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**June
2013**

COUNTY COMMENTS

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

MEETING
Tuesday, June 18, 2013
7:00 PM
Public Safety Building
3601 N. DuPont Hwy. (Route 13)
New Castle, DE

AGENDA
Presentation by Community Services Division of NCC Police
“Preventive Policing Program”
Election of Civic League Officers

**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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Update on Workforce Housing Who is benefiting in this secret program ?

On June 4th the front page of the Baltimore Sun carried the latest on Uplands, an affordable housing project update, noting new homes in the \$200,000 and up range.<http://www.baltimoresun.com/business/real-estate/wonk/bs-bz-uplands-opening-20130604,0,5856891.story#ixzz2VLNK7HJx> [[READ HERE](#)]

When was the last time you read about any new affordable housing development in this area, specifically New Castle County? Well, they are out there, but it's being kept a secret, along with a multitude of loose ends, and, perhaps, traps for unaware new home buyers.

As some may know, New Castle County has a Workforce Housing (WFH) program that, in the first months after Ordinance **07-150** was approved, netted (18) applications, some seeking 100% density bonuses, specifically listed in section **40.07.321** of that ordinance. But ever since the applications were made, and approved, not one ad has appeared anywhere to advise of the existence of affordable units, disguised as market rate units (**40.07.333**), and scattered about (**40.07.332**) the now approved developments under construction, and some already sold.

In (2) local sample houses, namely Bayberry North and Goldsborough Farms, several visits were made to inquire about affordable, or workforce housing, each time to be met with less than complete, transparent reply. As the months and now years passed after intense public reaction in September and October 2008, secrecy has prevailed.

- continued -

Even after the Delaware Real Estate Commission modified their Seller's Disclosure Form for New Construction, effective January 1, 2011, the public was still generally kept in the dark. Multiple requests for a formal opinion from the Delaware Attorney General of this official State document are still falling on deaf ears.

The latest foray for some State intervention in the series of non disclosure was on May 9, 2012 in a Senate hearing for SB 195- which would have mandated full disclosure to all buyers. Resistance came in the form of suggested fear of violation of the Fair Housing Act (42 United States Code, Chapter 36), as explained by Scott Wilcox, representing the Home Builders Association. He stated that disclosure would call attention to certain low income groups, many of whom, Wilcox asserted, were of a certain race. The April 25, 2012 letter from the National Home Builders Association read, in part... *courts have held that the Fair Housing Act prohibits local governments from exercising land use planning and zoning powers in a discriminatory manner*'.

So the Bill never escaped the committee status, and sales of homes in the WFH projects continued, secrecy and all. Various color ads still appear in the local press, never once advertising the presence or availability of new homes for various income levels listed in the County ordinance. The secrecy prevailed all through the administration off Chris Coons, followed by that of Paul Clark, whose spouse specifically requested certain new ordinance (**07-150**) wording that ultimately benefitted for her then client, Blenheim Homes, adding an extra (194) new building lots. That benefit was also reaped by the Ponds of Odessa project, gaining an extra (100) new lots.

Through the end of 2012 some \$12,000,000 in total sales were calculated, from the County's web pages and WFH projects, netting the New Castle County Housing Trust Fund a whopping \$47,659.63. See New Castle County Code section **40.07.313**. That gross amount falls short of enough to buy even one building lot!

Through April 15, 2013, another \$3,000,000 in WFH project sales were calculated from the New Castle County parcel view web pages. When will time come to reveal the secrets? Or end the selective nature of who builds what price level homes to satisfy the ordinance?

Further review of more County documents illustrates how the folks in charge of handing out the contracts (**40.07.341**) appear to have taken steps that ensure steady developer profit, that is no *very low* or *low income* levels, as written verbatim in the density bonus section of the governing ordinance, would be accommodated in a few chosen projects, such as:

Application **2007-0438** , High Hook, agreement **20111024-0064361** as filed with the Recorder of Deeds, signed by New Castle County Executive Paul G. Clark on 10/10/11, with page 1, paragraphs 5 & 6 reading, in part, *moderate income households*;

Application **208-0917** , Ponds of Odessa, agreement **20110728-0042210** as filed with the Recorder of Deeds, signed by New Castle County Chief Administrative Officer Gregg Wilson on 07/28/11, with page 1, paragraphs 5 & 6 reading, in part, *moderate income households*;

Application **2008-0829** , Village of Bayberry North, agreement **20091228-0081362** as filed with the Recorder of Deeds, signed by New Castle County Chief Administrative Officer Rick Gregory on 12/28/09, paragraphs 4 & 5 reading, in part, *moderate income households*.

Given all the shots about racism leveled early on by those who engaged a barrage of questions about the ordinance and WFH program, who can defend the point that New Castle County is now engaging in their own picking and choosing by allowing such handsome density bonuses without any offset in providing affordable homes for the income levels described in 40.07.321? Looks like the best of all profit schemes are still being provided by New Castle County in the above listed applications with every building permit issued.

And what did those income levels allegedly championed by the sponsor of Ordinance **07-150**, Penrose Hollins, get? (see David Grimaldi's comment on 6/3/13, below) On April 8, 2013 Council member Hollins was contacted by me on this matter and declined to take any action, other than to CC the developer of the plan I cited as an example.

As such, here are the next round of questions:

Is New Castle County legally permitted to discriminate against the income levels specifically listed in Ordinance **07-150**, namely the density bonus section **40.07.321**? Can they also pick and choose one code section to the exclusion of another section of the same ordinance? Do the terms capricious and whimsical fit this practice?

Since the income levels listed in the contracts for Bayberry, Ponds of Odessa, and High Hook all exclude those income levels used by the Home Builders Association to prevent complete disclosure as in paragraph 6 (above), there appears no reasonable defense for less than full disclosure.

Next comes **40.07.343** where any resale profit prior to the 15th year after initial sale is forked over to the County (Housing Trust Fund as in paragraph 9, above). Who believes that buyers in the \$200,000+ range are aware of this? And are the mortgage holders aware?

Glaring aspects about this scheme seem to include profit, secrecy, the fees and transfer taxes for the County. The rest, to quote CAO David Grimaldi in a packed meeting on June 3, 2013, was described as " major problems, *with only (1) affordable units determined to have been produced so far.*

Rather than to reveal more deceit and inconsistencies in this scheme I made a proposal to County Executive Tom Gordon at this same meeting:

"Unless there is complete enforcement of every section of the ordinance (**07-150**), rather than the discriminatory path now in place, notify the developers that no more building permits would be issued without full compliance and full disclosure. Or relinquish the density bonus lots."

Are you getting something for nothing in return from County government?

I added that Mr Gordon could be seen as a hero in correcting the discrimination put in place by his successor, and continued by his predecessor. I also asked if any real estate developers or their attorneys would argue to any Court that they would continue to refuse to construct homes for lower income levels, or refuse full compliance with the ordinance under which they applied for these handsome density bonuses, worth millions.

As the real estate market ramps up, and buyers continue moving into the area, which forward looking politician will continue with less than full disclosure? Which politician would follow a path of picking the code sections obviously favored by the developers?

As Shawn Tucker described to Council in the plan approval meeting on January 24, 2012 for High Hook, *127 lots would be workforce housing, with units to be available for \$249,000 for a (1) bedroom, up to \$413,000 for a (5) bedroom unit.* That's 32.8% of the (387) unit development. The majority would buy without full disclosure and we are to accept that the prices described by Mr. Tucker are "affordable housing".

Whenever I recount all the various contradictions in this scheme, the term hypocrisy is always mentioned, not by me. Hopefully, after review by various members of the current County administration, some honesty and adherence to the literal wording of all sections of the ordinances will come about. We'll see.

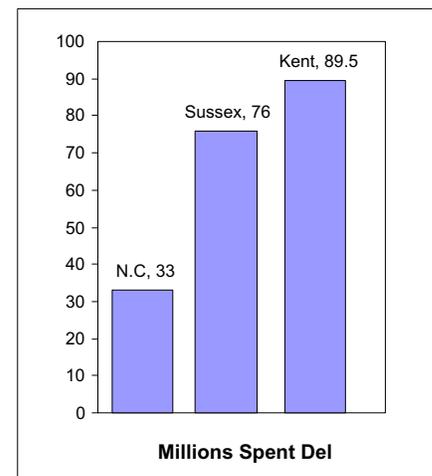
FARMLAND IS NEW CASTLE COUNTY'S MOST IMPORTANT ASSET

OPINION by Christine Whitehead

Delaware has two industries that cannot relocate overseas or to another state. One is tourism and the other is agriculture. Agriculture is our largest industry. Together with the eastern shore of Maryland, we feed the millions of people who live in the urban Northeast. We can continue to do so in the face of increasing climate instability because we have a guaranteed supply of water, while the Midwest and much of the interior does not. Hundreds of trucks go from Southern Delaware to New York and Philadelphia carrying chickens and frozen or canned food every day. Even the large grocery chains are beginning to buy fresh local produce. The market potential is endless, but it will only be realized if we have both a population that knows how to farm and grow agribusinesses, as well as land on which to do it. Farming is not only physically difficult, but bad years can ruin families financially. Allowing farmers to use the equity in their land to build up capital and continue farming benefits food consumers, our economy, the farmers, and all the businesses tied to them.

New Castle County not getting its share of preservation funding.

Since Delaware's Agricultural Lands Preservation Foundation was started, this County has provided about \$70 million dollars to the program; but it has received only \$33 million of state funds to preserve 87 of our farms, as compared to \$76 million going to Sussex County for 285 farms, and \$89.5 million spent on 383 farms in Kent County (all figures are rounded off). For a long time, our farms in this county were under much more pressure to develop than those in the other two counties. The payment per acre for development rights was not sufficient to interest many farmers who were getting increasingly large offers to sell. Of the 105,000 acres protected by easements purchased by the Foundation by 2012, only 12,000 were in New Castle County. Also, when farms in this county are sold, the 10 years of "rollback taxes" have to be sent to be used for the administrative costs of the Foundation. Therefore, this county is heavily subsidizing preservation in the lower counties. In 2012, of the \$32.3 million that went to the State from real estate transfer taxes, \$16 million came from New Castle, \$13.5 million from Sussex, and only \$2.8 million from Kent. The importance of agriculture on the Delmarva Peninsula is evident. A large share of federal farm preservation funding has been directed to Delaware's efforts for this reason. Since these funds match State funds, even our federal taxes are being directed to the two more Southerly counties. In addition, New Castle County has provided an additional \$6 million to the State program as matching funds to insure that some of its farms would indeed be preserved.



Something needs to be done to make this program work in a more fair and equitable way. This County needs more control over where its money is spent. The State farmland preservation program has a discouraging set of regulations, offering too little money to realistically keep farms in New Castle County preserved. Those wishing to preserve their farmland enter a bidding system, offering the rights to develop their farmland for severely discounted prices compared to market value. Once a parcel is accepted by the program, sometimes ten or more years pass before easements or development rights are finally purchased. All this difficulty makes the money go further, but as you can see, most of it goes to the Kent farms that are not under the same development pressure. (Check www.de.gov/Department of Agriculture/ALPF). Some families are making huge sacrifices to keep their land. Other farmers, sitting on incredibly valuable land, felt that they should not deprive their families of the wealth developers were offering. New Castle County must find a way to insure that more of the money it provides to the State for preservation saves *our* farms. We should start a simple program of our own. We should amend the law requiring a percentage of the real estate transfer

taxes which have helped fund the State program since 2005 to remain in New Castle County. We should be allowed to keep 50% of what is raised from the sale of real estate here for our own preservation program. Ordinance 13-040 to start a New Castle County farmland preservation program will be voted on June 11th. There are ways to acquire development rights quicker without spending so much money up front. A County program can be more flexible than the State's.

Let your Council Member hear from you. You can reach your Council person on the County website (www.nccde.org). Be sure you also contact the new Council President who wants to hear from everyone. TCBullock@nccde.org.

Preserving farms is one of the best bargains available to protect the health and well-being of New Castle County's citizens. When farms are preserved, their natural resources, such as wetlands, soils, marsh, woodland, wildlife, and waterways, are also protected. Protecting lands in perpetuity ensures their maintenance and management with no expense to the taxpayer. Protected agricultural lands also require less infrastructure and fewer municipal services than those same lands will require after development. A study conducted by the University of Delaware revealed that 80% of the preservation funds received by farmers have been spent in Delaware.

How our friends in Dover perfected the art of wasting public dollars

On June 4, 2013 the following message was sent to Bill Brockenbrough, Marc Cote and Shailen Bhatt of DelDOT, and copied to local legislators:

Bill,
The roadway in front of the local community is today being ripped up and replaced in sections. The work is also proceeding beyond the edge of my property, to the east where the developers are supposed to be eventually doing their upgrades.

Can you advise if this is a DelDOT project? If so, what is the project number and expense involved?

As the roadway which is being ripped away and now resurfaced was not in bad shape, I and my neighbors question this entire project, given that heavy construction traffic is increasing on a daily basis.

It seems counter productive to repair a functioning roadway that is targeted for intense construction traffic and vehicles, repairs at possibly public expense when we have been told repeatedly that from my property eastward all the upgrades will be done at the developers' expense.

Please advise.
Chuck Mulholland

The following day, June 5th, 2013 I received the following:

Chuck,
My understanding is the Secretary's Office has responded to this. Since Bill manages Traffic Impact Studies, it would be helpful for you to ask construction related questions to our PR office. They can get in touch with the Division that is responsible for the work that is occurring. Bill is extremely busy and not in the office until Friday.

Marc Cote
Assistant Director - Development Coordination

Responses since then : NONE

I did contact a news reporter with photographs I had taken, both of the before and after the action described in my June 4th email. My conversation included the June 4th local front page item:

*Paraprofessionals in the Brandywine School District facing layoffs at the end of the year pleaded for their jobs during a school board meeting Monday night **in another chapter of the statewide drama over education budget cuts.***

The **education budget cuts** from Dover also resulted, at least in part, in property tax increases both in the Appoquinimink and Colonial School Districts.

The aggravating point in this road work was that:

- 1) It was completely unnecessary.
- 2) The road workers advised my neighbor, John Taylor, twice that "DeIDOT found \$34 Million and it had to be spent by the end of June".
- 3) Due to the approved subdivisions on this road, the private development community, per numerous prior communications with DeIDOT, was responsible for the vast majority, if not all, of this roadway improvement.

Let's see if I have the timeline down correctly:

Dover: We have no money, cut the budgets.

We have no money, raise property taxes.

We just found money so repair some roadways, even if they are the responsibility of private developers and even if the repairs are not needed.

The next day Secretary Bhatt is quoted on the front newspaper page discussing **raising gasoline taxes and motor vehicle fees**, the same Mr. Bhatt who has yet to explain the gross waste of public money in front of my home on Vance Neck Road!

I know I am not understating the outrage on this matter as I have been contacted by numerous neighbors never before vocal on matters such as this. All agree that every penny spent was a total waste given the condition of this roadway before the Diamond Materials rotomill machine started on June 4th.

Chuck Mulholland

Nominees for Civic League Officers

As Chair of the Nominating Committee, I submit the following slate of nominees for officers of the Civic League for New Castle County for 2013 - 2014

William H. "Bill" Dunn - President
Mark W. Blake - 1st Vice President and Program Chair
Charles Stirk - 2nd Vice President and Editor of County Comments
Christine Whitehead - 3rd Vice President and Secretary
Treasurer - still seeking one

The election will take place at the June meeting and nominations may be submitted from the floor.

Christine Whitehead