

The Honorable M. Jane Brady, Esquire
Office of the Attorney General, State of Delaware
820 W. French Street
Wilmington, Delaware 19801

August 3, 2005

Dear Ms. Brady,

Please accept this letter of complaint pursuant to Delaware's Freedom of Information Act (FOIA) Chapter 100, Title 29 of the Delaware Code.

The Southern New Castle County Alliance (SNCCA) submitted a FOIA request to the Delaware Department of Transportation on 2-23-05. (See enclosures) The SNCCA was afforded an opportunity to review selected documentation, however that documentation did not include any records or information of any kind relating to when or by what means Mr. Nathan Hayward, Secretary of Transportation, was granted the legal authority to begin executing the referenced "joint development agreements." House Bill 550, Section 112, makes specific reference to the "joint development agreements" stating that the "Department should make its best efforts to adhere to the tenets of the model joint development agreement executed earlier this year between the developers of Westtown, the City of Middletown, and the Department..." This legislation was passed on 7-01-04. The Westtown JDA was executed on 2-12-04.

A subsequent agreement executed on 9-07-04, known as the "Southern New Castle County/Village of Bayberry Transportation Infrastructure Development Agreement refers to 17 Del. 507 as the "recently enacted Joint Agreement Statute." Our research indicates that Senate Bill 284 is the legislation referenced in the Agreement. SB 284 was signed on 7-22-04.

To date, we have not been provided with any legislation or other documentation relating to the legal authority that may or may not have been granted to DelDOT to execute the Westtown agreement although the passage of SB 284 and HB 550 appears to suggest a recognition that such authority should be required to execute said JDA's.

We have additional concerns regarding the terms of the funding requirements of the Westtown Agreement and the Bayberry Agreement, which are quite different. This appears to contradict the stated intent in HB 550, Section 112.

According to a communication from DelDOT in response to a list of questions submitted by the SNCCA dated 1-28-05, DelDOT intends to begin using the JDA statewide "where

the necessary elements are in place to assist in managing growth in a manner consistent with the goals of Liveable Delaware.”

We have not been provided with any documentation relating to established criteria used to format the JDA's. As DelDOT has indicated intent to continue using this type of contractual agreement in certain cases, we must request your assistance in determining what legal authority has been granted the Department to do so.

We appreciate your kind assistance in this most important matter. We would appreciate the courtesy of a reply within two weeks. Please feel free to contact us should you require additional information regarding this complaint. You may reach Leann Ferguson at 378-9516 or 530-3971.

Sincerely,

Leann H. Ferguson
Executive Vice President, SNCCA