Civic League for New Castle County
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November
2014

COUNTY COMMENTS

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

MEETING
Tuesday, November 18, 2014
6:30PM

Paul J. Sweeny Public Safety Building
3601 N. DuPont Highway
New Castle, Delaware

Speaker
WILMAPCO 2040 Regional Transportation Plan (RTP)
Dan Blevins, Principal Planner

CLNCC Ad Hoc Committee Executive Summary Ordinances 14-108 and 14-109

Due to the expedited introduction of proposed Ordinances 14-108 and 14-109 regarding the creation of a Traditional Neighborhood Housing Program, I appointed an ad hoc committee consisting of C.E. Mulholland, Jordyn M. Pusey, Vic Singer, myself (Charles C. Stirk, Jr), Frances West, Christine Whitehead, and Nancy Willing to study and discuss both Ordinances. After studying HUD and DSHA reports, the special consultant's report, the ordinances, and the existing program, the committee met for extensive discussion and further analysis of the proposed new program. Below, we highlight several issues that were not addressed at all in statements that three of the committee members offered at the Planning Board hearing and address in greater detail several issues that were merely mentioned. Of note, we came to many of the same conclusions that the Delaware Homebuilders Association stated at the public hearing by the Planning Board and the DLU.

Several of our members take issue with the fundamentals of the purpose and intent of the ordinance as stated. What would cause anyone to think that making a "failed" voluntary approach mandatory will change the end result? Besides ignoring the fact that the voluntary approach failed during a deep housing recession that damaged the entire international economy, the recommended mandatory approach appears to require that we "upzone" every undeveloped residential parcel in the County eventually. This is certainly extreme and of questionable feasibility and an approach that disregards decades of planning.

Our members question the necessity of public support of this segment of the housing market. Section 40.07.501 on purpose and intent raised this additional concern I will try to summarize. They feel Delaware's AMI is in reality much less

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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.

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than that of the MSA as a whole. Thus, social engineering for people with above median incomes to purchase above average priced new homes is straining the limits of a true public purpose. The Working Group believes a larger group of people who need help would be included by making 75% and below of the County's AMI the level to be eligible for homes costing no more than $180,000. They think if MPDUs go beyond that level, they will impact the normal housing market negatively as happened in Bayberry.

Another concern is trying to mix undistinguishable MPDUs with $500,000 homes. We believe these builders of mansions should work off site or pay fees in lieu. This is also a reason the program may work better if it is voluntary; but, this does look like of a form of hidden taxation and few companies will volunteer for that without a lot of incentive. That is possible to deliver without great detrimental consequences, however, where they may be working in an area with 5 acre estate zoning, but potential owners want less land.

Payment in lieu should also be granted when the development is planned to be located more than a quarter mile from a transportation route or in a location where walking to a bus stop or train station is too dangerous due to narrow roads lacking room for a sidewalk or for pedestrians to step out of traffic.

The way mandatory applicability is described in Section 40.07.510 generally lacks clarity and a provision for transparency. RE: "The Department of Land use may:" Who exactly in the Department makes this decision? It should be the General Manager, as someone must be responsible and the decision must be transparent. A negative decision should be "appealable" to the Planning Board. When is "allow payment of a fee-in-lieu of constructing MPDUs" appropriate? We have suggested a couple of examples above. Here the ordinance is giving a formula and failing to mention standards or examples to guide the decision -- an unconstitutional redelegation of delegated authority according to our legal expert. A standard might be worded, "Payment in lieu may be available when the Market Rate Units will be so much more expensive than the allowable cost for the MPDUs within the site that it will make the MPDUs so obvious as to thwart the intent of this program."

If the developer asks for a hearing on the application to do a payment in lieu of building MPDUs on site ahead of the decision, the hearing shall be noticed and open to the public.

The formula is "The payment-in-lieu amount shall be the difference between the sales price of a market rate unit (MRU) and an MPDU of the equivalent type as determined by New Castle County." This is even more vague than leaving the decision to the DLU. What is the reason for picking an "equivalent type" instead of just using the difference between the sales price of the MPDUs that will be built and the MRUs that will be built in the same development? If the payment is made when the first certificate of occupancy is needed, the sales prices will be set. With information on the cost of building that we do not have, one might decide that less than 100% of that figure would be enough. The consultants seem to think that the costs of building a home are within 10% of the selling price. If that is true, setting the appropriate payment should allow for building costs, but it should also take into account that the developer is realizing a great deal more income from the additional density granted under the program.

"All payments-in-lieu shall be deposited in the Housing Trust Fund." Considering the potential build up of that fund, a requirement should be stated in the ordinance that the County Auditor should report to the Council and to the public at the end of each fiscal year the activity in the Fund, where it is held, and who controls the investment. It should also be stated that the use of the Fund shall be determined by a majority vote of the Council following the usual appropriation by ordinance with the consent of the County Executive.

In Section 40.07.530, the use of permit construction valuation to set these contributions to the Housing Trust Fund at the time of issuance of a Certificate of Occupancy is a kind of fuzzy calculation too open to some individual interpretation. Again, leaving this decision to anyone at the Department of Land Use is

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exercising too little control over an important factor. The General Manager should be specified. Perhaps some of these decisions being left to that person should be made with the advice and consent of the Planning Board. A contribution to the Housing Trust Fund should be based on the final sale price of the market rate units. A percentage of that would be a simple figure and not subject to suspicion of influence. Before a percentage is set in the ordinance, consultation with a few local bankers who finance development and a few homebuilders should help the Administration and Councilman Hollins develop a fair and reasonable figure.

Many of these developments will be involved in rezonings, therefore, hearings will be required and issues of public benefit could be discussed at that time, but making decisions ahead of time of how much money will be realized by the Housing Fund could help inform the discussion.

Our Working Group is very interested in the potential for off site MPDUs to benefit older declining communities. Section 40.07.542 says "Under limited circumstances and upon approval of the" add General Manager of the "Department of Land Use...." At that point we would add "and the Director of the Division of Community Development and Housing." MPDUs may be located off-site if the off-site units serve a better public purpose than if the units were to be located in the market rate development. Once again standards are needed to guide them in making this decision.

The two we suggested for payment in lieu would be good for this also. We suggest adding "Consideration shall be given to the availability of parcels in a neighborhood off-site to add new units as well as whether the existing housing is in adequate condition to rehabilitate additional units sufficiently to benefit the stability of the property values in the neighborhood. Consideration shall also be given to whether or not public transportation is available in a suitable off-site neighborhood and not in the newly planned development. The near availability of potential sources of jobs and educational opportunities for adults in the off-site area versus the new development shall also be considered. Finally, the location of these off-site MPDUs should be widespread throughout the County, so that all areas benefit from the rescue of older housing through this program." The plan which is approved by the Department of Land Use should go through the Planning Board so that the public will be able to see the total plan and it should be approved by Council.

We do not feel that off-site housing should be limited to sales only. There may not be a sufficient market for sales to realize that potential, and surely renting with supervision by County employees could help some areas. Perhaps consideration should be given to allowing the developer to sell the units to the County to control the rental units.

In Section 40.07.543, due to the failure of the former program to collect fees, we feel some penalties are in order for non-compliance beside just contract claims that must be taken to court. The same is true of the stop levels. They are unworkable as stated due to the huge loophole in the final paragraph. What constitutes good cause and unforeseen circumstances should be defined or limited by examples that will inform the decision. And not just any DLU employee should be able to grant this waiver. Again, it should be the General Manager with the consent perhaps of the Planning Board. Things like this in this ordinance make it reek with the opportunity for persons to use influence to get favorable decisions.

The 15 year restriction is a detriment to the sale of these units. There may be a better way to handle this. Christine Whitehead sent members of the Council an explanation of a program in Chapel Hill, N.C., which is an outstanding model of community initiated effort. The Community Housing Trust sells the affordable units and buys them back when people want to move. Their staff at all times has a pool of units from which people can choose. They allow people to sell at any time they need to without all the trouble this ordinance would create. (Requiring advertising once a day for 365 days before being able to open the sale to the general market is just plain cost-prohibitive for the first buyer!) How much appreciation the owner accumulates in their program depends on how long they own a unit and the expense of any major

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replacements. The thing is, the Trust never loses complete control of the units as people move in and out routinely and people are regularly referred to the Trust. Units do not sit empty and people are not impaired by having purchased a restricted house just to get one they can afford. In our program, the County could either buy the units back in the Traditional Housing Program or set up a trust that works like the one in Chapel Hill. That one benefits from a lot of volunteer effort and fundraising for the cause in addition to federal housing funds.

"Deep within Section 40.07.560, is the sentence: "The buyer and seller are jointly and severally liable for and agree" A buyer and seller jointly and severably liable for and agreeing" to pay the Resale Profit" is not reasonable. Its not the buyer's problem. In addition, the formula is too complicated. Here, the author can come up with a penalty clause, but not for developers? That section needs to be rethought and rewritten. What Christine Whitehead handed in to the Planning Board had a suggestion on how to simplify it. The bottom line is there is no incentive to take care of a house in which a person cannot retain equity. Home ownership is defined by the DSHA and encouraged by HUD because earning equity has always been the most important factor. Frankly, that factor has been removed in the current housing market in this County, but we can all share the consultant's unsupported optimism that maybe things will get better in Delaware. Tom's Port Plan might just fly in spite of the Governor. DuPont may return from China, and our Fairy Godmother may bring us an electric car manufacturer that can actually build a car.

Finally, there is a fiscal impact. You must add it. While one may have trouble finding it in the four corners of this document, we know that buyers will be helped with down payments and settlement costs with the help of federal funds. Plus, this program has to be administered by County employees, and if it is passed with the mandatory provision, that will require hiring several more people including some with construction supervision experience. If this takes off like wildfire, we may need a few additional planners because the rezoning process is more involved than a simple development of land already zoned for the units for which the application is filed.

We oppose the ordinance as written, but we can support an ordinance that makes the changes we have suggested.

Charles C. Stirk, Jr.
President, Civic League for New Castle County