoice. Without data, and the police have failed to issue any despite Freedom of Information Act (FOIA) requests, it's impossible to know which forklift was traded. On the same estimate above, the cost of the demolition is listed as \$12,500 for 1505 Coastal Highway and \$18,800 for #1503 (a total of \$31,300) with a 12% discount should both demolished at the same time for a total of \$27,544, not \$5,000, which is listed on estimate #1141.<sup>33</sup> This discrepancy cannot prove anything at this point, because the invoice has not been produced for the work performed, or to define the products received and the total value of those products. Further, Program rules may have been violated in that no forklift was the property of the Dewey Beach Police Department according to the shipment dates of the forklifts listed in the inventories by the date of the estimate (April 1, 2016).<sup>34</sup> This transaction needs further inquiry to assess whether program rules were violated.

**10. Assertion:** Two letters were produced in the Bauer PowerPoint “showing” the Mayor and Town Council’s knowledge of the Dewey’s participation in the 1033 program. One dated 10/23/2015 has the signature of Jim Dedes. Mr. Bauer claimed “*Jim Dedes signature is on the original.*”<sup>35</sup> The other were in the form of a 10/23/2015 letter from Marc Appelbaum addressed to the Military Surplus Program headquarters apparently with Appelbaum asserting on behalf of all Council members and the Mayor that they knew of the 1033 program.<sup>36</sup>

**Fact:** The first letter shown in the Bauer PowerPoint presentation is draft of the second letter shown during the presentation a few pages later. The first is not on letterhead nor is it signed by Marc Applebaum. It only has Jim Dedes’ email written at the top- not his signature<sup>37</sup> The second purported letter only bears a signature stamp of Appelbaum used during a week he was in town, and its authenticity is in serious question.<sup>38</sup> It has been an ongoing dialogue between the Mayor and DCA, the authors of this research paper. The Mayor has refused to provide authentication of the letters. Over a month ago DCA asked for this purported letter to be referred to the Town attorney for review, and have not heard confirmation from the Mayor that this was done. The Mayor had originally distributed the Appelbaum letter on letterhead as evidence of prior knowledge by those outside the Police Department. As to the content of the letter, It’s unlikely and unheard of for any Town manager to assert that an entire Council and

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<sup>32</sup> At 48:40 Video of Town Council Presentation, January 13, 2018 and [LESO 1033 Program Powerpoint](#) slides 11, 14, and 15.

<sup>33</sup> [LESO 1033 Program Powerpoint](#) slide 14 and 15.

<sup>34</sup> Source: [Dewey Beach Police Department State Plan of Operation July 26, 2016](#). III. (J) and [2015 Inventory \(updated in 2016\)-Washington Post](#)

<sup>35</sup> At 49:40 Video of Town Council Presentation, January 13, 2018 (available on townofdeweybeach.com)

<sup>36</sup> At 48:05 Video of Town Council Presentation, January 13, 2018 and [LESO 1033 Program Powerpoint](#) slides 13 and 19.

<sup>37</sup> [LESO 1033 Program Powerpoint](#) slides 13 and 19.

<sup>38</sup> See Appendix C

the Mayor “knew of” and approved of a program in which at least three town Council members stated that they are not aware of Dewey’s participation. And while Appelbaum left the town and is subject to a non-disparagement clause with the town, he has not identified the letter as his. Further, the national 1033 program was controversial and was canceled on the national level just a few months later, before being reinstated by Pres. Trump in 2017. We are encouraging that this purported letter be reviewed for authenticity, as facts indicate its likely it is not authentic based on the information and situations reviewed. The purported letter of 10/23/2015 was known to be sent to LESO program officials, as that’s a requirement of the program, to obtain civilian agreement. But the letter did not surface until two years later. It’s a serious matter that must be reviewed.

**11. Assertion:** Town officials knew about the program. “I think everybody knew”<sup>39</sup>

**Fact:** This is a provably false narrative now repeated widely in the press and at Council meetings, by Commissioner Bauer and sometimes others but strongly disagreed with by at least three former Council members and by the investigator for the town, Attorney Max Walton. The Town Auditor, TGM did not identify the bank accounts of the program during their annual Audit, and the Audit Committee chair stated that the Town did not know. The Walton Investigation first identified Dewey’s extensive involvement after interviewing all relevant town employees and managers in the summer of 2017 and stated very clearly:

*“for an unknown period of time, the Dewey Beach Police Department has received, stored and sold federal surplus equipment...These Town assets have not been subject to any town audit, and their location, use or sale of this equipment has not been publicly disclosed to the residents at any time up to and including the present.”*<sup>40</sup>

Also the head of the Audit Committee, Larry Silver has gone public stating: *“The town should have known about these funds, but they didn’t.”*<sup>41</sup>

The auditing firm for the town, TGM stated that they were not made aware of any of the off-budget funds, receipts or transactions during its 2017 audit. How could it be said, as Bauer did: “I think everybody knew”?<sup>42</sup>

Even the Mayor earlier indicated the town manager did not have details on the program: *“Redefer said he believes the police department has been properly keeping records, just not sharing them with former Town Manager Marc Appelbaum because Mackert didn’t trust Appelbaum.”*<sup>43</sup>

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<sup>39</sup> At 48:19 Video of Town Council Presentation, January 13, 2018 (available on townofdeweybeach.com)

<sup>40</sup> [Dewey Beach Independent Investigator's Full Report](#) page 11

<sup>41</sup> [“Dewey Beach Police May Face Financial Investigation” Cape Gazette by Chris Flood 11/3/17](#)

<sup>42</sup> At 48:49 Video of Town Council Presentation January 13, 2018 (available on townofdeweybeach.com)

<sup>43</sup> [“Dewey Beach Police May Face Financial Investigation” Cape Gazette by Chris Flood 11/3/17](#)

As of January 2018, four months following the identification of Dewey Police Department's extensive involvement with the Military 1033 program, and its \$2.85 million of federal military surplus equipment there is still no response from the Police Department to Town Council for the equipment that was sold, how much was received for the equipment sold, and what has been done with the monies received from the sales.

#### **CONCLUSION:**

The facts from publicly available documents contrast with the Bauer presentation as shown above. In fact, the reliance on incorrect statements of fact in the Bauer presentation led one Commissioner (the Mayor) to actually say *"Now that I know the program I can clearly state our motion was inappropriate."*<sup>44</sup> The Mayor voted for the Council's earlier resolution to review Dewey's policies and procedures regarding participation in the program, as did all of Town Council. That review is underway, and the Bauer presentation serves only to mislead it, and send the message that the Police Department need not be accountable. The residents and Town Council do not deserve omissions of material facts relating to \$2.85 million of equipment listed on federal inventories as received by Dewey Beach and undisclosed bank accounts, their transactions, and the recipients of the funds. Residents do not even know where all this equipment is stored, including 36 military vehicles. Residents are due transparency and disclosure and integrity of the Town's departments. Dewey's credibility depends on the Town being accountable to the residents.

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<sup>44</sup> At 106-106:39 of Video of Town Council Presentation (available on townofdeweybeach.com)

**Glossary of Terms:**

DEMIL CODE A- Non-controlled property which becomes the property of the LEA one year after the ship date of the property.

DLA- Defense Logistics Agency; A branch of the Department of Defense (DOD) that provides supplies to the military services and supports their acquisition of weapons, repair parts, and other materials.

LEA - Law Enforcement Agency; A law enforcement agency is a government agency responsible for the enforcement of the laws, ie Dewey Beach Police Department

LESO - Law Enforcement Support Office; An office in the DLA which facilitates a law enforcement support program, which originated from the National Defense Authorization Act of Fiscal Year 1997 (FY 97). This law allows transfer of excess Department of Defense property that might otherwise be destroyed to law enforcement agencies across the United States and its territories.

PCR - Program Compliance Review; The PCR is an in-person meeting with the State Coordinator and selected LEAs. It ensures compliance with all terms and conditions of the memorandum of agreement between the DLA and the State. It also physically reviews the randomly selected LEAs 1033 Program weapons, aircraft, watercraft and tactical vehicles, and a sample of the general property.

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# Appendix A

## Material Quotes and Facts

### **A. From the Town Investigators Report of Sept 20, 2017 (Walton Report)**

(This report was recently removed from the town of Dewey Beach website but is available on this organization's website [DeweyCitizens.org/Walton](http://DeweyCitizens.org/Walton))

“For an unknown period of time, the police department has received, stored, and sold federal surplus equipment. At least some of the received equipment has / is being stored at an employee’s farm, and at local auto body shop. (Page 12, Footnote 27) After the equipment has been retained for one or two years, it is sold, and the proceeds are retained by the police department. To the limited extent the investigation was able to examine this matter, it appears that the transactions have been completely separate from the Town’s administration, have not been included in the Town’s books and records, and have not been subject to audit. Sale proceeds are not distributed to the Town, and the money is used at the department’s exclusive discretion, at least on some occasions for the purchase of police equipment and vehicles. Mr. Appelbaum recently learned of this program when the police department purchased two new police cars for just under \$100,000. Upon information and belief, inquiry into the scope and the propriety of these “off-book” funds by Mr. Appelbaum has been halted as a result of the Letter and Complaint, and this investigation.”

“While there may be a reviewed and approved procedure for obtaining, transporting, storing, insuring, and selling the equipment and then accounting for the proceeds and subsequent expenditures by the Police Department, this information has not been provided. We did not specifically request such information because it is beyond the scope of our investigation of the allegations made against the Town Manager. However, we are concerned that this practice may not satisfy required disclosure and accounting standards and needs to be reviewed immediately. Equipment obtained through the program should be titled in the Town’s name when acquired, storage and use should be approved, the sale of equipment should be approved, and proceeds should be accounted for.”

“Chief Mackert testified that he believes this was the first time surplus property has been sold. The Chief’s recollection was contradicted by John Doe 2 who stated, “[i]n the past, it would go into our police fund . . . ,” indicating there were previous sales of surplus property. John Doe 4 testified that “the Town of Dewey Beach hasn’t bought a police vehicle with town funds in 10, 10 years maybe, maybe more than that” due, in part, to the sale of surplus equipment, which he called a “slush fund” used to “pay the bills on equipping the police cars.”

“Outside consultant reviews of the Police Department have been proposed by the Town Manager in the past. We are advised that the Police Department has refused to engage in these reviews and has lobbied the Commissioners to avoid such review of its policies and practices.”  
Page 12 footnote 30.

## B. Quotes from Bauer Presentation

(All available on archived Council broadcast on livestream.com

<https://livestream.com/accounts/24951826/events/7318685/player>

*Click on overlapping rectangles in far upper right corner, select January 13, 2018 video*

*“they came through and touched every piece of equipment.” [at the last audit]*

-At 51:52 - 53:14 by Commissioner Bauer at Jan 13, 2018 of Dewey Beach Council Meeting

*“The state actually does the accounting for us.”*

-At 51:23 by Commissioner Bauer at Jan 13, 2018 of Dewey Beach Council Meeting

*“Our last one PCR was in August, August 17 of this year, and when they came in you had ‘okay let me see that laptop, okay, let me look at the serial number, scan the barcode, here you go,’*

-At 52:10 by Commissioner Paul Bauer at Jan 13, 2018 Council Meeting

*“but you have to physically hand over each piece of equipment”*

-At 52:36 by Commissioner Paul Bauer at Jan 13, 2018 Council Meeting

*“all the equipment costs zero.”*

-At 41:00 by Commissioner Paul Bauer at Jan 13, 2018 Council Meeting

*“These two Humvees that we have now are on loan.”*

-At 43:14 by Commissioner Paul Bauer at Jan 13, 2018 Council Meeting

*“So, I think one [Humvees] goes back next week, we have two of these. One goes back next week and the other one I’m not sure of the expiration date on that.”*

-At 43:21 by Commissioner Paul Bauer at Jan 13, 2018 Council Meeting

*“I think everybody knew” [about the 1033 program]*

-At 48:19 by Commissioner Paul Bauer at Jan 13, 2018 Council Meeting

*“Traded a forklift to offset the cost” [of the demolition of the Season’s Pizza Property]*

-At 40:40 by Commissioner Paul Bauer at Jan 13, 2018 Council Meeting

*“Jim Dedes signature is on the original” [the letter to the DLA LESO regarding participation in the program.]*

-At 49:40 by Commissioner Paul Bauer at Jan 13, 2018 Council Meeting

*“We are nowhere near the top.” [of towns participating in DOD surplus program in DE.]*

-At 36:04-36:08 by Commissioner Paul Bauer at Jan 13, 2018 Council Meeting

*“The chief of Police has asked each one of us to on a ride along” [to satisfy the council's request for details of the DOD surplus program]*

-At 1:04:30 by Mayor TJ Redefer at Jan 13, 2018 Council Meeting

*“They (the police) have not responded.” [Not responded to the council’s motion to provide details of DOD surplus program]*

-At 1:04:59 by Commissioner Gary Persinger at Jan 13, 2018 Council Meeting

*“They (the police) have responded now we have to review.” [police have responded to Town Council’s request for details of the surplus program]*

-At 1:05:02 by Mayor TJ Redefer at Jan 13, 2018 Council Meeting

*“This is not responsive.” [in response to Mr. Bauer and Mayor Redefer claiming the handout to the Town Council is responsive to councils request or details of the DOD surplus program]*

-At 1:05:07 by Commissioner Gary Persinger at Jan 13, 2018 Council Meeting

*“The federal government is monitoring the things that matter.” [Dewey Beach Police Department’s participation in the 1033 program]*

-At 1:06:17 by Mayor TJ Redefer at Jan 13, 2018 Council Meeting

*“Now that I know the program I can clearly state our motion was inappropriate.”*

-At 1:06:39 by Mayor TJ Redefer at Jan 13, 2018 Council Meeting

*“I hope you will join me in looking at this motion a little closer and seeing is what is important in the motion”*

-At 1:07:47 by Mayor TJ Redefer at Jan 13, 2018 Council Meeting

*“It won’t be a question and answer period at this time” [Following the Bauer Presentation stated to the public in attendance]*

-At 1:17 by Mayor TJ Redefer at Jan 13, 2018 Council Meeting

*“No one knew what was going on.” [in response to claim of knowledge of the 1033 program]*

-At 1:17:29 Public Comment by David King at Jan 13, 2018 Council Meeting

## **C. Local news articles on the Military Surplus Program**

### **“Dewey Beach Police Have Private Slush Fund”**

Cape Gazette by Chris Flood 10/13/17

Max Walton, the Wilmington-based attorney hired by the town to look into employee allegations against Appelbaum, said for an unknown time, the police department has received federal surplus equipment, stored it at an employee’s farm and a local auto body shop, and then sold it without reporting the profits to the town’s bookkeeper. He said it appears the transactions have not been documented by the town or subject to audit.

“Sale proceeds are not distributed to the town, and the money is used at the department’s exclusive discretion, at least on some occasions for the purchase of police equipment and vehicles,” he [Walton] writes.

“A footnote in the report said an unidentified officer testified the town hasn’t bought a police vehicle with town funds in at least 10 years, due, in part, to the sale of surplus equipment. Walton said the officer described the proceeds as a slush fund used to pay the bills for equipping police cars.

“This is the second time since a coordinated revolt against the town manager began in mid-June that it was revealed Appelbaum had questioned police operating practices in the months leading up to the employee complaint.”

### [“Dewey Police May Face Financial Investigation”](#)

Cape Gazette by Chris Flood 11/3/17

“Dismayed by the recent news of an unknown police department slush fund, the Dewey Beach Audit Committee is recommending town council conduct an investigation into the department’s management of a federal surplus equipment program that was the source of the money.

“There’s clearly a lack of internal control, said Larry Silver, committee chair, during the Oct. 27 meeting. The town should have known about these funds, but they didn’t, he said.

“Silver, a CPA since 1975, said there were two basic options for council. First, he said, council could direct an outside auditor to conduct an investigation with agreed upon procedures. Salisbury-based TGM Group, the independent auditor the town uses, could do this investigation, said Silver.

“Redefer said the police department took some liberties, but he said he also supported them. He said he’s spoken with police Chief Sam Mackert about the issue, and Redefer said he believes the police department has been properly keeping records, just not sharing them with former Town Manager Marc Appelbaum because Markert didn’t trust Appelbaum.[emphasis added]

“Silver explained as part of the the town annually approving its independent audit, the mayor and the town manager have to sign a representation letter saying to the best of their knowledge they’ve provided the auditor with all relevant information.”

### [“Dewey Beach Police DOD Surplus Accounting Under Scrutiny”](#)

Dover Post by Shannon Mcnaught 11/7/17

When asked if the Dewey PD could account for all of the items by providing the physical location of items in their possession and paper trails for items sold, Sgt. Cliff Dempsey said, “We’re not going to comment on that matter at this time.”

### [“Dewey to Investigate Dewey Slush Fund”](#)

Cape Gazette by Chris Flood 11/17/17

“The discrepancies around accounting procedures by the police department were called into question by Wilmington-base attorney Max Walton, who was hired by the town this past summer to investigate employee complaints against former Town Manager Marc Appelbaum. The employees included police Chief Sam Mackert, the majority of the chief’s officers, beach patrol Capt. Todd Fritchman and building inspector Bill Mears. Walton strongly urged town council look into the matter

Commissioners Dale Cooke and Paul Bauer said they knew the police department was participating in the program, but they were not aware the revenue wasn’t being accounted for.

In the past, Redefer said the police department didn’t trust Appelbaum to keep funds from the program separate from the town’s general fund.

In an email prior to the council meeting, Dewey Police Sgt. Cliff Dempsey said, “Mayor Redefer’s comment regarding the trust issues are correct,” he wrote Nov. 9. “The complaint filed this year outlines the long history regarding the town manager.”

### [“Former Dewey town manager used military surplus funds”](#)

Commissioners awaiting completion of five-year review of accounts

Cape Gazette by Chris Flood 01/22/2018

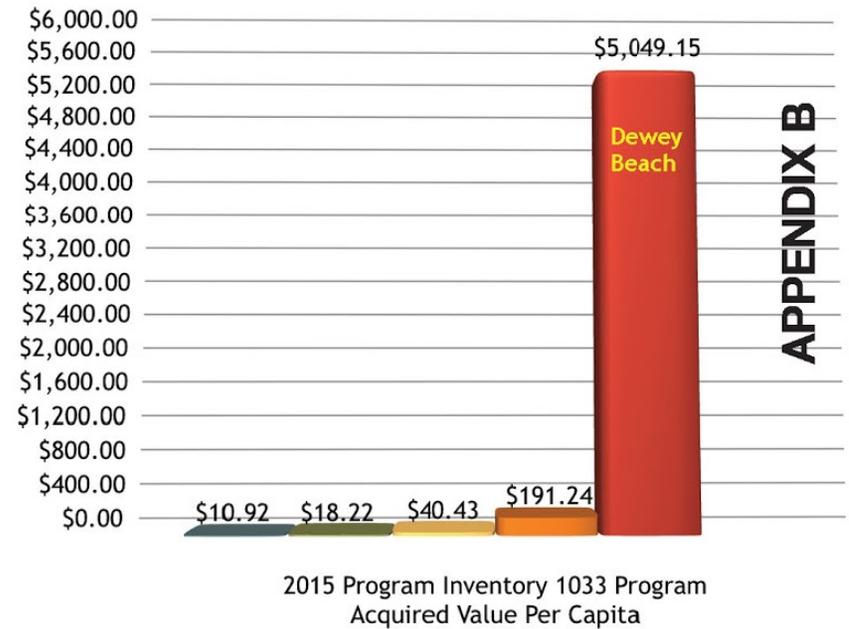
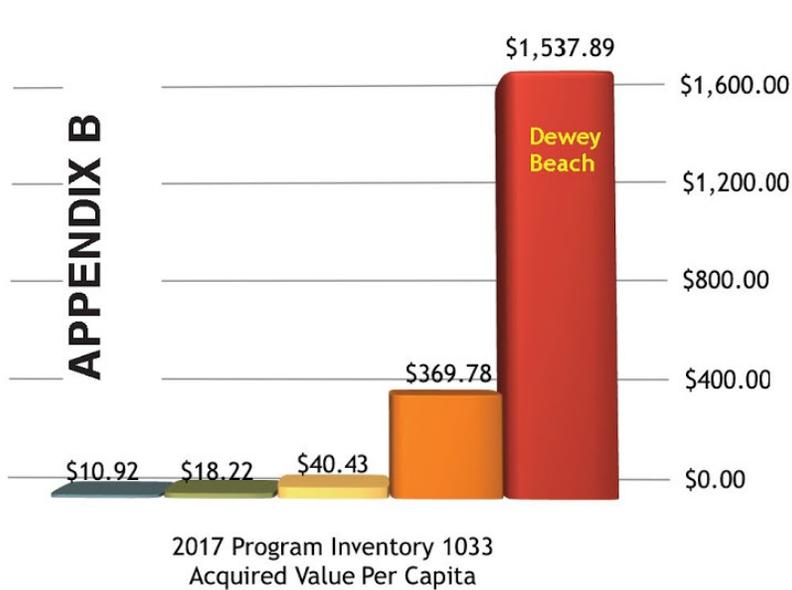
“items used in this program have been out in the open and helped the town’s residents, said Bauer, dispelling the myth the police department was hiding the equipment.”

“Redefer said the town should let Salisbury-based TGM Group conduct its five-year look back into each town department’s procurement procedures and any other revenue-generating activity not under the finance department’s control. [The accounting firm was hired in December](#), and Redefer said during the council meeting the review had been started.

“Immediately following the presentation, Commissioner Gary Persinger said he did not know about the program until reading about it in the Gazette, and he wasn’t satisfied with the information provided by the police. He said the presentation showed some property had been sold, but he wanted to know how the rest of the equipment had been used, disposed of and accounted for. There may be other sales that have not been accounted for in town revenue, he said.

“Referencing the biannual reviews, Mayor TJ Redefer said the federal government already accounts for the police department’s handling of the equipment procured by the town. He said it was inappropriate for the commissioners to be asking anything other than if there was additional revenue.

2017 1033 Program Inventory Acquired Value Total				2015 1033 Program Inventory Acquired Value Total			
Station Name (LEA)	Total	Population	Per Capita	Station Name (LEA)	Total	Population	Per Capita
FENWICK ISLAND POLICE DEPT	\$4,869.55	446	\$10.92	FENWICK ISLAND POLICE DEPT	\$4,869.55	446	\$10.92
LEWES POLICE DEPT	\$58,405.44	3206	\$18.22	LEWES POLICE DEPT	\$58,405.44	3206	\$18.22
BETHANY BEACH POLICE DEPT	\$50,458.00	1248	\$40.43	BETHANY BEACH POLICE DEPT	\$50,458.00	1248	\$40.43
LAUREL POLICE DEPTMENT	\$1,602,636.15	4334	\$369.78	LAUREL POLICE DEPT	\$828,847.10	4334	\$191.24
DEWEY BEACH POLICE DEPT	\$607,465.64	395	\$1,537.89	DEWEY BEACH POLICE DEPT	\$1,994,412.35	395	\$5,049.15
<i>2017 Inventory as of 9/30/17- DIA LESO</i>				<i>2015 Inventory (updated in 2016)-Washington Post</i>			



- FENWICK ISLAND POLICE DEPT
- LEWES POLICE DEPT
- BETHANY BEACH POLICE DEPT
- LAUREL POLICE DEPT
- DEWEY BEACH POLICE DEPT

Note: Nearby Beach Town Rehoboth DE is not listed because it does not participate in the 1033 Military Surplus Program

## Appendix C

Letter to Town Council Regarding Possibly False Letter Generated Related to Program

December 15, 2017

Dear Mr. Mayor and Members of the Council:

Thank you for forwarding this letter of October 23, 2015, below. I have reviewed this letter with the assistance of two staff members, both trained in chain of custody issues that apply to similar documents involving safety compliance and drug testing for the federal government, having processed over 200,000 documents relating to personal drug tests and custody forms in the past 28 years. While my staff or I are not recognized document authentication professionals (and we did not receive the hard copy regardless), there is enough information from the pdf letter to research and find significant circumstantial facts regarding the letter. We received this letter from you one week ago, and there are more elements that need research.

However, as a result of the preliminary research on the facts known, timing, signature stamp, inclusion of hearsay, and style of this letter, its neither the town's interest or the interest of our citizens group, Dewey Citizens for Accountability to claim this letter is authentic. This is a matter that should immediately be reviewed by the town auditor and or state and federal officials to determine the provenance and authenticity of this letter. We know it was submitted to state and federal officials in order to obtain Military Surplus equipment and pass an audit for the Police's participation.

During our review of the letter in use one we We have spoken to a number of town officials including those who have knowledge of the office practices of the Town Manager. We choose not to speak with, or have any communication with, the former town manager, Marc Appelbaum, due to provisions included in his separation agreement which limits his speech on any matter that could be seen as disparaging to the Town of Dewey Beach.

1. First, there is no doubt, that this letter was signed by a signature stamp. His pen and ink signature looks very different from the signature stamp. I have located two examples of his real signature on matters during his employment, and one other example of the signature stamp which he reported at that time was used, and he authorized his signature stamp to be use, on a document while he was physically far away from Dewey Beach.

2. The stamp was used during a week that Marc Appelbaum was in Dewey Beach. And as you know Mr. Applebaum lives very close to his office in town hall, in fact so close that had there been any issue of importance he could be at town hall within 5 minutes or less. It was not his practice, according to his office personnel, to use his signature stamp on documents when he was in physical proximity to his office, in fact the signature stamp was not even kept in his office.

3. The signature stamp of Marc Appelbaum was kept in the town clerk's office, which our researchers were told was never locked. Further there was no log on the use of the stamp. That

may have been an unwise practice in retrospect, as it would not prevent anybody with access to the Town Clerk's office from opening the file cabinet and using it. Without a log there or secured environment, there is no chain of custody that indicates exclusive control of this letter by Mr. Appelbaum.

4. The letter is unique in any letter I have ever seen in working with governments for 30 years in that it uses hearsay to represent that the "Mayor and Council of the Town of Dewey Beach...are familiar with the 1033 program." That statement assumes knowledge and represents the views of at least five elected officials. I have spoken to three of those persons who claim no knowledge of the "1033 program." The letter continues by using "We.." throughout. But it is not signed or copied to any of those other elected officials. Further, none of the three officials report having ever seen the letter before I provided it to them. This point #4 by itself with its statements of knowledge by other parties (hearsay) is frankly unprecedented and no town manager would dare to represent the views of the entire Council and Mayor in such a manner, and at a time that reportedly the town managers contract was up for renegotiation.

5. The letter is only cc to "Police Chief" not "Samuel D. Mackert, III". Our research indicates that one of the common characteristics of a forged letter is that it does not contain the name of the person(s) but instead a general term.

6. As I think we all now know, attempts by the Town Manager to obtain information from the department heads were met with resistance and obfuscation. And as documented when he did press, he was accused of interfering in police business. But further, the police chief was quoted in the media as stating that he withheld information from the town manager because "he did not trust him." That statement was also repeated in my recollection at town Council meetings.

There are serious matters regarding this letter. If the letter is a forgery it would be a unprecedented blow to Dewey's credibility, as it certainly represents multiple federal and state offenses, and was mailed in furtherance of falsely obtaining equipment. I request that you refer this letter to the Town Attorney, and the Auditor for the town for their review. In the meantime, let's please not distribute this document in any further manner, as that would just multiply the offenses if it does turn out to be false. If the letter is authentic, Dewey must first answer many questions regarding the provenance of the letter purported to be signed by Mr. Appelbaum and know to town Council and the Mayor.

Thank you for your attention to this serious matter.

Sincerely,

Jeffrey C. Smith

Coalition Director, Dewey Citizens for Accountability (DCA)

[deweycitizens.org](http://deweycitizens.org)

###END OF REPORT###