
NCCCL COUNTY COMMENTS

CONTINUING SAGA: OPEN GOVERNMENT? NOT AT NC COUNTY LAND USE **by Vic Singer 8 Mar 2015**

Public business must be performed in an open and public manner. Citizens must have easy access to public records for society to remain free and democratic. Those declarations, which bind State government and all its political subdivisions, appear in the first two sentences of Delaware's Freedom of Information Act, FOIA, 29 Del. C. Section 10001.

But New Castle County's Land Use Department (LU) acts like it's exempt from FOIA, like it has power to do public business in private, despite FOIA and despite the Oath of Office that binds the General Manager to ALWAYS uphold the body of law adopted under the Federal and State Constitutions.

At the January 21 CLNCC meeting, we noted that LU has initiated activity to update the NC County Unified Development Code, UDC, and that a consultant is under contract. We initiated efforts to examine the Request for Proposal (RFP) and the Statement of Work (SOW) for that activity. In February's County Comments, we noted LU's Feb 10 minimal response to our itemized list of relevant documents, informally transmitted in a Feb 5 e-mail to LU after telecon discussions starting weeks earlier.

We were allowed on Feb 10 to see only a small fraction of what we had asked for. The UDC re-write consultant RFP includes a SOW which at pg 4 of 14 says, RE: Zoning,

". . . Develop new planning tools, incentives and zoning approaches as the basics for a revised code which will provide New Castle County greater ability to entice investment and manage change in ways which will benefit the County. Assist in modifying or writing ordinances to support plan implementation and zoning objectives. Identify barriers in code which inhibit investment and business expansion and develop enhanced regulatory recommendations. . ."

This invites softening the UDC's tools for assuring that development occurs comprehensively.

Comprehensive development, essential to expanding the economy at minimum public cost, seeks to assure that public infrastructure supporting land use intensifications is created concurrently with the intensifications. If too soon, tax rates must increase to pay the fare. If too late, infrastructure construction increases public costs by disrupting prior intensifications. Too soon and too late both diminish quality of life by making economic expansion more costly and less sustainable. The comprehensive development concept is firmly embedded in Delaware's Quality of Life Act of 1988, part of NC County's enabling legislation. But NC County's UDC puts the teeth into our land use regulatory process.

At pg 7 of the SOW in the RFP, we find that "County may require other related services not specifically listed." That says that County will give direction later that they are ashamed to expose to the public.

And at pg 9 of the SOW in the RFP, we find in a Cost Proposal section that hourly rates are solicited for use in ". . . developing budgets and detailed Statements of Work once contract is in place. . ." That says that what's in the SOW in the RFP is a farce. LU will EVENTUALLY expose what the REAL Statement of Work will be, but right now it's unfit for public exposure.

Indeed, NOT showing in the SOW what REALLY is to be done prevents the Consultant from having any reasonable opportunity to determine what will be the necessary staffing level to complete the activity. Unless related correspondence and/or meeting and telephone conversations conveyed characterizations of what changes LU wanted to see, the RFP should have produced zero responses. Therefore the informally transmitted itemized list of information that must be made public needed to proceed to a formal FOIA Request (in my name) which was hand-delivered to LU at mid-afternoon on Feb 10, 2015. The itemized list follows:

- The RFP (request for proposal) sent to candidate consultants for updating the UDC
- A list of candidate consultants that the RFP was sent to
- SOW (statement of work) contemplated in RFP
- Selected Consultant's response to RFP, including exceptions (if any) to SOW in RFP
- Contract and performance schedule for UDC update consultant's activity
- Correspondence (or other documentation, including telecon summaries)between LU and the UDC update consultant regarding features of thepresent UDC to be preserved in the update.
- Same regarding features of present UDC to be changed in the update, and description(s) of the change(s)
- Correspondence (or other documentation, including telecon summaries) between LU and the public (individuals, organizations, companies, etc.) suggesting changes to the present UDC to be considered in the update.

“What we see is disappointment on all counts.”

Delaware's FOIA defines "public record" at 29 Del. C. Sect. 10002 (l) as "information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced." Following that statement is a list of exceptions that do not apply to anything in the itemized list within the Feb 10 FOIA Request.

The above was discussed at the Feb 17 CLNCC meeting. The next day, County Exec Tom Gordon telephoned me and said "I understand that you're mad at me." I responded that I'm not mad at HIM at all, and hadn't bothered him previously about requesting public access to public info because it hadn't occurred to me that

access would be denied by the LU GM, whom I AM mad at. The result: He agreed to direct the LU GM to provide the requested info and that it would be made available at a 9 am Feb 25 meeting in Tom's office.

Formalizing a FOIA Request starts a clock, according to Section 10003(h)(1), requiring a response by the 15th business day thereafter, granting access, denying access, or explaining why how much more time is needed to grant access. Excepting weekend days, the Feb 16 holiday, the Feb 17 and March 5 snow days, the 15th day ended at the close of business on March 6.

Hard copies of eight documents were provided for my retention at the Feb 25 meeting, and accepted after I repeated that I had asked only to SEE them, because the FOIA authorizes copying charges for copies to be retained. I was assured that there would be no charge for the copies to be retained.

Despite the specific request for correspondence (or other documentation, including telecon summaries) in the last three items in the FOIA Request itemized list, there are ZERO E-MAILS AND ZERO LETTERS between LU and the UDC Update consultant or between LU and anybody else within the eight documents received at the Feb 25 meeting, and NOTHING MORE HAS BEEN RECEIVED as of this writing.

Especially in light of some of the info that the Feb 25 documents expose, it is simply incredible that nothing transpired by e-mail, letter or telecon. LU is simply thumbing its nose at the FOIA and the Oath of Office.

Examples are apropos.

First, in a document identified as "UDC Update Consultant Draft Scope of Work Revised draft Dec 16, 2014" (not the latest version) we see under a heading entitled "Early Products (Jan 2015 -April 2015)" and a subheading "B Short-Term UDC Amendments" an item 1 "Streamline Development Review Procedures: Working with County staff and stakeholders, we will identify ways to streamline the development approval process . . . Techniques will reduce upfront costs in development approval process, and emphasize procedures that involve staff approval rather than discretionary public hearings."

Further in the same document, under a heading entitled "Traffic Impact and Traffic Concurrency Standards" we see the following: "Traffic level of service (LOS) was identified as a community priority, and a constant source of delay and expense in the current development process. We will revise the standards . . . and make necessary changes to UDC Division 40.11.100. The revise (sic) LOS will be targeted both to area of the County and to development type. . . We understand that you are seeking to contract separately with a transportation consultant. We will work with your transportation consultant developing an overall approach and revision to the County's LOS issues. . ."

Still further in the same document, a list of Exclusions, identifying services NOT included within the UDC Update Consultant's scope of services. The third such excluded item: "Studies or documentation needed to support the design standards, densities, intensities, setbacks, spacing requirements, environmental restrictions, or any other standards that require specialized technical analysis. Such studies and data may be available from the Comprehensive Plan or shall be provided by the client."

A later version of this document, identically titled but re-dated Feb 10, 2015 (hand-written) includes identical text under "Streamline Development Review Procedures . . ." and under the list of Exclusions. But the entire

"Traffic Impact and Traffic Concurrency Standards" text, above cited, is absent. Perhaps that means that an additional consultant has been or is about to be engaged for updating UDC Article 11. But LU hasn't provided an RFP or a SOW for this separate activity, and hasn't identified a selected consultant even though the first three items in the Feb 10 FOIA Request are written broadly enough to cover separate RFP's and SOW's for multiple UDC Update consultants.

The Feb 10, 2015 version of the "UDC Update Consultant Draft Scope of Work" document cites several times a NC County LU Department "Action Plan & Work Program" dated Oct 2014 and authored by the LU GM. An "Immediate Actions" section of that program includes an "Integrating Land Use and Transportation" category stating that "it is essential that we reduce congestion and shift transportation modes by integrating land use goals with practical and safe transportation solutions." But for that statement, all the foregoing appears to suggest that LU's hidden desire is to relax existing LOS constraints in the UDC. LU appears to prefer conducting that element of public business as long as possible in private, without public oversight opportunities, violating the FOIA and the LU GM's Oath of Office.

Relaxing the UDC's LOS requirements would certainly increase congestion on our transportation system. Time lost to congestion, costs associated with more collisions per mile traveled, resulting bodily injuries and even lives lost, can all be expressed in dollar terms. The Insurance Commissioner does some of that year after year. Those costs must be borne by the public. The effect of changing the UDC's worst allowable traffic impact from the "D" LOS to the "E" LOS can be expressed in public costs. yet we have seen no effort to quantify these costs, from either of the two transportation agencies we currently support - - DeIDOT at the State level and WILMAPCO at the Federal level - - both with transportation dollars to spend and both with the ability to track these costs. Comes now NCC LU with next to no dollars to spend - - and without a transportation-related revenue stream - - seeking to undertake planning for transportation system efficiency. It's not funny/ha ha, though it certainly is funny/peculiar.

We had hoped to get assurance from the FOIA Request that the UDC update activity will satisfy three objectives:

- Preservation or strengthening of external and internal Concurrency provisions already in the UDC. External concurrency involves public facilities and infrastructure needed to serve the intensification of land use. Internal concurrency applies to staging mixed use developments so that (for instance) all the box stores DON'T get built and occupied before any of the office or residential space is started. .
- Preservation of the transportation system impact requirements of the UDC. Article 11 of the UDC says that without a showing via a Traffic Impact Study (TIS) that the Level of Service (LOS) on affected elements of the transportation system will be no worse than the "D" LOS, building permits for any part of new major development (with or without a rezoning) must not be issued.
- Creation of a public hearing opportunity - - a resurrection, actually - - very early in the land use regulatory process. This would enable public oversight of what land use intensifications are starting thru the regulatory process long before they are practically chiseled into marble. .
- In addition, we hoped for convincing evidence - - draft work products - - indicating that something already exists beyond the SOW. What we see is disappointment on all counts.

Community Mobilizes to Protect Public Review Process

By Tom Dewson

On November 25, 2014, two days before Thanksgiving, an innocuous sounding ordinance was introduced to County Council. It's worded very simply. In exchange for a modest increase in open space, it states "...the floor area of parking structures shall not apply to the maximum gross floor area allowed as a minor land development plan..."

It was only after several weeks of analysis that residents realized how profoundly impactful this ordinance could be. If enacted, it would change the development review process in a very fundamental way.

Today, the approval process in New Castle County includes a critically important system of checks and balances. Development plans above a certain size are required to be reviewed by the independent Planning Board, with input from the public, followed by consideration by County Council, again with public input.

Ordinance 14-127 eliminates this public review process for many parking garages.

Imagine a high rise parking garage on any office, retail or residential complex in New Castle County being approved with just the ok of the County Land Use Dept. No review by the independent Planning Board, no review by County Council, and no forum for public input and discussion into the decision. Importantly, the ordinance also provides a "backdoor" to allow other unacceptable plans to be approved without public review.

Community reaction to this proposal has been strong and broad-based. Several hundred petitions of objection were sent to the Planning Board, and on Tuesday, March 3 -- in the midst of an ice storm -- residents shared their concerns with the Board. As might be expected, several other speakers -- who clearly see the opportunity to undercut the UDC and freeze the public out of the land use process -- spoke in support of this change.

The ordinance is now being re-drafted. Once available for review, the public will need to evaluate the substitute language and once again have our views heard.

Any ordinance that diminishes key provisions of the UDC, weakens the checks and balances in County government, and abolishes one of the public's most basic rights is a step in the wrong direction. Many residents continue to believe we can move our County forward in a way that benefits the developers AND the public interest. We look forward to finding that "AND", and growing our County for the benefit of all.

Tom Dewson is a member of an ad hoc group of residents advocating for responsible land use.

ATTORNEY GENERAL'S OFFICE READY TO HELP WITH HOUSING PROBLEMS

The highlight of February's Civic League Board meeting was a presentation by Deputy Attorney General Jennifer Smolko on their programs and services related to housing developed in cooperation with the Delaware Housing Authority. It is referred to as "Delaware Homeowner Relief." Whether you have a problem with mortgage relief fraud, foreclosure scams, just trying to save your home, or finding a place to live, there are counseling services and relief programs available. They are holding workshops for the public and there are many ways to reach them. Here is a list of all you should know if you need help:

Delaware Housing Workshop, MARCH 24th; 3-5 P.M. loan servicers available; 5:00 P.M.

Educational Workshop; Chase Center on the Riverfront, 815 Justison St., Wilmington All kinds of help at one place.

For more information:

www.homeownerrelief.com or www.attorneygeneral.delaware.gov
Consumer.protection@state.de.us

Delaware Homeowner Relief Hotline 1-800-220-5424

A.G.'s Foreclosure Prevention Office: 302-577-8393 or 8378

Learn about the Delaware Mortgage Loan Modification Services Act

You can also email them at statutory.licensing@state.de.us

We would also urge anyone who needs guidance on choosing options to contact one of the housing counseling agencies.

Clarifi, Wilmington 800-989-2227 or www.clarifi.org

DE Community Reinvestment Action Council 302-298-33250

First State Community Action Agency, New Castle 302-498-0454

Hockessin Community Center 302-239-2363

Housing Opportunities of Northern DE, Wilmington 302-429-0794

Interfaith Community Housing of DE, Wilmington 302-652-3991 www.ichde.org

Neighborhood House, Inc., Middletown 302-378-7217 Wilmington 302-652-3928 www.neighborhoodhse.org

West End Neighborhood House, Inc., Wilmington 302-658-4171 www.westendnh.org

YWCA Delaware, Newark 302-224-4060

**Do not wait until
last minute when
there is little they can do.**

**Don't assume you know
all you need to know.**

2015 CLNCC Meeting Dates

7PM on the Third Tuesday of the Month

17 March 2015
21 April 2015
19 May 2015
16 June 2015
21 July 2015
15 September 2015
20 October 2015
17 November 2015

Paul J. Sweeney Public Safety Building
3601 N. DuPont Highway New Castle, DE 19720

Civic League for New Castle County

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CLNCC Meeting

3/17/15 7-9 PM

3601 N. DuPont Highway New Castle, DE 19720

Guest Speaker

Christopher J. Curtin

Deputy Attorney General

Common Interest Community Ombudsman

7-9 PM Tuesday 17 March 2015

Civic League For New Castle County March 2015 Meeting

Paul J. Sweeney Public Safety Building
3601 N. DuPont Highway New Castle, DE 19720

<http://www.civicleaguefornc.org>

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