

David B. Carter –Public Hearing Testimony Talking Points

**NCC Planning Board Hearing on Ord. # 05-087: Elimination of 3.319 Hearing
September 6, 2005**

Members of the New Castle County Planning Board, I would like to thank you this opportunity to comment on the proposed Ordinance # 05-087 introduced by Council President Paul Clark .

Please propose that the problems with UDC Section 3.319 Community Character Hearings be addressed thoughtfully through the Comprehensive Plan Update, not by the misguided efforts of Ordinance Number 05-087 that does not integrate the issue with the broader problems.

The changes to UDC Section 3.319 to make the Open Space Planned Development a by-right option is clearly a massive comprehensive upzoning. All rezoning decisions and changes to the UDC should be reviewed in the context of the Comprehensive Plan. The intense controversy at 3.319 Community Character hearings is a symptom of a much greater problem with a lack of public support and agreement with the current comprehensive plan. The plan should reflect a shared vision with the affected communities of New Castle County.

Most of the contentious information presented at the hearings is directly related to dissatisfaction with the zoning and NCC Comprehensive Plan. Removing 3.319 is an effort to cover up a symptom of the large problem, not correct it.

The new Comprehensive Plan Update is underway, with its first formal meetings to be held on September 26, 2005 at Rockwood Visitors Center from 5-9 PM. Rather than change the code, we should comprehensively review this controversial issue in the full context of the complexities of land use planning, develop thoughtful and comprehensive strategies to address the concerns, and incorporate these strategies into the Updated Comprehensive Plan.

To address this issue in any process other than through the Comp Plan update is nothing short of an evasion of responsibility by New Castle County Government.

There are numerous key issues or problems associated with the UDC 3.319 hearings and land use that should be addressed as part of any considerations

for improving the land use hearing process. I have outlined a few of these below.

Major Problems:

I. The existing Comp. Plan erroneously planned to accommodate all the growth in SNCC projected by the Delaware Population Consortium.

No allowances were made for municipal growth. This problems was originally outlined for NCC Council and the NCC Planning Board in writing on April 17, 2003, yet it has been continually ignored (letter attached). This issue of excessive land zoned for development is at the center of issues regarding growth and density.

Extensive land was zoned Suburban (S) to meet this projected county housing need in unincorporated areas. During the interim period, the Towns of Middletown, Townsend, and Smyrna all annexed low density Suburban Reserve (SR) land and developed it at much higher densities. These in combination with open space plans have lead to excessive over development due to the excessive amount of land zoned for growth.

The zoning must be properly adjusted in light of these changes before any comprehensive upzoning, such as that proposed in Ordinance 05-087 is given any consideration. The growth zone may no longer be necessary, and higher densities are readily achieved in towns, since people appear to believe that Townhouses are most appropriate in Town. Essentially, SNCC residents are more comfortable with municipal growth and reduced growth in unincorporated areas. Even if an unincorporated growth zone is needed in SNCC, data will demonstrate that the size and extent needed out to the year 2030 is significantly smaller than that in the outdated Comprehensive Plan.

II. Infrastructure Inadequacies & Funding Shortfalls

With the recent developments for financing both the Water Farm II, Road infrastructure, and surface water management it may make good planning practice to delay the SNCC unincorporated growth zone for another 10-20 years until needed. This would promote infill development that requires reduced levels of public subsidies, promotes redevelopment, and allows more time and opportunity for land protection. This would require a significant downzoning of S zoned land to SR in accordance with the projected housing needs of the Delaware Population Consortium.

Until the \$100 Million for Sewer and \$600 Million for Rt. 301, and undetermined funds for surface water management improvements are encumbered, this growth zone should not be pursued. Better planning of the SNCC region may significantly reduce public expenditures.

III. Affordable Housing

A shallow and deceptive argument is being made that the removal of UDC 3.319 Community Character Hearings is needed to provide affordable housing.

The fact is that conservation design is gentrifying the landscape and making townhouses far out of the affordable reach of many people. Open Space development is adding to the affordable housing crises, not fixing it. Developers are exploiting the gimmick of “nature” at high cost. The whole sale marketing of fragmented, crippled ecosystem, and dysfunctional “synthetic nature”, marketed as open space; is a major factor reducing affordable housing.

Yet there is an affordable housing issue throughout New Castle County. This does not refer to Section 8, or poverty level households, but for young families getting started, median wage earning labor workers, and even young college graduates hoping to start out with a first home to build equity for larger homes for a family in the future.

If we are to address the affordable housing problem, there is much more to consider than the physical structure of gentrified development planning. Proximity to work, public transportation, and other services are major cost of living factors that are harder to make cost effective in remote unincorporated areas such as SNCC where the majority of residents must commute out of the region for jobs.

Affordable housing is a real issue, but will be hurt not helped by Ordinance 05-087 and “conservation sprawl”. Fixing it will require more comprehensive strategies such as:

- ✗ Inclusionary Zoning or Affordable Housing Mitigation Fees for all developments**
- ✗ Development of Affordable Housing Trust**
- ✗ Promotion of Municipal Growth over Unincorporated Growth in NCC, etc,**
- ✗ Increases in Low Interest Mortgages with public funds**

✍ **Increased Job Opportunities in developing areas.**

IV. Lack of Intergovernmental Coordination with Middletown, Smyrna, and Townsend.

There has been woefully inadequate coordination for growth between the county and municipalities in SNCC. As a start, all plans should be coordinated and in combination their proposed growth should not exceed the projected housing need of the Delaware Population Consortium for the MOT planning district. Growth should be treated as a limited resource like drinking water and carefully allocated between the County and Municipalities.

These are just a few of the complex problems that should be addressed as part of any proposal to change the UDC Section 3.319. Consideration of such a massive and significant change in by-right development zoning density should require a much more deliberate and thoughtful process, and is only appropriately done through Comprehensive Planning due to its regional impacts.

I hope you will recommend that this issue not be addressed by the Proposed Ordinance # 05-087 or any amendment to this Ordinance.

The proper place to address the issues, concerns, and conflicts experienced through 3.319 hearings is through the update of the NCC Comprehensive Plan. Thank you for your time and consideration.

David B. Carter



**818 Union Church Road
Townsend, Delaware 19734
Email: Davidctr@aol.com**

April 17, 2003

New Castle County Planning Board
New Castle County Government Center
87 Reads Way
New Castle, Delaware 19720

New Castle County Council
Louis L. Redding City/County Bldg. 8th Fl.
800 North French Street
Wilmington, Delaware 19802

Subject: Comments on M-O-T Growth Analysis and Considerations Not Addressed that Nullify Conclusions of Analysis by New Castle County Planning Staff with Serious Implications for Proposed Southern Sewer District Expansion

Dear New Castle County Council and Planning Board Members,

I write to provide comments in response to the April 9, 2003 M-O-T Growth Analysis completed by the New Castle County Department of Land Use in response to my March 4, 2003 letter presented at the Planning Board Hearing. Specifically, I would like to:

- Point out several serious flaws in the analysis by New Castle County Staff due to the oversight of key growth factors,
- Provide clarification of my letter on the of March 4, 2003 on the Goldsborough and Carter properties that has been misrepresented by New Castle County Department of Planning Staff, and
- Provide some reasonable recommendations on land use directions in New Castle County that may help us better meet the shared vision in our Comprehensive Plan without the need for the \$ 110 Million Southern Sewer District Expansion.

I am particularly concerned that the M-O-T Growth Analysis may be misleading due to the its lack of consideration of major factors affecting land use and housing needs in the M-O-T Planning District. This may simply be an honest oversight on the part of the Department of Land Use. However, the fact that these issues were specifically identified as a concern directly to the County Staff involved with this analysis could lead to the perception that this analysis is an effort to deceive the reader, rather than an effort to provide a non-biased analysis of the complex issues impacting growth management in Southern New Castle County. Due to the serious issue facing the leaders of New Castle County regarding the Southern Sewer District Expansion, I feel compelled to outline these concerns and the additional information that should have been included in New Castle County Department of Land Use's M-O-T Growth Analysis.

Oversights in NCC Dept. of Land Use M-O-T Growth Analysis that Nullify Conclusion

The updated population/household projections included in the New Castle County M-O-T Growth Analysis do provide the documented need for a modest increase in housing need from the information available in the Comprehensive Plan Adopted October 2002. The updated projections show the need for 23,105 households by the year 2025 to provide housing for 68,115 people (increase of 4,478 dwellings by 2025). The updated number for existing housing in 2000 is 10,181. This means that only an additional **12,924** homes are needed in the M-O-T Planning District by 2025. It should also be noted that as of February 19, 2003 there were 6,151 unimproved lots in approved record plans in the incorporated and unincorporated areas of the M-O-T Planning District (Mastrangelo, Feb. 19, 2003). **This results in the need for approval of only 6,773 additional units by 2025 by the combined actions of New Castle County AND the municipalities in the M-O-T planning district.**

The New Castle County M-O-T Growth Analysis wrongly utilizes the projected need for houses of 23,105 rather than the correct number of 12,924 new units to be added to the 10,181 existing units in the M-O-T Planning District (Total WILMAPCO projected housing need of 23,105). This number used in the NCC analysis is the total number of houses needed by 2025, not the additional number of houses needed over those existing in 2000. As outlined above, the total number of additional houses needed in accordance with the updated number to be in compliance with the Comprehensive Plan is 12,924. As such, the analysis done by the NCC Department of Land Use grossly misrepresents the actual amount of Suburban (S) Zoned Land necessary. In addition, there is approximately 66,000 acres of Suburban Reserve (SR) zoned land. If only 20% of this land is developed with 5-acre lots by 2025, it will provide an additional 1,320 homes. It is also highly probably that a significant number of additional homes will be built in the various municipalities in the district during the period. I do agree with the NCC staff that a variety of housing types will likely be built at higher density than the single family option. This adds addition support to the concern that the current UDC and amount of S-Zoned land is significantly higher than needed. The failure to consider these facts and include them in the M-O-T Analysis nullifies the analytical result that the current amount of S zoned land is needed. This analysis shows that a significant down zoning or at least a significant increase in the minimum open space requirement for development is needed to meet our shared vision that is outlined in the Comprehensive Plan.

As pointed out in the NCC analysis, this number of households needed is impacted by a number of factors. The analysis emphasizes that average household size is a “driving force behind household projections”. Although there is truth to this, population projects are a far stronger driving force. According to WILMAPCO RTP 2025 (March 6, 2003), the major factor influencing population of the region is in-migration. Although a number of factors such as jobs, schools, and quality of life issues influence emigration; the availability of developable land is also a major factor. Sewer capacity and other infrastructure under the control of public agencies significantly affect housing demand

and in-migration. The extent to which the proposed NCC Southern Sewer District, the new Middletown sewage treatment facilities, and the potential for sewer capacity by Kent County resulting from proposed Annexation by the Town of Smyrna should all be discussed in this section of the Analysis. This issue may be the major driving factor influencing the changes in the 2025 housing projections.

It is unclear why the NCC M-O-T Analysis states “A further consideration when discussing the amount of potential development is that the land use industry is very much driven through supply and demand.”, yet fails to discuss the implications of zoning and sewer infrastructure on this supply and demand. *In doing so, the conclusion should be that the current zoning and UDC will provide more than enough supply to meet ANY ANTICIPATED housing demand, not that it is in accordance with the Comprehensive Plan. This begs the question of whether we have developed a Comprehensive Plan to encourage maximum growth or to proactively influence and direct what occurs on the landscape. The shared vision of the Comprehensive Plan should do the latter, however, the UDC and Zoning appears structured to accommodate the former. As such, it is difficult to agree with the NCC conclusion that the Unified Development Code is very much in accordance with the 2002 Comprehensive Development Plan Update.*

Clarification of Comments and Content of March 4, 2003 Letter to NCC Planning Board from David B. Carter

The primary misconception of my March 4, 2003 letter is that it opposes open space development options over large lots. This is not the case. It does point out that in order to accommodate the Open Space Option 2 and Open Space Planned Development Option, either much less land should be zoned Suburban (S) and/or the actual minimum open space requirements must be significantly increased. Failure to do so will produce a serious surplus of developable land that it will likely stimulate far more growth than desired. This will result in a gross density levels far in excess of those called for in the Comprehensive Plan. This central thesis is outlined in the following excerpt from my March 4, 2003 letter that states:

“Either the UDC code or our existing zoning must be changed if they are to serve as appropriate implementation tools for our Comprehensive Plan. These changes must increase the open space requirements, with significantly higher rates for the OS2 and Planned Development Options than for single family and OS1. A second option may be to consider a comprehensive down zoning of Suburban zoned land to Suburban Reserve to correct the problem; similar to the proactive re-zoning conducted several years ago.

Until either the UDC or the Zoning problem is corrected, the use of the OS2 and planned development options seriously threaten the community character of the rural/suburban environment of Southern New Castle County. Due to this well documented problem, no OS2 or Planned Development options should be approved unless they include significantly higher percentages of open space with modest reductions in housing units. Approving these plans places the County on a path that is a direct and significant departure from the shared vision in our Comprehensive Plan. The OS2 option should only be considered when accompanied by 60% open space, and open space design option should only be considered when accompanied by 70% open space, in order to protect the community character of Southern New Castle County. These open space ratios will provide the needed buffers to protect the community character while providing modest density bonus to the site developers.”

This concept should not have been new to the NCC planning staff. The concept of higher open space rates was routinely raised at a series of conservation design meetings sponsored by New Castle County Department of Land Use. In addition, a number of e-mail correspondences pertaining to analysis of build-out scenarios were shared between the involved County Staff and me. It was as part of this analysis of the proposed Conservation Design ordinance that disconnects between the Unified Development Code and the Comprehensive Plan was identified.

Reasonable Recommendations for Implementation of the Comprehensive Plan

The current trend of development in the M-O-T Planning District that is causing the departure from the shared vision of the Comprehensive Plan is at least in part, being caused by unexpected and unanticipated growth in the Southern New Castle County Municipalities. Regardless of the cause, it is critical that we adjust actions and public policy for development in the unincorporated areas in response to these factors. In many ways, the additional growth in areas such as Middletown has at least temporarily buffered the unincorporated areas from more expansive sprawl. This provides a rare and fleeting opportunity to realize a vision for New Castle County that significantly increases open space and protects environmental resources through the reduced need and utilization of land.

Additionally, with the demographic shift of anticipated housing in unincorporated areas to the actual construction of significant housing in municipalities on annexed land, it may now present the opportunity for saving 110 million dollars in New Castle County taxpayer funds through the diminished need for a Southern Sewer District Expansion. With minor changes in public policy, it is well within our reach to achieve the objectives and implement the vision outlined in the 2002 Comprehensive Plan, without County investment in Sewer Expansion.

In fact, expansion of the Southern Sewer Service area will likely result in a major departure from the comprehensive plan with regard to gross density for the region. It will likely create a significant excess of sewer capacity that will further stimulate the housing industry, leading to construction that far exceeds the number of housing unit currently needed. This increase in construction will be a simple supply & demand response of the industry responding to a liberal supply of developable land.

However, there may be a need for sewer in additional areas of the M-O-T Planning District. These will be modest increases that may well be accommodated with very small modification to the existing county system, higher utilization of the Middletown Sewer Treatment Facility now under construction, and perhaps with the realignment of Suburban-Suburban Reserve Zoning that accommodates some annexation of areas of SNCC by the Town of Smyrna. Examples would include a policy decision returning to the use of areas such as the Odessa National Golf Course for supplementation spray irrigation (this was one of the original justification for up zoning the Fieldboro Road area

from SR to S), sending waste water from unincorporated areas around Middletown to the Middletown's treatment plant or permitting additional annexation around Middletown, and permitting new development north of Smyrna to be serviced by the Kent County facility under the existing agreement with the Town of Smyrna. Smyrna currently has two forced mains in place that can accommodate the additional growth. This combination of options would provide the needed sewer infrastructure for denser development to meet the projected housing needs for New Castle County until 2025, while utilizing far less land and protecting environmental resources.

The remaining unincorporated areas of Southern New Castle County should then be critically analyzed and public land use and infrastructure policies re-aligned to focus and direct the significantly reduced amount of growth that would be necessary without artificially stimulating the housing industry with an excess of sewer capacity. This would likely require some down zoning and or the passage of true conservation design measures that protect at least 50 percent of the unconstrained land (usually 65-70 percent of the land). At these open space ratios, on site septic could easily be utilized without environmental degradation and significant amounts of open space would be preserved. **To accomplish this, large lots of 1.5 to 2 acres are not necessary.** According to Randall Arendt (1999), lot sizes could be reduced to as small as 30,000 to 40,000 square feet. To accomplish this either individual or community septic systems are located in the most appropriate soils off-lot within the undivided open space. In doing so, wells can also be placed more than 100 feet from septic to meet health and environmental requirements. Ownership and maintenance of the on-site system can remain with the homeowner, and the areas can be managed as natural meadows for environmental improvement. The key concept here is to ensure protection of 50% or more of the unconstrained land as open space to ensure adequate quantities of undivided open space to place septic other than the "protected resource areas" that should not be disturbed at any time.

The unincorporated areas of Southern New Castle County may be better suited for more modest conservation design development than to traditional Suburban development due to their landscape orientation on the rural/suburban fringe. In order to protect green infrastructure, these areas may be better served by septic systems than regional sewage treatment (Brady et. al., 2001). To ensure the rural character of the area, these sites could also be focused to designated fringe areas of a green belt. Development of this green belt could be readily accomplished by redirecting some of the \$ 110 Million savings in sewer construction costs to land protection efforts through purchase of development rights or fee simple acquisition.

Conclusion

In conclusion, the M-O-T Growth Analysis conducted by the New Castle County Department of Planning is a flawed analysis that does not support their conclusions. They must consider the full scope of influencing factors including municipal

infrastructure, land supply, in-migration, etc. on the regions growth, which they have not done in their analysis.

As a result, it is still clear that the current Unified Development Code and Zoning are not in accordance with the approved New Castle County Comprehensive Plan Adopted October 2002.

Finally, I have provided some constructive recommendations that should be openly discussed with regard to meeting the waste water needs for projected housing to 2025 without excessive stimulation of the housing market. Also, I would like to propose that consideration be given to focusing growth around existing municipalities to meet wastewater needs and housing demands, using a new perspective on annexation as a useful tool for to meet regional infrastructure needs, and a rural fringe approach to development in the unincorporated areas of Southern New Castle County rooted in conservation design.

Thank you for your time and consideration.

Sincerely,



David B. Carter

Pc: Joshua Mastrangelo, NCC Dept. of Planning (w/o Attachments)
Chuck Mulholland, Southern NCC Alliance (w/o Attachments)

Attachment: New Castle County M-O-T Growth Analysis transmitted April 9, 2003.

References:

Arendt, Randall. (1999). Growing Greener – Putting Conservation into Local Plans and Ordinances. Island Press. Washington, D.C.

Brady, Ann B., D.R. Brake, and C.W. Starks. (2001). The Green Infrastructure Guide – Planning for a Healthy Urban and Community Forest. Regional Planning Partnership. Princeton, N.J.

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Regional Transportation Plan 2025. (March 6, 2003). WILMAPCO.

Mastrangelo, Joshua. (February 19, 2003). Email correspondence to David Carter with attached spread sheet of requested data on number of lots approved in record plan. New Castle County Department of Land Use.

M-O-T Growth Analysis. (April 9, 2003). New Castle County Department of Land Use.

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New Castle County Department of Land Use. New Castle, DE.