



CIVIC LEAGUE
For New Castle County

Informed Citizens for Sound County Growth

P.O. Box 11523 - Wilmington, DE 19850

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**September
2010**

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

MEETING

Wednesday, September 15, 2010

7:00 PM at the Delaware State Police Troop 2 Building
100 La Grange Avenue
(Rte 40 East of Route 896)

AGENDA

Is the "*Quality of Life*" statute being avoided
by Delaware politicians and bureaucrats?

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.

Chuck Mulholland,
President

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9 Delaware § 2603. Purposes of regulations.

(a) Regulations adopted by the County Council, pursuant to the provisions of this subchapter, shall be in accordance with a comprehensive development plan adopted pursuant to this title, and shall be designated and adopted for the purpose of promoting the health, safety, morals, convenience, order, prosperity or welfare **of the present** and future **inhabitants of this State, including**, among other things, **the lessening of congestion in the streets or roads** or reducing the waste of excessive amounts of roads, securing safety from fire and other dangers, providing adequate light and air, preventing on the one hand excessive concentration of population and on the other hand excessive and wasteful scattering of population or settlement, promoting such distribution of population and such classification of land uses and distribution of land development and utilization as will tend to facilitate and provide adequate provisions for public requirements, transportation, water flowage, water supply, drainage, sanitation, educational opportunities, recreation, soil fertility, food supply, protection of the tax base, securing economy in governmental expenditures, fostering the State's agricultural and other industries, and the protection of both urban and nonurban development.

(b) The regulations shall be made with reasonable consideration, among other things, of **the character of the particular district** involved, its peculiar suitability for particular uses, **the conservation of property values** and natural resources and the general and appropriate trend and **character of land, building and population development.** (48 Del. Laws, c. 321, § 3; 9 Del. C. 1953, § 2603; 55 Del. Laws, c. 85, § 18A; 66 Del. Laws, Sp. Sess., c. 199, § 1; 66 Del. Laws, c. 207, § 1; 70 Del. Laws, c. 270, § 1; 71 Del. Laws, c. 401, § 15.)

This portion of Delaware Law was included after recent front page news reports about development incentives provided by New Castle County Council. Also included in this edition are (2) compositions from former Planning Board members.

DON'T FORGET
VOTE!

**THERE ARE MANY LOCAL AND STATEWIDE RACES TO BE DECIDED
THE PRIMARY ELECTION DATE IS SEPTEMBER 14, 2010.**

Problems with Redevelopment

"As a long term Community Advocate, I felt reporter Chad Livengood wrote a refreshingly candid article on problems with Redevelopment. Properties impacted by acts of God and similar situations were addressed by Redevelopment as part of the Unified Development Code (UDC) when it was adopted in 1997. Over the years, the Redevelopment ordinance has been mercilessly perverted by the county to now include, by right, just about every zoning category including residential. With a compliant county government as well as favorable waivers and interpretations by the Land Use Department, there is precious little protection for residents' quality of life covered in the 2007 Comprehensive Development Plan.

One might argue that the free market would determine when a profitable property should be redeveloped. The incentives are many and compelling including density bonuses, exemption from impact fees and traffic studies, expedited approvals and exemption from site capacity standards. Not to mention the 400% site improvement rating which is easily achieved by adding a few bicycle racks and handicapped parking spaces. Finally, developers love redevelopment because of the "by right" predictability, lower costs, no hearing and no unhappy residents to deal with?

But what about adverse impacts on neighbors and their quality of life? They too should have "by right" protection. But they don't. Neighbors should have better transparency and hearings, aesthetics as pleasant or better than existing, drainage better than before including downstream, adequate local sewers including downstream, adequate, non contaminated drinking water. Traffic is the responsibility of the county and should be within Level of Service standards. The county can ill afford loosing all of the fees and taxes redevelopment will avoid. Interestingly, the first few projects would have been renovated without the redevelopment subsidies.

Ordinance 06-007 was adopted in 2006 and was the most liberal version of the redevelopment code. Coons and council tell us that ordinances not serving their purpose are always under review for improvements. Isn't four years long enough to recognize that this ordinance needs to be more neighborhood friendly?"

Fritz Griesinger



**For a nationwide comparison on how well Delaware is doing, visit :
<http://www.cnbc.com/id/37516043>**

See how the state with the #1 rating for being "business friendly" ended up with a combined ranking of #42. Was it the Transportation rating of #44, was it the Quality of Life ranking of #47 (3rd from the bottom)?

And the theme for this edition: Is the "Quality of Life" statute being avoided by Delaware politicians and bureaucrats?

compiled by Chuck Mulholland
President, Civic League for New Castle County

THE REDEVELOPMENT PROVISIONS ENACTED PER THE 2007 COMP PLAN

In the August 29, 2010, newspaper article about the changed attitude of Councilman Weiner, Council President Clark mentioned the latest Acierno v. New Castle County case, 09A-02-005 MMJ Sept. 17, 2009. Acierno sought to have five parcels he wanted rezoned joined in one application and designated a redevelopment project under UDC Sec. 40.08.130(B)(6). The Dept. of Land Use turned him down. The Board of Adjustment denied his appeal.

The Superior Court affirmed the Board's decision. The Court quoted the statute which states the purpose of designated redevelopment:

(a) Redevelopment is intended to facilitate and encourage the continued viability of previously developed land by granting a credit for both extractive use sites and brownfields; and for sites with legally existing GFA that has been demolished by more than fifty per cent of its GFA. [gross floor area] New construction may be configured or located elsewhere on the site although rehabilitation or restoration of existing structures is highly recommended.

(b) The standards of this section shall apply only to sites that have been designated as a Brownfield, developed under the former code, developed prior to the adoption of New Castle County development regulations, or former of existing extractive use sites.... The applicant shall be permitted to utilize all of the established square footage for the site; provided that said square footage is existing or existed (or was approved on the site). For office or commercial sites that are currently used for residential purposes and abut residentially zoned property, the applicant must provide the entire required buffer against the residential land.... In lieu of this section, an applicant may choose to redevelop the site in full compliance with the UDC." The judge was not asked to consider the lawfulness of the ordinance as the developer was eagerly seeking to use it.

Sites that were developed before regulations were enacted could be of unlimited size and even under the older codes might be more GFA on a site than would be available today. My guess is this was passed to allow the University of Delaware to easily redevelop the old Chrysler property. This is something the entire community will be happy to facilitate because the land could not be put to a worse use and will in all likelihood be greatly improved. The General Manager of Land Use could waive regulations for any project that produced as many as 1,000 jobs when the UDC was first passed, so the mystery is who else was the Council seeking to accommodate?

Since the section now waives vitally important standards of the UDC, the question becomes does it open many other properties in less desirable situations (or with less public-spirited developers) to too little regulation to protect the public? The Citizens for Responsible Growth who have been fighting Barley Mill Plaza's owners would probably say yes.

In spite of the statement that it is to be used for land that was once developed, the map that accompanied the proposal for this idea in the 2007 Comp Plan contained many parcels designated for this use that were or are vacant. One of those is owned by Stoltz Realtors. The amount of land color-coded for this designation on the map was probably one-third of the upper County. Only time will tell if that is too much, but it certainly seems someone went overboard.

Among the regulations waived are as follows:

- 1- the need to do a site capacity analysis,
- 2- prohibitions against building in a floodplain,
- 3- riparian buffer requirements for nonconforming rebuilding,
- 4- the need for major plan review by the State is speeded up and the developer can get to the record plan stage without the public examining technical review concerns.

Other problems with it include:

- 1 – density bonuses will be given,
- 2 – the General Manager of Land Use can approve without Council plans with as much as 50,000 sq.ft. of additional gross floor area (more than 3 football fields) to a site,
- 3 - brownfields can obtain a Mixed Use designation. Having seen how little cleanup is required for DNREC to clear a brownfield for development, this is dangerous to future users. The language is vague and unclear in spots and they legislate by table again, but at least the Land Use Department reserved the right to require unspecified improvements on its orders or DeIDOT's. The appeal route set up is ridiculous. It is the Planning Board that has expertise in this area. The only reason Council would avoid it is because they think developers will get a more favorable decision from the historically lenient Board of Adjustment.

authored by Christine Whitehead

[Note! This article has been revised by the author from the mailed version.]