

September 2017



COUNTY COMMENTS

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

CLNCC Monthly Meeting

September 19, 2017

7:00 PM

Christiana Presbyterian Church
15 Old Baltimore Pike, Newark, DE 19703

Guest Speaker: Lt. Governor Bethany Hall Long

Civic League For New Castle
County

Founded in 1962.

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comments, as well as articles
from any member including
residents of member civic
associations.

News and Notes from the President

County Executive Meyer to Begin Holding Civic Umbrella Meetings

Our CE will be starting the civic umbrella meetings this month, on Sept 28th. This will be a good opportunity to discuss the myriad of issues that we prioritize in a direct setting. The administration is also attempting to attend local civic association meetings to understand the concerns of individual neighborhoods. If you would like to inform the administration of dates for your community meetings, please contact Ken Dunn at kdunn@nccde.org.

Please share with your executive board the matters you would like us to bring up at the first meeting.

We Want to Hear From YOU!

Our authors strive to provide content that is informative and timely so that current issues regarding New Castle County are familiar to our members. However, it would be greatly appreciated if our members could provide some feedback to let us know what type of content, topics, or issues you would like more of, or in addition to what we already offer. Please email Newsletter Editor/President, Jordyn Pusey with any and all suggestions. I look forward to hearing from you!

The Civic League For New Castle County 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.

We believe that informed citizens are the strongest defense against thoughtless and imprudent public policy. We value transparent, ethical government, and properly planned growth strategies that benefit all of New Castle County's Residents.

For further information, please visit our website.

www.civicleagueforncc.org

Hamilton Park/Pyles Lane Site Operable Units 24, 25, 26, 27 and 28 (OU-24, OU-25, OU-26, OU-27 and OU-28) New Castle, Delaware, DNREC Project No. DE-1284

Letter From Sarah B. Bucic, MSN, RN, Director, Civic League for New Castle County

The Civic League for New Castle County has been made aware of the remedial investigation ongoing in the Hamilton Park/Pyles lane area affecting 28 properties. The Civic League for New Castle County's mission is to provide information to help guide civic leaders and citizens of New Castle County in advocating for their own quality of life through careful review of new legislation and policies from State and County agencies. While we supporting the remediation efforts at the Hamilton Park/Pyles Lane site, we are concerned that the residences remain occupied during remediation.

As per the DNREC notice from July 19, 2017:

“The Hamilton Park/Pyles Lane Site ("Site") is a residential neighborhood located off of New Castle Avenue (Route 9) in New Castle, Delaware.” (p 3)

“DNREC initially investigated the surface soil at the Site in 2002. The soil samples collected during the initial environmental investigation did reveal elevated concentrations of metals in the soil on some properties in the neighborhood above unrestricted (residential) use standards.” (p 3)

“Soil within the top two (2) feet identified as having concentrations of metals and/or PAHs that could potentially pose an unacceptable risk to residents who are exposed to it, and not covered with a building or impervious surface, e.g. concrete, asphalt, must be removed and replaced with DNREC-approval material that meets residential use requirements.” (p 4)

The Agency for Toxic Substances and Disease Registry (ATSDR) notes that “PAHs can enter your body through your lungs when you breathe air that contains them (usually stuck to particles or dust)” and that “People living near hazardous waste sites can also be exposed by breathing air containing PAHs...Drinking water and swallowing food, soil, or dust particles that contain PAHs are other routes for these chemicals to enter your body...Under normal conditions of environmental exposure, PAHs could enter your body if your skin comes into contact with soil that contains high levels of PAHs (this could occur near a hazardous waste site)” [1]. In addition to PAHs, elevated concentration of metals have been found at the site for which the ATSDR notes is highly concerning, especially for children who are at higher risk of harm than adults [2].

Based on similar remediation activities at the Hercules Road & Lancaster Pike Property [3] which also contained chemical hazards in the soil and sediment, and taking into consideration the extremely close proximity in which residents will be carrying out their activities of daily living in relation to the remediation area, The Civic League for New Castle County believes that a fully transparent process must include:

- 1. A public meeting to explain the plan of remediation and any potential risks to community members**
- 2. Based on WILMAPCO's Route 9 Corridor Plan, residents should have the option of temporarily relocating during remediation activities**
WILMAPCO noted in their May 2017 report in their Major Zoning Recommendations that in the next 5 years a community buyout desirability study will take place and within 10 years a complete community relocation (if desired) could take place which could rezone Hamilton Park to commercial, institutional, or open space [4 - p 89]
- 3. Full community notification of potential risks by DNREC before and during remediation**
- 4. A public health contact person and contact information provided for community members**
- 5. Air monitoring for community safety and health during remediation**

Based on prior findings of contaminants in soil requiring remediation under the Delaware Department of Natural Resources and Environmental Control (DNREC) Division of Waste and Hazardous Substances, Site Investigation & Restoration Section, we believe it is necessary to monitor air and dust during all intrusive activities. Similar to the Hercules Road & Lancaster Property requirements [3], we believe at a minimum that air monitoring should be conducted initially at the beginning of the day, periodically during the day (every 30 minutes), when tasks change, and when visual observations of potential environmental concern are noted in the breathing zone. All air monitoring equipment should be calibrated according to the manufacturer's specifications prior to use each day and the community should be notified if any additional precautions for health and safety are necessary. Dust suppression and perimeter air monitoring plans should be in place to be protective of the health of residents [3, pp 24-28].

It is integral that the community health be protected during this remediation process.

Sarah B. Bucic, MSN, RN, Director, Civic League for New Castle County

[1] ATSDR. Agency for Toxic Substances and Disease Registry. (August 1995). *Public health statement: Polycyclic aromatic hydrocarbons (PAHs)*. <https://www.atsdr.cdc.gov/ToxProfiles/tp69-c1-b.pdf>

[2] ATSDR. Agency for Toxic Substances and Disease Registry. *Possible Health Risks from Exposure to Arsenic, Lead, and Polycyclic Aromatic Hydrocarbons, 35th Avenue Site Public Health Evaluation, North Birmingham, Alabama*.

https://www.atsdr.cdc.gov/hac/pha/35thavenuesite/factsheet_35%20ave%20site_soil_2015_508.pdf

[3] Brightfields. (April 2012). *Site health and safety plan for remedial action activities at the Hercules Road & Lancaster Pike Property, Wilmington, Delaware (DE-1492)*. Prepared For:

Toll Brothers, Inc.

https://onlinedocs.dnrec.delaware.gov/docfinity/servlet/repository?j_username=DNRECAPI&j_password=API@dnrec2012&id=8a8a81ef3785266b0137863f0b59108f&clearRedaction=false&annotate=true&thumb=false&pdf=true

[4] WILMAPCO. (May 2017). *Route 9 Corridor Master Plan*. http://www.wilmapco.org/Rt_9/Report/Rt9CMP_lowres.pdf

THE CHESTNUT HILL PRESERVE

by Vic Singer

A News Journal Aug 25 article erected a tombstone on the effort to force County or State government to buy the former Route 4 orphanage parcel -- "Chestnut Hill Preserve" -- for use as a public park. It was futile because standing law neither demands -- nor prohibits -- that outcome. The battle over the opposite situation -- what constitutes lawful and timely use of the parcel -- is about to begin.

The controlling law in New Castle County is the Unified Development Code, UDC, Chapter 40 of the County Code, enacted long ago by NC County Council. The "Intent" paragraph of UDC Article 1 and the "Purpose" paragraph of UDC Article 5 announce that the purpose of the UDC is to implement the County's Comprehensive Development Plan by establishing controls enabling development of parcels of land no worse than concurrently with the infrastructure needed to support the occupants of the parcels.

Section 40.01.015 "Intent" says: "This Chapter is intended to protect the interests of both current and future County residents and neighbors from the potential adverse impacts of land uses. At the same time, this Chapter is intended to respect landowners' rights to the beneficial use of their property. The regulations contained in this Chapter were designed to encourage greater flexibility and more development options while minimizing development impact on current property owners and the environment."

And Section 40.05.000 "Purpose" says: "This Article establishes the actual development capacity of individual sites based on current adequacy ("concurrency") of roads, water, sewers, and schools."

Section 40.05.000 continues as follows: "This Article requires an applicant for a rezoning, subdivision development plan or land development plan to conduct a carrying capacity analysis which regulates the maximum intensity of development based on actual infrastructure capacity. The carrying capacity analysis is designed to ensure that the public health, safety, welfare and quality of life of the citizens of this County are protected by preventing development from exceeding the existing carrying capacity of public facilities needed to sustain the proposed development."

Several varieties of infrastructure are listed in Section 40.05.000. Transportation system capacity is addressed as follows: "The County has numerous areas of congestion that may limit the development potential of a site. Each proposed development is allocated capacity based upon a traffic impact study for the proposed development. The allocation of this capacity sets a maximum development potential for each site." Later in the UDC, Section 40.11.210 establishes as the threshold of acceptability, the "D" Level of Service (LOS) in publicly sewered areas. It also provides that an intersection presently serving at the "E" LOS is acceptable if improvements already being constructed or covered by existing DelDOT contracts for construction will bring LOS to the "D" level.

The UDC's Section 40.11.000 states that "The purpose of this Article is to ensure that development occurs only where there are adequate transportation facilities in place, or programmed for construction. Transportation capacity is allocated to proposed land developments on a first come-first serve basis. The highway capacity shall be determined by a traffic impact study. No major land development or any rezoning shall be permitted if the proposed development exceeds the level of service standards set forth in this Article unless the traffic mitigation or the waiver provisions of this Article can be satisfied."

And the UDC's Division 40.11.100 requires that the applicant for a proposed development submit projected additional traffic on and off peak and describe existing conditions including LOS, to support determining whether a Traffic Impact Study, TIS, is needed. If 50 or fewer peak hour trips are to be added, a TIS isn't required. If more than 50 trips are projected, the applicant must submit a TIS covering a study area, area of influence, established in a Scoping Meeting under Section 40.11.122. The area of influence, under UDC Section 40.11.124, needn't extend beyond the third intersection in any direction from any access/egress feature of the proposed development unless the LU Department and/or DelDOT expand the scope at the scoping meeting.

For the Chestnut Hill Preserve TIS, DelDOT did indeed add six intersections to the TIS scope, to include the Route 4 intersections with Salem Church Road and Library Avenue. And a 9/9/2016 DelDOT letter (with copies to the LU Department) reminds the TIS author of that addition and acknowledges the author's and DelDOT's finding that both above-mentioned intersections would be well into the "E" LOS range, and that no remedial system improvements are contemplated. Yet DelDOT didn't object to the subject project proceeding. The obvious reason: the "D" LOS requirement is County law -- enacted by an elected legislative body. DelDOT's own requirement, perhaps less stringent, was given force by an appointed Secretary. Further, DelDOT has a lesser obligation to enforce County law than County staff has. So DelDOT has left enforcement of County law with the County's LU Department.

Upon a TIS finding of excessive traffic impact, the applicant has the option under UDC Section 40.11.150 to propose either a new plan or restrictions for the prior plan that would limit the impact to acceptable levels. Thereby, the proposed 265 dwelling unit project would be reduced to provide no more than 50 additional peak hour trips to the transportation system, perhaps 41 DU's.

Yet somehow, acting on the LU Department's recommendation, County Council approved recordation of the 265 DU subdivision plan. Responding to this author's prods starting 7/30/2017 on the basis for LU's recommendation, the Department requested a "legal review" regarding its execution of the UDC Article 11 requirements, and on 8/15/2017 advised that "the review concluded that the TIS is consistent with the requirements of the code." LU is concealing the rest of the results of the legal review. That's hard to explain unless the review advises the Department that it has no authority to disregard DelDOT's expansion of the TIS scope of the TIS because disregarding it amounts to a veto of law duly enacted over a decade ago by County Council. Not even the County Executive has such veto authority, and he's elected, not appointed.

It's appropriate for the Department to acknowledge its error in recommending recordation and to proceed according to standing law. LU can truthfully say that nobody bats 1000, and recognize that the story will sound much better if the folks who made the error tell about it. LU should get out in front on this -- by NOT issuing any building permits, just as UDC Section 40.11.000 demands when a valid TIS says the impact is excessive. Otherwise heads will probably roll.