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**January
2013**

**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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COUNTY COMMENTS

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

MEETING
Tuesday, January 15, 2013
7:00 PM
Paul J. Sweeney Public Safety Bldg.
3601 N.DuPont Hwy (Route 13)
New Castle, DE

AGENDA
Guest Speakers:
County Executive - Thomas P. Gordon
Chief Administrative Officer - David Grimaldi

Letter to DeIDOT

December 31, 2012
Delaware Department of Transportation
PO Box 778
Dover, DE 19903

Re: Public Comment Dec 14 Draft Amendment to Traffic Study Regulations

This past October, individual citizens, major civic organizations, and area legislators expressed their concerns about DeIDOT's proposed Amendment to the Standards and Regulations for Subdivision Streets and State Highway Access. On December 14, DeIDOT issued a 2nd draft of the proposed Traffic Study Regulations, and we were surprised and disappointed to read the new proposal. After a lengthy public comment period, ostensibly designed to seek/incorporate upgrades to a 1st draft offering inadequate protection to local communities, we see that DeIDOT has both rejected important suggestions to protect the public interest while adding new language to further weaken current/proposed regulations. Our comments on this latest draft are detailed below.

Important Suggestions Rejected

1. Legal Authority. DeIDOT failed to address the longstanding issue of "hot potato", where DeIDOT and the County each point to the other on responsibility for transportation infrastructure. Our reading of the law is that the State's roads are fundamentally the responsibility of DeIDOT. The below text, added by DeIDOT in the latest draft, perhaps best illustrates the gulf between the public's

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expectations and DeIDOT's perspective. In the preamble discussing the purpose of Traffic Impact Studies, DeIDOT has added these words **“DIRECT REQUIREMENTS BY DELDOT TYPICALLY ARE LIMITED TO THE LOCATION AND DESIGN OF THE DEVELOPMENT ACCESS”**(Sec 2.1).

2. Infrastructure Funding. DeIDOT made no changes to the flawed infrastructure funding program whereby developers pay an assessment to DeIDOT and are then free to proceed with development. This sets up a situation where developers can pay pennies on the dollar for improvements, the improvements never get made, and the public is left with a traffic nightmare that the taxpayer ends up eventually funding out of our own pockets. There needs to be **DIRECT LINKAGE** needed improvements are identified up front, and developers make (and pay for) the required upgrades **CONCURRENT** with the build-out of their project. If this occurs within a TID, DeIDOT can apportion the work across the responsible parties, but the developers fund and implement the work as a condition of occupancy. This is the only way to protect the public.

3. Regional Impact. DeIDOT failed to address developments with regional impact to the transportation system. The proposed "3rd road out limitation" specifically prevents this type of analysis and needs to be changed (Sec 2.5.2.2). Some states such as Florida have a square footage threshold for major land developments that have regional impact.

4. Public Engagement/TIDs. DeIDOT's responses to specific questions posed by the public continue to indicate their concerns regarding public involvement. This is particularly significant given DeIDOT's push to broadly implement Transportation Improvement Districts with their long time horizons, complexity and limited role for the public. As one citizen noted, TIDs may have the effect of further reducing public engagement in an environment where it's already judged to be insufficient.

New Language to Further Weaken Current/Proposed Regulations

We believe that traffic study regulations are needed that balance the interests of all stakeholders, supporting needed growth while preserving the character of our communities. We strongly object to the following new language incorporated in the latest draft.

1. Non-Residential Rezonings. The latest draft adds a clause that non-residential rezonings without a specific associated development plan should be **CONSIDERED WITHOUT A TIS** at all, and that the need for a TIS be evaluated when the development proposal is defined (Sec 2.3.1). This is unacceptable to the community.

2. Existing Conditions. The latest draft **REMOVED LANGUAGE** that DeIDOT will recommend a TIS if development is proposed for a non-rural area where existing conditions are currently below LOS D (Sec 2.3.1). Again, this is unacceptable.

3. Calculation Methods. The latest draft curiously modified several calculation methods which appear to **FURTHER WEAKEN CURRENT/PROPOSED REGULATIONS**, and are unacceptable.

-Default Contribution Formula. For situations in which a TID exists and no formula for developer contributions has been defined, the default formula for contributions is now proposed to be based on % of total traffic vs % of increased traffic, **A MAJOR CHANGE** (Sec 2.3.4). To illustrate, lets examine a roadway with, say, 6,000 vehicles of peak hour traffic. A development is proposed that adds 3,000 vehicles of peak hour traffic. With no other nearby new developments underway, logic would require that 100% of needed road upgrades be funded by the developer creating the impact (using the % of increased traffic method). DeIDOT, however, is now proposing to use a % of total traffic method. Under this calculation, the developer would only be required to fund 33% (3,000/9,000) of needed road upgrades, with the **REMAINING 67% SUBSIDIZED BY THE TAXPAYER**.

-Queuing Analysis Standard. A Queuing Analysis is utilized to determine whether existing and proposed left hand turn lanes near developments are adequate. Current regulations specify that 98% of expected queues be accommodated at signalized intersections. DeIDOT's latest draft proposes to **RELAX THIS TO 95%** with the reasoning that it's "consistent with our current practice". In our view, the fact that DeIDOT may not have followed established rules is no justification to relax existing requirements. This logic, carried forward, creates a host of unintended consequences.

We appreciate the opportunity to comment for the record and reiterate our offer to meet with you to develop a balanced approach that represents the interests of both the development community and the public.

Respectfully submitted,

Save Our County, Inc

Joseph C. Kelly, Esq.

Walter P. McEvilly, Jr., Esq.

Tom Dewson

Chuck Mulholland, President-Civic League for New Castle County
& Southern New Castle County Alliance

Fran Swift, President-Greater Hockessin Area Development Association

Bill Dunn, President-Milltown-Limestone Civic Alliance

KEEP A CRITICAL EYE ON OUR FUTURE

We have a new County Executive. He was elected with a lot of the usual promises and one unique promise. Tom Gordon was widely praised when the Unified Development Code was first enacted. Many civic activists in the arena of land use felt over the past six years, however, that the Code was constantly being weakened and made ineffective for its original purposes. (One of the most important of those purposes was "concurrency" meaning current adequacy of infrastructure.) Tom apparently felt the same way, and thus he promised to restore the UDC to its original form. That may be a goal too far to reach, but it was a promise members of the Civic League Board welcomed. By striving to restore it, strength can be returned to the UDC and repair work can breathe new life into it. In seeking to do this, however, we must be aware that we are in the midst of a recession brought on by the collapse of the housing market.

While we know that there are a great number of approved site developments waiting to be built, we must not support changes that would make it more difficult to approve well-planned and well-sited, code compliant developments that do not have adverse impacts that cannot be mitigated or corrected. Developers are not the enemy. Thoughtless, greedy, crooked, and community-destructive developers are the ones who must be regulated in a fair way so that our county will continue to attract people who want to live and work where there is a very good quality of life. To overbuild our small State is to undermine what has been our greatest asset in attracting new companies and new residents - our efficient size. If we lose the efficiencies of scale we have enjoyed, we will slowly deteriorate.

In line with this, we must pay careful attention to how we restore the UDC's best deleted features and add some improvements. The basic problems that exist in it today were there in the beginning and

were simply made worse by ordinances introduced over a decade toward one purpose. Some people believe neighboring property owners should have nothing to say about development next to them and commuters should have nothing to say about clogging roads. Such people succeeded in weakening the influence of the Planning Board and prevented meaningful public criticism of any plan that did not need a rezoning. Planning and zoning grew out of the ancient common law rule that an owner's right to use their property as they wanted ended where it caused harm to their neighbors. While State law spells out the ways they should not cause harm today, the fundamental principle is still the same.

By placing so much improperly delegated power in the hands of the General Manager of Land Use, changes to the UDC created a dictatorship that must be brought back under control. One of the revelations from the lawsuit by the SOC against the County for rezoning BMP using an illegal process was that the lower level Department of Land Use employees who have technical expertise may not agree with or even know what the General Manager is doing. This is a once in a lifetime inside look at DLU operations, and it shows the need for greater transparency. Routine applications may not generate a need for additional transparency in DLU, but battles such as the one over Barley Mill Plaza do. Openness permits oversight and oversight encourages integrity in the process and rational decision-making in the public interest.

State law provides for oversight of the DLU (formerly the Planning Dept.) two ways. The Planning Board is supposed to advise it, and the Council has the same oversight responsibility for it as it does for all County departments and agencies. Decades past the Council had veto power over poor site development plans and a possible change back to that option should be discussed soon. It is time to mandate open decision-making and better confine the power and authority of the General Manager to act alone. As the current G.M., who proposed the ordinances that gave him so much power, is still in office in this new administration, acting sooner, rather than later, would be prudent. The long-acknowledged weakness in all governments is that power corrupts and absolute power corrupts absolutely. We must spread out the power in County government as well as making the process more open. We cannot afford a government that does not do its job properly and ignores the people it governs.

Opinion of Christine Whitehead,
current Board Member of the Civic League and former member of the County Planning Board