

## **Proof We Have of Inappropriate Developer, DelDOT Dealings**

### **Editorial to the Middletown Transcript by SNCCA Executive Vice President**

Dear Editor,

The Southern New Castle County Alliance (SNCCA) is a non-profit civic organization dedicated to “Protecting and Improving our Quality of Life through Education, Civic Involvement and Community Advocacy.” As such, we volunteer our time to make every effort to inform the public on important issues facing our community.

We have provided documentation obtained through the Freedom of Information Act (FOIA, submitted by SNCCA to Secretary Hayward, 2-23-05) to many different members of various media organizations in the hopes that information would be used to better inform the public. Unfortunately, only a small amount of that information has been published. We are compelled to clarify the record relating to the “allegations” of a “DelDOT/developer deal” reported by the Transcript on June 23, 2005. The “allegation” originally came in the form of a comment from a member of the development community.

#### **NO PUBLIC INPUT**

- ✍ The Alliance has conducted an extensive review of documentation relating to the Westown (a.k.a. Middletown Transportation Infrastructure Agreement) and the Bayberry Agreement for over a year.
- ✍ These “Joint Development Agreements”, or JDA’s, commit *millions* of taxpayer dollars to private development projects with *no public input*.
- ✍ *No public hearings* were held relating to these agreements or on the *changes to Delaware Law* made to allow them.
- ✍ The SNCCA contacted Senators Vaughn and Amick, and Representatives Cathcart and Hall-Long in an effort to determine *when and how DelDOT was given the authority* to begin executing these agreements committing millions of taxpayer dollars.
- ✍ *Senator Amick and Representatives Cathcart and Hall-Long* indicated that they *did not know* how or when DelDOT was granted authority. *Senator Vaughn did not respond*.
- ✍ Alliance research using *FOIA revealed* documentation referring to *House Bill 550(HB 550, The Bond Bill) Section 112*. The sponsors of this bill were Rep. Roy, Sen. Venables, with co-sponsors Carey, Lofink, Oberle, B. Ennis, Keeley, *Cathcart*, Miro, Stone, Mulrooney, Blevins, Cook, DeLuca, Connor, and Simpson. It was passed on July 1, 2004 at 1:59 A.M., the last day of the Legislative Session for the 142<sup>nd</sup> General Assembly.
- ✍ *Section 112 states*: “Southern New Castle County. In order to expedite the orderly improvement of roads and other infrastructure in the rapidly growing area of Southern New Castle County, the Department is authorized and directed to enter into such joint development agreements as it may deem necessary and appropriate. In doing so, *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 Westown, the City of Middletown, and the Department,”*

✍ *No public discussion or debate took place.*

In recent months, DelDOT Secretary of Transportation Nathan Hayward has made many public statements regarding *DelDOT's shortage of funding*. He has suggested leasing Route 1 to private investors as well as large toll increases as potential ways to raise money. *Route 301* is at the forefront of the DelDOT project list yet *Secretary Hayward* said, *“paying for the road remains a question.”* (News Journal 5-24-05)

## THE FACTS

- ✍ *The Westown Agreement* signed on *February 12, 2004* by Secretary Nathan Hayward, commits DelDOT to “timely fund all New Infrastructure, (except to the extent funded by Developer or other property owners pursuant to paragraph 5 below), including design and construction, as required by this Agreement.” *There were no public hearings held.* There is a specific schedule detailing Developer contributions. (“Exhibit B”)
- ✍ *The Bayberry Agreement* was signed on *September 7<sup>th</sup>, 2004* by Secretary Nathan Hayward and commits DelDOT to “commence construction for upgrades to the Boyd’s Corner/Mt. Pleasant intersections on or before April 19, 2005.”(pg. 3 of Agreement) *The Agreement commits DelDOT to “assess Developer for its fair share contribution* to such projects in the amounts which reflect the Developer’s proportionate share in light of background traffic (existing and future) and in light of other planned developments in the area of influence.” *There were no public hearings held. NO “EXHIBIT B” (schedule of Developer contributions) WAS INCLUDED.*
- ✍ *March 8, 2005* email from SNCCA Executive Vice President Ferguson to Linda Scott, *DelDOT Legal* Department: “I find that *the Westown Agreement has an “Exhibit B”* attached that calculates developer contributions...As the Bayberry Agreement refers to HB550, Section 112 which refers to the Westown Agreement as a model for future agreements, I would like to ask *if an exhibit determining calculations and contributions for Bayberry ....exists”* Scott responds. “I contacted Bill Brockenbrough (DelDOT staff)...*He said there is no exhibit.”*

## HOW DID THIS HAPPEN WITH NO PUBLIC INPUT?

- ✍ *Senate Bill 284 (Sponsors:Vaughn, Roy, Co-Sponsors:Cook, Still, Cathcart, Schwartzkopf, Hall-Long, B. Ennis)* passed at 7-1-2004 at 1:05 A.M.) *changed Delaware Law*, Title 17, Section 507 to allow DelDOT to “create rules and regulations...acquire the necessary rights-or-way for these improvements, using contributed funds from the developers whose proposals trigger the need or speed up the timing ...”
- ✍ *House Bill 550, Section 112*, specifically authorizes DelDOT to execute Agreements, modeled after the Westown agreement.

- ✍ As of June 25, 2005, The SNCCA has received *no documentation authorizing DelDOT* to execute *Westown*.

THE *ALLIANCE IS NOT ALONE* in expressing concerns about the circumstances and terms of these agreements. *Common Cause Delaware, Friends of Historic Glasgow and The Civic League for New Castle County* have all reviewed associated documentation and have expressed concerns. The Civic League unanimously passed a resolution in support of the Alliance request for review by the State Auditor, R. Thomas Wagner.

### **DelDOT STAFF EMAILS RAISE RED FLAGS**

- ✍ The *Bayberry* Agreement was signed on *September 7, 2004*.
- ✍ *August 12, 2004* email from J. Cantalupo to T. Bishop: “...*agreement was drafted by the attorneys for Blenheim Homes* and that aside from Ralph (Reeb) no one else in the Department has looked at it. Please note, that we were asked to *treat the agreement as confidential...limit its distribution* to the handful of folks that have to review it and let them know to *be careful with it*.”
- ✍ *Handwritten notations on the same email: “Sept. 7<sup>th</sup> is the drop dead for signing.*
- ✍ *September 15, 2004* email from M. Angelo to C. Wicks: “After reviewing Bayberry Agreement...1. *Where are the attachments?* ...2. *Will Federal Funding be used*...3. *Does section 112 of the Bond Bill (HB550) relieve us from having to comply with State of Delaware procurement and bidding procedures?*...4. *When is developer required to make his contribution and who oversees how and when developer should make his contribution?*
- ✍ *September 15, 2004* email from C. Wicks to R. Reeb: *“I know this has been executed...but I was not aware of the deadline that had been set for signing this agreement.*
- ✍ *September 16, 2004* email from R. Reeb to T. Bishop: *“Ted, the games continue...”*

### **WHERE ARE YOUR TAX DOLLARS BEING SPENT?**

As the pressure to select an alternative for Route 301 rises, and the Secretary of Transportation continues to call for new ways to raise money, our questions regarding the millions committed to Bayberry and Westown multiply.

### **STATE AUDITOR R. THOMAS WAGNER**

The SNCCA held its regular meeting on June 16, 2005 and welcomed State Auditor R. Thomas Wagner. He was advised in advance of our concerns and our intent to ask his office to assist us.

### **WHAT WE ACTUALLY ASKED THE STATE AUDITOR WAGNER ON 6-16-05**

- ✍ *Could his office assist in getting documentation granting Secretary Hayward/DelDOT the legal authority to begin executing JDA's?*
- ✍ *Could his office assist in determining why these agreements (Bayberry/Westown) are so different as to their terms?*
- ✍ *Could his office assist in determining how much money DelDOT committed to Bayberry (Blenheim Homes) and how much money the developer contribution is?*
- ✍ *Given the timing of the Garrison's Lake sale, (developer-Blenheim Homes) ("the General Assembly made an 11<sup>th</sup> hour move, allocating funds ...in the Bond Bill to purchase the course on the last day of the legislature's 2004 session. The State Department of Transportation completed the purchase of the tract in September 2004 for \$3.3 MILLION...Delaware State News-6-9-05), the emails, and the gross dissimilarities in the two Agreements, would he conclude that a "quid pro quo" could have occurred?*

### **STATE AUDITOR WAGNER'S RESPONSES**

- ✍ *He agreed to facilitate communication with the Attorney General to clarify the legal authority issues.*
- ✍ *He agreed that there should be some uniform criteria applied and agreed to review the issue.*
- ✍ *He indicated that DelDOT's methods of financing projects made it somewhat difficult to follow the finances but committed to assisting in attempting to answer these questions.*
- ✍ *He agreed that given the documentation we obtained and the associated circumstances, it was not an unlikely scenario. "It happens all the time." (Middletown Transcript, 6-23-05)*

*The SNCCA has made multiple attempts to get answers to these questions. We have asked our local legislators, to no avail. We have asked Secretary Nathan Hayward, to no avail. SNCCA President Chuck Mulholland attended the meeting New Castle County Executive's Umbrella Civic meeting on June 2, 2005. DNREC Secretary John Hughes and DelDOT Secretary Nathan Hayward attended to address concerns submitted in advance by the leadership of NCCO Umbrella Civic organizations. Secretary Hughes addressed his list of questions in order and made efforts to answer all prior to leaving. Secretary Hayward addressed his list of questions starting with the last question first. He had not addressed the questions regarding the JDA's submitted by the Alliance when he announced that time was up, and he attempted to leave. Mr. Mulholland pressed for a discussion on these critical issues but Mr. Hayward failed to adequately answer the concerns and cited the lack of available time to continue. The Middletown Transcript attended the meeting and witnessed Hayward's efforts to avoid the issues.*

### **WHAT'S NEXT?**

- ✍ Alliance President Chuck Mulholland told State Auditor Wagner that he, as the *watchdog for our State's money, is our last best hope.*

- ✍ *We deserve to know how our tax dollars are being spent.*
- ✍ *We deserve to have a chance to have a say in that process.*

If we truly need to raise revenue to pay for much needed road projects like **Route 301**, Churchmans Crossing improvements, and many others, then *we must have a full and fair accounting* of why tax payer dollars have been contractually committed to *private development* projects. Projects that will *add to our traffic woes* and take money away from projects that will benefit the public.

Please contact State Auditor R. Thomas Wagner and encourage and support his efforts to give you, the taxpaying public a full and fair accounting of where your money went. Email him at [r.thomas.wagner@state.de.us](mailto:r.thomas.wagner@state.de.us). Fax him at 302-739-6707.

Copies of all the referenced documentation is available free of charge by contacting Leann H. Ferguson at [LHFerg@aol.com](mailto:LHFerg@aol.com).

Sincerely,  
Leann H. Ferguson  
Executive Vice President, SNCCA