

MEMORANDUM

A determination as to whether David E. Moskowitz meets the qualification requirements of the Dewey Beach Charter requires an examination of the Charter through the lens of basic statutory construction.

Principles of statutory construction generally apply with equal force to municipal ordinances. *One-Pie Investments, LLC v. Jackson*, 43 A.3d 911 (Del. 2012). The Courts in Delaware have held that: “the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain ... the sole function of the courts is to enforce it according to its terms.”²⁵ A statute is ambiguous only if it is “reasonably susceptible to different interpretations, or if giving a literal interpretation to the words of the statute would lead to an unreasonable or absurd result that could not have been intended by the legislature.” *Evans v. State*, 212 A.3d 308, 314 (Del. Super. Ct. 2019), as corrected (June 5, 2019). When “a statute is unambiguous, and an application of the literal meaning of its words would not be absurd or unreasonable, there is no legal basis for an interpretation of those words by the court.” *Evans v. State*, 212 A.3d 308, 315 (Del. Super. Ct. 2019), as corrected (June 5, 2019).

In this case Charter of the Town of Dewey Beach specifically sets forth the plain and unambiguous requirements in Sections 5 and 9 of the Charter. In section 5 titled “Qualification of Mayor and Commissioners”. In order to qualify as a resident commissioner, the individual shall (1) be a bona fide resident and domiciliary of the Town; **and** 2) shall own real estate within the Town **or** be both a settlor/creator and trustee of a valid trust which real property located in the Town has been conveyed and the conveyance is recorded in the Office of the Recorder of Deeds in and for Sussex County, **or** be a leaseholder of real estate in the Town under a valid lease of a term of five (5) years or more. Any person applying as a leaseholder candidate pursuant to this subsection will be required to include a copy of a valid lease with his or her candidate filing.

In section 9 the proposed candidate must at least 30 days before the election submit a certificate showing that he is eligible to serve in the capacity of (in this case) Resident Commissioner. The Commissioners of Dewey Beach shall not permit the name of any such candidate to be filed except such candidate as shall meet the requirements of Section 5 of this Chapter.

The Charter in this case is plain and unambiguous in its requirements, therefore the sole function of this Commission and this Election Board is the analysis of David E. Moskowitz's qualifications for Resident Commissioner as of August 18th, 2020 is to enforce those terms. The Dewey Beach Charter particularly contemplates several scenarios under which an individual can prove his or her resident requirements, none of which were met in this instance. Applying the principles of statutory construction to this Charter, the Commission must give full effect to its plain and unambiguous requirements.

The "and" in 5(b) between provisions 1 and the options in provision 2 indicate that **both** are required in order to meet the statutory requirements. The charter is not susceptible to another interpretation based on the plain language. Further, an interpretation of the plain and unambiguous language does not produce an absurd result. In looking at whether Mr. Moskowitz meet any of the requirements of section (5)(b)(2): First, Mr. Moskowitz was not the owner of the Read Ave. property. A company called "BeachTime.com LLC", owns that property. There was no indication that Mr. Moskowitz owned any other property in Dewey. There is no indication that Mr. Moskowitz is the trustee of a valid trust. There is no indication that Mr. Moskowitz is a leaseholder of a real estate lease of more than 5 years or more. Additionally, if Mr. Moskowitz was going to rely upon the leaseholder provision, wherein he is a leaseholder of real estate under a valid lease of 5 years or more, he was required to include a copy of the valid lease with his candidate filing. Mr. Moskowitz's candidate filing of August 18, 2020 contained no such information. At this time any such filing or other corrective actions would be untimely under section 9 of the Charter.

Further, provision 5 (e) states that "[i]f any one of the Commissioners shall, during his term of office fail to continue to be qualified as above stated, he shall ipso facto vacate his office." As Mr. Moskowitz doesn't meet the requirements set forth in section 5(b)(2) and 9 pursuant to the plain and unambiguous language in the Charter, Mr. Moskowitz must be disqualified from his position and candidacy as Resident Commissioner. Mr. Moskowitz failed to continue his qualifications as stated above, and pursuant to the plain and unambiguous language in provision 5(e) he is required by the Charter to "*ipso facto*" vacate his office and is not eligible to be elected as a Commissioner in this election.

Respectfully Submitted,
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EXCERPTS FROM TOWN OF DEWEY BEACH, DE- CHARTER

SECTION 5 QUALIFICATIONS OF MAYOR AND COMMISSIONERS

(a)

Each Commissioner shall be at least 21 years of age. **(78 Del Laws, c. 346, 7/18/2012)**

(b)

Not less than two (2) of the Commissioners shall be designated Resident Commissioners. A Resident Commissioner shall have the following qualifications: 1) shall be a bona fide resident and domiciliary of the Town; and 2) shall own real estate within the Town or be both a settlor/creator and trustee of a valid trust to which real property which is located within the Town has been conveyed which conveyance is recorded in the Office of the Recorder of Deeds in and for Sussex County, or be a leaseholder of real estate in the Town under a valid lease of a term of five (5) years or more. Any person applying as a leaseholder candidate pursuant to this subsection will be required to include a copy of a valid lease with his or her candidate filing. **(76 Del. Laws, c. 273, 6/30/2008; 78 Del Laws, c. 346, 7/18/2012)**

(c)

Other Commissioners must either have the qualifications of a Resident Commissioner as defined above or be an owner of real estate within the Town or be both a settlor/creator and trustee of a valid trust to which real property which is located within Town has been conveyed which conveyance is recorded in the Office of the Recorder of Deeds in and for Sussex County, or a leaseholder of real estate within the Town under a valid lease of a term of five (5) years or more. Any person applying as leaseholder candidate pursuant to this subsection will be required to

include a copy of a valid lease with his or her candidate filing. (78 Del Laws, c. 346, 7/18/2012)

(d)

The Commissioner with the title of "Mayor of the Town of Dewey Beach" must be qualified as a Resident Commissioner.

(e)

If any one of the Commissioners shall, during his term of office fail to continue to be qualified as above stated, he shall ipso facto vacate his office. The Commissioners shall be the judges of the qualifications of the members.

SECTION 9 Method of Filing for Office of Town Commissioners.

No person shall be voted upon as a candidate for the office of Commissioner unless at least thirty (30) days before the date set for the election of said officers he shall have filed with the Commissioners of Dewey Beach a letter or other certificate setting forth that he will be a candidate for a certain designated office. The Commissioners of Dewey Beach shall not permit the name of any such candidate to be filed except such candidate as shall meet the requirements of Section 5 of this Chapter.