

VIA EMAIL: awomack@cityofreboth.com and trunzo.jeffrey@gmail.com
Ms. Ann Womack, City Secretary, MMC
Mr. Jeff Trunzo, Planning Commission Secretary
Rehoboth Beach City Hall
229 Rehoboth Ave
Rehoboth Beach, DE 19971

Re: Planning Commissioner Mark Hunker

Dear Ms. Womack & Mr. Trunzo:

As residents and property owners in Rehoboth Beach, we are writing because it appears – unless it can immediately be proven to the contrary – that Mark Hunker has been and still is ineligible to serve as a member of the Planning Commission (“PC”). If this is true, as we believe based upon the information known to us, we request that action be taken so that Mr. Hunker immediately stops participating as a Planning Commissioner, including participating as such in PC meetings, communications among and between PC members and/or other City officials or personnel, or other actions in which only PC members can participate. His continued participation puts at risk the legality of all actions of the PC. If other information exists to show that Mr. Hunker is not ineligible, we request immediate public disclosure and receipt of such information. Please immediately provide copies of this letter to all members of the PC and to the Mayor and City Commissioners (“M&C”).

Prior to December 20, 2019, neither the City Charter nor the City’s Municipal Code, especially Section 51-2, prescribed any specific requirements for persons to serve as PC members. However, since the creation of the PC until at least 2019, it appears that all PC members have been either residents (full-time or part-time) or property owners in the City. On October 18, 2019, the M&C voted on the appointment of Mr. Hunker as a PC member, although Mr. Hunker was neither a resident nor a property owner in the City. In connection with a discussion of Mr. Hunker’s appointment, various statements were made about his leasing of property in the City, apparently as relevant to whether he was a “Leaseholder” under Section 7(d) of the City Charter and thus an eligible voter. The minutes of the October 18, 2019 meeting state that before voting to approve Mr. Hunker’s appointment, “There was discussion among the Commissioners regarding whether or not to allow non-property owners to hold positions on commissions and boards. A recommendation was made to revise the Code to include **persons** that hold a long-term lease to be allowed to hold a position on the Planning Commission.” It was anticipated that Mr. Hunker would satisfy that new requirement, if it were enacted.

Following up its October 18, 2019 discussion, on December 20, 2019 the M&C passed an ordinance amending Section 51-2 of the City Code to say, in Section 1 of the new ordinance, that the PC “shall consist of nine members, who shall be residents, property owners, registered voters, or persons eligible to register to vote within the City of Rehoboth Beach”.

In addition to imposing these new requirements, the amendment to Section 51-2 was very important in two other respects. Section 2 of the amendment said that “This Ordinance shall become effective immediately upon its adoption by the Commissioners of the City of Rehoboth Beach.” Also, the

amendment specifically deleted a "protective" sentence in the prior version of Section 51-2 that stated "All current members shall continue to serve the unexpired portion of their term"; that "protective" sentence had been added in 2007 when the M&C reduced the number of PC members from 9 to 7, and the M&C wanted to make clear that the new requirements for the PC (only 7 members) would protect and not require any then-existing PC members to vacate their seats before their then-current terms would expire in Fall 2007. Even after the M&C restored the number of PC members in 2009 back to 9 (from 7), that "protective" sentence remained in Section 51-2.

The short of it is that when the M&C in December 2019 imposed specific qualifications for being a PC member, the M&C also deleted the "protective" sentence that existing PC members could serve out their unexpired terms and the M&C did not place any limitations on the fact that the new qualifications "shall be effective immediately" – i.e., henceforth, the PC "shall consist of nine members, who shall be residents, property owners, registered voters, or persons eligible to register to vote within the City of Rehoboth Beach."

Apparently after December 20, 2019, as far as we know, no one ever checked to see if the recently-appointed PC member Mr. Hunker was, as a matter of fact, actually "eligible to register to vote" in the City.

However, as the result of statements made by Mr. Hunker during a PC public hearing on August 14, 2020 regarding his business, his business operations, and his business locations in the City, a review was undertaken of Mr. Hunker's voter registration status with the City and, more importantly, of documents available online from the website of the Sussex County Recorder of Deeds' Office which might relate to any lease. We did not find Mr. Hunker's name on the list of voters registered with the City for the recent City election. Also, we could not find on that Recorder of Deeds' website any documents that show Mr. Hunker, in his individual capacity, owns or co-owns the land or buildings on which his restaurants are located. That also led to a search on that website regarding whether Mr. Hunker's company, JAM Holdings Restaurants or JAM Holdings or JAM (in any version) is the owner of that land, or whether Mr. Hunker or JAM (in any version) has a 10-year lease with a landlord that has been filed at any time. We were unable to find any such lease.

In any event, even if a lease in the name of JAM (or variants) exists, it would not make Mr. Hunker a Leaseholder under the City Charter unless he is personally the lessee. The City Charter defines "Leaseholder" as "a **natural person** holding title to an undivided interest in a **lease** or who holds title to a lease as a tenant by the entirety", and it defines "Lease" as "a valid lease to real property in the City for a term of at least ten (10) years **which lease is recorded in the Office of the Recorder of Deeds** in and for Sussex County and upon which real property is erected an improvement having an assessed valuation of at least one thousand dollars (\$1,000.00) as shown by the records of the City of Rehoboth Beach." Further, even if Mr. Hunker is personally the lessee, he would still not be a "Leaseholder" because it appears his lease is not on file with the Office of the Recorder of Deeds.

For the above reasons, it appears to us that since Section 51-2 was amended on December 20, 2019, Mr. Hunker has been ineligible to serve as a PC member. For this reason, we ask that he voluntarily remove himself from any further action in his "purported" role as PC member and from any further

participation in PC matters (except as any other member of the public participates). This includes upcoming PC workshops and meetings.

We also wish to note that when Linda Kauffman, a former member of the Board of Adjustment, moved out of the City a few months ago, she ceased being a member of the Board of Adjustment at that time and did not finish the term to which she was appointed. Unless Mr. Hunker immediately provides facts that prove he is a Leaseholder as defined by the City Charter (which is the only way he could be eligible to register to vote in the City, other than as a resident or property owner in his individual {or revocable trust} capacity), he cannot continue to perform any functions as a PC member.

Please note that none of this should be considered a personal criticism or attack on Mr. Hunker, nor is it a challenge to his honesty or integrity. This is simply a matter of enforcing City law regarding the eligibility of a PC member.

We look forward to a response prior to the next PC workshop or meeting.

Yours truly,

Marie Hatkevich, 221 Munson Street, Rehoboth Beach, DE

Jennifer Duncan, 68 Kent Street, Rehoboth Beach, DE

Robert Lauder, 96 Sussex Street, Rehoboth Beach DE

August 20, 2020