



# COUNTY COMMENTS

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

**March  
2012**

## 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

WWW.  
CivicLeagueforNCC.Org

PO Box 11523  
Wilmington, DE 19850  
302-529-1529

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## MEETING

**Tuesday, March 20, 2012**

7:00 PM at the Delaware State Police Troop 2 Building  
100 La Grange Ave  
( Route 40 East of Route 896)  
Bear, DE 19701

## AGENDA

Presentation by Doctor Lilian Lowery  
Delaware Secretary of Education

## What constitutes full disclosure for purchasing real estate in Delaware?

Since consumer spending drives 70% of the US economy, who, in the days of very slow recovery in the housing market, would ever consider being less than fully truthful about a purchase most often described as the largest in a family's lifetime, the purchase of a home?

The following collection of statements, code sections and points will paint a picture somewhat different than full disclosure, and I believe, sets the stage for a completely unnecessary blemish on buying real estate in Delaware, one county in particular.

We all know that home values continue to drop, confirmed by the February 28, 2012 release of the Case- Shiller index

<http://www.marketwatch.com/story/us-home-prices-at-post-crisis-lows-case-shiller-2012-02-28>

Many also know that in Delaware the state and local governments derive large amounts of revenue from real estate transactions. In the words of County Executive Paul Clark in his January 10, 2012 address to Council, New Castle County at one point reaped \$40M in real estate transfer taxes in a prior year, a yearly amount that has dropped to a current \$16M.

<http://www.delawarefirst.org/21592-clark-new-castle-county-address>

In the early years of the last decade, after a re-figure of the Realty Transfer Tax split between the State, the counties and municipalities, New Castle County saw a rampant, and lucrative, increase in residential development:

[http://www.delaforum.com/2004/Oct-Dec/ARTICLES/County%20surplus%20\(10-1\).htm](http://www.delaforum.com/2004/Oct-Dec/ARTICLES/County%20surplus%20(10-1).htm)

[http://findarticles.com/p/articles/mi\\_hb6642/is\\_1\\_17/ai\\_n28830750/pg\\_3/](http://findarticles.com/p/articles/mi_hb6642/is_1_17/ai_n28830750/pg_3/)

Rather clear comments about RTT were delivered in an address at the University of Delaware on March 25, 2008, in part as follows: **"Posing the challenge of creating a livable Delaware"....**

We must also address the third cause of over development- that pernicious realty transfer tax. As low as property taxes are, the counties have made up much of their revenue through the levy of the realty transfer tax. Because the transfer tax has come to represent a significant portion of the counties' budgets, the county governments now have a built-in conflict: to disallow zoning variances, raise property taxes, or do anything that would limit development means risking a very substantial revenue stream.

..The transfer tax is, in reality, a royalty paid on destruction. As I have said, if it goes to general revenue it creates perverse and pernicious incentives ...

Without sacrificing our private property rights, we must find a way to correct the market distortions that are enriching some but are impoverishing us all as a community.....

<http://www.udel.edu/PR/UDaily/2008/mar/keynote032608.html>

**These above comments were made by William B. Chandler III, then the Chancellor of Delaware's Court of Chancery.**

And what do we have now? As with most areas throughout the US, we see a steady decline in home values, as well as diminished construction activity, and a tidal wave of foreclosures. Has anyone witnessed any level of restraint in incentivizing more construction? Has the **law of supply and demand** been abolished?

The point here is that given the dynamics of **supply and demand**, does an increased amount of new home construction in such times of excess inventory have any affect on existing homes? How about on the price of those homes already for sale, like the 5,483 among the [Zillow.com](http://www.zillow.com) listings for January 2012 in New Castle County? How about the already approved 10,756, yet un-built, residential construction lots in the unincorporated county area as of July 28, 2010. Actual construction permits ranged in the mid 500's for the past (2) years for the unincorporated area. There appears to be more than an ample supply for some time!

More and more houses may create an invitation for those who feasted off Realty Transfer Taxes for years (as mentioned above), but do not serve well for those witnessing a constant downward real estate value in their homes. Again, witness the Case -Shiller findings and other reports, showing a **combined equity loss** in real estate for existing homeowners now surpassing **\$7 Trillion**, and home values now at the 2002 level.

[http://www.marketwatch.com/story/economy-still-hobbled-by-weak-housing-high-debts-2012-02-29?link=home\\_carousel](http://www.marketwatch.com/story/economy-still-hobbled-by-weak-housing-high-debts-2012-02-29?link=home_carousel)

So did the County do anything to ramp up more home construction, amidst an unprecedented economic turmoil based largely on a collapsed housing market? Could the past dependence on **RTT** be a clue?

In February 2008 the Council adopted an affordable housing ordinance that provided up to **double density**, NCC Code section **40.07.321**, listed in Ordinance 07-150, which also provided that residential units would be made available for *low and very low income households*, constructed to look like market rate units, and scattered among market rate units (**40.07.330, & 333**). What they did not include was any advisory provisions to apprise market rate buyers of even the existence of below market rate units in the same community. (Note: To find the actual income level wording you have to read the original document/ ordinance as the levels reflected in the Land Use website has excluded the very low income wording).

The unequal value aspect, in real estate appraisal parlance, is known as **regression**, a subject contained in the real estate assessment manuals for over (20) years. The value aspect is also contained in the term "comparable sales". In short, the key is that units of lower value tend to diminish the value of higher cost units within the same area, design, style, etc. The reverse, *progression*, is also in the instruction manuals.

Given that the County has, so far, approved ( beyond the above 10,756 lots) some 1958 new units within (4) affordable or workforce housing projects in southern New Castle County, is there any mechanism to adequately alert all home buyers in these communities that there are government approved below market rate units available, for sale in these projects? Or that these units are price fixed for (15) years (40.07.343)?

A constant review of the published advertisements for each of these projects was followed, now for (2) years, with (2) projects now actively selling units to the public. At no time was any wording about *below market rate*, nor (15) year fixed prices, noticed, not in the newspapers, nor in the magazines. The most recent "new" ad was a ½ page color spread in Delaware's largest distribution paper, on Sunday, February 12, 2012, page G4, announcing the sale of (7) units before the sample was even completed. That one listed developer has a history through the Delaware Department of Justice of paying fines for less than complete disclosure is even more insulting to the unaware home buying public.

<http://www.delawareonline.com/article/20110418/NEWS/104180340/Odessa-National-developer-default?odyssey=tab|topnews|text|Home>

**April 8, 2011** edition reported on the unending complaints against the developer(s) of Odessa National, one of whom , in 2008, " **paid nearly \$500,000 to resolve *deceptive-marketing* complaints in Odessa National's 55-plus Legacy neighborhood"**

So how is the home buying public to be made aware of all value related aspects, again?

In mid 2009 officers of **Southern New Castle County Alliance**, working with area legislators, prepared what was numbered as Senate Bill 131 of the 145th General Assembly, legislation to mandate buyer awareness prior to execution of purchase contract. On June 9, 2010 the bill was voted out of committee , but died without being brought up for a vote by June 30, 2010, the end of that legislative session.

<http://www.legis.delaware.gov/LIS/LIS145.NSF/vwLegislation/SB+131?Opendocument>

**AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO HOME CONSTRUCTION AND IMPROVEMENT PROTECTION.**

In May 2011 the first home in one of these projects was sold to a retired tradesman, and senior citizen, who still resides in New Jersey. Did he know any of the details just described regarding value, appreciation, regression, fixed prices? I know that answer and you need not guess for long.

So questions were soon directed to Dover regarding the content of SB131, and what SNCCA was trying to achieve regarding **buyer awareness and protection**. I was informed in a January 4, 2011 email from the Division of Professional Regulation that, "effective 1/1/11", the seller's disclosure form for new homes had been revised to include advisory regarding the existence of affordable or workforce housing, with the exact wording on page 2, line 13 **"is the property subject to any agreements concerning affordable housing or affordable housing?"**

<http://dpr.delaware.gov/boards/realestate/documents/DREC%20New%20Construction%20Property%20Disclosure%20effective%20010111.pdf>

And the sales continued, along with the less than complete advertising.

Further contact was directed to the Division of Professional Regulation, and on January 24, 2012 I was advised that only disclosure regarding **the (individual) property being sold** was subject to advisory, **not the remaining units within the project**. Here is the exact wording of the question, and the reply:

*I apologize for the delay in responding to your request. We took your questions to the January 12, 2012 Commission meeting and below are the responses:*

**Specifically does this form accompany the paperwork for all properties in a Workforce Housing project, as adopted / approved by New Castle County government, or just the individual WFH units?**

Response: *The disclosure pertaining to workforce housing status would be for the property being sold. That is, a seller would only need to disclose information about his or her home, not about the other homes in the development.*

Forgive my naivete', but this appears to mean that, separate from the actual buyer of a *below market rate, fixed price unit* is told, no other buyers are told....

So the concerns included in SB 131 fell by the wayside and market rate buyers are plunking down market rate dollars without full disclosure!.

Considering the term "*consumer confidence*", .will the moment of enlightenment, or awareness, occur upon future sale of the market rate unit, when comparable sales data is gathered by the financier, or sooner in a refinancing? Little late, don't you think!

On January 19, 2012 a presentation was made to the New Castle County Board or Realtors

[http://vimeo.com/35370025?utm\\_source=E-Newsletter+List+%28only%29+NCCBOR+Total+Membership&utm\\_campaign=6d0745dafa-NCCBOR\\_Newsletter\\_JAN+\\_27\\_20129\\_23\\_2011&utm\\_medium=email](http://vimeo.com/35370025?utm_source=E-Newsletter+List+%28only%29+NCCBOR+Total+Membership&utm_campaign=6d0745dafa-NCCBOR_Newsletter_JAN+_27_20129_23_2011&utm_medium=email)

with repeated reference to BUYER PROTECTION and new real estate forms.

On February 1, 2012 an email was sent to various participants of that event, including members of the Delaware Real Estate Commission, containing my wording, in part : "*Again, from the official reply, 09.9% of all the potential buyers as calculated between the total 1958 units would be fully advised of below market rate status within these (4) projects, and therefore be apprised of any REGRESSION aspects, in a prolonged period of declining real estate value. **The other 90% are left without complete advisory.** ..*

*I am seeking any available comment on whether or not this constitutes full disclosure.*

*I will copy those members of the Delaware Real Estate Commission for whom email addresses were located on available real estate website(s)..."...*

This communication was copied to members of the General Assembly, Realtors, news media, the Department of Professional Regulation, and the Consumer Affairs section of the Delaware Department of Justice.

There has been no response as of March 6, 2012...

And as I was preparing this newsletter I kept searching for ANYTHING to dissuade me from prior assertions that all buyers should be made aware of all pertinent facts about their real estate purchases.

Today I read :

<http://www.bloomberg.com/news/2012-03-06/finance-isn-t-as-amoral-as-it-seems-part-2-commentary-by-robert-shiller.html>

## **Finance Isn't as Amoral as It Seems (Part 2): Robert Shiller.....Deliberate Deception**

**Finance may seem corrupt also because the management of information is central to success in the field. And to make the best deal in a financial transaction, there is always the temptation to withhold information. Deliberate financial deception wounds the victim's ego; people feel foolish to have been duped.**

Reading of the full Bloomberg text blends well with the content of this newsletter.

prepared by Chuck Mulholland, Email: [cemulholland@gmail.com](mailto:cemulholland@gmail.com)

March 6, 2012

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## Civic League Calendar

Mar. 20, 2012 - Delaware Secretary of Education, Dr. Lilian Lowery,  
meeting at Troop 2, Bear, 7 PM

Apr. 17, 2012 - Delaware Finance Secretary Tom Cook  
meeting at Troop 2, Bear, 7 PM

May 15, 2012 - OMB director Ann Visalli  
meeting at new Del Tech Innovation and Technology Center  
97 Parkway Circle, New Castle , 7 PM.