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**September
2013**

COUNTY COMMENTS

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

MEETING
Tuesday, September 17, 2013
7:00PM

Join the Civic League for New Castle County in welcoming **Delaware's Public Advocate, David Bonar**, as guest speaker at our next monthly meeting!

Location:
Cranston Heights Fire Company
on Kirkwood Highway
Prices Corner - next to Sears
Chiefs' 2nd Floor Meeting Room.
Access the meeting room at the back of the Fire House
away from Kirkwood Hwy.

The Division of the Public Advocate is the Delaware agency that advocates on behalf of consumers on utility issues.

The Division of the Public Advocate is reaching out to consumers to provide information about electricity issues and rates, and ways consumers can save money on electric bills.

**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.

Bill Dunn,
President

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SOC ANSWERS NOTICE OF APPEAL FROM BARLEY MILL PLAZA, LLC

The land use players watching the legal battle between residential plaintiffs who are fighting the development of Barley Mill Plaza as a string of huge box stores and pad sites along Route 141 at the Lancaster Pike were hardly surprised to learn that the decision handed down by Vice Chancellor Glasscock will be appealed by the defendants to the Delaware Supreme Court. They will also find no surprise in the readiness of those plaintiffs to defend the decision in their favor. But the public is about to learn the meaning of the term "cross appeals." Not all winning opinions satisfy the purposes of a lawsuit, and some winning decisions can result in unfortunate precedents or rules that will strangle open government in the future. The opinion in SOC, et al v. New Castle County Council and Barley Mill Plaza, LLC is one of those which will lessen public participation in the rezoning process if allowed

(continued)

to stand unamended. What it has shown is that the public who has the most at stake can fight with stamina through years of public hearings and still be ignored by the Department of Land Use and County Council. The Vice Chancellor refused to find that BMP, LLC, was legally required to produce a traffic analysis before the Council voted on the rezoning, although he did find that the deciding vote was illegal and nullified it. What the plaintiffs—who are now the appellees—hope to have the Supreme Court do by briefing a cross appeal is correct the errors of law made by the court below in writing its opinion, but confirm its final decision.

If you think this sounds tricky, it is. Fortunately, the excellent legal counsel for the plaintiffs is assisted by volunteer attorneys who have spent countless hours on this case. With the help of contributors who understand the importance of Council seeing professional traffic studies in the rezoning process, money has been and will be found to keep up the fight against the well-heeled appellants (sometimes referred to as "Stoltz") and the Council (using your tax money).

The appellants managed to split the public opposition to this too-large project by threatening to build other over-sized projects in various locations. The reason the Civic League supported fighting—even in the face of an unenforceable, loophole riddled compromise agreement—is that the principles at the heart of this fight are too important to the future of this county to allow it to be uncontested. Adjacent property owners have a constitutional right to present evidence of the harm that a rezoning will cause. County Council does not have the authority to pass ordinances in defiance of the Constitution and a law enacted by the General Assembly for the purpose of insuring that the Council would see a professional traffic analysis before voting on a rezoning. The Civic League tried to warn our membership what the passage of 09-066, 067, and 068 would mean for land development in this County, but not enough people complained to their Council member about them. The sections which pushed the traffic analysis to the last stage of a plan were included, in my opinion, for the sole purpose of getting rezonings approved which would be revealed by a traffic analysis to be too large for the roads in an area to handle or too poorly located for the developer to afford the necessary traffic mitigation measures.

Developers' attorneys have acted for years as though they have a right to build anything that meets the rules and regulations on any parcel. This is just not true. There are rational limits to the size of a plan generally established in the past by LOS or level of service limits. If we do not shout to the hilltops that we refuse to give up those limits, we will all be surrounded by sky high or hugely bulky buildings in the future. That is what "Smart Growth" means—building to a level that will support mass transit no matter what it does to your roads until you reach that population number. That's the theory most land use planners have adopted in the past few years. Thank heavens Tom Gordon has found a planner to lead the Land Use Department who talks about "sustainable" growth. There is hope for us yet.

Meanwhile, if you would like to support SOC (Save Our County) in the Supreme Court fight, please go to the PayPal on their website (www.save-our-county.org) and contribute. If you want to disagree with me, members may send a letter or longer opinion to our new Editor at ccstirk,jr@gmail.com.

Editorial by Christine Whitehead who is solely responsible for the contents.