



# CIVIC LEAGUE For New Castle County

*Informed Citizens for Sound County Growth*

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**JUNE  
2009**

### 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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# COUNTY COMMENTS

CIVIC LEAGUE FOR NEW CASTLE COUNTY  
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## MEETING

**Tuesday, June 16, 2009**

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

## AGENDA

### DOWN TO THE WIRE

*Last days to work with the General Assembly*

- Best size for County Council
- Property Reassessment
- New Revenue Source
- Redistricting after 2010 Census
- Consolidating School Districts
- Cutting Government Costs
- Civic Action in Coming Decade

## Work Force Housing The Awakening

Imagine being at the Maintenance Corporation meeting where 100 new home owners have gathered to become acquainted only to find a few surprises. First they learn that 10 of them have benefitted from the new Work Force Housing (WFH) ordinance in that they didn't have to pay full price for their new homes. Thanks to WFH, a portion of the other 90 new buyers purchase had gone to help reduce the price of their homes. Then they learned that while their houses all looked similar, the builder had been allowed to find construction economies in their 10 homes to help further lower their cost.

The 90 home owners who paid market cost were relieved to learn that at least all 100 new owners would have to share in the cost of operating the maintenance corporation. This would include cutting the grass, maintaining the drainage pond, and snow removal. This caused consternation among several of the 10 WFH owners who professed surprise at this charge for services and complained that their budgets simply would not allow for paying them.

The biggest surprise however, among all 100 new owners, was learning that the builder had been allowed to squeeze all 100 of their homes onto acreage zoned for only 50 homes! The magic of the WFH 100% density bonus had made it possible for the developer to double the number of houses on his land, and provide a surprise for the new owners!



(continued from front)

The 100 new owners were somewhat comforted upon learning that at least the County wasn't making them pay full cost for all the infrastructure required for their new homes. The cost for new streets, sewers, and schools to serve them would for the most part be passed along to every home owner in the County, including those in Brandywine Hundred - who had long ago paid for theirs. The magic of State funding for infrastructure still prevailed, even amidst the State's huge budget deficits.

All 100 new owners were unanimous in declaring it was unfair that the Developer hadn't been required to advise them of ALL the conditions of their new purchase, including the fact that the 10 WFH owners would have to live in their homes for at least 15 years, and then upon selling, could not collect more than their original purchase price despite inflation or improvements they had made in their homes. Any "profit" realized would be claimed by the County.

At present the developer is urged to fully advise buyers but only new State legislation will provide meaningful impetus. Why the County did not mandate proper advisory in their original ordinances is disconcerting, especially given a clause that precludes any changing or updating requirements, commonly known as "vesting".

Chuck Mulholland,  
Southern New Castle County Alliance

(continued on back)

## "BUCK A BARREL" update since May report: the saga continues.

SUMMARY: Drafting of enacting legislation is expected by June 5 according to Rep. Mike Barbieri, co-sponsor with Sen. Karen Peterson; the delay thus far is unexplained. Rep. Barbieri spoke about it with the Governor, who wants the new revenue without endorsing the approach. The Governor seems to fear two things: 1) Lawsuits delaying or denying the revenue opportunity; or 2) The ire of the lobbyist for OSG/Maritrans, the company now lightering at Big Stone Anchorage. Meanwhile, HB162, introduced on May 13 by Rep. Mulrooney and Sen. DeLuca, captured our attentions, and speculations on whose initiative it reflects.

DETAILS: The Governor's fears are hard to understand. Threats of lawsuits didn't stop his gambling proposal, nor should they stop the lightering service tax proposal. The only objection his staff could express was a vague reference to pre-emption via the Commerce Clause of the US Constitution. Lightering activity initiated, conducted and completed entirely in Delaware's inland waters is hardly interstate commerce. Moreover, that issue was decided by the US Court of Appeals for the 3rd Circuit in the "Norfolk Southern et al" 1987 case. The Court rejected the premise that the Commerce Clause precluded Delaware law preventing coal lightering on Delaware Bay, by adopting the State's position that approval of the Delaware Coastal Zone Act ban of coal lightering constituted Congressional consent under the (federal) Coastal Zone Management Act, thereby immunizing against Commerce Clause scrutiny.

HB 162 seems innocuous at first glance. It says: "For vessel to vessel petroleum transfers on the waters of the Delaware River and Bay, obtaining a Clean Air Act Title V permit allows an entity to conduct vessel to vessel petroleum transfers, notwithstanding any other provision of Title 7." By exempting such transfers from the Coastal Zone Act (Chapter 70 of Title 7), it would eliminate the monopoly position now enjoyed by OSG/Maritrans, the only company now lightering at Big Stone. The CZA prohibits lightering by any entity not already thus involved in 1971, when the CZA became effective, except as a contractor to an entity with "grandfather" status. Most, if not all, of the Delaware River refineries that receive oil lightered there could establish "grandfather" status merely by applying for a CZA permit. None have.

Despite Delaware Supreme Court's 1985 "Coastal Barge" decision that declared vessel to vessel transfers at Big Stone to be covered by the CZA, and Delaware Superior Court's 2007 "Vane" decision that expansions or extensions of "grandfathered" lightering activity require CZA permits, DNREC hasn't bothered with enforcement. OSG/Maritrans doesn't have a CZA permit. Passage of HB 162 would make moot any slapping of either OSG/Maritrans' or DNREC's wrists.

But the greater damage that passing HB 162 would do involves the definition of "petroleum" and the extension of lightering activity beyond Delaware Bay, to the river upstream. The definition is concisely explained by Encyclopedia Britannica, thus. "Petroleum occurs in the Earth in liquid, gaseous or solid forms. The term is usually restricted to the liquid form, but as a technical term it also includes natural gas and the viscous or solid form known as bitumen." Encyclopedia Americana has a similar definition. Some dictionaries interpret the term as only the liquid, and others lean to the technical term. The courts are not bound by either unless legislative intent can be established.

Thus passage of HB 162 would enable vessel-to-vessel transfer of petroleum anywhere upstream in Delaware waters despite the CZA. BP proposed several years ago to build a LNG plant on the eastern shore of the Delaware River opposite Claymont. The plant consisted of large onshore tanks with ancillary warm-up and pressurization equipment (in New Jersey) and an offloading dock extending into the Delaware River. (The DE/NJ boundary for the northernmost portion of the river adjacent to the Delaware shoreline is the low water line on the east shore.) The CZA absolutely prohibits bulk product transfer facilities in Delaware that were not already operating on the 1971 CZA effective date. Using a floating dock between the LNG tanker and the shore would allow regarding LNG offloading as

permissible lightering under HB 162. Who else but BP would benefit from allowing lightering in the Delaware River?

BP's application for a "Status Decision" under Delaware's CZA was denied by DNREC and the denial was upheld on appeal to the Delaware Coastal Zone Industrial Control Board. Thereafter it was further upheld (in effect) by the US Supreme Court. Testimony before the CZ ICB by BP witnesses supported the ICB's conclusion that the proposed plant was a bulk product transfer facility with ancillary manufacturing functions (which the CZA forbids) rather than a manufacturing facility with ancillary bulk product transfer functions (which the CZA allows).

Since the BP application failed at the "Status Decision" stage, the "Permit Application" stage was never reached. That precluded any discussion of BP's intentions as to insurance protections in the event of a severe fire involving one of the LNG tankers. If the LNG operation is as safe as BP claimed, a truly massive insurance policy should be cheap. The river at Claymont is less than a mile wide. A fireball more than a mile wide had been predicted to be within the realm of possibility. BP had announced its intent to operate the facility as a LLC (Limited Liability Corporation, without backing by the full faith and credit of the parent corporation), enabling an escape from liability beyond the real estate value of the onshore facility. However, the Status Decision appeal never reached the insurance issue because BP sunk its own boat.

In his 4/28 "Let's Get To Work" address to the General Assembly, Governor Markell expressed repugnance for "proposing that our state employees take such significant cut in pay [8%], especially those who can least afford it." Then he said: "Any cut we restore or any revenue proposal we reject, we must find cuts or revenue proposals to make up the difference." Evidently Governor Markell dislikes his across-the-board 8% wage or salary cut for State employees (\$91 million in reduced spending) less than he dislikes a new tax on oil lightering services at Big Stone Anchorage. A \$1/per barrel lightered (4 cents/gallon of gasoline), tax would produce about \$100 million in revenue, far more broadly based than his 8% cut. The Governor learned of the lightering tax opportunity last August. Staff studies have found no roadblocks besides opposition by a powerful lobbyist, a close friend of Governor Minner's. The Governor's withheld support - - foot-dragging - - throws away perhaps \$2 million PER WEEK in sorely needed potential revenue.

Vic Singer

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## Civic League 2009-2010 Officers, Directors Announced

*The Wilmington News Journal in its June 1 edition carried the following news announcement:*

The Civic League for New Castle County, one of the largest and oldest civic umbrella groups in Delaware, has announced its new officers and directors for the coming year.

Daniel E. Bockover will remain the group's president, while vice presidents are Dianne Kempfski, V. Eugene McCoy and Chuck Mulholland. Treasurer is David Bailey. Past President is Frances M. West.

Directors elected for the 2009-2012 term are Kenneth Murphy, Philip Doering, Dianne Kempfski, Philip Lavelle, Charles Mulholland, Gary Warren, David Carter, Edmund Cohen and Barbara Finch.

The Civic League, founded in 1962, is a nonprofit, nonpartisan organization that monitors and evaluates county and state government, establishes positions on issues and advocates for a good quality of life in New Castle County.

To learn more about the group, contact D. Bockover at 475-7969 or [President@CivicLeagueforNCC.org](mailto:President@CivicLeagueforNCC.org). Visit [www.CivicLeagueforNCC.org](http://www.CivicLeagueforNCC.org)