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**October
2014**

COUNTY COMMENTS

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

MEETING
Tuesday, October 21, 2014
7:00PM

Mill Creek Fire Company Community Room
3900 Kirkwood Highway
Marshallton, DE

AGENDA
What is the Grand Plan ?

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.

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Participatory Budgeting Could be a Win-Win-Win for Delaware.

By Dave Tancredi

Both the state and the county have limited resources. There are hundreds of communities that want to see improvements or have issues that need to be addressed. But no one wants to raise taxes nor cut programs needed in other parts of the state. To meet these challenges, there is a new idea in budgeting that has started to become adopted across the United States. In Chicago, Boston, San Francisco and California, local legislators have adopted participatory budgeting.

I first became aware of the idea in an article by Hollie Russon Gilman in Slate. To quote Hollie, "Participatory budgeting empowers citizens to identify community needs, work with elected officials to craft budget proposals, and vote on where and how to spend public funds. Typically, people use a paper ballot listing project ideas and can vote for a set amount of projects totaling the allocated amount of funds. Unlike other forms of civic engagement, PB involves spending real public money."

There are three keys to participatory budgeting. First, it needs legislators willing to set aside parts of their budget for the program. Second, it needs communities to be active to promote projects. Third, there needs to be organized civic committees to create a ballot and hold elections in an area.

When all three of these factors come together, it's a win-win win. Legislators get the gratitude of their constituents for allowing them direct access to community resources. Communities know their proposals are being considered fairly and can have a direct impact in their neighborhood. Local civic organizations become empowered through increased participation.

Participatory budgeting could have a positive impact in New Castle County and Delaware. I urge local legislators and civic leaders to learn more about the idea at www.participatorybudgeting.org.

THE NEWPORT GAP PIKE TRUCK ROUTING INSANITY

an Editorial by Christine Whitehead

As you drive from the Delaware Memorial Bridge toward the split that takes I-95 north or south, if you enter the lane to Newport, you see that DeIDOT is routing traffic headed for Lancaster, Pennsylvania, to Rt. 41, the Newport Gap Pike, via Rt. 141. Rt. 141 – which has finally been widened to four lanes or more all the way to the Lancaster Pike — has a sign telling drivers to turn off of it and head for Lancaster through Belvedere, Marshallton, and the Cedars. For those of you unfamiliar with this stretch of road, these are older communities with houses down to the edge of this 2-lane national highway. People back out of parking in front of small shops and their homes into the traffic. Trucks that must be at least 150 feet long pass within a few feet of bedrooms.

On the eastern side in the Cedars, there is no space to walk at all. Homeless people walk down the highway who are unfamiliar with it. A woman stepped from behind a telephone pole directly into my lane the other day during rush hour when all lanes were full. Had I been a large truck or a fast driver, she would be dead. A young man with a bicycle was in the same lane a couple of days later. Last winter at the start of an icy storm, a huge truck slid down the hill just past the Cedars and cars had to turn in the middle of the two lane road between houses a few feet from them to try to escape being stuck for hours.

The wonder is that these old houses have been able to continue to stand with the vibrations from trucks impacting the foundations of homes. These property owners have been trying to sustain a beautiful and viable neighborhood in the face of the indifference of DeIDOT to their situation. The trucks can easily continue on Rt. 141 to the Lancaster Pike — also mostly 4 lanes. Just a very few houses are anywhere near as close as these to the road on this route as those in the Cedars and these are protected by fences or walls. Before the residents lose their homes, before people get hurt, and before the lungs of the property owners of Belvedere, Marshallton and the Cedars become diseased beyond help, DeIDOT should change those signs. Sec. Bhatt tried to tell us that he decided to support the building of a new route for 301 because he felt the danger of a big rig when he was turning in his car with his child near Middletown. He should put himself in the place of these parents. Bhatt wants to use millions of dollars to solve his problem. It would only take a few thousand to help these residents. Come on Secretary Bhatt. If you have an ounce of empathy with the people of this State, change those signs! Tractor-trailer trucks do not belong on Route 141!

If DeIDOT will not stop the trucks, then buy out the property owners for a decent price and help them move further back in their communities. These unique residential areas are the kinds of places people have not wanted to leave through generations. Please stop making it so unpleasant that they will have to leave. The County can help the Cedars and Belvedere by forming planning commissions as they did in the fancy unincorporated neighborhoods like Greenville and Hockessin. That guarantees the changes are made to suit the residents. Please, please do something in the next Budget cycle. The situation gets worse every day.

THE FUTURE PLANNING BATTLES IN DELAWARE

an Analysis by Christine Whitehead

As I see it, the essential division of the people and planners in Delaware is between two groups. One is those who believe that overdevelopment and high density is inevitable and even beneficial. They simply plan for managing the worst case scenario. The other group believes it is not inevitable that we overdevelop and grow to a very high density of population and structures. These people believe we can control and direct development so that we never become victims of unmanageable density and

impassable roads. Perhaps both see the benefits of keeping our major highways easy routes for commerce to use daily, but the first believes it takes money to build better roads and get people into mass transit. The second group prefers that we not push our population density to unworkable levels in the first place and that we limit curb cuts onto major roadways so that trucks are not caught so often in local traffic.

Does either group see the need to enable our major highways (some of which are two lanes) to be used for evacuation of large populations in the event of a catastrophe? We are the small part of an hourglass on the East Coast and the top of a peninsula. Whether we will someday see military vehicles moving through in great numbers or ambulances carrying injured away from an atomic disaster or drowned beach towns, we must be sure they can get through New Castle County to their destinations.

We are limited in Southern New Castle County by the lack of bridges across the Delaware River and the few across the Canal. That means that we cannot allow the routes down there to become clogged. The area—like all of New Castle County—has a "carrying capacity." That is the build out level that does not exhaust the ecosystem, that does not produce so much local traffic that the roads are clogged, and that permits the growth of vegetation for food and oxygen, that holds down the fouling of air so that it is breathable, and that will not use up vital resources such as fresh water. Seldom have we seen the sophisticated planning that determining the carrying capacity requires. The State gave it a shot a few years ago under John Carney's leadership. That involved a very large number of players from all facets of the Delaware community—developers, planners, farmers, homeowners, civic leaders, and scientists; but today we are sinking into a fight over TIDs.

Some of us in the Civic League believe that the TID regional planning tool limits public participation in making plans. That is because the public is generally unaware that these districts are being established for the long term and they have only one chance up front to comment on what will be done with the land and highways around them for the next 20 years. If more of these go forward, it is our expectation that the turnout of public attendance at hearings will be low and the result the planners want will be set in stone. We believe that the people who live in an area have the greatest knowledge of what will be acceptable in terms of land use and highways at the time proposals are made. Twenty years is not a predictable time frame, and those who are property owners during that time should be part of the decisions about what is acceptable in their communities. WILMAPCO will be coming to speak at the next Civic League meeting in November, so we hope that we will hear whether anything has changed in the TID planning that is moving so fast below the Canal.

I have spent 5/7ths of my life traveling up and down the Eastern Corridor at least 4 times a year to the South and for 2 decades, 5 times a year to North. From getting stuck on Long Island almost 6 hours after driving up with a tiny baby to spending two hours stuck on I-495 on the Washington by-pass with a small child in 98 degree heat sitting next to a car full of drunk men, I have learned about congestion. More fun was getting stuck on the New Jersey Turnpike late one night for 6 hours with a diabetic son.

A former President of the Civic League had the worst imaginable experience of all. His young nephew died after an automobile crash in Delaware many years ago because the paramedics could not get through the beach bound traffic to reach him soon enough to save him. Congestion has consequences.

Planning is not simple. Problems created for humans can be huge if it is done without attention to the many possibilities involved in their behavior. Some states manage traffic accidents much better than we do. They swoop in to remove vehicles immediately, but even for them, the occupant trapped in a damaged vehicle or burning vehicles can cause great delays. The number of trucks we have on our roads is extremely significant because it increases the chances for spills and overturned heavy loads that cannot be cleaned up easily—not to mention those who slide on icy hills on two-lane national highways in the middle of residential areas.

My hope is that the residents of Delaware will learn to participant at every opportunity in planning

hearings whether they are for changing something in your backyard or establishing plans for the entire county. Speak out, write, email, and talk to your elected officials. Let them know the kind of state you want Delaware to be in the future. If someone calls you polling on such questions, take the time to answer them. If you get calls polling on candidates, talk to them about what you want. Watch the video on YouTube of the candidates that came to the Civic League Candidates Forum in September. It was interesting and revealing as much for what was not said as what was. Only one candidate—John MacKenzie—mentioned the environment. One! Read the News Journal. They have worked hard to give us what we need to understand the problems our children and grandchildren face if they remain here. Working and planning together, we may overcome those problems; but it will take an energetic commitment to the future of Delaware on the part of all of us to do so.

VICTORY Against Toll Brothers' Attempt To Circumvent Concurrency And Adequate Facility Law In New Castle County!

By Nancy Willing

Last month, the NCC Board of Adjustment rejected Toll Brothers' appeal of the county's decision that their application for Hercules/National Golf Course on Lancaster Pike had expired and their Traffic Impact Study was unacceptable.

After the public hearing, Chairman David Burt deferred the board's business meeting and decision until the two sides delivered briefs which answered the narrow question of whether or not the County erred or was illogical (the parameters of the BoA scope of appeal). The 4-2 vote supported the Department.

Chairman Burt has provided us with a superb document (his written opinion is not yet released) clarifying that approval of Traffic Impact Studies is the county's purview not DeIDOT's but warned that Toll's "taking" arguments were outside of the scope of the appeal and would be taken up in the higher court [[see: Koontz v. St. John's River Water Management District](#)].

Constitutional issues notwithstanding, according to county law, a landowner may develop a parcel only when the impacted surrounding roads and intersections are improved enough to handle the additional traffic imposed by a proposed record plan. In other words, you can't build on your parcel simply because you've promised to hand DeIDOT a portion of cash towards a road improvement sometime, somewhere "down the road". You'll have to wait to build until the state is ready to fix the intersection or you've paid for the fix yourself. The UDC gives you the right to develop your land according to the by right under zoning but it doesn't give you the right to develop it whenever you want to do so.

The Civic League for New Castle County will be asking New Castle County how all this fits together with TOAs and TIDs.

The UDC and the law of concurrency and adequate facility demand that infrastructure improvements linked to capacity increases made necessary by new development must either be in place already or in contract before such development may be permitted. Right?

Obviously Toll and their YCST lawyers don't want to see it that way but I am very happy the New Castle County Board of Adjustment agrees.

Nancy Willing

DNREC's Failure to Comply with the Law a Threat to Land Protection in Delaware

By David Carter

In recent months, a major controversy over backroom dealing to protect land in Port Penn has pulled back the curtain and shed light on a threat to Delaware's land protection program, largely due to the failure of our government officials to follow the law.

As background, the Delaware Audubon Society and News Journal uncovered the special interest deal making that proposed using 6.6 million dollars of public land protection funds to protect 260 acres (\$25,384/Acre) as part of a deceptive plan to buy out lands at a public cost well in excess of updated appraisal values. In comparison, a recent round of the state's agricultural preservation selections will cost approximately \$ 7.5 million and protect 4,040 acres. (\$1,856/Acre).

The sweetheart land deal proposed to use Delaware Agricultural Preservation funding supplemented with additional Delaware open space funds to sweeten the deal & pay above market value, a plan never considered for the hundreds of farmers who have protected their land for future generations following the rules. This proposal was "justified" by the use of questionable claims of a "imminent threat" of development. In reality it was the result of poor land use planning decision by the first Gordon Administration (who zoned the land Suburban at the last minute, rather than its original plan for Suburban Reserve), unethical dealing of the Clark Administration, and a highly questionable legal settlements made by New Castle County that attempted to bypass the normal land use review and concurrency requirements, likely as part of a political favor.

The current County Executive and a host of SNCC elected officials wrongly claim that their hands are tied by the good ole' boy legal settlement. They argue that buying out these mistakes would be cheaper than building a sewer system. However, a careful read of the settlement agreements does not confirm this claim. Both agreements require certain conditions that do not appear to have been met, and they include provisions for the landowner to pay for all costs of running sewer service. It appears more like an expensive cover up.

Also of interest is the fact that in one case, in June 2008 the magistrate issues a report to recommend all federal claims against New Castle County on these cases be dismissed. Despite this report, on November 29th of 2010, the county defied all logic and ethical responsibility to the tax payers by entering into a settlement agreement and mutual release.

In essence, our elected officials are seeking to spend an exorbitant amount of public land protection funds to buy out and cover up their mistakes and highly irresponsible actions. They prefer to damage the integrity of our state land protection programs to hush up the issues and their negligent decision making, if not outright unethical cronyism.

Fortunately, the exposure of the deal helped ensure that Delaware's Open Space Council properly declined to pay more than the appraised value, at least temporarily stopping the deal.

But the problem gets much bigger. The Port Penn deal brought to light the undisputable fact that the Delaware Department of Natural Resources and Environmental Control, who was part of the sweet heart deal, has also been out of compliance with the requirements of the Land Protection Act (Chapter 75, Section 7502(2)) since 1996, meaning the program has not been updated to meet the needs of our changing landscape for almost 25 years despite a legal mandate for an update every five years (last maps approved in 1991). This is a critical consideration. Had our state agency been following the law, the problems and controversy that occurred over the Port Penn Area properties would likely have been avoided. Laws exist for a reason, and the public should demand that their publicly funded agencies follow the laws. When they fail to follow the law for decades, someone needs to be fired to clearly reinforce the importance of public servants following the law they are entrusted to administer.

The Land Protection Act requires that land protection maps known as “State Resource Areas” be updated every five years and provided to all three counties. Based on these maps, all three counties should comply with the Land Protection Act by adopting overlay zoning ordinances and environmental design standards to protect SRA's. This is intended to provide better coordination and more cost effective protection of land in mutually agreed upon areas. The law simply requires thoughtful intergovernmental coordination. Had due diligence been done to comply with the law and the maps been updated over the past several decades, the disposition of land in Port Penn would have been clearly delineated. DNREC and the County simply need to follow the law and stay in compliance with this well-articulated and thoughtfully constructed statute to better protect important open space areas.

Of serious concern is that this failure of DNREC to meet its legal obligation under the land protection act to provide counties with detailed maps of State Resource Areas (SRA's) was brought to the attention of the new Cabinet Secretary some time ago. It was included and described in the Delaware Biodiversity Scorecard Report published by the Delaware Chapter of the Nature Conservancy in June 2013 (TNC, June 2013, Pgs. 12-13). It was also presented directly to Secretary Small at that time, who is now serving as DNREC Cabinet Secretary. Secretary Small simply ignored the violation of the law, despite his oath of office to uphold the and abide by the laws of the State. A copy of the report is available at:

<http://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/delaware/delaware-biodiversity-scorecard.pdf>

When our public officials and agencies intentionally ignore and fail to follow the law, it opens the door to abuse of public trust and public funds. In short, it creates a culture where these officials tend to make up the rules as they go along, often making arbitrary and capricious decisions at high cost to the public.

Just as important, any sweetheart deals that occur outside the standard rules and practices set a precedent for other land owners. It would likely undermine the integrity and confidence in our open space programs as well as inflate the costs, leading to wasted public funds and less land protection. Following the law is critical to avoiding these unintended consequences that can seriously undermine a successful program.

Delaware’s Land Protection Act and Open Space funds have served the needs of the people and protected much of our State’s natural heritage for future generations. In most respects, it has been a tremendous success. Since 1990, the program has contributed to the protected 55,550 acres of land in our State, expending \$329,699,753. With our State’s natural heritage and the expenditure of hundreds of millions of dollars at stake, we should all take notice of the State’s failure to follow the law while administering this program, and put it back on track before much bigger problems occur.

Pressure is currently being applied to DNREC and the Open Space Council to come into compliance with the law. It is quite possible that DNREC will move to simply have the law changed, an increasingly common practice used for those unwilling to carry out their due diligence as public servants to protect the public interest. Changing the law rather than doing the needed work to comply with it is simply unacceptable in light of the need and value of updating our programs and ensuring intergovernmental coordination.

We urge everyone to get involved, demand DNREC follow the law, and strongly advocate against any unscrupulous efforts to change the law and allow more gaming of our open space programs.

The implications of following the law are simply too important. It ensures the program will continue to be managed in an open, transparent, predictable, and cost effective way. Most importantly it ensures we will be able to protect our open spaces for future generations.

David Carter

Where is the Workforce Housing fiasco now?

On February 26, 2008 New Castle County Council unanimously adopted Ordinance **07-150**, with the approval signature from Christopher Coons dated March 7, 2008. Thereafter, through December 8, 2008, the density feeding fest from the developers commenced, resulting in (17) development applications were filed with the Land Use Department for a new construction count of (4,451) dwelling units, including (683) WFH units.

The public uproar was substantial, to the point of a remedial Ordinance, **08-121**, adopted on February 24, 2009, same resulting in zero applications through 2013 when parcel 0802600011 at 109 McKennan's Church Road was under a WFH application (Plan **#20140167**), now withdrawn (see Plan **20130105**).

The current batch still contains only those applications filed through December 2008.

Now we have to go to the original Ordinance to see the rules governing the already approved plans, since no new regulations affect the original batch, see **40.07.311B**, plans vested upon application.

40.07.311,A: To secure a residential density bonus and incentives outlined under **40.07.320** through **40.07.326**(all plans) ***must comply with all of the provisions of this Division.***

40.07.312: Workforce dwelling set aside requirement ... *at least 20% for low and/or moderate income households.*

40.07.314: Off-site workforce dwelling unit construction.. *through the conversion and rehabilitation... of market rate dwelling units to workforce dwelling units.*

40.07.321, A&B: Residential density bonuses..(20%) *nest aside..affordable to low and or very low income households.*

40.07.331: Staging and timing of workforce housing unit construction, *WF units shall be made available for sale or rent concurrently with market rate units...*

40.07.343: Affordability period..(15) years

40.07.353 Annual reporting, with the last report dated March 25, 2014 showing now a total of (1) approved plans totaling (2,917) new units and (341) WFH unites thereon, for calculated percentage of (11.7%).

Whatever happened to the 20% under sections 40.07.312 and 40.07.321?

The separate contracts under **40.07.341** allow at least (3)plans **to omit** very low and or low incomes. I have presented this aspect on numerous occasions to various County administrators, all without any explanation. Each time the wording of section **.311A** was included. Still no answer.

The situation with all the dancing and movable wording reached a new level when it was discovered that for project **20080421** the WFH developer utilized section **.314** **..to convert a market rate unit into a WFH unit-** after renovation, and thereafter believed to be subject to the above listed code sections. That was parcel 0703720261, located far from the nearest WFH plan, and in a market rate community.

So who gets to deal with all the secrecy , that is no published ads, yet over \$15,000,000 in sales in WFH projects, and no quantification of actual production of WFH units whatsoever in all the annual reports written for Council (40.07.353)? No one asks any questions? No one wants to know?

For a recap: Ordinance 07-150 with numerous flaws begat Ordinance 08-121, a remediation without any visible success, and approved shortly after the first moratorium, Ordinance 08-113.

After years of abject failure and close monitoring by members of the public, (2) additional moratorium Ordinances followed, #13-089 and #14-071.

Now we approach the next step, another WFH script, and as of this date no one but the insiders know any details.

If there is any level of success to be had, the mis steps of the past cannot continue to be ignored. And the entire rest of the unincorporated area in New Castle County must come to grips that WFH is not just confined mainly to the nether regions of Southern New Castle County, namely the 60% of all approved plans in the 9th Representative District. Recall that the gross calculations still reveal (341) WFH units are to be produced, some rentals, some units for sale, some apartments.

How is anyone out shopping for a home able to find one of these units? Short of stumbling onto the County website and successfully navigating to the one page that finally reveals some detail, only one developer link actually contains the wording *Workforce Housing*, and none of the detail you read above is contained.

I have highlighted various segments of the enabling Ordinance which have been subject wide swings of imagination, over cloaked in secrecy, and numerous market rate buyers not fully informed of all the implications of Ordinance 07-150. This includes countless buyers in the income levels proscribed in 40-07-321.

Perhaps this is why (10) of the original (17) WFH plans were not pursued by the developers, too many problems that are virtually impossible to follow, and be honest and advertise at the same time. This is pretty much a verbatim quote from May 16, 2013 email from an Executive Assistant who had just met with a WFH developer confronted with numerous compliance issues.

Chuck Mulholland
Southern New Castle County Alliance
10/11/14



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Civic League Membership
for 2014-2015