

**38 Ebb Tide Cove**  
**Fenwick Island, Delaware 19944**  
**July 30, 2018**  
302.539.3532 /[vlcarmean@verizon.net](mailto:vlcarmean@verizon.net)

**Delaware Department of Justice**  
**Attention: FOIA Deputy Attorney General**  
**Carvel State Bldg.**  
**820 North French Street**  
**Wilmington, DE 19801**

**RE: Delaware Open Meetings Law Complaint**

**Dear FOIA Deputy Attorney General:**

**Complaint:** Under the Delaware Open Meetings Law (Title 29, Chapter 100, Statutes 10001-10006), I am filing a complaint on behalf of myself, two other Fenwick Island Council Members (Julie Lee and Roy Williams), as well as the residents of Fenwick Island because we believe the *Delaware Open Meeting* rules and the ***Code of the Town of Fenwick Island*** provisions under *Chapter 160* (especially ¶'s 160-12 & 160-13) have been violated by several individuals either working for/ or involved with the Town of Fenwick Island's Councilmanic (Council-manager) government. This group includes Mary Fox, the Town's Attorney; Gene Langan, the Town's President/ Mayor; Theresa Tieman, the Town Manager; Patty Schuchman, the Building Official; and William Weistling, a resident who has volunteered to chair several Town committees.

Wording within *Chapter 160- ZONING* of Fenwick's **Code, ¶ 160-12, Interpretation; purpose; conflict** indicates where there are questions regarding regulations, easements, rules, etc., "the provisions of this chapter shall control." In addition, **¶160-13, Board of Adjustment (BOA)**, provides that the three to five BOA members shall have the powers "defined and conferred, and the limitations imposed by Title 22 of the Delaware Code ..."

**Background Summary of Complaint:** For the past two to three years, the Town of Fenwick has retained Mary Fox, Esquire, to counsel the Town of Fenwick on changes to its height restrictions, which have gone from 30 feet throughout the town to 32 feet with free-board provisions. The only height exceptions include those listed in *Chapter 160*, i.e., chimney, solar panels and wind turbines. The institution of changes has not been without conflict, but

the process has been properly followed with proposed changes, workshops, hearings and readings.

Within the past five months, plans were submitted by the Sand's Hotel for construction of a new building in Fenwick. Recently in May/ June the owners of the Sand's submitted new plans which included a 6 foot structure on the roof as well as additional feet for an elevator shaft. None of the Council members listed above were officially apprised of these developments. I was unofficially informed by Mayor Langan at the Town's Birthday Party on July 1 while wrapping hot dogs at the food stand. My response to Gene Langan noted that this request should be handled by the Board of Adjustment.

Nothing more was said to me until I attended a Fenwick Society of Homeowner's (FISH) meeting on July 14 to give a candidate speech. Before the meeting began Mr. Langan confidently shared with me that the owner of the Sand's had gotten his variance for the mechanics without going through the Board of Adjustment. My response was, "How can this be?!" Mr. Langan responded that Mary Fox, Esquire, had made the decision because of "gray areas" within the Code.

Later, I found out that Council Member Lee first heard about this on July 11 when she received a phone call from Gene Langan about "possible gray areas." Council Member Williams reported that he was told on July 12<sup>th</sup> that the height increase was a "done deal."

The following week when Council Member Lee decided to obtain firsthand information from the Town Hall, she was given a 27 page email packet that contained email exchanges from Tim Willard (the lawyer for the Sand's owner), Mary Fox, Pat Schuchman, Terry Tieman, and William Weistling. In the week and a half that followed, Council Member Lee, Council Member Williams and I separately read these emails several times. These emails are somewhat confusing to track due to the formatting of the email stream. None of us have been allowed to photocopy these emails as they all had to be read in Ms. Schuchman's office. I am unaware of whether the other three Council members (Bunting, Mais, Merritt) have read the emails or had a chance to discuss them.

By way of a rough summary of those 27 pages, what the three of us have derived is that this exchange of emails began on June 5 with a thank you from Tim Willard to Mary Fox for all her help on the new ordinances for the proposed hotel. As a member of the Council and the Charter & Ordinance Committee, I was unaware of anything official being discussed by these two lawyers. As a Council, we have never authorized Mary Fox to assist the Sand's owners.

- By July 6<sup>th</sup>, a number of emails had already been exchanged. However at this date, Mr. Willard began asking questions about mechanical equipment possibly not counting toward the height. Mary Fox's response was to reference the need for the BOA. On the same day, Mr. Weistling wrote, "How to proceed from here. Pat and I can decide either way or have Council get involved. Due to possible litigation, it could be discussed in executive session."
- On July 10<sup>th</sup>, Terry Tieman emailed a suggested draft memo to Council explaining some of what was transpiring, but she was directed not to send it out by Mary Fox, Esquire, at 11:41 AM who wrote, "don't give Council members this memo – it's not confidential and could be subject to a FOIA request." Later that day at 2:29 PM, Ms. Schuchman sent a draft letter to Terry Tieman for her approval to send to the Sand's owner: "We agreed that whether or not roof-mounted mechanical equipment is considered part of the building ... ambiguous and thus falls into gray area... (we have made a) decision to err on the side of the property owner..."
- On July 12, Mary Fox concluded to Mr. Willard at 10:00 AM: "Please see email ... sent to you by client..."

**Concluding Comments:** It appears to us that decisions to grant a variance were reached by a small group of people who did not comply with the Code or the variance process outlined therein without informing Council members in a timely fashion by way of an Executive meeting, regular meeting or giving public notice to the residents. As such, we are asking your office to review the relevant material via Fenwick Island's Town Hall records to determine if a violation of Delaware's Open Meeting regulations has occurred. We are also asking for a remediation process from your office, including a finding that the decision for this "de facto" variance be reversed with a requirement that the owners of the Sand's Motel comply with the original height restriction and/or apply for a variance following the protocol for requesting the same.

Because of what has transpired, Fenwick Island's height regulations as they pertain to the Sand's Motel have been negated without Council or public input. While every Fenwick property owner would like a new motel constructed, it is important that the proper regulations are followed.

Sincerely,



Vicki Carmean, Council Member- Town of Fenwick Island