

County Comments

Newsletter of

THE CIVIC LEAGUE FOR NEW CASTLE COUNTY

Informed Citizens for Sound County Growth

CLNCC Monthly Meeting

Tuesday, February 20, 2018

7:00 PM

Christiana Presbyterian Church

15 Old Baltimore Pike, Newark, DE 19703

Guest Speaker: DE Concerned Residents for Environmental Justice

Meetings of Note

WILMAPCO & DELDOT Transportation Public Workshop

Monday, February 26, 2018, 4-7 pm

Newark Free Library, 750 Library Avenue, Newark, Delaware 19711

Delaware United Public Meeting & Legislators' Forum

Sunday, February 25, 2018, 2:30-5pm

UUFN, 420 Willa Road, Newark, DE 19711

County Civic Umbrella Group Meeting

County Executive Meyer held a Quarterly Civic Umbrella Meeting on Monday, January 22nd with many CLNCC members attending. The public benefits from meeting as one group and hearing concerns brought by all constituents.

Mr. Meyer is still considering names for Planning Board Chair as that position remains open and the Board is two members short.

February 2018



Founded in 1962.

P.O. Box 5562
Wilmington, DE 19808

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.

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

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.civicleaguefornc.org

One bright note: after calling attention to the Department of Land Use current practice of bringing plans forward to the Planning Board without a traffic impact study, DLU GM Rich Hall agreed to revisit the change made in the code under Paul Clark that allows this unfair practice. Citizens pointed out that the Supreme Court ruling on Barley Mill Plaza speaks directly to this mischief.

There are several controversial development applications in play that absolutely require a TIS to be included in deliberations.

[DNREC consultant stumbles on legal details in its Draft CZCPA Process Recommendations Report](#)

By Vic Singer

The Coastal Zone Conversion Permit Act, CZCPA, was enacted as HB 190 last June by the General Assembly to modify Delaware's renowned Coastal Zone Act by enabling previously forbidden heavy industry activities on fourteen designated sites within the Coastal Zone. DNREC is required to prepare new regulations to guide the new activities. DNREC engaged the Consensus Building Institute, CBI, to recommend, initially, how to organize a Regulatory Advisory Committee, RAC, to support development of the new regulations.

CBI undertook individual private interviews with people selected by CBI or DNREC to gather suggestions. After a public outcry objecting to the conduct of public business in private meetings with people with wallet-based interests, CBI conducted further private interviews with others who asked for the opportunity, and DNREC hastily held two public meetings with constrained agendas.

On December 22, CBI released a draft "Process Recommendation Report" and asked for written comments by January 19, 2018. Vic Singer submitted comments, repeated below between lines of ~~~~, supplementing his verbal and written comments during an interview some months earlier at Buena Vista with a CBI employee, without repeating them.

~~~~~  
CBI's thirteen recommendations implicitly reflect the notion that DNREC's Secretary holds exclusive authority to establish how to revise Delaware's Coastal Zone Regulation to reflect no less than the newly legislated requirements of the Coastal Zone Conversion Permit Act (CZCPA) -- HB 190 enacted in the 2017 session of the General Assembly. In an introductory "Background" statement, the DNREC Secretary's role is to be aided and abetted by a Regulatory Advisory Committee -- RAC -- that DNREC is to lead. The charge for the RAC is to "support its [ i.e., DNREC's ] development of new regulations."

Recommendation #1 urges the RAC to deal only with features reflecting the CZCPA, and not with other provisions needful of attention. Recommendations #2 thru #6 urge the DNREC Secretary to categorize RAC membership, establish membership qualification and/or disqualification criteria, to allow or disallow

the RAC to form subcommittees whenever it so chooses, Recommendation #7 and #8 urge the DNREC Secretary and/or the RAC to TRY to reach out to the larger community.

Recommendation #9 urges the DNREC Secretary to give direction to the RAC to draft "detailed prescriptive guidance" for DNREC's staff to prepare actual regulations, which the RAC might -- or might not -- be allowed to review and critique. Recommendations #10 thru #13 involve RAC's work plan, work schedule and procedures, all under DNREC control.

Clearly, CBI judges that the DNREC Secretary and the Department he heads are totally in control. Whether or not that's consistent with the legislative intent deserves careful attention to the words enacted by the General Assembly.

The CZCPA was written as an addition to Delaware's Coastal Zone Act, CZA, to enable some previously prohibited activities and to preserve other prohibitions. That is reflected in the engrossed version of the CZA available on the internet at <http://test.delcode.delaware.gov/title7/c070/index.html>.

Except for changes to accommodate newly permissible activities, the provisions of 7 Del. C. Section 7005 "Administration of this chapter" are preserved as they were prior to HB 190. Under Subsection 7005(b), the DNREC Secretary is authorized to issue regulations which do not have the force of law unless approved by the Coastal Zone Industrial Control Board, CZICB. And under Subsection 7005(c) the DNREC Secretary is required to develop and propose a comprehensive plan and guidelines for conversion permits which become binding regulations upon adoption by the CZICB after public hearing. And under Subsection 7005(d), DNREC and all other agencies of state government must assist the CZICB in developing policies and procedures and must provide all information that the CZICB may require.

Broadly interpreted, the General Assembly gave to the CZICB the authority to alter any part of or the entirety of any comprehensive plan or regulation proposed by DNREC and/or its Secretary at any time that the CZICB chooses to do so.

Yet the thirteen CBI recommendations do not mention any role for the CZICB in any part of the process for developing regulatory controls over newly authorized activities in the Coastal Zone. The thirteen CBI recommendations presuppose that the RAC will be totally controlled by DNREC and/or its Secretary, that effectively the RAC will be a puppet on the Secretary's strings. But the legislative intent according to the words of the CZA and the CZCPA enacted by the General Assembly is that for the Coastal Zone, DNREC and/or its Secretary are to be totally controlled by the CZICB, effectively puppets on CZICB's strings.

Clearly, CBI knows that its clients are the DNREC Secretary and DNREC, and that the clients want to be in total control despite what the law says. Indeed, recent history mutely demonstrates that the CZICB's overwhelming desire is to go along to get along, i.e., to be a puppet on DNREC's string. A notable recent demonstration of that, is the CZICB's refusal to hear an appeal on a CZ permit on the premise that the appellant didn't qualify for "standing" even though Section 7 Del. C. 7007(b) gives standing to "any person aggrieved by a final decision of the Secretary" and the Section 7 Del. C. 7002(h) definition of "person" as "any individual or group of individuals . . . or any other legal entity."

Since the CZICB would appear to be puppets on DNREC's or its Secretary's string, seeking CZICB's approval for proceeding according to the CBI recommendations might seem a mere formality. Exploring whether or not the CZICB would need to hold a public hearing before endorsing the CBI recommendations is an issue better explored at the outset than at the end of the process.

CBI needs to add to its final recommendation report an epilogue that it gives at least lip service to the statutory authority of the CZICB along with an explanation for why that wasn't recognized in its draft report. CBI needs to demonstrate that it has read AND UNDERSTOOD both the CZCPA and the CZA in order to make its work product worthy of respect.

\*Vic transmitted his comments electronically at 1:09 pm Jan 19, and DNREC acknowledged receipt at 2:22 pm. Coincidentally, at 1:22 pm on Jan 19, 13 minutes after Vic's electronic transmission, the Delaware Superior Court "EFiled" its disposition of the Appeal from the CZICB's denial of standing in the case that Vic cited to demonstrate that the CZICB is a puppet on DNREC's or its Secretary's string. The court's disposition: after citing the CZA provision on standing, remand to the CZICB for re-consideration.

## [Let Community Experts into Coastal Zone Act Process](#)

*By Bill Dunn*

In 1972, a Republican Governor, Russell Petersen, fostered legislation that is known as the Coastal Zone Act or "CZA." This was only six months after the EPA was formed and, at the time, this was a groundbreaking law that protected our coastlines from an additional refinery below the canal.

The CZA blocked new development on the Delaware River and Bay for industrial purposes and, if existing industrial operations shut down for more than two years, they could not reopen. Over the decades, there were numerous legal attacks by business interests that went as far as the U.S. Supreme Court, and the CZA has been upheld.

The state General Assembly last year approved the possibility that the 14 shutdown sites may be reopened, after the establishment of a new set of regulations that would define how and what can be done on those sites.

The Secretary of DNREC, Shawn Garvin, in order to develop these new regulations, began the process to develop the rules for what is called the Coastal Zone Conversion Permit Act (or HB 190), by determining who would be on a Regulatory Advisory Committee (RAC). To define representation on the RAC, Secretary Garvin hired a consulting group named Consensus Building Institute (CBI).

CBI has completed their process of individual/small group interviews and public workshops and has written their report. In that report, they recommended that the RAC members fall into three categories:

environment, environmental justice, and public health; community, including fence-line communities; business and labor; and (possibly) others.

I participated in the interview process with the Civic League for New Castle County President and another member who was on the original CZ Industrial Control Board. In our interview, we emphasized two major points; a step-by-step, citizen-informed, open process and community-based technical representation on the RAC.

So, I found it completely ridiculous that their report recommended to shove off the technically competent representative whose responsibility “would be for deliberation, exploration, and option generation” to a meaningless, non-voting sub-committee. This would leave any and all committee decisions solely with the full RAC, where other interests would guarantee technical competence in their representation.

Relegating community-oriented technical competence to a non-voting sub-committee is similar to having a medical billing clerk do your next surgery or having a backhoe operator design the next interstate highway. In this situation, proper process design, site preparation and instrument controls of these process are paramount and will have far-reaching impacts on human health and the environment if not properly defined.

All the varying interest groups are important, but if technically competent voices are not at the table, that will impact Delawareans' health and welfare and our tourist economy. The current proposed RAC design is an invitation to disaster!

Without people of varying interests, who understand the technical aspects of industrial processing at the table who can provide crucial information to other members and responsibly challenge their counterparts at that table, the community will find themselves 5, 10, 20 years down the road with an environmental problem that has gotten no better — and possibly much worse.

Older Delawareans remember windows being blown out in New Castle from the DuPont explosion at Carneys Point, New Jersey, the Amoco explosion near Dobbinsville that killed five employees in 1980 and, more recently, the number of EPA Superfund sites identified and the employee that was never found from the explosion and acid spill at the Delaware City refinery.

We must insist that the RAC have two or three community-oriented citizens with some significant level of environmental, chemical and industrial technical competence who can understand the processes and chemistry in order that responsible businesses can operate and hopefully avoid the safety and environmental health concerns listed above.

### **[Send us your stories](#)**

What is important to you? Do you have an issue in your community that needs to be addressed? We want to hear from you, our loyal members. Let us know how we can help!