



**CIVIC LEAGUE**  
For New Castle County

*Informed Citizens for Sound County Growth*

P.O. Box 11523 - Wilmington, DE 19850

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**SEPTEMBER**  
**2007**

# COUNTY COMMENTS

CIVIC LEAGUE FOR NEW CASTLE COUNTY  
*Informed Citizens for Sound County Growth*

**New Location !  
Special Meeting Date !**

**Monday, September 17, 2007**  
**MEETING**

**7:00 PM at the Paul Sweeney Public Safety Building**  
3601 N. duPont Hwy  
(Rte 13 South of DMV, North of Gracelawn Cemetery)

### AGENDA

**JACK MARKELL - DELAWARE STATE TREASURER**  
**DELAWARE FACING FORWARD**  
**Challenges of Demographic Changes**

**What do the changing demographic trends mean to the need and cost of state and county services, housing, education, and the economy?**

### **GETTING OUR MONEY'S WORTH??**

*by Bill Dunn*

*First in a series evaluating State and County services and responses.*

The Milltown-Limestone Civic Alliance (MLCA), a civic umbrella group from north-central New Castle County, has been assisting numerous civic and community groups around the portion of the old Hercules Country Club which is proposed for residential housing by the national builder, Toll Brothers Builders Inc.. More than three and half years ago when this concept was first publicized, the community was almost completely opposed to its development for a list of reasons including traffic and other on-going and developing problems.

Meetings of the surrounding communities became a regular thing and discussions as to what were key issues and how they should be addressed sometimes varied. What remained a constant in these discussions is a commitment to the protection, health and interest of the existing communities.

#### STATEMENT OF PRINCIPLE

- ◆ Monitor and selectively evaluate government actions including laws, regulations and policy.
- ◆ Provide appropriate forums for informing as well as soliciting input from the public.
- ◆ Establish positions based on responsible studies and consistent with the aims and purpose of the organization.
- ◆ Advocate these positions.

Founded in 1962, the Civic League is non-profit volunteer organization, which studies and illuminates County and State government actions concerning comprehensive developments and the quality of life and is a vocal advocate of relevant positions.

County Comments is the official publication of the Civic League for New Castle County.

Dan Bockover,  
President

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### Meeting Dates for 2007

Monday, September 17  
Tuesday, October 16  
Tuesday, November 20

Meetings will be held at the  
Public Safety Building on Rt. 13  
and start at 7:00pm

**Have you renewed  
your Civic League Membership?**

More Info and a form is available on the web site:  
WWW.CivicLeagueForNCC.Org

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**Eminent Domain  
Takings for Public Benefit, Not Public Use**  
*by Victor Singer*

As many in the broader community are now aware, pollutants including arsenic on the property and how they would be dealt with, became one of the two major concerns that the MLCA's community working group has been focused on. As County Land Use became more aware of the scope of the problem, they turned to the State Department of Natural Resources and Environmental Control (DNREC) to define what would be an appropriate clean-up plan to prepare for residential housing. Soon after being contacted about the property, DNREC and the Department of Agriculture got in to a back and forth as to whose responsibility it was because it was once a golf course, typically the Dept. of Ag's responsibility. After over a year of abdication by both agencies, the County "contracted" DNREC to act as an Environmental Consultant on their behalf because of their lack of experts in this field.

Upon accepting the responsibility, DNREC received a Remedial Action Plan from Toll Brothers' hired environmental engineering firm, Brightfield & Associates. Once the plan was reviewed and accepted by DNREC earlier this year, it was posted for public comment, which prompted the establishment of the MLCA's technical group of highly degreed chemical PhD's and environmental engineers to review the plan on the community's behalf. Literally, dozens of well thought-out questions were written to DNREC, some of which have yet to be answered. Nonetheless, despite the inadequate attention to the communities' technical concerns, minor modifications have been made to the earlier plan and work is about to begin.

Anticipating that the communities' comments and concerns would receive only limited attention, environmental and legal firms were hired by our groups to review and prepare to act on the communities behalf. At the end of July, a letter written by the Working Group's formal environmental consultant was submitted to County Executive Coons highlighting some of our more serious concerns. They include: Known contaminants and their risks; Gaps in knowledge of all contamination; and our greatest concern; Location of homes so close to remediation areas that are of high risk! Recognizing the validity of the issues and the depth of our hired professional's concerns, they forwarded the letter to DNREC for their comments.

The reason that our group has been forwarding material to the County that could become part of a legal action against the County, is to emphasize two major issues. One: the community is more than willing to work with the County's Administration and Land Use Departments to allow the property's owner to proceed with their plans after they've shown proper concern for the health and welfare of the surrounding property owners. Two: the information and evaluation that the County is receiving from DNREC as their environmental consultant is woefully inadequate. The County should seek other resources to act on their behalf and to fulfill their chartered responsibility to protect the health and welfare of the citizens of New Castle County.

Dating back to the arbitrary and later rescinded raising of permissible limits for arsenic in soil, to the more recent reviews of environmental problems here and elsewhere in the State; some believe DNREC is inadequately fulfilling their responsibilities to protect the health and welfare of the citizens of the State of Delaware.

I (and others) intend to make changing and improving DNREC's performance a goal for candidates running for Governor in 2008. Responses and promises from candidates will be a factor for voters when they enter the voting booth in November 2008!

Bill Dunn – President  
Milltown-Limestone Civic Alliance  
September 2007

Radio talk shows and the News Journal have focused on Eminent Domain takings recently. But one among many abuse opportunities has gotten little attention, probably because a numerical hypothetical is needed to understand it clearly. It involves the "Going Concern" value of an ongoing business.

Assume an ongoing business occupying a building with a \$120,000 fair market value on a parcel of land having a \$30,000 fair market value, the REAL ESTATE value is \$150,000. (The thrust of the example isn't changed if zeroes are added to some or all the dollar amounts.)

The proprietor of the ongoing business would happily continue into the distant future, until he retires, passes it to his heirs, or sells it. But out of left field, an entrepreneur appears who wants the parcel for some larger scale private venture unrelated to the existing business. To acquire the parcel and entice the proprietor to go away, the entrepreneur anticipates paying for the real estate value plus some reflection of the "Going Concern" value of the ongoing business. Or alternatively, if the ongoing business could be continued on another site, the entrepreneur would anticipate paying relocation expenses.

The business is making money. Over and above all raw material, operating and personnel costs (including a reasonable salary for the proprietor reflecting how much he would have to pay a manager if he isn't running it himself), the business produces net revenues of -- say -- \$25,000 per year, about \$100 per business day.

A willing investor interested in continuing the business might seek a 10% return on his investment. So he might well offer \$250,000 to the proprietor. This suggests no less than a \$100,000 "Going Concern" value of the business, substantial compared with the \$150,000 real estate value. If the real estate value is regarded as an addition to the "Going Concern" value, the takeover could require a \$400,000 minimum price. The proprietor might not willingly sell his ongoing business for even that higher valuation unless he senses some sort of duress.

To this point, everything is above board. Then Government announces its intention to take the parcel by eminent domain and then to sell it to the entrepreneur, not for a public use, but to accomplish the acknowledged public good as a private enterprise.

Now the proprietor senses duress. His negotiating position is diminished because his well-being now competes with that acknowledged public good. If he gives in, Government pays him perhaps \$250,000 to acquire his parcel - - \$150,000 for the real estate plus \$100,000 for the "Going Concern" value - - or perhaps \$400,000 if he withstands the duress.

Next, Government demolishes the building and sells the vacant parcel to the entrepreneur, contemplating the larger scale venture that's an acknowledged public good. AT WHAT PRICE? The building no longer exists. Nor does the ongoing business (at least not on that parcel). So the entrepreneur gets the parcel for the land value only, which is \$30,000. He pays a small fraction of the \$250,000 to \$400,000 it might have cost without government involvement. AND THE PUBLIC PAYS THE DIFFERENCE, out of tax revenues!

A question arises: WILL THE ENTREPRENEUR DONATE SOME OF THAT DIFFERENCE TO POLITICAL CAMPAIGNS WHEN GOVERNMENT PARTICIPATES IN THE TRANSACTION? The answer could be: If it looks like a duck, walks like a duck, acts like a duck, and quacks like a duck - it might be a TAX!