

The Pendulum Is Swinging

Vic Singer

New Castle County's Unified Development Code, UDC, went into effect on 12/31/1997 & has been amended many times over the years, though its basic strategy has been preserved. The UDC uses a threshold strategy. Almost entirely in a single document, the UDC establishes thresholds that must be met or exceeded by every land developer in all zoning districts or in particular zoning districts. Compliance with the UDC is required county-wide, but on matters where the UDC is silent, the developer may proceed in any fashion he wishes.

The strategy of the predecessor system for controlling land use intensification control system was results-oriented, based heavily on judgments by the planners in the Planning Department (later re-named Land Use Department) that uniquely allowed latitudes aimed at imagined results that most people would LATER regard as desirable. Additionally, the results-oriented strategy lends itself to parcel-by-parcel regulation rather than uniform regulation county-wide. Results-oriented regulation encourages separate deals on each parcel.

As might well be anticipated for results-oriented regulation, frequent criticisms arose -- both among hopeful developers & development opponents -- that some developers were treated more favorably than others & that some planners graded some proposals more favorably than others. The results-oriented decision process obviously makes fairness judgments impossible until the future arrives. However, it was more readily demonstrable that critical needs of the expanding community were getting insufficient attention.

Unjust treatment arguments also appeared.

Land use intensification -- economic growth -- demands infrastructure additions. Favoritism & glossed-over critical needs both affect how much of the cost of needed infrastructure will be borne by the developer & how much will be borne by the public (government). How is the cost of growth fairly distributed between those already there & those accommodated by the new development? What about the elderly widow living out her declining years on a fixed income -- the little old lady in tennis shoes. What is her fair share of the public cost of economic growth that she won't live long enough to benefit from? Should -- or shouldn't -- the largest share of the cost of new development be carried by the new development?

Coupled with a concurrency requirement, the UDC's threshold strategy made speculations about glorious results unnecessary & postponed wrestling with the fairness question. The concurrency requirement is that if infrastructure already existing or already under construction or already under contract for construction was sufficient to accommodate the expanded need, permission to go ahead was granted on a first come first served basis. If infrastructure was insufficient, permission was denied, but if the developer's desire to proceed was great enough he could volunteer to contribute a negotiated amount to eliminate the deficiency.

About a decade after the UDC was adopted, provisions were added to accommodate redeveloping but not rezoning parcels that had become obsolete or obsolescent without reaching the requirements for new development, so long as a

In Memoriam

The Civic League is mourning the passing of a dear friend & former President, Fritz Griesinger. Fritz was passionate about the rights of homeowners & worked tirelessly to make Pike Creek Valley the lovely & liveable place it is today. He was one of 3 key persons who fought to get the hospital built near Christiana.

NCCCL April Votes

- Donation to Christiana Presbyterian Church
- Donation in Honor of Joe Reda
- Recognizing Daniel Bockover for dedicated service

measured amount of progress towards new development requirements was reached. The measurement scheme, which enabled trading improvements against one another, was quite crude & unsatisfying, was enacted because nothing better was conceived.

Among the strengths of the UDC is its County-wide applicability, that discourages deal-making on individual parcels. Any advocate of a special deal for a particular parcel couldn't avoid questions on justification for exemptions from any blanket county-wide requirement. The Neighborhood Preservation Overlay District proposal avoids any need for such justifications by requiring that a separate deal be cut for every NPOD (Proposed Div. 40.16.000.B & Sec. 40.02.240).

The proposed NPOD ordinance restricts (for now) the NPOD designation to existing neighborhoods approved prior to adoption of the UDC (via proposed Sec. 40.16.102.B.2) & requires every NPOD to include at least one residential zoning district & all or part of any non-residential districts (via proposed Sec. 40.16.101.A.2). Via proposed Sec. 40.16.102.H.1 thru 5, the proposed NPOD ordinance preserves UDC Environmental, Transportation Impact, Sewer & Water (supply) Impact, Site Capacity & Concurrency Calculations, & Impact Fee requirements .

The practical effect of the Sec. 40.16.102.H.1 thru 5 prohibitions that County Council creates, is to reserve deal-making on these matters for County Council itself rather than the Land Use Department. The LU Department is evidently authorized by proposed Sec. 40.16.301 to cut deals involving a unique Conservation Plan for each NPOD "to protect & preserve the features critical to the neighborhood" that would become a part of each NPOD rezoning ordinance. According to proposed Sec 40.16.301.H.1 thru 6, incentives may be included "to encourage conservation within the NPOD" such as (from H.4) "Develop(ing) appropriate lot area required for zoning districts within the NPOD" & (from H.6) "Other regulatory requirements that do not increase the density . . . to an extent greater than permitted by the underlying zoning district." Note that without the word "other" in H.6, the lot size changes authorized by H.4 would be limited to increases because decreases would increase the density. The word "other" in H.6 prevents H.6 from limiting H.4. Accordingly proposed Sec. 40.16.301.H.4 authorizes the LU Department to cut deals that increase density via the NPOD Conservation Plan, subject to Council approval.

Indeed, proposed Sec. 40.16.101.A.3 says: "If there is a conflict between the NPOD regulation (including this Article & any NPOD Conservation Plan) & the underlying zoning district, the NPOD regulations apply." The stated clear intent is that by enacting an NPOD rezoning, County Council automatically repeals any prior ordinance provision that is contrary to Council's current wisdom, without showing the words to be stricken. As discussed in prior County Comments essays & prior correspondence with the LU Department, that violates State Law, as does Section 4 of the NPOD proposed Ordinance. Neither the LU Department nor the County Law Department have offered any real justification for the State Law violations.

In addition to the above-described protections that proposed Sec. 40.16.102.H 1 thru 5 provide for the listed UDC provisions, proposed Sec. 40.16.102.H.6 also seems to preserve "Any other requirements of the UDC that are not specifically superceded by this section or a NPOD conservation plan." But the protection is illusory. Any NPOD Conservation Plan can wipe out any prior requirement merely by mentioning it. The question as to whether such a wipeout on -- say -- the third NPOD is applicable merely for that third NPOD or for all subsequent NPODs has been posed to the LU Department previously but never answered.

In summary, the proposed NPOD ordinance shows that the pendulum she are a-swingin' in some respects back to where we were before the UDC was enacted. The protections for our quality of life that the UDC provided are being nibbled away by enabling the argument that the diminutions apply to small parcels rather than county-wide, thereby making little difference in the big picture.

Dear Members & Former Members of the Civic League

Christine Whitehead

Leaders of the Civic League are enjoying a period of frequent dialogue with the County Executive & the Department of Land Use. Gordon wants to hear what problems civic leaders have in different regions, & he brings in people to try to solve them. As we go through revising the Unified Development Code, all of the leaders who shared comments on proposed ordinances with the DLU have been included in a focus group to shape the final drafts.

Thus, our sense of responsibility to reflect the opinions of our members, & indeed all of our neighborhoods in New Castle County, is heightened. While some younger members have joined our Board, we feel strongly the need to hear from many 30 to 40 year olds about whether they differ in their priorities & concerns from the 50 to 80 years olds who make up the majority of our Board. All socio-economic indicators say that they are steering away from early marriage & home ownership which was the routine for us, but does that translate into a desire for an urban lifestyle built around dining out & easily accessible entertainment including sports? How will that impact the future of building in this County?

The Civic League still needs experienced leaders also. If you have served as an officer in your homeowners association or regional civic alliance, please consider joining our Board. Perfect attendance is not required. We meet January to June, take off July & August in non-election years & meet September to November. For many years we have been meeting the third Tuesday in each month. In an election year with statewide primaries, we now host a debate in the Spring or August as the Primary Election is early in September. In 2014, the largest Candidates Night was taped & put online. This year we will have a smaller number of candidates at each event as we will return to dividing them among meeting dates.

We welcome nominations from our member groups. Probably our first priority at the moment is to find more people who enjoy writing. We would like to be able to get a report from each region about what is happening there so we can compile them for County Comments, but we will take them verbally if no one likes to write. Building is starting to speed up again.

Our County Budget experts have aged out, so we would especially like to recruit a couple of Board members who like scrutinizing budgets. Our Board members develop an understanding of the UDC which controls land use in this County, & some learn about land use legal cases. We always seek attorneys still in practice to file cases, of course, but it would be beneficial to be joined on the Board by another retired attorney or more logical people who like to get into this. There are times when one can keep a plan from winding up in dispute with early input. That is one of the things which the Land Use Department under Gordon is seeking once again--having neighborhoods see concepts on which a developer is working before one spends a great deal of money on detailed planning. Those meetings will be attended by a planner from the Department of Land Use to insure that the developer's attorney provides correct information to the community.

So these are exciting times to be a part of the Civic League. We would like to have you renew your membership as an individual or community, & dues have not changed. Those are only paid annually, so see when you last paid. If it has been over a year, please fill out the form below & send a check to the Post Office Box on the letterhead. To send us nominations for our Board or an office, please email me at christine2w@aol.com or Frances West at EdFran11@verizon.net or send names to the Post Office box above. If you attend the Annual Meeting, you can nominate from the floor. You must know people who care enough about our fellow residents & the place we all call home to get involved as you have been.



CIVIC LEAGUE for NEW CASTLE COUNTY

Informed Citizens for Sound County Growth

P.O. Box 5562 Marshallton, DE 19808
(302)529-1529 www.civicleagueforncc.org

MEMBERSHIP FORM

Type of Membership:

- Individual / Couple \$25
- Non-profit Organization \$25
- Civic Association / Maintenance Corporation \$ 25
- Regional Civic Organization \$25
- Business, less than 99 employees \$25
- Business, more than 99 employees \$50
- Government agency \$ 25

Name _____ Title _____

Organization_(if any)_____

Mailing address _____

May we publish in Directory? yes no

Email address _____ May we publish in Directory? yes no

Telephones Cell _____ Home _____ Off. _____ Publish? yes no

Method of paying dues: ____ check enclosed ____ amount ____

Credit Or Debit Card [Please use PayPal on our website.]

Please Return To : Civic League for NCC P.O. Box 5562 Marshallton, DE 19808

Membership Dues are used to pay the expenses of our volunteer lobbyist to cover the Legislature in Dover & County Council & to keep us informed of pending legislation. We now have the expense of renting meeting space, maintaining a website, & doing mailings. In election years, we have to have larger meeting halls for several debates. Most volunteers donate their expenses, but that may not always be the case in the future. .

Processing By Recipient:

- Information recorded by Treasurer Date _____
- Check or Pay Pal deposited & recorded Date _____
- Copy to Membership & Editor CC Date _____
- Copy to Vice President w/file Date _____

Fritz Richard Griesinger AGE: 82 •

Fritz Richard Griesinger, 82, of Cokesbury Village, Hockessin DE, passed away suddenly on April 21, 2016. He was born on October 25, 1933 in Red Bank, NJ to Richard & Marie Griesinger. He graduated from Drexel University, where he studied chemical engineering, was a member of Alpha Pi Lambda, & met his wife, Shirley Lippincott Griesinger.

During his professional career, Fritz worked for Worthington Corp., A. R. Dervaes, & A. C. Supply Company in the sales & service of industrial pumps & compressors. In the early 1980s he founded Pumping Specialists, Inc., from which he retired in the mid-2000s.

Fritz was very active in local community activities, including land use issues & considered himself a community activist. One of his major accomplishments was serving as a key member & treasurer of the Suburban County Hospital Task Force. This all-volunteer group was responsible for determining the location of what would become the Christiana Care Hospital. Fritz was also instrumental in locating the Kirkwood Branch of the New Castle County Library & the Pike Creek Substation of the Millcreek Fire Department.

He was an active member of the Pike Creek Valley Lions, the New Castle County Planning Board, Civic League for New Castle County, Pike Creek Valley Civic League, & WILMAPCO. He was involved with Junior Achievement at Skyline Middle School.

Fritz advised many neighborhoods in New Castle County on forming or strengthening their civic associations. He received numerous awards, citations, & proclamations in recognition of his commitment to serving his community as a volunteer. He enjoyed sailing, driving his Corvette, & talking about sports with his grandsons
Fritz was predeceased by his parents; sister, Mary Lou G. Duff; & daughter in law, Deborah F. Griesinger. He is survived by his wife of 57 years, Shirley Griesinger; his son, Eric F. Griesinger of Bel Air, MD; his daughter, Ann G. Holland & her husband, Tim of Randleman, NC & grandsons, Andrew E. Griesinger & Mark R. Griesinger.

A memorial service will be held at Cokesbury Village on May 20, 2016 at 1:30 pm, with a reception following the service.

In lieu of flowers, gifts can be made to the charity of your choice -



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CLNCC Annual Meeting

5/17/16 7-9 PM

Topic

THE WILMINGTON SCHOOLS PLAN

Why is it needed? How will the new districts look? Will the State pay for the changes?

Bring your questions about the process.

Guests will include the Red Clay District Superintendent & the Hon. Jea Street, a lifelong activist for better education. Additional Guest to be announced.

ELECTION OF CL BOARD MEMBERS & OFFICERS

Time

7-9 PM Tuesday 17 May 2016

Location

**Christiana Presbyterian Church
15 North Old Baltimore Pike
Christiana, DE 19702**