
NCCCL COUNTY COMMENTS

UPDATING THE UDC: DON'T DRINK THE KOOL-AID YET !

by Vic Singer 4/17/2015

At the 1/20/2015 CLNCC Meeting, I noted that updating and revising NC County's Unified Development Code had been a major discussion topic during the 2012 election. But by midyear 2014, although a Consultant was finally under contract, I had heard nothing about progress being made. So I announced my intention to make inquiries. After several telecons, I sent a 2/5/2015 e-mail to Land Use Department General Manager (LU GM) Eileen Fogarty's Aide, exactly as she had directed, with the following eight item list of what I expected to see on a visit to LU on 2/10/2015:

- 1) The RFP (request for proposal) sent to candidate consultants for updating the UDC;
- 2) A list of candidate consultants that the RFP was sent to;
- 3) SOW (statement of work) contemplated in RFP; 4) Selected Consultant's response to RFP, including exceptions (if any) to SOW in RFP;
- 5) Contract and performance schedule for UDC update consultant's activity;
- 6) Correspondence (or other documentation, including .telecon summaries) between LU and the UDC update consultant regarding features of the present UDC to be preserved in the update;
- 7) Same regarding features of present UDC to be changed in the update, and description(s) of the change(s);
- 8) 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.

During that visit, I saw copies of only the RFP SOW and the successful bidder's response, and was advised that nothing else on the list would be made available. Since several statements in the SOW suggested an effort to WEAKEN essential regulatory controls already in place in the UDC, I completed a FOIA (Freedom of Information Act) request form including the above list, and submitted it formally on 2/10/2015. My Feb 2015 County Comments essay dated 2/11/2015 expands the above summary.

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At the next CLNCC meeting on 2/17/2015, I summarized the underwhelming response thus far. The next morning, County Executive Tom Gordon telephoned and asked that I meet at 9 am 2/25/2015 with him and then with the LU GM. During that meeting, he directed the LU GM to provide everything I had requested. The LU GM immediately gave me a 3/4 inch thick packet of paper that was found, upon later examination, to be only a fraction of the itemized list. Indeed, that the packet was incomplete was acknowledged on its cover page. My March 2015 County Comments essay, dated 3/8/2015, explores all the documents received thru 2/25/2015 more thoroughly.

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Filing the 2/10/2015 FOIA Request started a clock according to Section 10003(h)(1) of the FOIA. There must be 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 2/16 holiday, and two snow days (2/17 and 3/5), the 15th business day ended at the close of business on March 6. I had remained silent from 2/25 until 10 days past the 3/6 deadline. On 3/16/2015 at 4:12 pm I e-mailed Tom Gordon pointing out that I had received NOTHING since the incomplete packet on 2/25/2015, and that the LU GM is entitled to thumb her nose at the FOIA for 15 business days - - until 3/6/2015 - - but not thereafter. She was then 6 business days beyond the lawful suspense duration, and was therefore in violation of what the FOIA demands and also the oath of office.

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Fourteen minutes later, at 4:26 pm, I received an e-mail from the LU FOIA Administrator "to inform [me] that your FOIA information [I] requested is still be (sic) complied and [I] will be notified tomorrow on its completion." At 2 pm on 3/17/2015, I picked up a stack of paper about 6 inches thick.

WHAT THE 3/17/2015 DISCLOSURE TEACHES:

The 6 inch stack of paper includes copies of numerous PowerPoint presentations to a large variety of groups inside and outside of government between early 2014 and early 2015. The following verbatim quotes are key thoughts that appear over and over in the presentations that can be interpreted as touching three of the four focal points that we regard as features the land use regulatory process essential to COMPREHENSIVE DEVELOPMENT: Maintaining UDC's transportation system LOS, Maintaining UDC's Infrastructure Concurrency requirement, and Resurrecting very early public exposure of development proposals.

- Challenges: Transportation often drives development decisions.
- We heard: Reduction in traffic congestion
- Integrate transportation solutions to reduce congestion & improve TIS process
- Preferred outcomes: Create transportation choices to reduce congestion.
- Develop and integrate pragmatic solutions to reduce congestion in key corridors
- Early community input, ongoing interaction .between staff & community
- Strategic Actions: concurrency.
- Action Strategies: Encourage community input to identify issues at an early stage
- Revise UDC [to] incentivize desired economic development while managing change *in ways which add value to the community*

These SOUND good - - any of us can read our preferred interpretations into the quoted words. But we don't know what they REALLY mean until we see how they are expressed the UDC Update Consultant's Statement (or Scope) of Work (SOW).

The most recent SOW provided under the 2/10/2015 FOIA request was first received in the 2/25/2010 package. It is an updated version of an earlier "Consultant Draft Scope of Work Revised Draft Dec 16, 2014" hand dated 2/10/2015 (the same date as the FOIA request). The Dec 16 2014 version had been part of the 2/25/2015 packet I received in Tom Gordon's office. Several of its details were discussed in the March County Comments essay. The major change from the Dec 16 2014 draft is the omission of its entire section entitled "Traffic Impact and Traffic Concurrency." Elimination of that section in the 2/10/2015 draft SOW could be interpreted as a victory except for two evident facts.

First, a 1/27/2015 e-mail from the UDC Update Consultant to the LU GM, and related correspondence, are consistent with a new overlay zoning scheme that would create Economic Development Districts and Neighborhood Conservation Districts. The 1/27/2015 e-mail addresses regulatory incentives of the Economic Development Districts, including "Modifications to concurrency in traffic impact analysis such as exemptions from traffic impact studies, level of service standard reductions . . . that reduce the cost of compliance.

Second, except for the absence of the term "Overlay Zoning," both the 12/16/2014 and 2/10/2015 SOW drafts already include the terms "Economic Development Districts" and "Neighborhood Conservation Districts" in text that conveniently avoids mentioning that relaxations of the concurrency, LOS and TIS requirements are being contemplated.

The apparent UDC Update strategy is to soften up the audience -- the public -- with sweet talk before exposing the bitter pills. We are to be lulled into complacency before being urged to drink the Kool-Aid.

And at the regulatory level -- how individual land use intensification applications are to be handled -- exactly the same strategy again appears: Keep the public in the dark until it's too late to mount an effective defense, thereby making the Kool-Aid easier to swallow. That strategy is clearly stated in both the 12/16/2014 and 2/10/2015 SOW drafts, in text under a "Short Term UDC Amendments" heading and a "Streamline Development Review Procedures" heading. That text: "[E]mphasize procedures that involve staff approval rather than discretionary public hearings."

Eliminating "discretionary" hearings means hearings other than the Planning Board and County Council public hearings which are mandated by State law. It is hardly credible that the UDC Update SOW would include such a provision if it didn't reflect the views of the LU GM. Those views boldly contradict her advocacy, in numerous presentations to many groups in and outside of government, of early involvement of the public in land use intensification applications, is just sweet talk before the Kool-Aid comes into view.

SIGNS OF PROGRESS UP TO FEB 10, 2015 HAVEN'T BEEN FOUND

Surprisingly, nothing found thus far in the responses to my 2/10/2015 FOIA request discloses anything amounting to a probing evaluation and weighing of merits and demerits of alternative approaches to revising and updating the UDC. But concerns with scheduling of exposures to bitter pills are evident, aptly described as bickering. A total expenditure of \$93,000 thus far is shown at 1/20/2015 in an internal LU e-mail. The most recent DRAFT of the SOW for updating the UDC is dated 2/10/2015, the same date as the FOIA request. Unless the presented evidence is woefully non-responsive, all that can be regarded as progress between contract award and 2/10/2015 is some rather expensive bickering over when the SOW should say what, i.e., no REAL progress at all.

The LU GM is scheduled to appear at the 4/21/2015 Civic League meeting. Perhaps she will explain the contradiction between her advocacy of early public involvement with land use intensification applications, (during presentations to many groups in and outside government), and her opposition to early public involvement, in the UDC Update SOW. Perhaps also she will quantify how much difference in total public cost could be expected between maintaining and relaxing existing transportation system impact constraints and concurrency requirements. In other words, will the public benefit more from selecting the path that the UDC Update SOW reflects or continuing with the existing focus on COMPREHENSIVE development .

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CLNCC Meeting

4/21/15 7-9 PM

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

Guest **Eileen Fogarty**

NCC Department of Land Use General Manager

2015 CLNCC Meeting Dates 7PM
on the Third Tuesday of the Month

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

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