



COUNTY COMMENTS

Newsletter of the
CIVIC LEAGUE FOR NEW CASTLE COUNTY
Informed citizens for sound County growth

NOTICE OF ANNUAL MEETING & ELECTIONS

Tuesday, May 16, 2017

Christiana Presbyterian Church

7:00 P.M.

15 North Old Baltimore Pike, Newark, DE 19702

FEATURED GUEST: Jennifer Cohan, Secretary of Transportation

Civic League For New Castle County
Founded in 1962.

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The Civic League is a non-profit,
non-partisan,
volunteer organization.

The opinions expressed herein are
those of the authors of the individual
articles and not a position of the Civic
League unless so stated.

Authors are responsible for the
accuracy of their statements. The
Editor will accept corrections and
comments, as well as articles from any
member including residents of member
civic associations.

Articles may be edited to conserve
space and should be about the County.

Slate of Candidates for CL Board

President: Jordyn Pusey

**Vice Presidents: William Dunn
Nancy Willing**

Secretary: Barry Shotwell

Recording Secretary: Mike Johnson

Treasurer: Scot Sauer

Officers serve a one-year term. All directors will be
nominated for a three-year term.

Nominations from the floor or by proxy will be
accepted. Please contact Francis West to make
submissions.

The Civic League
meets the third Tuesday of each month
except July,
August and December.

Unless special events are being held,
the meetings are usually at the
Christiana Presbyterian Church Social
Hall on old Route 7 in Christiana.

The public is welcome to attend all
meetings which generally start at 7:00
P.M.

The agenda of the group is focused on
New Castle County government and
those State issues that impact County
government or our quality of life in
this County.

For further information, please visit
our website.

www.civicleaguefornc.org

2017 Bylaw Committee Amendment Recommendations

- **Article 2, Section 4:** Required Annual meeting and election quorum *is to be reduced by from 18 to 15.*
 - **Article 3, Section 2:** Required Board minimum membership *is to be reduced from 15 to 12.*
 - **Article 3, Section 2:** Required Board maximum membership *is to be reduced from 36 to 30.*
 - **Article 3, Section 3:** Directors shall begin their terms as of June 1 is to be revised to read: *as of June 1st or as of the 1st of the month after which an election is held.*
 - **Article 3, Section 4:** Delete "or by telephone or fax" and *add "or by any available form of communication.*
 - **Article 3, Section 4:** Delete "Two-fifths but at least eight" and *add Eight* members of the whole Board of Directors shall be necessary at all meetings to constitute a quorum for the transaction of business."
 - **Article 2, Section 2:** Add a sentence at the end of the section to state: *The quorum of Special Meetings shall be the same as that of the annual meeting.*
 - **Article 3:** Delete "a majority of which shall not be members of the present board," regarding the composition of the Nominating Committee.
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County Land Use Process Under Threat - Will County Administration Act?

By: Tom Dewson

All residents of New Castle County need to be aware of a serious threat to the integrity of the County Land Use approval process.

Since December, concerned citizens have been fighting the deeply flawed traffic study underway at Delaware National, the 262-unit residential development proposed for the former Hercules Golf Course. As designed, *the traffic study fails to account for over 20,000 vehicles per day.* The issue isn't the 16 intersections identified for study. It's the failure to properly account for traffic at these intersections. The recent Toll Brothers Supreme Court decision was clear--traffic capacity is allocated on a first-come, first-serve basis, and the County is the final decision maker. The County Code is similarly clear--trip generation from projects with recorded plans must be included. Yet, to date, *the County has refused to account for*

- 2.2 million square feet of approved but unbuilt space at AstraZeneca and the Experimental Station - over 1 million square feet of existing but vacant space at AstraZeneca, Experimental Station, Barley Mill Plaza, 4250 Lancaster Pike and Chestnut Run Plaza

All clearly have traffic rights that precede any new development, and all clearly impact some of the 16 intersections being studied.

As expected, objections have been raised that "the approved but unbuilt developments aren't close enough to be considered" and that "traffic studies haven't considered vacant space in the past". *None of these objections hold water.* Everyone who travels Route 141 knows it's a major employment corridor. Morning traffic flows from the suburbs to employers along the corridor, and returns in the evening. As for vacant space, this is a unique situation that can't be ignored -- vacant space is huge, it's nearby and it has prior traffic rights.

We filed a formal objection with the County in early March, and we await their response. *The County Administration has a watershed decision to make.* Left unaddressed, the integrity of the land use process will be seriously undermined -- for this and all future projects.

Q&A on Lightering/ Wharfage Fees and Applicability in Delaware

By: Victor Singer

◊ **WHAT IS "LIGHTERING?"** "Lightering" is transferring cargo between deep draft ocean vessels and shallower draft vessels going to or coming from up-river port facilities. For petroleum, the vessels are close enough together to use heavy hoses stretched or draped across the gap between the vessels.

◊ **CAN LIGHTERING BE DONE AT SEA?** Lightering can be done at sea, but when done in inland bays sheltered from heavy seas and storms, it's safer and less susceptible to demurrage fees incurred while waiting out inclement weather.

◊ **WHAT IS A DEMURRAGE FEE?** A demurrage fee is the charge that the user of a seagoing vessel pays to the owner when the time required for loading, transporting and unloading the cargo exceeds what was provided for in the terms of the contract. It is analogous to the per day charge for renting a car.

◊ **WHY IS LIGHTERING IMPORTANT TO DELAWARE?** A narrow 55 ft deep (low tide) trench in the floor of Delaware Bay, parallel to but separated from the 45 ft deep Delaware River channel, is easily accessible by fully-loaded deep draft ocean tankers. A mile wide portion of this trench, between 7 and 17 miles northwest of Cape Henlopen, known as Big Stone Anchorage, is more than a mile within the DE-NJ state line. Big Stone has been used for lightering petroleum for more than a half century.

◊ **IS LIGHTERING AT BIG STONE COVERED BY DELAWARE'S COASTAL ZONE ACT?** The Anchorage is subject to all of Delaware's laws, including the Coastal Zone Act. The CZA forbids bulk product transfers of materials delivered by sea. Since lightering of petroleum has been continuously ongoing at the Anchorage since before the CZA was enacted, it is a "grandfathered" non-conforming activity, but all expansions and extensions are subject to CZA conditions..

◊ **DOES THE CZA ALLOW LIGHTERING OF COAL?** The CZA forbids lightering of materials other than petroleum, even coal, a different mineral, because they are NOT grandfathered. That was the outcome of a series of lawsuits that reached the Delaware Supreme Court and the US Third Circuit Court of Appeals in the 1980's. A single company with a grandfathered right (via its predecessor companies) has been granted a CZA permit to lighter

petroleum at Big Stone. Up-river refineries, that contracted for petroleum lightering services before the CZA was enacted, may apply for separate CZA permits but have not done so

◊ **HOW MUCH PETROLEUM IS BEING LIGHTERED AT BIG STONE?** Data are closely held and hard to access. The 2006 proposal was prompted by an application from the lightering company to increase the amount of crude oil it could lawfully lighter at Big Stone from 100 million barrels/year to 125 million barrels. DNREC has disclosed that over 58 million barrels of crude were lightered at Big Stone in CY 2013. Not much goes to the Delaware City Refinery because the refinery's Coastal Zone permit enables receiving more crude by rail than the refinery can use. The petroleum lightered at Big Stone goes to refineries in DE, NJ, PA and other states on the eastern seaboard.

◊ **HOW MUCH GASOLINE DOES A BARREL PRODUCE?** A barrel of crude produces as much as 29 gallons of gasoline plus higher molecular weight hydrocarbons and residual oil (separately marketable products).

◊ **WHAT WILL THE FUTURE BRING?** Because of the Bakken Shale oil fields in the northwestern US and Canada and newly developed petroleum extraction technology, the US will inevitably become a major petroleum exporter rather than importer as in recent decades. Foreign sales of US petroleum was enabled some years ago, and pipeline connections to Gulf of Mexico ports have just been authorized. Billions of dollars have been invested in railroad tank cars for shipments to the East Coast and in port facilities are expanding rapidly, particularly upstream on the Delaware River. Large increases in Delaware Bay lightering volume are on the horizon.

◊ **DO FEES APPLIED ELSEWHERE TO LIGHTERING IN JURISDICTIONAL WATERS?** Lightering is one among several vessel services and fees termed "WHARFAGE." The Tariff for the Port of Long Beach CA defines "Wharf" as including "any wharf, pier, quay, landing or other stationary structure to which a vessel may make fast or which may be utilized in the transit or handling of goods and merchandise." It also defines "wharf premises" as "port terminal facility areas alongside of which vessels may lie or which are suitable for and are used in the loading, unloading, assembling, distribution or handling of merchandise." And it defines "wharfage" as "The charge assessed against merchandise calculated [as] set forth in this tariff for the passage of that merchandise onto, over, through or under wharves or wharf premises or between vessels or overside vessels (to or from barge, lighter or water)

when berthed or when moored in a slip adjacent to a wharf or wharf premise." Those definitions make clear that the Port of Long Beach sees fit to impose fees on any merchandise transported on vessels floating on the Port's waters.

◁ **IS THE PROPOSAL AN INTERFERENCE WITH INTERSTATE COMMERCE?** Lightering at Big Stone Anchorage is a service started, performed and completed entirely within Delaware's boundaries. It is no more interstate commerce than the tax on a hotel room imposed on whoever rents it, or the toll on I-95 at the DE/MD State Line, or at the Delaware Memorial Bridges. Nor is it an interference with Maritime law, since the Anchorage is seven or more miles upstream from the mouth of the Delaware River.

◁ **WHY DOESN'T DELAWARE HAVE WHARFAGE FEES FOR LIGHTERING AT BIG STONE?** There's no GOOD reason. A wharfage or lightering fee has been suggested from time to time since 2006 but never enacted. The company that has long enjoyed a monopoly right to lighter petroleum at Big Stone has many good friends highly placed politically. Legislators who have proposed a lightering fee have been strongly encouraged to back off or just ignored.

◁ **IS A FEE FOR WHARFAGE SERVICES NOW TIMELY?** For the next fiscal year, Delaware faces a revenue shortfall of about \$400 million, more than 10% of the current budget and more than \$400 per capita. Several years ago, HB 418 was filed by Rep. Edward Osienski (D, 24th District). Joint sponsors and/or cosponsors are Senator Karen Peterson (D, 9th District), Michael Barbieri (D, 18th District), Rep. Earl Jaques (D, 27th District) and Rep. John Kowalko (D, 27th District). It proposed a \$1 per barrel service fee on petroleum lightered at Big Stone, either inbound or outbound. The bill wasn't worked. Rep Osienski has promised to file the bill again as soon as several questions are answered that his staff hasn't found answers to in several years. Rep Osienski is willing to welcome co-sponsors or to turn it over to another Rep who would like to run it.

◁ **UNDER THE HB 418 PROPOSAL, WHO PAYS?** The "buck a barrel" proposal amounts to a tax less than 3.5 cents per gallon of gasoline derived from the lightered crude, but much less per gallon of the total amount shipped up river. Almost all the lightered crude is sold to non-Delaware refineries, and only a fraction of the gasoline produced finds its way back to Delaware..

◁ **IS IT FAIR TO IMPOSE DELAWARE'S REVENUE NEEDS ON NON-DELAWAREANS?** Fair or not, taxes imposed on businesses with revenues mostly from sales outside

the State of Delaware account for more than \$1 Billion - - more than 30% - - of Delaware's State budget. HB 418 represents only a small addition to our historic practice. And it is analogous to the separation charge imposed by most oil and natural gas producing states on their resources sold for use by Delawareans.



BIG STONE ANCHORAGE →
highlighted in pink

- ++ Anchorage 10 miles long, 1 mile (+) wide, 55 ft deep (low tide) with full depth access from ocean
- ++ Delaware River channel will be 45 ft deep when dredging is completed
- ++ Shallow shoals separate Anchorage and Channel
- ++ DE-NJ state line is more than a mile to northeast

Edited by Jordyn Pusey. Please contact with any corrections.