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**June  
2014**

# COUNTY COMMENTS

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

**MEETING**  
**Tuesday, June 17, 2014**  
**7:00PM**

Public Safety Building  
3601 N. DuPont Hwy. (Route 13)  
New Castle, DE

**AGENDA**  
**Candidate Forum for Recorder of Deeds, State Treasurer  
and State Auditor and Civic League Elections**

### 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 consistent with the aims and purpose of the organization.

Advocate these positions.

Founded in 1962, the Civic League is a 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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### “Little Pressure for U.S. 301 spur.”

“Law makers directing DelDOT to monitor - development growth along the “spur” road” is like asking to be told when your flooded basement should be evacuated. Apparently, the Governor and Legislature, and including New Castle County, have yet to be awakened to community discussion for the “spur” alignment to be the direct connector to I-95, as per original intent, rather than the recently intended 12 mile diversion to the East (to make up the short fall of Relief Rt. 1 tolls). Monies have already been allocated thru the State Bond bill and Federal grants for the over costed purchase of rights of way from the land developers.. Admit the mistake. Return to common sense. The next question should then become who should pay for County ineptness in accommodating limitless land use/ access to the corridor North of Summit Bridge?

Charlie Weymouth

### An act to amend Chapter 1 of Title 9 of the Delaware Code HOUSE OF REPRESENTATIVES - 146 GENERAL ASSEMBLY STATE OF DELAWARE HOUSE BILL NO \_\_\_\_\_

Delaware has, historically, permitted near unlimited curb cuts/access to our interstate, commercial highway system, and thus constricted required commercial thruways to the State’s Port(s), air, road, and rail terminuses. Be it so provided and, further, incorporated into Delaware State Code, the following:

No points of direct access shall be permitted on any interstate Highway lying within the Counties, unless via a prior approved secondary road interchange, for those roads to include, but be not limited to, the following designated Routes and same such future alignment designation: Rts.: 40, 41, 141, 52,92,100, Lancaster Pike-Rt. 30/Lancaster Avenue-Wilmington, Relief Rt. 1, Rts.13, 301,896-I-95, I-295, I-495.

Charlie Weymouth

# **If it LOOKS like a duck, WALKS like a duck, QUACKS like a duck, it's a TAX**

by Vic Singer

Most of us easily describe the principles we live by, one-dimensionally, isolated from complicating details. But political matters in Delaware historically operate according to the "Delaware Way" because the state is small. Most of the participants in Delaware government's big decisions - - folks from the executive and legislative branches, lobbyists, other interested parties, and occasionally some common folks - - often know one another well and eschew making life unbearably painful. Before each political fight, combatants often cite flag and motherhood (one-dimensional) principles. But the results of the battle often give everybody a doggybone though less satisfaction than earlier hoped for - - a compromise. That reflects the lesson most of us learned as teenagers: even when we wanted to go all the way, usually heavy petting was the most that happened.

The "Delaware Way" is an approach for dealing with multi-dimensional issues too complex -- too multi-dimensional -- to be addressed via one-dimensional generalizations. One of many complicating matters of principle derives from the oath of office prescribed by Article 14 of the Delaware Constitution, as follows:

"All members of the General Assembly and all public officers executive and judicial, except such inferior members who shall be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath or affirmation:

"I, (name) do proudly swear (or affirm) to carry out the responsibilities of the office of (name of office) to the best of my ability, freely acknowledging that the powers of this office flow from the people I am privileged to represent. I further swear (or affirm) always to place the public interests above any special or personal interests and to respect the right of future generations to share the rich historic and natural heritage of Delaware. In doing so I will always uphold and defend the Constitutions of my Country and my State, so help me God."

No other oath, declaration or test shall be required as a qualification for any office of public trust."

The first part of the second sentence complicates the "Delaware Way" when the doggybone tossed to each participant in the battle rises to a level is more than a mere compromise. A case in point focuses the discussion..

In May of 2007 following Gov. Minner's request to increase Delaware's gasoline tax, Civic League proposed that a "tax no smaller than \$1 per barrel of oil lightered at Big Stone Anchorage in the Delaware Bay be imposed - - and that the first \$1 per barrel of such revenue be earmarked for Delaware's Transportation Trust Fund." Our proposal amounted to a 4 cent per gallon on gasoline produced mostly for markets not in Delaware. Representative Bill Oberle and Senator Karen Peterson then sponsored appropriate legislation which drew sharp words from the lobbyist for the only company with a recognized right under the Coastal Zone Act to lighter oil at Big Stone, a close friend of Gov. Minner's, who then withdrew her gas tax proposal. Evidently she decided that she needed the revenue only if it didn't burden her friend's client. The lightering tax proposal went nowhere..

Next, in 2009, responding to Gov. Markell's proposals to recover from a \$770 million revenue shortfall, Representative Mike Barbieri proposed a tax of 25 cents per barrel lightered at Big Stone (\$25 million/year annual revenue at then-current volumes). After my March 24, 2009 Powerpoint presentation to Gov. Markell, he directed an in-depth staff study of the proposal; the result: even though no roadblocks had been found, the CLNCC proposal was not pursued because of fears of

potential litigation on issues that couldn't be identified. But upon urging by Gov. Markell (whose legislative liaison during his first term was the son of the lightering company lobbyist) a substitute law was enacted imposing a \$100,000 annual tax. After the second annual payment, that law was repealed.

This year, Gov. Markell proposed a 10 cent per gallon tax on gasoline sold in Delaware, contemplating a \$50 million annual revenue enhancement to offset relocating to the State's General Fund, a \$40 million annual revenue stream long devoted to the Transportation Trust Fund. DeIDOT Secretary Shailen Bhatt was unaware of the lightering tax alternative during his appearance at CLNCC's Feb 2014 meeting. (See March 2014 County Comments.)

CLNCC has urged Rep. Barbieri to re-introduce his 2009 proposal, adjusted to a "Buck a Barrel" to produce \$58 million per year at current lightering volumes. Rep. Barbieri has been attacked recently by political critics who point out that in his "day job" he works for a privately-owned entity that includes the State of Delaware among its customers. Rep. Barbieri's response to CLNCC urgings: early in the current term, Rep. Ed Osienski, Bill Oberle's successor, expressed an interest in sponsoring the lightering tax legislation so now it's his. Though Rep. Barbieri has suggested that Rep. Osienski telephone us, he hasn't called, and doesn't respond to our telephone calls either. Meanwhile, the lightering company lobbyist insists that the proposal is unconstitutional, despite Gov. Markell's staff finding that there are no legal roadblocks.

So nothing has been introduced at this writing (June 12). Many State Reps of both parties have been quite complimentary about the proposal, and offer assurances of their support once somebody ELSE sponsors it, but nobody steps forward. And Governor Markell prefers a 10 cent per gallon hit on Delawareans to a 4 cent per gallon hit on non-Delawareans.

A favorite expression of George Jarvis, a former President of CLNCC and retired State Rep, Senator and DeIDOT Secretary, was "If it LOOKS like a duck, WALKS like a duck, TALKS like a duck, it's a TAX." But this time, it looks like a tax, walks like a tax, talks like a tax, but it's not a tax - - it's a duck. Everybody is ducking what the oath obliges: have we crossed the threshold where the second sentence of the oath of office no longer controls how the Governor and the legislators relate to the lobbyist?

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## **I-495 Bridge Closure**

The proposition of DeIDOT operating as a self ruling fiefdom was diluted by a previous Governor proven to have called the shots when it came to DeIDOT's land acquisition, etc. Local contractors now gripe at not receiving the immediately necessary force work. They can protest, and as should local Architects for the public building work. (But, the latter group does not). Under normal design-build delivery, law requires compliance to our State' Professional Services Procurement Act (following the [Federal] Brooks Act) requiring equitable distribution of work to local design resources, to those with experience and current expertise. Can you name a local source with the immediate capability for thorough forensic examination of causes and prescription to design resolution for this scale required under I-495? The word hasn't gotten out as to who you are. As to the law requiring competitive bid for General Construction, that was tossed to the winds twenty years ago with the oncoming CM concept. And declaring an emergency situation to immediately engage a favorite has not been unknown. Into this scrambled mix should be committed resolve to comply to the law, encourage, once again, competitive bid, and produce at prices in accordance with realistic cost guidelines.

Most Sincerely,  
Charles M. Weymouth, AIA

## **Reference: State Procurement Act-Professional Services**

**Subject: Advertisement-Red Clay Consolidated School District-Request for Architectural/Engineering Services for Various Projects-RFQ#2-14-54 Noncompliance to Law due to Restrictive Language/Complaint Herein**

**Requested Action: Require The Data Service Center, DOE and the District to immediately withdraw advertisement and repost in accordance with the law.**

Lady and/ or Gentleman!

By way of background, this person was the co-author of the Professional Procurement Act (w/ Thomas B. Evans, Sr., P.E., Genl. Frank Lynch, C.E. - 1972) which included specific selection criteria of Architects and Engineers based upon: experience, relevant expertise, a preference to local physical proximity of the Professional, and equitable distribution to all firms, with particular consideration to the new, smaller firms. (With influence upon the Legislature from others, Construction Management was NOT included in this Act)

Systematically, over the last fifteen + years, but few, select, Architects are performing subject, major, new facility, public education work, and, further, the traditional competitive bid general contract has been replaced by the non-risk, "Construction Manager". Regarding this latter, moreover, for Public work, the Construction Manager has transitioned into becoming the "Project Manager", performing the cost-value analysis and integral to the selection of the subsequent Architect, whether or not a previous adversarial relationship to the potential Architect might exist. The tradition of the Architect's practice has been, once the Architect is selected, that same Professional would search out the feasibility/substantiation of a project, detail the operational and physical needs thru a program, this latter oft with research, and perform the cost-value analysis of what is to make up the facility in order to hold to a budget, both in materials and, alternative operational approach. The design, cost-control, services delivery including mandatory contract administration and progress review integral to those services was held to be the Architect's responsibility. All to say, with such necessary engagement, the experience factor, such being prime in selection criteria, for one building type can range, not just five years, as advertised/requested, but can extend over fifty years, particularly, to recognize how a facility endured, and the history of change orders/time delays, cost over runs (this latter under C.M. contract absorbed by the Owner.) Such current practice (and as advertised though the Service Center) denies the experience gained by the similarly required research, detailing of nearly same construction, delivery process—whether hospital, prison or the major school. And there is no evidence wherein CM Construction Delivery performs in superior cost savings, quality, or, certainly, risk underwriting. Our firm has performed both Design-Build and Construction Management, the latter for the envisioned Lower and Middle School Renovations. The required innovation of the Architect, producing solutions, inevitably, crossing many of the same building material issues, such experience requires the Architect to have a varied project background, all pertinent to any renovation. Thus, all such experience is relevant, not just "five schools within the last five years."

Thorough cost review and comparative analysis/read out is required not only for the overall State Procurement process but Construction Delivery alternative modes. Most immediately, the Data Service Center should be required to cancel the published advertisement for services required of the new Red Clay Consolidated School District and be re advertised. In re advertising, scope should be accurately reflected and with published criteria in accordance with the Professional Procurement Act.

This Architect is an unsuccessful applicant to perform Professional Services for the same District's "William P.Cooke Elementary School" (adjacent to Rt. 41 and Stony Batter Roads). It is my understanding the award was to an out of State Architectural/Engineering firm.

This author believes an investigation most warranted for systems of delivery and subject costs/timeliness in delivery, etc..as well as construction of new School facilities, noting the notoriety of underutilized, recently constructed/renovated Inner City Schools.

Your direct intercession for required action in regard to subject matters would be most appreciated.

Charles M. Weymouth, AIA