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CONNOLLY
GALLAGHER LLP

September 14, 2017

By Electronic Mail

Fred Townsend, III, Esq.
Solicitor, Town of Dewey Beach
Wells Fargo Bank Building
18489 Coastal Highway, 2nd Floor
Rehoboth Beach, DE 19971

Re: Town Manager Investigation – Summary of Preliminary Findings

Dear Mr. Townsend:

Yesterday we provided our preliminary findings regarding a June 14, 2017 letter (“Letter”) making allegations against Dewey Beach Town Manager Marc Appelbaum. Below we provide a non-exhaustive summary of our preliminary findings and recommendations on certain (but not all) allegations presented in the Letter. These are our independent preliminary findings and recommendations and they are not (and should not be construed as) the findings of the Commissioners.

A. Summary of Findings

We find that the June 14, 2017 Letter was sent—at least in part—in retaliation for Mr. Appelbaum inquiring into the operations of the police, the lifeguards, and the building inspector, questioning the policies of these departments, scrutinizing the budgets of these departments, and otherwise not allowing these departments to function unsupervised. We do not believe the supervisory actions of these departments by Mr. Appelbaum jeopardized public safety.



Moreover, we do not believe that the Letter was written at the behest of those employees who allegedly were subject to racially discriminatory or sexually harassing conduct, exemplified by the fact that two of the most serious incidents cited by the Complainants occurred in 2013, three or four years before the Letter was delivered to the Town. We conclude that many (but not all) of the claims asserted in the Letter are legally insufficient, inflated, or are otherwise without merit, and are very likely occasioned by the Complainants' resentment of Mr. Appelbaum's perceived "interference" with their areas of responsibility.¹

However, this does not mean that *all* of the claims levied against Mr. Appelbaum are without foundation, and we find that it is more probable than not that Mr. Appelbaum committed the following acts:

- Although denied by Mr. Appelbaum, on one occasion in 2012 or 2013, he rubbed his bare foot on the leg of an employee.
- Although denied by Mr. Appelbaum, on one or more occasions, Mr. Appelbaum used the phrase "the brown people," as described by an employee. This allegedly occurred sometime in 2012 or 2013.
- Although denied by Mr. Appelbaum, we believe that, at minimum, Martha Sweeney had an uncomfortable encounter with Mr. Appelbaum in March of 2016.
- Mr. Appelbaum recently (July 2017) recounted a story to Town employees about a woman adjusting her breasts prior to a court appearance.

We also find that Mr. Appelbaum has committed other acts that should be addressed going forward:

- Mr. Appelbaum may have overstepped his authority regarding the Court clerk position.
- He has, on occasion, treated certain (but not all) employees in an unprofessional manner.

¹ The attorney that wrote the June 14, 2017 Letter is Alex Pires, who may have been assisted by Diane Cooley.

- At times, Mr. Appelbaum does not wear shoes in the office.
- At times, Mr. Appelbaum wears sweatpants or pajama pants in the office.
- Mr. Appelbaum has, on occasions, used the terms “fu**” and “fu**ing” in the presence of Town employees and Commissioners and has “given the finger” on some occasions.

Specific details regarding the above issues, and specific discussions of our conclusions regarding the enumerated claims in the June 14, 2017 Letter will be addressed in the final report, which will be confidentially provided to you as the Solicitor in the near future.

B. Recommendations

Based on the forgoing, we recommend that the Commissioners of the Town of Dewey Beach take the following actions:

1. Formally reprimand Mr. Appelbaum for the incident where he placed his bare foot on the leg of an employee.
2. Formally reprimand Mr. Appelbaum for his use of the phrase, “the brown people” in at least or one or more conversations with an employee.
3. Within 60 days, Mr. Appelbaum should be required to complete the following types of training: anti-harassment, anti-discrimination, and effective interpersonal communications (including non-defensive communications, and effective methods of supervision).
4. The Town should expedite the efforts currently underway to update its human resource policies and the employee handbook, including clarifying disciplinary standards and grievance procedures applicable to all Dewey Beach personnel.
5. In the absence of a distinct human resources director position, the Commissioners should consider immediately establishing a human resource ombudsman, or similar position, to act as a confidential contact for Town employees to report any conduct they believe is improper, such as sexual harassment, race or sex discrimination, workplace violence, policy violations, or

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other conduct by employees and supervisors they believe is inappropriate, and perhaps unlawful. This ombudsman should have the authority to bring reported incidents to the appropriate supervisor and the Town Manager, but should also have the ability to bring concerns to the Town Solicitor or the Mayor for action in the event that they involve the actions of the Town Manager, or if the Town Manager or supervisor, in the opinion of the ombudsman, fails to investigate the complaints or fail to take necessary or appropriate action regarding the conduct.

6. The Commissioners should immediately assure that FLSA standards are met for non-exempt employees.

7. We recommend that the Town move expeditiously to fully engage the outside law enforcement consultant that it has preliminarily contacted for a review of police department procedures.

8. The Commissioners should immediately require review of the federal surplus equipment program.

9. The Commissioners should also require a review of the parking ticket appeals system.

10. Although the Clerk of the Alderman's Court is technically an employee of the Town, the Town Commissioners should consider taking steps to delineate the Court Clerk's responsibilities and reporting structure.

Please feel free to contact me with any questions.

Sincerely,



Max B. Walton

MBW/sld