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DELAWARE LAWYER

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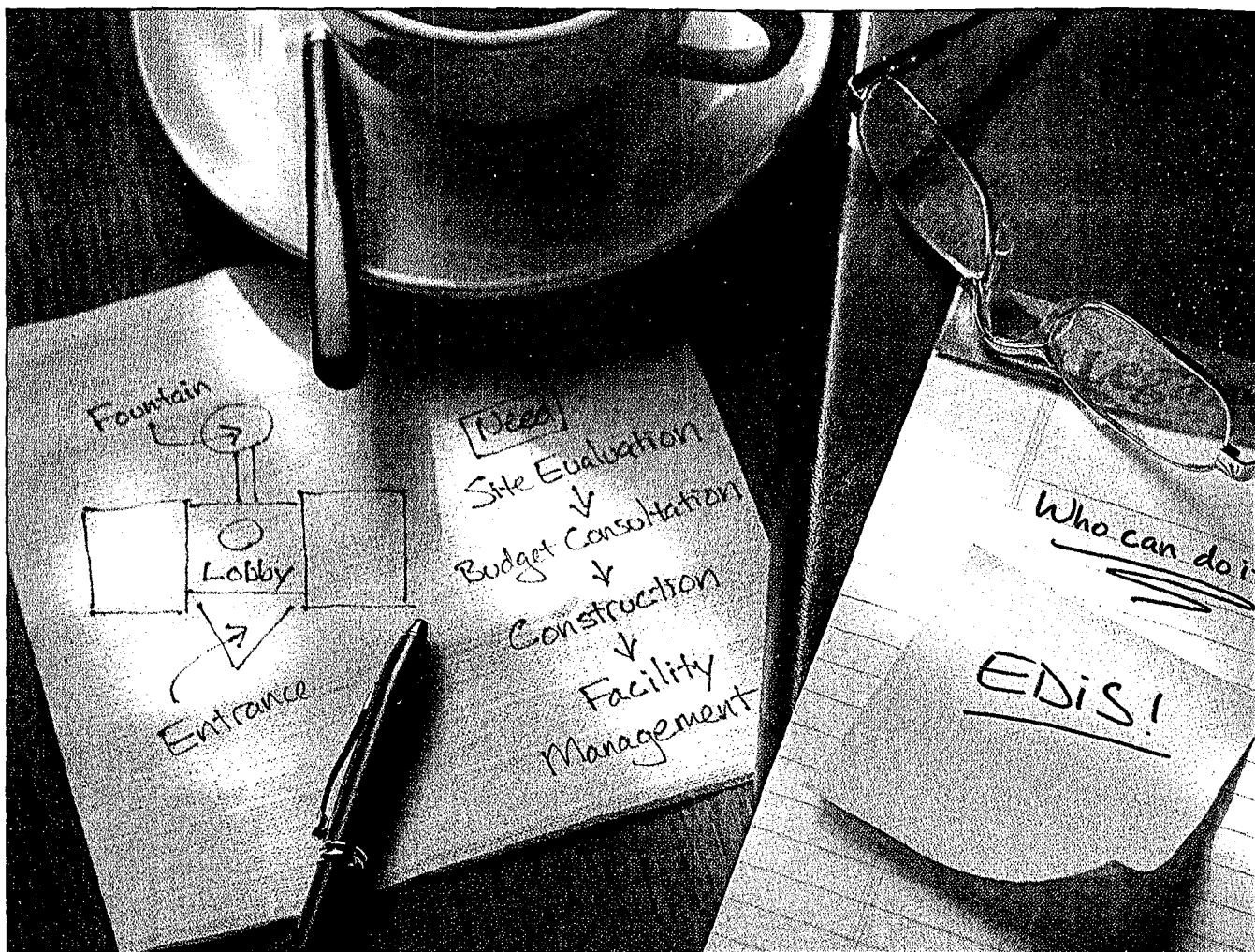
Volume 18 Number 3

\$3.00 Fall 2000

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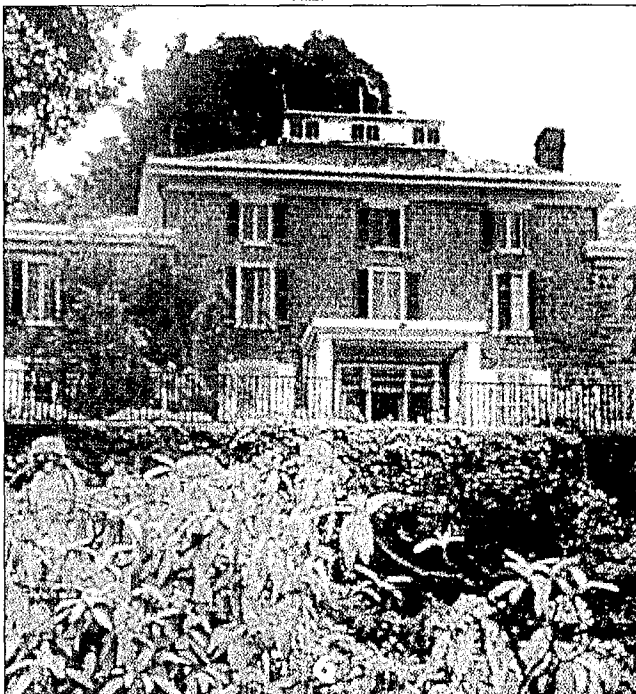
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AESOP ON ANNEXATION

Mark F. Dunkle



Suburbs took the form of large
residential subdivisions with
indistinguishable houses.



The saving of Gibraltar is an excellent
example of how committed citizens can,
in partnership with government and
business entities, find creative ways
to purchase, preserve and reuse
historic residential properties.

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EDITORS' NOTES

When I was first asked to serve as the issue editor for this "Quality of Life" issue of *Delaware Lawyer*, all sorts of ideas and topics for potential articles swirled through my already congested and somewhat limited brain. While the general citizen normally associates issues such as "traffic," "the environment," and other "infrastructure"-type matters with "quality of life," being actively involved in representing landowners, developers, builders and companies in connection with land development matters over the last 15 years has caused me to develop a somewhat different perspective on that over-used term. For me (and I suspect many others) what provides me, my family and friends, with peace of mind and comfort, on a day-to-day basis, is peace and prosperity, economic growth, sufficient time to enjoy family, friends and leisure activities, and comfortable housing and amenities. While I have concerns about traffic and have, over the years, become quite informed and, thus, concerned about protecting precious natural, cultural and historic resources, these are not the things that give me great pause or concern from day to day. Frankly, it is my belief that so many people do spend so much time battling over the so-called "quality of life" issues, because life is, in fact, so good and we have the "luxury" of taking the time to fight like crazy to stop a Wawa, or oppose a housing development of slightly different types of homes than ours, or bitterly insist on down-zoning our neighbors' properties because of concerns of "over-development" after we already "got ours."

As a result of the foregoing perspectives, my initial thoughts for this issue were dramatically different than as they ultimately developed. Once I regained my focus, however, and realized that discussion of issues such as "world peace," economic prosperity and time management tools were not what the Board of Editors probably expected, I was quickly able to identify five authors and five topics that I knew the readers would love to hear from and about. The results and the quality of the articles far exceeded my expectation. I can't say enough about my feelings of thanks and respect for jobs very well done.

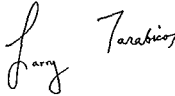
We begin this issue with two different perspectives on New Castle County's Unified Development Code ("UDC") from Wendy Danner and Richard Forsten. Both articles are excellent and provide valuable and helpful suggestions for moving forward. I have no doubt that Wendy is correct in pointing out that the UDC sets the framework for new and better means of developing land with opportunities for landowners and developers to propose new and creative development. The long-term legacy of County Executive Tom Gordon will be determined by the steps and actions that will hopefully be taken by his administration over the next four years to actually mandate and support those very important new and creative land development techniques and opportunities contained in the UDC.

After those two excellent articles, Doug Hershman provides us with a thoughtful review and somewhat new analysis on "quality of life" from the point of view of the homebuilding industry. Doug's article is followed by an extremely entertaining and thought-provoking analysis of suburban/urban development (truly applicable to all three counties) by Mark Dunkle. Mark provides us with perspectives that should be reviewed and discussed in communities throughout the state.

Finally, Lisa Goodman provides us with a fantastic, interesting and unique review of the regulatory and other steps leading to the adaptive reuse and rehabilitation of a jewel of historic property in the city of Wilmington.

I believe you will enjoy and appreciate the articles presented here.

Special thanks go to my administrative assistant, Renee Ebert, whose excellent organization skills and periodic "gentle reminders" kept us all on track and on schedule, and to my great friend and partner, Richard Levine, whose guidance and assistance as a sounding-board and brainstorming sessions were invaluable, as they have been on so many occasions in the past.


Larry Tarabicos

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Mark F. Dunkle practices commercial real estate transactions, land use, zoning and environmental litigation. He is a partner with the firm and serves as special counsel to the Delaware Department of Transportation for condemnation and land acquisitions. He is past president of the Kent County Bar Association and currently serves as an editor of *In Re*, the Journal of the Delaware State Bar Association. Mark graduated from the University of Virginia in 1982, received his J.D. from Emory University School of Law in 1985, and is admitted to practice in Georgia and Delaware.

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Douglas M. Hershman is vice president and director at The Bayard Firm where he heads the real estate department. He is currently starting his third term as chair of the Real and Personal Property Section of the Delaware State Bar Association. He is also currently serving his fourth term on the board of directors of the Home Builders Association of Delaware.

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DELAWARE LAWYER

A publication of Delaware Bar Foundation
Volume 18, Number 3
3301 Lancaster Pike, Suite 5-C
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Richard A. Forsten

LAND USE "REFORM" AND THE LAW OF UNINTENDED CONSEQUENCES: ARE WE HEADED WHERE WE WANT TO GO?

Cries over "development" have probably been going on since Columbus first set foot in the New World; but, it seems that the last ten years or so have seen a substantial and much-publicized rise in complaints about "development." Generally, these complaints include too much development, too much traffic, and too much density. Suburban "sprawl" is the "evil" which is ruining our lives and which must be discouraged.

It is helpful to remember, though, that development itself is not evil. It results from both natural population growth¹ as well as economic success and prosperity. Nevertheless, in response to the "problem" of

development, governments have enacted a host of countermeasures. Many of these reforms, targeted at specific problems or issues, are quite successful.² Ironically, though, in the long run other well-intentioned reforms only act to exacerbate the problems they were designed to correct or to create new problems which are worse.

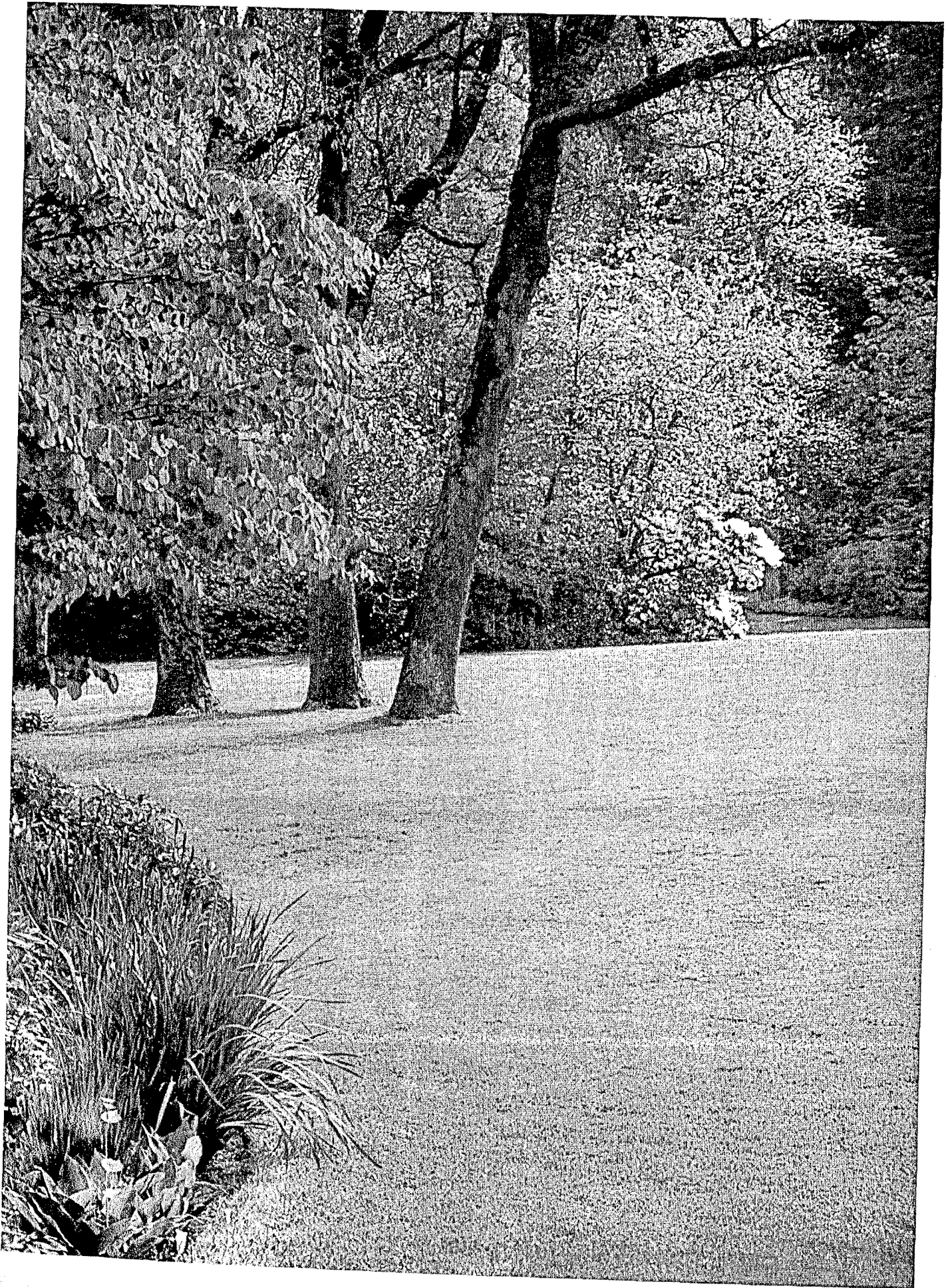
This article is written to examine certain assumptions and to take a critical look at various policy initiatives and reforms. It may be that the initiatives, on balance, are worthwhile, but before blindly following them, it is important to see where they lead. In particular, there are three areas which I would propose to focus on: (1) greater requirements for open space as part of the development or improvement of a property; (2) requirements regarding minimum levels of service for traffic; and (3) requirements that existing properties come into compliance with newer (and greater) requirements for open space, setbacks, parking, landscaping and other items. In discussing each of these areas, I will use New Castle County as an example and focus on the changes from the county's old zoning and subdivision codes to its new Unified Development Code ("UDC"). In questioning certain provisions of the UDC, I do not mean

to denigrate it or all of the hard work that has gone into it. I merely want to raise issues for discussion. As various county officials have stated from time to time, the UDC is a living code and is meant to be adjusted and amended over time as situations, experience, and circumstances warrant.

One of the first things that is striking about New Castle County's new Unified Development Code is the amount of open space which is now required to be included as part of any project. Whereas historically a commercial or industrial property owner might only have to worry about complying with setbacks (i.e., the distance from the edge of the property line to a building or parking lot) or wetlands, under the new UDC, a property owner must leave a certain percentage of his property "open" — meaning that it cannot contain anything except landscaping and perhaps a stormwater detention basin. In an industrial zone, the percentage ranges from 15% to 20% and in a heavy-industrial zone it is 10%. In commercial and office districts, these open space requirements vary from 20% to 50% of the total site area.

Now, you may already be asking what's wrong with that? Don't we want nice landscaping and open space as part of any project? Before answering the question, though, think about the costs. For a property zoned CN (Commercial Neighborhood) under the UDC, the requirement for open space is 45%. This means that if you own an acre of ground zoned CN, nearly half of it is undevelopable.³ Prior to the UDC, though, there was no separate open space requirement (other than setbacks). The end result under the UDC is a building perhaps one-third to one-half smaller than may have been permissible before, or, put another way, a building which may have required an acre of ground in the past now requires one-and-a-half to two acres. So, what's the big deal, you ask, other than the fact that a "greedy" property owner can't build quite as big a building? Isn't it better to have more "space"?

If one looks at an individual project, one might be tempted to say "yes," less density and more open space is a good thing.



result is that more property must be developed in order to provide the same amount of shopping or office space. More property being developed today means less undeveloped property today and in the future. It means more traffic and it means more sprawl. Shoppers and workers must drive more and mass transit is less effective, as the same amount of stores and offices are spread out over a larger area. Thus, a policy designed to provide more open space (by requiring relatively large amounts of open space within individual projects), actually leads to more property being developed and therefore less open space in the long run.

Instead of requiring open space as a part of any project, which open space often only consists of random patches of grass and plants not really usable by the public anyway, wouldn't it perhaps make more sense to encourage development at greater densities, thereby preserving more undeveloped property and open space for the future? Higher density development should help make mass transit more effective and lessen the amount of sprawl and traffic. Some of the more plentiful undeveloped land could also be purchased to provide preserves, parks, and *usable* recreational space. In this way, higher density development, toward which many people would initially have a negative reaction, could actually reduce sprawl and provide more real, usable open space.

Closely related to the issue of density is that of traffic. Another trend in modern planning, and something that is also incorporated into the UDC, is to limit development where existing roads are already operating at capacity. In the parlance of land use planning, road capacity is described in terms of "level of service" or LOS. Intersections are graded based on the average wait time at an intersection, with "A" being the best and "F" being the worst.⁴ If existing roadways are already at or exceeding capacity, no further development in the area will be permitted.⁵ For purposes of the UDC, a minimum LOS of "D" is required at all intersections which will be affected by a project in developed areas of the county, and an LOS of "C" is required in the more rural areas. If an intersection doesn't meet the required LOS, the property owner can either agree to make the improvements necessary to improve the LOS (often too expensive a proposition for one project to bear) or, alternatively, can attempt to obtain a waiver.

Again, you say, doesn't that make per-

fect sense? If traffic is already bad in an area (i.e., LOS "D" or lower), we certainly don't want to make traffic worse, do we? In an ideal world, of course, the answer would be "no." However, as the population expands, as residential shopping and office needs increase, and as new stores and restaurants look to come to the area, more development will occur. If we prohibit (or severely restrict) development where traffic is heavy, development will be driven (no pun intended) to areas where traffic is less. Rather than concentrating development and attempting to improve traffic capacity where it is

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a problem, LOS requirements tend to spread development out, causing still more traffic. The end result is more sprawl. And, not only more sprawl, but by spreading out development, we are also making traffic mitigation techniques (such as mass transit and carpooling) less effective. Thus, the very tool used to combat traffic problems, LOS requirements, may in the long run make our traffic and sprawl problems worse. Perhaps it would be better to have several traffic-generating projects locate in the same area, so that one set of traffic improvements can accommodate a group of projects. Traffic improvements might

be less costly (due to economies of scale), individual property owners might be more easily able to contribute a portion of the cost, and mass transit and traffic mitigation should work better.⁶

Open space requirements and LOS requirements primarily affect new projects, but as we impose these new standards on new projects, we must also stop and ask ourselves what will be the effect on existing development and businesses. Traditionally, these older businesses, or "non-conforming uses," are allowed to continue. However, when a non-conforming use wants to expand or upgrade, it is typically forced to comply with the new standards or is otherwise prohibited from expanding or upgrading. Moreover, if some percentage (50% under the UDC) of the building or project has been destroyed, then the project can only be rebuilt if it comes into total compliance with the new requirements.

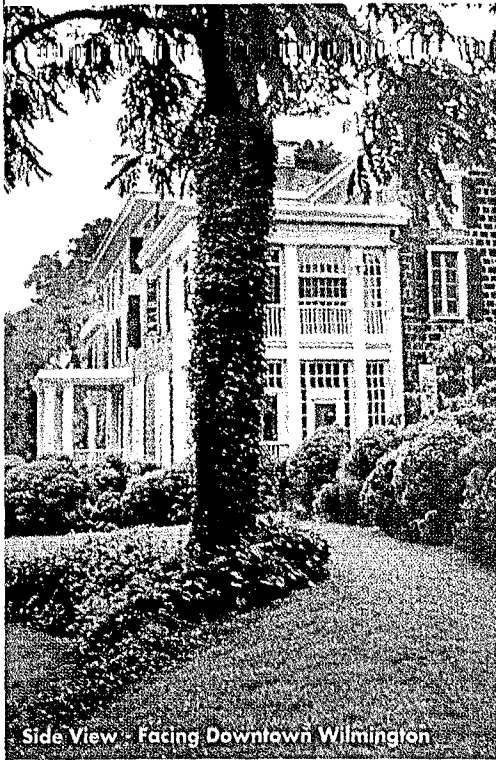
All right, what's the problem now, you may be asking. After all, if we have newer, "better" standards, shouldn't we want older properties to comply? Things will never get better if we don't apply the newer, better standards. Unfortunately, such an approach overlooks the reality facing many, if not most, older-developed properties — not only do such properties not comply with today's modern requirements, but, because they were developed in the 50s, 60s, and 70s, they were developed on smaller lots with higher densities, and the projects themselves are also often smaller in size than that required by modern business practices and customers. If such projects had to be rebuilt under today's more restrictive codes, with their large open space requirements, many could only be rebuilt at substantially less than their current size or capacity. As a result, property owners of non-conforming projects have little or no incentive to invest in their properties and keep them modern and up-to-date.

Recently, the New Castle Board of Adjustment denied an existing fast food restaurant the variances it sought to upgrade and modernize its existing facility. Several Board members, though, dissented from the decision, and their dissent forcefully captures this problem facing non-conforming uses:

the members supporting the application respectfully disagreed with the Department's interpretation of the basic premise of the [UDC] in circumstances like those presented in

Continued on page 25

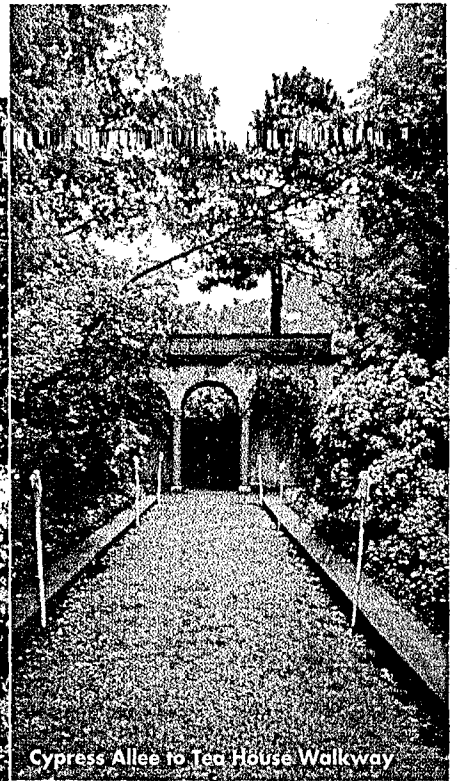
Gibraltar Mansion



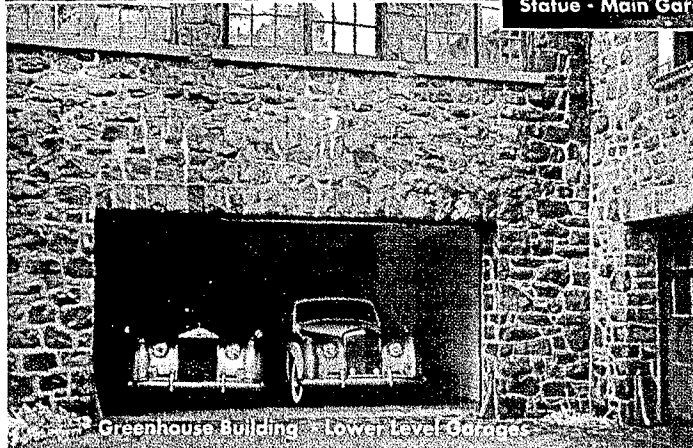
Side View - Facing Downtown Wilmington



Statue - Main Garden Area



Cypress Alley to Tea House Walkway



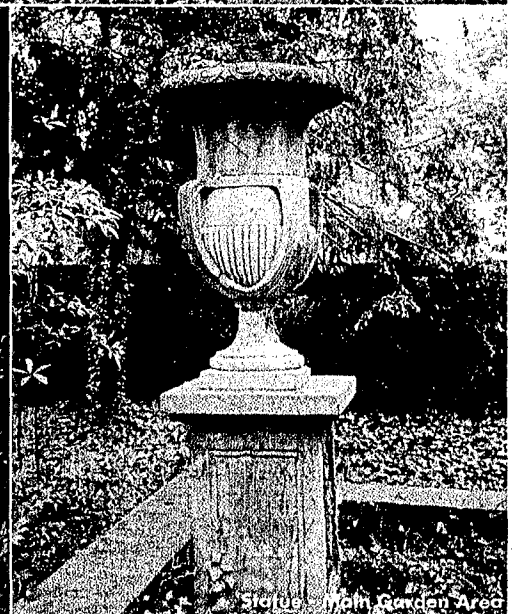
Greenhouse Building - Lower Level Garage



View from Garden



Driveway Drop-off Area



Statue - Main Garden Area

Lisa B. Goodman

PRESERVING URBAN ESTATES: A CASE STUDY

As interest and awareness in saving historically and culturally significant properties grows, so does an old dilemma; how to pay for the purchase, restoration, and upkeep of such properties. Few argue that preservation is a worthwhile goal. Practically speaking, however, costs and land use regulations make saving old properties a challenging matter.

What Do You Do With A White Elephant?

Saving large residential properties creates particularly specialized problems. Commercial or industrial properties, with a sufficient initial infusion of cash and vision, can be transformed into self-supporting commercial concerns. James Rouse's 1976 renovation and reopening of the 1836 Faneuil Hall Marketplace in Boston is a prime example. Commercial properties can also be converted to multi-family residential use through the creative use of apartments or condominium schemes. Residential properties, however, do not generally offer the same cash flow opportunities. House museums, unless supported by outstanding collections and/or large endowments, generally fail to generate sufficient income to be self-sustaining. Conversions of large residences into office or retail space, while sometimes a viable preservation method, often result in necessary but unfortunate interior alteration.

Urban residential properties with large grounds surrounding them present additional problems. If estate gardens exist, they may have fallen into disrepair, yet contain historically significant structures or garden designs worthy of preservation. Even more importantly, large urban estates are rare, and the existence of green space within a city landscape is a natural

resource which is often too expensive to easily re-create. Green areas within cities provide oases for both humans and wildlife, aid in noise and air pollution remediation, and generally make cities more liveable.

In addition to the financial problems involved in preserving large urban estates, land use regulations often present difficult challenges. While some jurisdictions, New Castle County among them, have adopted land use codes which specifically provide opportunities for "adaptive reuse" of historic structures, many jurisdictions do not. Urban estates are almost always zoned residential, and options for adaptive reuse, in the absence of an ordinance which makes such reuse a permitted one within the zone, are limited. Adaptive reuse schemes often permit limited office use, despite underlying residential zoning, by requiring the obtaining of a special use permit. Special use permits require a public hearing, generally in front of a Board of Adjustment. To grant a special use permit, a finding must generally be made that the proposed use is reasonably necessary, and will not be detrimental or injurious to the area. Despite general agreement among neighbors living near such urban estates that they should be preserved, an actual proposal often provokes disagreement and protest, as do concerns regarding noise, traffic, hours, lighting, and possible street disruption during renovations.

In the absence of a workable adaptive reuse option, rezoning is sometimes necessary in order to permit an alternative use for a large urban estate. Rezoning of such estates, usually from a residential to a commercial or office designation, also presents problems. Changing a zoning district in Delaware is always the province of the governing body of the jurisdiction, and can easily take nine to eighteen months from start to finish, with no guarantee of success. Rezoning also cause con-

cern among neighbors and area civic organizations. Even the most restrictive commercial or office designation, which might be necessary for the conversion of a large single residence into a going concern, creates the possibility that unwanted uses may be permitted on the property. For example, the conversion of an estate house into a fine restaurant or inn usually requires commercial zoning. If the inn or restaurant fails, however, any other commercial use permitted within that zoning designation may be made of the property, assuming that all other code requirements (parking, landscaping, level of service for affected roads) can be met.

Such community concerns can be addressed by placing deed restrictions on a property in connection with a rezoning. Typically, such deed restrictions limit a property to only the proposed use, or prohibit the use of the property for certain named uses which would otherwise be permitted within the zoning district. While this is often done, it presents a danger for an owner who has spent a great deal of time and money to rezone a property, who is then faced with limited or no alternatives should the proposed use fail.

Despite all the difficulties raised above, the remaining historically significant residential properties within cities are worthy of preservation, and more attention has recently been turned to attempts to save them. An excellent case in point is currently in process at one of the northern gateways to the city of Wilmington. Gibraltar, the former Sharp family estate, located at the intersection of Pennsylvania and Greenhill avenues, is currently undergoing a miraculous and complete restoration. The tale of how this property was saved from demolition is instructive, both from a creative financing standpoint and from a legal land use perspective.

A Brief History of Gibraltar

The house that was to become the Gibraltar Mansion was begun by Dr. John Brinkle in approximately 1844. Dr. Brinkle built his residence on the six-acre property at the corner of Pennsylvania and Greenhill avenues, and located the house on a hill which rises approximately 40 feet from the bed of Greenhill Avenue. The property was purchased by Hugh Rodney Sharp in 1909. Mr. Sharp was married to Isabella du Pont Sharp, the sister of Pierre du Pont, well-known for creating the gardens at Longwood.

The Sharps expanded the existing Brinkle house to its current size of approximately 20,000 square feet. Gibraltar now includes 14 bedrooms, a two-story glass conservatory, and a large garage with a glass greenhouse above it, all surrounded by a tall, ivy-covered stone wall. Although Dr. Brinkle, a physician and cotton merchant, had constructed the original house in the Federal style, during the expansion overseen by the Sharps, Gibraltar became an example of the Colonial Revival style.

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Most notably, the Sharps had the good fortune and foresight to hire Marian Cruger Coffin to design the extensive garden at Gibraltar. Between 1917 and 1923, Coffin created a garden at Gibraltar which reflected her focus on proportion and design, as was appropriate for a landscape designer of the Italian Renaissance School. Coffin studied landscape architecture at The Massachusetts Institute of Technology, where she met Henry Francis du Pont, the owner of Winterthur, who was attending Harvard at the same time. Connections made through her friendship with Henry resulted in Coffin receiving numerous commissions for gardens in Delaware, including two gardens at Winterthur, gardens at Mount Cuba, and the campus design for the University of Delaware, as well

as the garden for Gibraltar.

The Gibraltar property remained the residence of Isabella DuPont Sharp until her death on December 17, 1946, and of Hugh Rodney Sharp, until his death on August 9th, 1968. The property was inherited by their two children, Hugh Rodney Sharp Jr., and Bayard Sharp. In 1976, Bayard conveyed his half interest in the parcel to his brother, Hugh R. Sharp Jr., upon his death in December of 1990, conveyed the property to his three grandchildren through a real estate trust.

The trustee of the real estate trust, H. Rodney Sharp III, and the other two beneficiaries found the mansion too expensive to either reside in or maintain. The Marian Coffin Garden, which had remained virtually intact, became overrun with weeds and ivy. The house, now empty, suffered the unfortunate yet predictable slights of vandals; windows were broken, interiors were damaged, and the elements took their inevitable toll. The mansion and its surrounding garden seemed headed for slow decay at best, and the wrecking ball at worst. Indeed, a plan for residential development on the property had been floated, and by 1995 the Sharp heirs, unable to maintain the property, had listed it for sale for two million dollars, a reasonable price given its acreage and location, yet one that placed it virtually out of reach of anyone who wished to save it from development.

Enter Preservation Delaware

Preservation Delaware, Inc. ("PDI") came to the rescue of Gibraltar through a combination of vision, creativity, fund-raising, and hard work. PDI itself had been formed in 1993, as a non-profit organization intent on preserving historic sites within Delaware. Its initial offices were located at the University of Delaware's Goodstay Center, directly across Pennsylvania Avenue from Gibraltar. PDI's board desperately wanted to save Gibraltar, yet was understandably concerned about the long-term cost of doing so. The board determined that it would attempt to acquire Gibraltar, but decided that it would have to find an economically self-sustaining use for the property — not an easy task given their desire to also maintain its historic integrity.

Show Me The Money

In a visionary move, PDI began dis-

cussions with the Delaware Open Space Council. Created in July of 1990 upon the adoption of the Delaware Land Protection Act, 7 *Del. C.* Chapter 75, the Delaware Open Space Council is a nine-member board which advises the secretary of the Department of Natural Resources and Environmental Control (DNREC) as to the implementation and financing of the Open Space Program, which formally began with the passage of the Delaware Land Protection Act. The Open Space Council also recommends specific land purchases to DNREC. The Open Space Program is funded in part by legislative appropriations, by land and water conservation bonds, and by the dedication of a portion of the Realty Transfer Tax. 30 *Del. C.* Chapter 54.

When PDI approached the Open Space Council with a request for funding to preserve Gibraltar, the use of Open Space funds to preserve an urban property was a new concept to the council. Specifically, since its inception in 1990, the council had funded purchases of open space which was in a natural state, such as woodland, streams, or open meadow, and which adjoined existing state-owned parkland or other preserved open space. The council initially viewed Gibraltar as a poor candidate for the expenditure of Open Space funds because of its isolated nature and location within the city of Wilmington. Indeed, no property within the city had ever been protected through Open Space Program funds. PDI worked hard to change the council's mind. It solicited the support of the National Trust for Historic Preservation and the Garden Conservancy, as well as gathered over 1,200 signatures on a petition supporting the expenditure of Open Space funds to preserve the property. Approximately a year after discussions were begun with the Open Space Council, the council agreed to spend roughly one million dollars to purchase a conservation easement to preserve Gibraltar from development. This conservation easement, essentially a purchase of development rights, specifically limited the owners of the property (still the Sharp Real Estate Trust at the time) to construction of one new building on the site, which was contemplated to be needed in conjunction with the adaptive reuse of the site. Otherwise, existing structures could be maintained, the gardens could be restored and expanded, and certain other items, such as parking areas and driveways could be resurfaced or added.

With the receipt of the Open Space funds, the Sharp family was now in a position to donate the property to PDI. One year later, after seventy-five percent of the 2.1 million dollar target for the garden restoration had been raised, the garden restoration project began. In keeping with PDI's theory of self-sufficiency, the 2.1 million dollar campaign goal included one million dollars to form an endowment to permanently cover the cost of the garden's upkeep. Today, the

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restoration of the garden is virtually complete, and it is preserved as a resource and public garden for all Delawareans.

This (Very) Old House

While plans were being formulated and money raised to renovate and preserve the gardens, PDI's Buildings Committee, led by PDI's current president, Walter Rowland, Esquire, was committed to finding a way for the Gibraltar mansion to cover its own operating costs. After a long search, a contract was signed in October of 1998 with Someplace(s) Different, Inc., for the con-

version of the mansion into a small luxury inn. Someplace(s) Different owns and operates approximately twenty-two historic properties in Canada and the eastern United States, all of which have been painstakingly converted by the company into small luxury inns. These properties have all been restored with exacting attention to historical integrity, and furnished with a mix of antiques and reproductions. It is this proven record which PDI sought to bring to Gibraltar. Additionally, the lease revenues received by PDI for the use of the mansion were earmarked to go toward maintaining the grounds and gardens, and toward providing funds for other preservation projects.

Once Someplace(s) Different entered into its lease with PDI, Someplace(s) Different moved forward with its plans to secure the development permits necessary to begin the conversion of the mansion.

A Stumbling Block

A review of the zoning of the Gibraltar project revealed it to be within an R-1 district. Within the city of Wilmington, the R-1 district is the most restrictive residential district. Permitted uses include one family detached dwellings, and other non-residential uses closely associated with residential areas, such as houses of worship, elementary schools, libraries, parks, and similar uses. The use of a property as a hotel, the use which most closely resembles the small inn proposed for Gibraltar, is not a permitted use within the Wilmington City Code in any residential district, and does not appear as a permitted use until the C-2 district, a commercial designation clearly inconsistent with surrounding residential properties. In addition to the time and uncertainty inherent in undertaking a rezoning, it was felt by all parties that a commercial district was not appropriate for Gibraltar, especially one which would have permitted uses such as a laundromat, funeral home, commercial parking lot, used car lot, and numerous other medium intensity commercial operations.

In response to this dilemma, a meeting was convened with Daniel J. Mahoney, Someplace(s) Different's point person on the Gibraltar project. Peter Besecker, the planning director for the city of Wilmington, and myself as project attorney. After laying out the project to Peter, it became clear that the best course of action was to seek a use variance. Use variances, while virtually

impossible to accomplish in New Castle County, are more available in the city of Wilmington and are highly suited for unique properties of this type.

Use variances developed in property law as a method of allowing an otherwise unpermitted use to be made within a zoning district, without the need for a rezoning. Use variances are available when a property owner can demonstrate the following three requirements:

(1) the property cannot yield a reasonable return when used for a permitted purpose; (2) the plight of the owner is due to unique circumstances; and (3) the use authorized will not alter the essential character of the locality. *Hockessin v. Board of Adjustment of New Castle County*, Del. Supr. 577 A.2d 753 (1990).

In New Castle County, a use variance must first be granted by the New Castle County Board of Adjustment and then approved by County Council. This two-step process, as well as the stringent legal requirements, make use variances almost unattainable in New Castle County.

Within the city of Wilmington, however, use variances are granted more often, due perhaps in part to the fundamental difference between urban and suburban areas. Urban areas commonly have commercial and residential uses in close proximity, and such proximity is viewed as a convenience of urban life. Additionally, the city of Wilmington has empowered its Board of Adjustment to grant use variances without City Council approval. Because the size and location of Gibraltar make it a unique property ill-suited to continue as a single-family residence, and because its location on such a large lot behind high stone walls protect the surrounding residences from any disturbances due to commercial activity, a strong argument existed that Gibraltar met the requirements for a use variance.

Community Participation

Once it was determined to pursue a use variance for Gibraltar, intensive community information sessions began. Meetings were held with the residents of the communities immediately surrounding Gibraltar, including the Highlands, Greenhouse Place, the Devon Condominiums, and the streets immediately adjoining Gibraltar. Individual mailings were sent, and representatives of the appropriate community associations were asked to invite their members. The initial set of meetings, held in

September of 1999, resulted in a number of issues being raised by the community. These issues included concerns about the adequacy of parking (including the enforcement of proposed valet parking), questions about food deliveries and exit and entrance patterns, and concerns regarding the possibility of disturbance due to music from outside events such as weddings and receptions. These are typical concerns raised in conjunction with any proposed commercial activity, and are especially sensitive when such activity is planned in close proximity

**Between
1917 and 1923,
Coffin created
a garden at
Gibraltar which
reflected her
focus on
proportion and
design, as
was appropriate
for a landscape
designer of
the Italian
Renaissance
School.**

ty to residential properties.

Because winning neighborhood support is key to both a successful Board of Adjustment hearing and successful long-term operation, Someplace(s) Different took the concerns of the neighbors very seriously, and responded to them in a positive way. It addressed the valet parking issue by entering into a formal agreement with the University of Delaware for the use of the Goodstay Center parking lot across Pennsylvania Avenue. Exit and entrance patterns were addressed by reconfiguring the

major exit out of the site to align it with 16th Street by utilizing a "paper street" that had never been developed. State Representative Joseph G. DiPinto and City Councilman Gerald L. Brady were instrumental in addressing neighborhood parking concerns by assuring the neighbors that existing parking laws would be enforced, and by suggesting that new parking restrictions for adjoining streets would be considered if problems materialized. Someplace(s) Different also discussed the handling of deliveries at its other properties, and explained to the communities that operations of its type utilized only small delivery trucks which would fit into the site, obviating the need for on-street delivery parking. Finally, the issue of outside music was addressed by an agreement that outside music would conclude by 10:00 P.M.

There is no question that neighborhood cooperation was helped by a general community desire to save the property from development, and by the neighbors' appreciation for the community resource that Gibraltar's lovely garden and proposed inn and restaurant would create. Someplace(s) Different, PDI, and the neighbors all worked together to resolve concerns relating to the preservation and use of the property.

With community support, and the support of DiPinto and Brady, the Wilmington Board of Adjustment granted a use variance for the Gibraltar property at a public hearing held on January 12th, 2000. Someplace(s) Different now plans to begin renovations on the mansion this summer, with a grand opening of the Inn and restaurant within a year.

A Model For The Future

The saving of Gibraltar is an excellent example of how committed citizens can, in partnership with government and business entities, find creative ways to purchase, preserve and reuse historic residential properties. Preservation Delaware provided the vision and commitment, the state of Delaware contributed initial funding, Someplace(s) Different added commercial expertise, and the city of Wilmington granted the necessary zoning relief. The result is the saving of a property that will be a community amenity, a source of pleasure and pride for city residents, and a model for future attempts at urban historical preservation. ♦

Wendy R. Danner

BALANCING RIGHTS: THE UDC AS THE LATEST CHAPTER IN THE EVOLUTION OF NEW CASTLE COUNTY'S SUBDIVISION & ZONING CONTROLS

The juxtaposition and convergence of personal rights including property rights, on one hand, with social good and community rights, on the other, has historically been fraught with contention, angst, discord and, yes, even politics.

The arrival of the evolution of this social conflict in New Castle County, Delaware — where it has peaked in the last decade — should come as no surprise to anyone. Remnants of this issue litter the landscape of nearly every community in America that has a population of greater than 50,000 people.

Why?

Our communities historically have valued growth, which usually means jobs, an expanded tax base, increasing personal wealth, more people, and similar impacts. Such growth is inevitable as evidenced by our society's burgeoning population. In just the last century, population in the United States grew from 76 million in 1900 to an estimated 275 million today.¹ When they grow up, our children have to live someplace, and most of us would like to have them near where we are.

Over the same period, agriculture — where literally half of Americans lived on farms in 1900 — lost its economic capacity to support such a large population. Agriculture today supports between only one to two percent of American families. The evolution of our economy to industrial, manufacturing, and more recently a post-industrial knowledge economy, transplanted those people to urban growth centers and that American innovation: the suburbs.

In New Castle County, Delaware, those numbers are not extraordinarily different. Here's a quick look at the county's

population growth:²

1800:	25,361
1850:	42,780
1900:	109,697
1950:	218,879
1960:	307,446
1970:	385,856
1980:	398,115
1990:	441,946

Given this increasing growth rate, the issue then turns to how the community manages its growth.

Evolution of that management for most communities has been from non-management to a continuum of management forms. Design and implementation of such management approaches inherently is a political issue that seeks to balance the wants and needs of those who value growth (property owners whose property is more valuable given its potential for development, developers, builders, suppliers, workers and others) and those who do not share that value (current residents who share a desire for open space, abundant infrastructure, a simpler lifestyle, and like values — even if it means keeping their neighbor's property undeveloped or underdeveloped).

The need for zoning and subdivision controls came to light after World War II, when most Americans started migrating towards the suburbs. The desire to escape the crime and overcrowding of the cities coupled with the mobility afforded by the automobile, served as one of the catalysts for the suburbanization of our society.

While the move provided peaceful solitude, safety, and security, the adverse affects soon became apparent. Suburbs took the form of large residential subdivisions with indistin-



guishable houses spaced equidistant apart from one another along street patterns of stub streets and dead-end cul-de-sacs. Just as the homes were spaced far apart from one another, the subdivisions were spaced far from existing towns and cities. Different types of uses began to become completely segregated from one another. This fragmentation led to a lack of interconnectivity between communities as well as shopping, recreational and employment areas. Further, the complete dependence upon the automobile resulted in longer commutes, congestion, and pollution.

In New Castle County, the bulk of suburbanization took place between the late 1940s and the 1960s north of the Chesapeake & Delaware Canal. Employment opportunities offered by large manufacturing companies such as DuPont, Ford and Chrysler, caused the Brandywine Hundred, Pike Creek, and Central Pencader (the Route 40 corridor) areas to grow rapidly.

In 1954, New Castle County enacted its first Zoning Code to segregate non-compatible uses. Commercial zones were clearly delineated to prevent industrial nuisances in residential neighborhoods. In accord with the existing philosophy, New Castle County assigned zoning designations to broad areas rather than specific parcels.

In 1967, New Castle County adopted its first Subdivision Regulations to assert some rudimentary control over the site design of subdivisions and the preservation of natural resources.

Over the next 30 years, New Castle County's population continued to surge. The influx of banking industries to Delaware after the adoption of the Financial Center Development Act in 1981 continued to fuel the state's economy as well as its population growth. Between 1960 and 1990 New Castle County's population grew by 44%.³ During that same period, the population of unincorporated areas doubled.⁴

Meanwhile, the loss of natural resources similarly increased at an alarming rate. During this period, Delaware lost to development 21% of its farmland⁵ and 42,000 acres of wetlands.⁶ Traffic congestion occurred and soon residents began to ponder the long term repercussions of unmanaged growth. Concerns regarding the lack of infrastructure, the disappearance of privately held open land, and the depletion of natural and historic resources soon caught the attention of Delaware politicians always eager

to subdue the dissatisfaction quotient of the population.

In 1988, the state of Delaware adopted the "Quality of Life Act," codifying its commitment to address land use concerns. The Act strengthened the three counties' ability comprehensively plan, guide and manage future development, and encourage the most appropriate use of land.⁷

That same year, New Castle County adopted its first Comprehensive Plan which set the framework for growth management amendments to be made to New Castle County's subdivision and zoning rules and regulations. Although

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many of the initiatives outlined in the 1988 Comprehensive Plan were undertaken, they proved to be unsuccessful over the next several years in many regards. Rezoning was reactive rather than proactive, fragmenting the overall comprehensive zoning vision. Infrastructure to support new development was still lacking. More strict environmental controls were needed. Although the 1988 legislation touched upon the core issues, the county just worked along the margins of what was needed, as evidenced by the residents' continuing dissatisfaction with their quality of life.

Towards the end of 1996, it was clear that business could not go on as usual.

Community opposition placed every development project in jeopardy. The business community searched for ways to meet the growing resistance. However, political gridlock on how to solve the problems prevented government action.

In an effort to reconcile the residential community's interest in controlling development and the business community's interest in continued growth, the state organized a task force in an effort to facilitate a compromise between the dueling interests. Although the several months of negotiations produced 77 pages worth of recommendations, the 100-member committee came to no consensus, and the state's summit ended with what was characterized as a "big shrug."

In the absence of fundamental change, residents' concerns were compounded by the results of a University of Delaware study which revealed that the number of residents living south of the Canal in New Castle County would double over the next 20 years.⁸ With the majority of jobs remaining in the Wilmington area, such a population surge would seriously impair the existing traffic routes into the city.

It was estimated that unchecked growth could add an extra \$2 billion to road and transit costs in New Castle County over the next 25 years. Such a drastic increase in the population would also tax existing public schools barely able to handle the number of students currently enrolled. Further, with no sewer service available south of the Canal, and questions regarding the long term environmental viability of individual on-lot septic systems beginning to surface, alternatives were desperately needed. Current water and sewer system needs, including wide-scale replacement of septic systems, were estimated to require more than \$600 million in new investments.

Residents, frustrated with their representatives' inability to gain control over growth management, took to the polls in 1996 and elected officials largely on their stances on land use issues. Many active civic leaders with no prior political experience, who vowed to overhaul county land use practices, were elected to legislative positions. Among these newly-elected civic leaders was County Executive Thomas P. Gordon, who immediately embarked the overhaul of the county's land use practices. Things started to happen quickly.

In 1997, the county's Comprehensive Plan was amended. The Plan identified

three main issues that had to be dealt with: the timing of growth, the character of growth, and the location of growth. The Plan adopted a growth management strategy designed to reverse current trends which promoted suburban sprawl, and it addressed problems related to lack of infrastructure and degradation of resources. The goals set forth in the Plan were to be accomplished by the enactment controls regulating the location, timing, and character of growth on both a micro and macro level.

Macro controls, e.g., zoning regulations dictating where growth is to occur county-wide, were to be based upon factors such as population growth and economic policies affecting market forces. Lesser controls, e.g., subdivision regulations dictating where growth is to occur on a specific site, were to be based on environmental and topography factors unique to the site itself.

The timing of the growth was to be regulated by the availability of infrastructure. In a philosophical change, although taxpayer investment financed infrastructure elsewhere, new development would be forced to pay its own way for other types of public services, such as police, fire, and emergency medical services. If infrastructure such as roads or schools were not present, developers, and ultimately home buyers through fully-loaded costs, had to provide the same, or wait for such facilities to be provided by the government.

The Comprehensive Plan also laid the framework for several new initiatives reflecting current trends in planning philosophies and practices.

In order to preserve New Castle County's unique character and desirability as a place to live and work, the Plan provided for regulations to be adopted encouraging more compact development patterns to reduce consumption of open space and farmland while at the same time preserving valuable natural and historical resources.

The Plan also recognized the importance of a healthy economic environment and proposed a coordinated strategy stimulating such an environment through the enactment of regulations that would attract businesses and industries and direct them to appropriate locations. In order to allow for more predictable and efficient planning, the Plan proposed a comprehensive proactive rezoning and provided that once consensus is reached, controls making it very difficult to rezone property should be

enacted. Finally, the Plan provided for regulations expiring or "sunsetting" approved plans where the developer had not started construction within a designated time, to insure that development reflects the most recent rules and regulations adopted by the county.

The Comprehensive Plan identified five long-term goals to be implemented.

First, alternative modes of travel were to be encouraged. It had become clear that road expansion alone could no longer be depended upon. With the increase of air quality control standards and the decrease of federal funds for transportation improvements, alterna-

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tives to single occupancy vehicle travel must be utilized. Just a 10% shift to alternative transit (e.g. public transportation, walking, and biking opportunities) would significantly reduce improve road congestion as well as improve air quality.

Second, neighborhood interconnection was to be promoted. A desegregation of communities would create an opportunity for local residents to access local land uses such as parks, schools, services, and jobs without having to drive on major thoroughfares. Interconnectivity also furthered the goals of a reduction in congestion and cleaner air.

Third, infrastructure must be present

for growth to occur. No public sewer investment was to be made outside the designated sewer service area until all properties located inside such designated area were serviced. Further, alternative wastewater treatment facilities, such as spray irrigation facilities, were to be encouraged to replace currently failing individual on-lot septic systems.

Fourth, a public/private partnership to develop strategies to achieve timely construction of the recommended water supply facilities was to be initiated. Incompatible uses were to be prohibited on sites with "reservoir potential."

Finally, sources for funding county projects must be identified as property taxes, and limited state funds could no longer be relied upon to fund infrastructure necessary to serve new development.

In June of 1997, Executive Gordon proposed a initiative that would impose a moratorium on all the processing of all rezoning requests and subdivision plans. The move was made in an effort to free county planners from having to process the several hundred land use applications expected to be received over the next six months allowing them to devote their attention to rewriting the county's subdivision and zoning regulations.

Leaders in the development industry vehemently opposed the measure calling it "drastic" and "overkill," and they predicted that it would ruin business and cause unemployment in the trades. However, because an abundant supply of approved lots existed, awaiting construction, the county felt strongly there would be no adverse repercussions to the industry. Despite the opposition, New Castle County Council voted unanimously for the moratorium on all new rezoning and development requests.

Unfortunately, with the moratorium underway, the county planners were not freed from their daily duties as envisioned. In an attempt to beat the implementation of the more stringent standards to be adopted, developers filed plans at six times the normal rate before the moratorium took effect. More than 180 plans were filed between June 10, 1997 and June 24, 1997. The county planners, however, demonstrated their commitment to change by managing their daily caseload while working after hours and on weekends to assist in the comprehensive overhaul of the county's land use code.

Critics immediately attacked the county's efforts to rewrite its Subdivision and Zoning Codes. The then-president

of the Delaware State Chamber of Commerce stated that "[n]o one who deals in the real world believes that the onslaught of legislation New Castle County is facing can be handled in the next six months . . . [i]f they try they will do more harm than good."⁹ The moratorium was characterized as a "cover" devised by the County Executive and New Castle Council so the latter would have "an excuse" when it could not pass its own land use measures.¹⁰ Despite the skeptics, once the moratorium was announced, members of New Castle County Council and the newly-elected administration rolled up their sleeves and began to draft ordinances intended to meet the goals outlined in the Comprehensive Plan.

Council members found out quickly how difficult it is to balance special interests. Farm owners and land speculators feared their land value would be compromised by efforts to control growth and retain open spaces. Developers and homebuilders, used to less governmental oversight, faced the possibility that projects would be disallowed or delayed until adequate infrastructure is provided. Civic groups and neighborhood associations found it difficult to embrace planning principles encouraging clustered development utilizing different housing types. Other public interest groups feared insufficient low income housing would be provided. Finally, homeowners expressed a general distaste for new housing in their community to accommodate the increasing population.

The administration and the legislators quickly learned that most land use decisions are no-win situations. One party to the controversy always walks away dissatisfied. This dissatisfaction is inherent in the government's attempt to balance two constitutional rights: property rights and personal rights. Applying democratic principles, the majority rules. But, in land use, frequently the majority wants to interfere with an individual's right. Communities often demand that their elected officials protect their quality of life by limiting someone's rights to use his or her property as he or she sees fit. In response, private property owners often demand that elected officials protect them from harsh government interference. This moral dilemma becomes more complicated when other groups assert their own agendas: economic development, environmental activism, and advocacy for the poor.

In promulgating the controls in the

Comprehensive Plan, the administration and council members considered every issue raised carefully and responded to each and every concern. Investors were informed that well-planned, efficient, and orderly growth promotes the highest property values for everyone. Developers and homebuilders were warned that if the necessary infrastructure was not provided, development would continue to face public opposition. Civic groups were educated on the benefits of clustered developments and the aesthetic value of mixed housing types. Public interest groups were told that low income housing must be sturdy

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approved under
the pre-UDC code.**

enough to withstand a second life as a rental property. Finally, it was explained to homeowners that growth is inevitable, but the loss of natural areas and community character is not.

After six months of intense work, the Unified Development Code ("UDC") came into being. The document was comprised of about 400 single-spaced typewritten pages divided into 34 chapters. The UDC embodied the philosophy of "performance zoning," where subdivision and zoning regulations are codified into one document.

The philosophy behind performance zoning allows a landowner to do more

things as right. It is not proscriptive as traditional zoning. However, the developer is held to a higher standard of design, protection of the environment, and provision of adequate facilities. The UDC adopted and implemented the policies outlined within the Comprehensive Plan such as impact fees, the sunseting of plans, bufferyard and landscaping requirements.

Contrary to those who said it could not be done, the document unanimously passed County Council on December 31, 1997. At the same time, the county proactively rezoned every parcel in New Castle County, assigning approximately 137,000 parcels new zoning designations. No one thought that the work was completed after the passage of the UDC. To the contrary, everyone was well aware that the document and rezoning designations would need fine tuning. Such modifications are inevitable with such sweeping and complicated legislation.

Since its adoption, the UDC has been amended approximately 11 times, with two large omnibus packages being adopted. Some changes were the result of previous time restraints, others just due to the inevitable lessons learned through the passage of time. Planning, just like any other discipline, changes and evolves. Merely because things are done differently does not necessarily mean that they were done incorrectly before. Planning philosophies merely reflect public opinion in a frozen point in time, and must continue to undergo revision to reflect current concerns.

The majority of litigation that ensued in the 2½ years since the UDC's adoption, has been brought largely by developers who want to avoid the stricter, hence more expensive or less lucrative, controls of the UDC. The cases have centered mainly around interpretation of provisions found in the former code. Unfortunately, because the former code is slowly being phased out, the resulting court decisions having little to no precedential value. Although the vast majority of active plans are UDC plans (i.e., 215 plans out of a total of 248 as of June 6, 2000), the county is still working diligently to dispose of the few dozen former code plans that remain active. Being the case, the long-term impact of the UDC on the physical landscape will not be seen for quite awhile. Most of the building occurring today, and for some time in the near future, will stem from plans approved under the pre-

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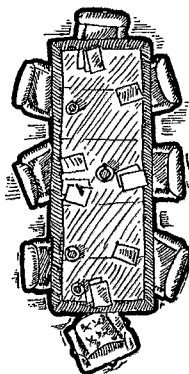
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UDC code. However, over the next decade, the controls embodied in the UDC should gradually become more apparent to residents.

Time will show that the UDC did more than control run-away growth and insure a more attractive landscape. The controversy surrounding the UDC's enactment made people focus more intensely on land use and infrastructure issues. Where once only developers and their attorneys knew the land use system, now the civic activists and homeowners are equally informed. The discourse has expanded to other governmental agencies as well. In response to the lack of capacity in schools, the state now requires developers to obtain certification that capacity exists or pay a voluntary school assessment fee.¹¹ Intergovernmental agencies are working more closely together to resolve issues such as traffic congestion and farmland preservation.

In the end, the question is not whether the UDC slowed or hastened growth. It was intended to do neither. The question is whether it results in a better quality of growth.

We cannot change the policies of the past, but we can insure that we learn from the adverse repercussions of such practices. All residents of New Castle County have an important stake in how our community grows and how our environment is protected from the threat of over-development. Through the extraordinary efforts on behalf of County Executive Gordon and the County Council members in enacting the UDC, the residents of New Castle County will enjoy a better quality of life.

FOOTNOTES:

1. Source: Center for Applied Demography and Survey Research, University of Delaware, U.S. Census Bureau.

2. *Id.*

3. Source: *Shaping Delaware's Future: Managing Growth in the 21st Century Delaware*, Delaware State Office of State Planning Coordination, December 23, 1999, Appendix 8, Table 1.

4. Source: *Id.* at Appendix 8-1.

5. Source: *Id.* at p. 8 (figure represents farmland lost between 1970-1997).

6. Source: *Id.* at p. 9 (figure represents wetlands lost between 1951 and 1981).

7. 9 Del. C. §§ 2657, 2659, 4957, 6957, 6858.

8. 1997 University of Delaware population study conducted for the Wilmington Planning Council.

9. Source: The News Journal, July 6, 1997.

10. *Id.*

11. 9 Del. C. § 2661.

Douglas M Hershman

QUALITY OF LIFE ISSUES IN RELATION TO THE HOMEBUILDING INDUSTRY

When first asked to write on this topic, I thought for sure I understood the assignment based on the title of the article. However, upon further reflection (and construing the words of the title as only an attorney can), I realized that there were several interpretations. I then stepped back and thought "they can't really want me to write about the quality of life of the people in the homebuilding industry." As a result, I have decided to take a small amount of liberty with the title and will concentrate on how the homebuilding industry interrelates with quality of life.

I can answer simply that homebuilding is quite inextricably tied to quality of life. For instance, in this year's State-of-the-State address Governor Carper stated that "[h]aving a decent place in which to live is basic to a family's quality of life."¹ In the state of Delaware, the predominant form of living is in owner-occupied housing. It is estimated that 71% of Delaware residents own their own homes.² This close relationship between homebuilding and quality of life has been the case for more than 50 years, particularly so following Congress' passage of the landmark Housing Act of 1949, the preamble of which sets forth the goal of providing "a decent home and a suitable living environment for every American family."³

But what really is quality of life? In Delaware, the term "quality of life" is mentioned in 57 different provisions of the Delaware Code. This phrase can be found in code provisions dealing with such diverse topics as transportation⁴ and highways,⁵ forestry⁶ and wetlands,⁷ noise control,⁸ mobile homes,⁹ alcoholic liquors,¹⁰ and nursing facilities.¹¹ In fact, in 1988 Delaware adopted the "Quality of Life Act."¹² While mentioned in the Code many times, nowhere is the term "quality of life" defined for us. Notwithstanding this lack of

direct definition, the Quality of Life Act does provide us with a statement of its intent and purpose from which the building blocks for achieving quality of life can be gleaned.

It is the purpose of this subchapter to utilize and strengthen the existing role, processes and powers of County Councils in the establishment and implementation of comprehensive planning programs to guide and control future development. It is the intent of this subchapter to encourage the most appropriate use of land, water and resources consistent with the public interest and to deal effectively with future problems that may result from the use and development of land within their jurisdictions. Through the process of comprehensive planning, it is intended that units of County Council can preserve, promote and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention and general welfare; facilitate the adequate and efficient provision of transportation, water, sewage, schools, parks, recreational facilities, housing and other requirements and services; and conserve, develop, utilize and protect natural resources within their jurisdictions.¹³

In its Delaware Statistical Overview 2000, the Delaware Economic Development Office has attempted to define quality of life by stating as follows:

Delaware provides a variety of leisure time offerings, including world-class museums, historic sites, gardens, performing arts, unique festivals, many special events, tax-free shopping and outdoor recreation facilities. Although situated in the densely populated Northeast Corridor, Delaware retains extensive open space and an easy-going lifestyle. Delaware residents enjoy the comfortable pace of their home state and tap the rich historic, cultural and recreational attractions which are all within a two hour drive.¹⁴

Obviously, quality of life is many things to many people.

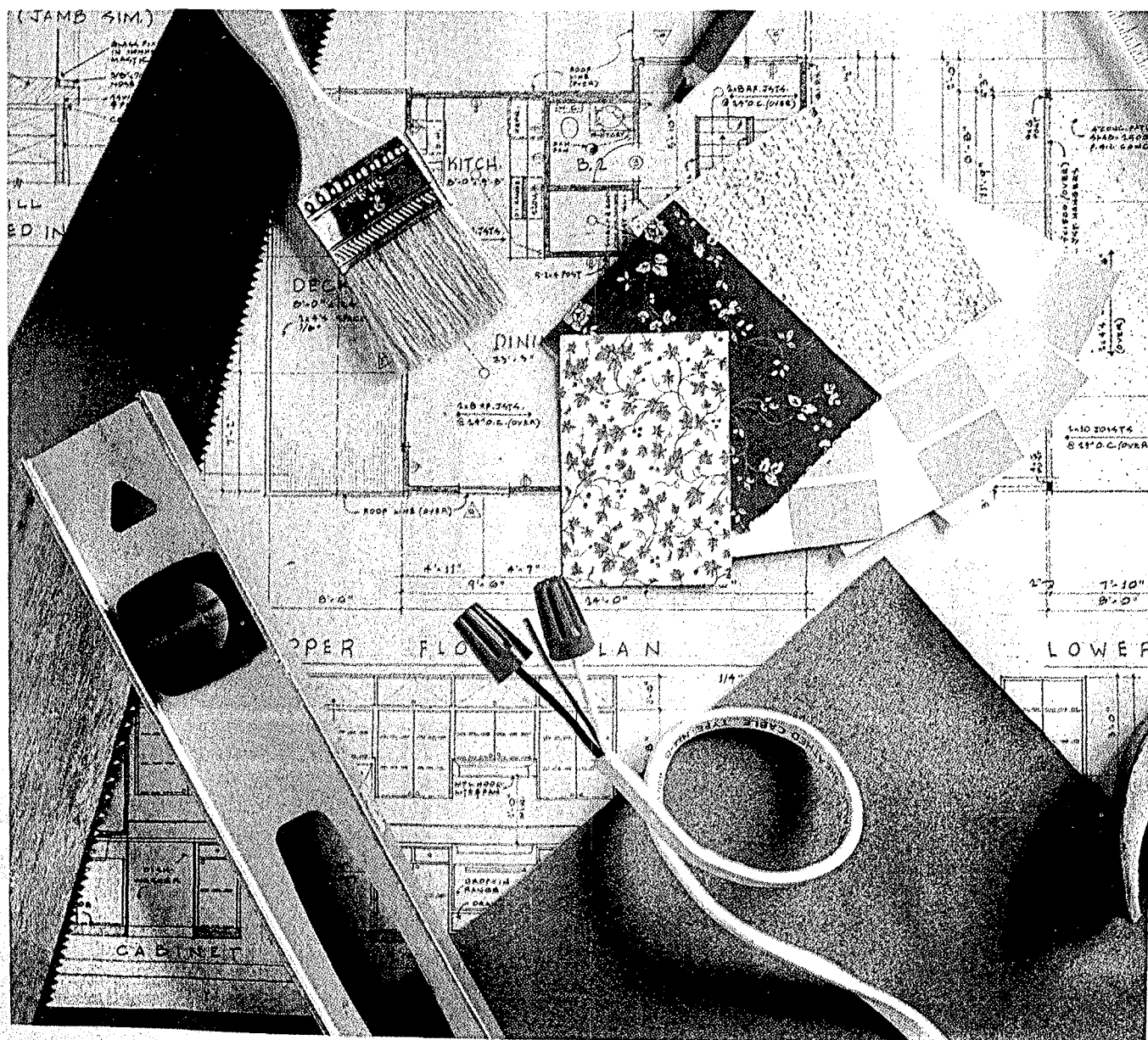
As Justice Potter Stewart once remarked about pornography, "It's hard to define, but you know it when you see it."¹⁵ Perhaps in talking about quality of life, "you know it when you live it" is more appropriate. The National Association of Home Builders (NAHB), a national trade association representing the home-building industry, uses the phrase "a better place to live" to define quality of life. "Through the years, home builders have been responding to changing definitions of 'a better place to live' as each generation's needs and aspirations have changed. For those families that raised their children in the years after World War II, a better place to live meant a single-family home in the suburbs. Today, ... Americans are increasingly concerned about traffic, crowded

schools, and the loss of open space."¹⁶

In today's climate, quality of life seems to revolve around issues of growth. As noted by the National Governors Association, "[o]f the 45 state-of-the-state addresses given through February 14, 2000, about half addressed one or more aspects of growth and the connections to quality of life and protection of the environment."¹⁷ As acknowledged by NAHB, "Across America, growth is fast becoming one of the nation's most pressing concerns."¹⁸ No discussion of growth can take place today without the mention of sprawl. "In communities across the nation, there is a growing concern that current development patterns — dominated by what some call 'sprawl' — are no longer in the long term inter-

est of our cities, existing suburbs, small towns, rural communities or wilderness areas. Though supportive of growth, communities are questioning the economic costs of abandoning infrastructure in the city, only to rebuild it further out."¹⁹ The president of the National Trust for Historic Preservation just one year ago referred to the discussion of sprawl as "a great national debate" and surmised that it would "frame one of the most important political issues of the first decade of the 21st century."²⁰

There is no question that Delaware is still growing. The Delaware Population Consortium has indicated that population will increase statewide by approximately eight percent over the next ten years.²¹ For Sussex County, the



increase is projected at more than seventeen percent.²² More importantly perhaps, total households statewide will increase by twelve and one-half percent.²³ Of course, Delaware is not alone. "In the next decade and beyond, a growing U.S. population will continue to increase the nation's need for housing. The population is expected to grow at an average annual rate of 2.4 million people for the next 15 years, with births outpacing deaths by almost two to one, according to the U.S. Census Bureau. The population segment that accounts for most household formations, those aged 25 to 64, will increase by about 1.1 million per year over the next 15 years ... The number of households will increase by 1.1 to 1.2 million per year through the next decade."²⁴

Concerns over sprawl combined with the planned increase in population and households has spawned the concept of smart growth. "Smart growth recognizes connections between development and quality of life. It leverages new growth to improve the community."²⁵ Phrased in question form by the president of the National Trust for Historic Preservation, "Will we continue to allow haphazard growth to consume more countryside in ways that drain the vitality out of our cities while eroding the quality of life virtually everywhere? Or will we choose instead to use our land more sensibly, and to revitalize our older neighborhoods and downtowns, thus enhancing the quality of life for everyone?"²⁶

Delaware is no different. As noted just a few years ago in the *Shaping Delaware's Future* report, Delawareans prefer a future in which "[h]ousing and business development is focused in existing communities and in clearly defined 'growth' areas around the state, with limited development occurring outside of those areas."²⁷ The report went on to state:

Across the state people voiced concern about what they viewed as seemingly haphazard and unplanned development. Houses and businesses are springing up where there were once open fields, forests and farms. At the same time, the state's major cities and smaller towns lose residents and jobs to these new developments.

To reverse this trend, people generally supported focusing most future residential and economic growth in certain areas of the state.

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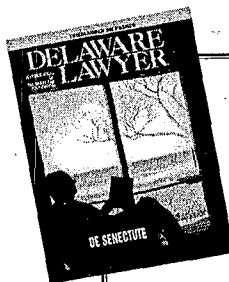


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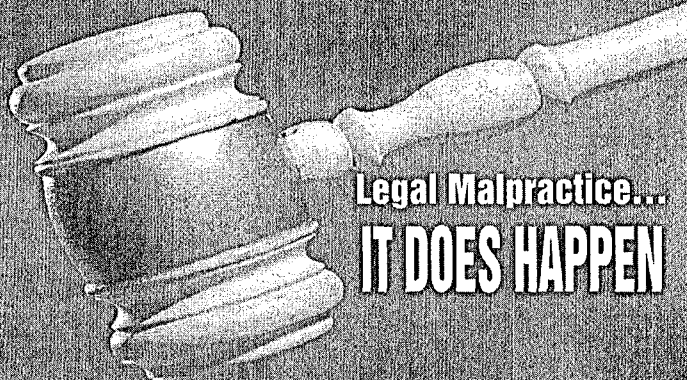
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ments should work together to identify where such future development should and should not occur. Through increased and coordinated planning and zoning these agencies should guide residential and economic activities to desired growth areas. Focusing development in these areas would control the sprawling development most people dislike; more efficiently use limited financial resources; and help protect Delaware's unique characteristics.²⁸

Since that report, Delaware has been pursuing the concept of smart growth in different ways. As Governor Carper noted in discussing the recently adopted statewide investment strategy, "[f]or the first time in our history, agreement has been reached between the state and each of our counties about where growth should occur and when it should happen."²⁹ He continued "Over the next few years . . . we need to more clearly define growth areas. By doing so, we can better protect our resources and further reduce the amount of open space and farmland that's lost to unnecessary sprawl."³⁰

The homebuilding industry has adopted smart growth as its platform for the future of its industry. NAHB endorses the concept of smart growth as outlined in its Smart Growth Report. "NAHB believes that smart growth can serve as a blueprint for planning and building an even better America in the years ahead."³¹ The key elements of NAHB's strategy include the following:

- Anticipating and planning for economic development and growth in a timely, orderly and predictable manner.
- Establishing a long term comprehensive plan in each local jurisdiction that makes available an ample supply of land for residential, commercial, recreational and industrial uses as well as taking extra care to set aside meaningful open space and to protect environmentally sensitive areas.
- Removing barriers to allow innovative land-use planning techniques to be used in building higher density and mixed use developments as well as infill developments in suburban and inner-city neighborhoods.
- Planning and constructing new schools, roads, water and sewer treatment facilities and other public infrastructure in a timely manner to keep pace with the current and future



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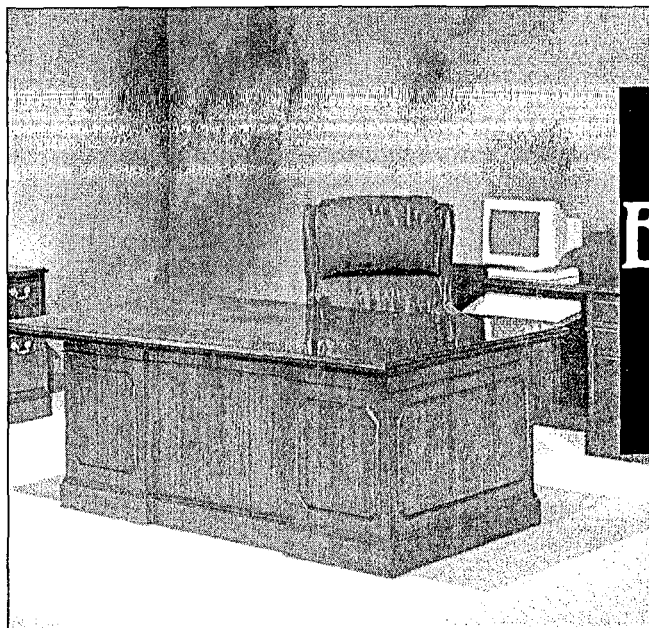
demand for housing, and finding a fair and broad-based way to underwrite the costs of infrastructure investment that benefits the entire community.

- Achieving a reasonable balance in the land-use planning process by using innovative planning concepts to protect the environment and preserve meaningful open space, improve traffic flow, relieve overcrowded schools and enhance the quality of life for all residents.

- Ensuring that the process for reviewing site-specific land development applications is reasonable, predictable and fair for applicants and contiguous neighbors.³²

Of course, "there is no 'one-size-fits-all' solution. Successful communities do tend to have one thing in common — a vision of where they want to go and of what things they value in their communities — and their plans for development reflect these values."³³ As stated in the NAHB Report, "[m]ost important, smart growth is understanding the aspirations of Americans . . . while protecting the environment and quality of life for all Americans. Where do people want to live? What types of homes do they want for themselves and their children? What can they afford? What types of jobs and economic opportunities do they seek and expect?"³⁴ In Delaware, Governor Carper identified the things we value as "a cleaner environment, plentiful water, land and open space better preserved, smarter land-use strategies, an improving transportation system, safer neighborhoods, record levels of home ownership, expanded health-care, effective management of taxpayers' dollars, and a job for everyone who wants one."³⁵ Clearly, the homebuilding industry is a large part of this vision and, therefore, a strong player in achieving the quality of life we all desire.

This year, in his State-of-the-State address, Governor Carper began by looking back in time, to the beginning of the 20th Century. He stated, "Then, as now, our citizens were concerned about their quality of life, and how to make the quality of their children's lives even better than their own."³⁶ In conclusion he looked forward one hundred years and speculated that they would say of us that "we laid the foundation which enabled Delaware to achieve a quality of life and a nobility of purpose for which future generations were grateful."³⁷ The homebuilding industry intends to



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be a part of that foundation. As stated in the Executive Summary of NAHB's Smart Growth Report, "Building Better Places To Live, Work and Play. That has always been the work of the nation's home builders."³⁸

Together, through participation, cooperation and compromise, quality of life can be achieved to everyone's satisfaction.

FOOTNOTES

1. Source: Delaware Governor Thomas R. Carper State-of-the-State Address, January 27, 2000. www.nga.org.

2. Source: United States Bureau of the Census. See Table 1216, 1999 Statistical Abstract of the United States, www.census.gov (as of 1998).

3. Source: *Celebrating the 50th Anniversary of the Housing Act of 1949*, November 3, 1999 by National Association of Home Builders, www.nahb.com.

4. See, 2 Del. C. § 2001

5. See, 17 Del. C. § 145

6. See, 3 Del. C. §§ 1031, 1071

7. See, 7 Del. C. § 6602

8. See, 7 Del. C. § 7101

9. See, 25 Del. C. § 7001

10. See, 4 Del. C. § 543

11. See 16 Del. C. § 1101 and 29 Del. C. §§ 7907, 7920, and 7970

12. See, 9 Del. C. §§ 2651, 4951 and 6951

13. 9 Del. C. § 2651

14. Source: Delaware Statistical Overview, 2000. Delaware Economic Development Office, www.state.de.us/dedo.

15. Source: Text from transcript by Federal News Service of National Press Club Luncheon with Richard Moe, President, National Trust for Historic Preservation, January 22, 1999, www.nthp.org.

16. Source: *Smart Growth, Building Better Places to Live, Work and Play* by National Association of Home Builders, www.nahb.com.

17. Source: *Managing Growth Is A Major Interest of Governors In Their State-Of-The-State Address* by National Governors' Association, 2000, www.nag.org.

18. See Note 16.

19. Source: Text from executive summary of *Why Smart Growth: A Primer* by International City/County Management Association with Geoff Anderson, 7/98, www.smartgrowth.org.

20. See Note 15.

21. Source: 1999 Annual Population Projections, Delaware Population Consortium, www.state.de.us/dedo.

22. See Note 21, Also, Delaware Department of Labor, www.ncccc.com.

23. See Note 21.

24. See Note 16.

25. See Note 19.

26. See Note 15.

27. Source: *Shaping Delaware's Future* by Cabinet Committee on State Planning Issues, April 1995, www.state.de.us/planning.

28. See Note 27.

29. See Note 1.

30. See Note 1.

31. See Note 16.

32. See Note 16.

33. See Note 19.

34. See Note 16.

35. See Note 1.

36. See Note 1.

37. See Note 1.

38. See Note 16.

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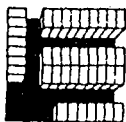
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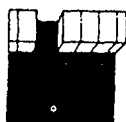
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continued from page 7

basic premise of the [UDC] in circumstances like those presented in this case, at least to the extent that it will ultimately result in a death sentence to a long-standing business that is doing the best it can to comply. Reduced to its essence, the Department's interpretation will mean, in many instances, that the days are numbered for long-standing, permitted uses on sites that, because of existing physical constraints, can never fully comply with the UDC . . . it is simply not unreasonable for a property owner to make normal, necessary improve-

Higher
density
development
could actually
reduce
sprawl and
provide more
real, usable
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ments to property in order to continue with a long-standing use so long as no appreciable harm is done, and so long as the site is brought into compliance at least to the extent physical conditions permit. In sum . . . the UDC was not intended to be a ticking time bomb for [the applicant and those similarly situated].⁷

Thus, these older properties, which often already lack many of the conveniences and features of newer projects, decline in appearance and value. As they decline in value, there is still less incentive to maintain them, and they decline further. Newer businesses, when faced with the choice of either buying and improving an existing, non-conforming property or buying and improving an undeveloped

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undeveloped land is developed and existing, non-conforming properties are not recycled. The law of non-conforming uses, like open space requirements and LOS requirements, contributes to more sprawl and more traffic.

More sprawl. More traffic. More development. Ironically, policies adopted to combat these problems are, in some ways, making them worse. Simple criticism, though, is not enough. Having identified problems, the question is what, if anything, can be done.

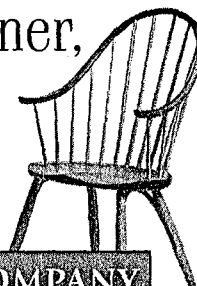
While no single policy will work as a panacea, and every policy involves trade-offs, I would respectfully suggest the following ideas and tools be considered:

• **Higher Densities.** Rather than attempt to limit density on a project by

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project basis, with bits of open space included in individual projects, we should provide for higher densities and less open space for individual projects. Higher densities for individual projects should lead to fewer projects overall, as the demand for commercial and office space (and residential homes) will be met more quickly the sooner more space (and homes) are built. Higher densities will reduce sprawl and make mass transit more feasible. Higher densities will leave more land undeveloped.

• **Buy Open Space.** The only fair way to preserve open space, and to ensure it is not developed, is to buy it. Rather

to preserve open space, and to ensure it is not developed, is to buy it. Rather than focusing on diffuse green strips between buildings as "open space," government should buy land for preserves, parks, and recreational areas. Land could also be "banked" for future economic development (i.e., the next Astra-Zeneca). Perhaps property owners could "purchase" higher densities for their projects by contributing towards a fund for open space preservation.

• **Redevelopment Bonuses For Older Properties.** Rather than encourage the gradual decline and abandonment of non-conforming uses and entire non-conforming areas, we should have policies in place which encourage redevelopment and improvement of existing sites. Redevelopment restores a community and helps reduce the loss of undeveloped land. Density bonuses and code waivers should apply to older non-conforming sites.

Having presented my suggestions, let me present a hypothetical. Let's travel back in time to the late-80s and the Concord Pike. The Concord Mall was there (obviously), but whole stretches on the western side of Route 202 were still undeveloped. The Brandywine Raceway was in decline, its facilities old, the horse-racing industry fading, and its owners were looking to redevelop the site. Today, however, almost all of the land along Concord Pike has been developed, but to get development approvals, most property owners scaled back their requests and the projects that went forward were much lower in density than they otherwise might have been. As a result, Concord Pike suffers from sprawl. Mass transit is difficult, and shoppers and workers must travel from site to site to site to work and shop.

What if, though, we had applied the principles of higher density and redevelopment bonuses? Much (if not all) of what was built could have been built at the Concord Mall, the Brandywine Raceway (now Brandywine Town Center), and perhaps one or two other locations. Much, much more of the undeveloped land could have been preserved — perhaps as a park, perhaps as undeveloped land. With greater concentrations of development in much fewer places, mass transit would be more effective and the number of vehicular trips would be greatly reduced (making Concord Pike more driveable). There would also be fewer entrances and exits to properties on Concord Pike, helping make the road even more

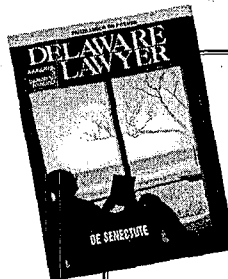
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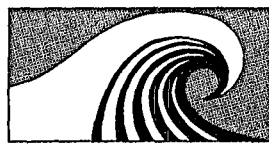
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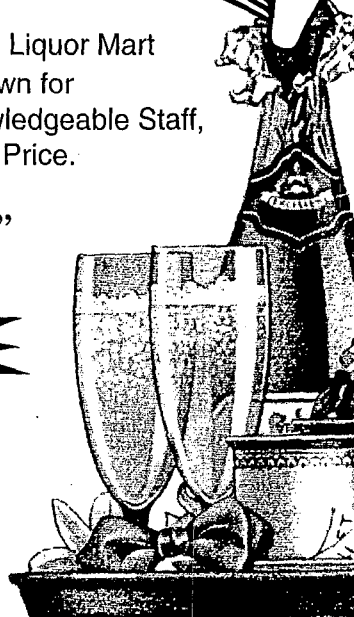
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driveable. Even if only one or two large tracts had been preserved along Route 202, I suspect that many would prefer that kind of open space (with higher density at other locations) to the total development which occurred.

Development is inevitable. Population growth and economic growth depend on it. But although development is inevitable, sprawl is not. The challenge facing society is twofold: (1) managing the growth so it does not overwhelm us, and (2) preserving as much room and open space as we can for future generations. If we are serious about stopping sprawl, then we must take a fresh look with a long-term perspective at the policies we put in place.

FOOTNOTES

1. In fact, the population of Delaware rose from 666,000 to 753,000 between 1990 and 1999, and is expected to rise to 800,000 by 2005. U.S. Census Bureau; see www.census.gov.

2. For example, stormwater management controls and requirements for new projects are much more effective than older, often non-existent controls of the 60s and 70s. Bonding requirements for site improvements now ensure that those improvements will be made.

3. Indeed, the 45% applies after subtracting wetlands and other protected natural resources.

4. LOS "A" means that a car must wait an average of 10 seconds or less at an intersection. LOS "B" is an average wait of 10-20 seconds, LOS "C" 20-35 seconds, LOS "D" 30-55 seconds, and LOS "E" 55-80 seconds. An LOS of "F" means that the average wait is in excess of 80 seconds, and the intersection is failing.

5. Under the UDC, a highly discretionary waiver from this requirement may be granted by County Council.

6. In considering the issue of traffic, another problem, specific to Delaware perhaps, is the division of authority regarding land use and traffic improvements. The Delaware Department of Transportation (DelDOT), a state-level agency, is responsible for road improvements, while New Castle County is responsible for land use approvals. Even if the county wanted to group several traffic-generating uses in an area, such a strategy would be ineffective absent agreement with DelDOT. This division of authority undoubtedly makes traffic management and road improvements much more difficult than it otherwise could be.

7. New Castle County Bd. of Adjustment, App. 00-0117-A, May 18, 2000. ♦

Mark F. Dunkle

AESOP ON ANNEXATION

Once upon a time, a Country Mouse invited his cousin, a Town Mouse, to pay him a visit and partake of his country fare. Beans and bacon, cheese and bread were all the Country Mouse had to offer, but he offered them freely. The Town Mouse rather turned up his long nose at this rough country spread and said: "I cannot understand Cousin how you can put up with such poor food as this, but of course you cannot expect anything better in the country; come you with me and I will show you how to live. When you have been in town a week, you will wonder how you could ever have stood a country life."

The Country Mouse was easily persuaded and returned to town with his friend. "You will want some refreshment after our long journey," said the polite Town Mouse and took his friend into the grand dining room. There they found the remains of a fine feast, and soon the two mice were eating up jellies and cakes and all that was nice.

Suddenly they heard growling and barking. "What is that?" said the Country Mouse. "It is only the dogs of the house," answered the Town Mouse. "Only!" said the Country Mouse. "I do not like that music at my dinner." Just then the door flew open. In came two huge mastiffs, and the two mice had to scamper down and run off. "Good-bye Cousin," said the Country Mouse. "What! Going so soon?" said the Town Mouse. "Yes," the Country Mouse replied. "Better beans and bacon in peace than cakes and ale in fear."

In Aesop's fable, the Country Mouse concluded that urban life could not compare to a simple, safe, isolated country existence. This fable of pleasant country living as an escape from urban strife lives on as a driving force behind suburban sprawl. With their numerous small towns, farms, and scattered strip and planned subdivisions, Kent and Sussex counties typify the

modern tension between the myth of country living in a suburban reality. The state of Delaware seeks to guide and control future suburban development through the Quality of Life Act under 9 *Del. C.* §2651 *et. seq.* directing the counties to devise and revise comprehensive plans in an effort to balance the need for adequate transportation, water, sewage, schools, parks, recreational facilities and housing along with the conservation of natural resources on a county-wide basis. As an alternative to this approach, perhaps municipal annexation offers a more natural or organic approach to the inevitability of population growth in Kent and Sussex counties.

Like Aesop himself, the quiet Delaware country life is a mix of myth, legend and very little reality. Certainly there are real farmers on real farms in Kent and Sussex counties. They generally live on the land, they work for a living and do not fill up country two-lanes commuting to Seaford, Georgetown, Salisbury, Dover, Wilmington or other work centers every day like most rural residents. The Country Mouse might live on Kent County potato farms or Sussex County chicken farms, but not in the one-acre homesteads that dot the spaces in between. If you regularly drive a vehicle that must be registered and tagged, you do not live in the fabled country.

The move to farm country by suburban homesteaders brings urban hazards: crowded two-lane roads slowing the commute to work and shop; failing septic systems with no room for replacements; wells that run dry; long waits for police, fire or EMT services already stretched thin and well below the ratios enjoyed by residents of towns and cities. The sins of city life (and then some) surround and permeate the mythical refuge proudly touted by those living "in the country." In tiny Delaware, at least, life in the country only really exists for those few Delaware farmers making a living from soybeans, chickens, cranberries and other agribusiness ventures. Subdividing the countryside into so many half-acre lots to satisfy those nine-to-fivers fleeing the city is a losing proposition all around.

The mythological refuge sought by the Country Mouse as

he scrambled away from the terrors of town life to his wide open fields and hedgerows still holds the passions of these non-farming country homesteaders. A country road dotted with half-acre home sites is really a village without a name or a neighborhood without a town. These disconnected communities still face problems with traffic, crime, sanitation, emergency services, and other pressing problems that require community solutions.

Small-town Delaware still exists — it has just been scattered along country roads and lost the essence of a community. The county is not a community, but a small town is.

Municipal annexation in Kent and Sussex counties offers one way to order the chaotic residential development exemplified by northern New Castle County's much maligned sprawl. Annexation is a simple, logical, and natural way to meet the inevitable increase in population that no amount of planning and zoning will ever reduce. Unless the General Assembly permits the counties to interfere with municipal growth, Delaware towns in Kent and Sussex counties remain free to grow into contiguous areas by annexation. Annexation has long been used by the city of Dover under the early guidance of the late Mayor Crawford Carroll to grow. Expanding since 1960s, Dover's municipal acreage now exceeds the geographic land area of the city of Wilmington. Municipal annexation can reduce sprawl by moving housing into a traditional configuration that accepts higher density living as a good thing. Outside of town, density does not sell.

Kent County has approved a comprehensive development plan that identifies growth zones in the county where higher density development should take place. Unfortunately, there is vocal resistance from existing country residents of any increased density where they live. This resistance seems to come primarily from residents who feel they moved out to the country to escape urban problems and to find peace and quiet. Even though these citizens would never be confused with farmers, they believe they live in the country. Interestingly, farmers on the other hand generally do not oppose development as long as the realities of their business activities are recognized and accepted without being looked upon by new suburbanites as a nuisance. As long as crop dusting, late-night chicken hauling and other noisy or dirty agribusiness activities can take place unimpeded,

farmers are generally not filling up county planning and zoning meetings opposing land use development projects or municipal annexations.

The expansion of Kent and Sussex counties' many small towns offers one solution to the growing frustration of suburban sprawl and the current resistance to higher density development in county designated growth zones. When the city of Milford unsuccessfully attempted to annex desirable but non-contiguous land, the Court of Chancery observed that the Delaware General Assembly intended that the city of

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Milford should grow by annexation. Municipal growth is consistent with the fundamental concept of a municipality as a group of people collected or gathered together, not separated into distinct masses, and having a community of interests by being residents of the same place, not different places. *State ex rel Dot v. city of Milford, Del. Ch. 576 A.2d 618, 624 (1989)*. Disembodied masses necessarily lack a wholesome sense of community. Encouraging the current separate and distinct masses of country residents to actually accept higher density development near their homesteads is a recipe for

frustration and arduous nights at the Planning Commission. Bring the town out to the country, become part of a community, and higher density growth, compactness and livability might replace sprawl and mythological virtues of one happy acre in the field. Perhaps Delaware's brand of smart growth should focus on the health, prosperity and expansion of small towns, making it easier to grow and develop within the town's boundaries, yet keeping a firm hand on more scattered isolated countryside development.

The Kent County Comprehensive Plan hints at this approach by targeting areas for growth around the towns between Smyrna and Milford including Felton, Harrington, and Camden, among others. Redrawing planning and zoning maps will not stop sprawl. Only by growing small towns will higher density growth slow suburban sprawl.

Delaware's three counties lack any authority to extend or alter their political boundaries through annexation. Municipalities, however, may grow even across county lines and the General Assembly, through 22 *Del. C.* §101 and more significantly, through home rule provisions of individual town charters, has put in place various mechanisms for municipal growth and the reduction of county controlled land.

Annexation procedures among municipalities in Kent and Sussex counties vary significantly. The weighted voting procedures originally enacted as a uniform method for municipal annexations in 22 *Del. C.* §101 were found to violate the Equal Protection Clause of the 14th Amendment (one-man one-vote protection). The Delaware Supreme Court confirmed the unconstitutionality of the weighted voting annexation election procedures of 22 *Del. C.* §101 in *Kelly v. Mayor of Dover, Del. Ch. 314 A.2d 208 (1973)*, affirmed, *Del. Supr. 327 A.2d 748 (1974)*.

Without a uniform statute, Delaware's incorporated municipalities find the specific direction for their annexation authority and procedure in their own town charters as approved by the General Assembly. All allow for growth. In the town of Milton in Sussex County, property owners contiguous to the town may petition for annexation. If the petition receives a favorable recommendation from the town's Planning and Zoning Committee, then a two-thirds vote of approval by the Town Council alone will admit the territory into the

municipal boundaries. No other referendum or special election is required as long as all property owners in the territory seeking annexation join in the original petition. A majority of the town residents, however, are required to approve in a special election any annexation of territory proposed by at least five but less than all property owners in the territory proposed for annexation. The special election requires approval by a majority of all residents of the territory proposed for annexation and a majority of all residents of the town before the land will be accepted into the municipality. The Milton annexation procedure allows the town to grow if asked by willing contiguous property owners and an agreeable town government to the exclusion of the town residents. Hostile annexations become the subject of public referendum on growth by including the vote of existing municipal residents. The Milton scheme would favor extending town boundaries to undeveloped areas owned by a minimal number of property owners but disfavors annexing existing subdivided lands, undesirable or impoverished areas where the town residents would vote to keep these properties outside town boundaries.

The town of Cheswold in Kent County is permitted a more aggressive annexation procedure under its charter. In Cheswold, the town residents do not participate in any annexations or special elections and only the qualified voters of the territory proposed for annexation participate in the vote. The territory proposed for annexation can include multiple parcels of property owned by various owners, yet only requires the approval of a majority of residents of the territory or non-resident landowners so as to satisfy the one-man one-vote requirement. The initiation of annexation can begin by a petition of a contiguous land owner or simply by an independent resolution passed by the Town Council directing certain lands be considered for annexation. Cheswold's charter would allow the town to aggressively define a target territory and subject the properties to an annexation vote without any request from the residents of the territory. The town could also combine parcels so that an anticipated majority of qualified voters who favored annexation would outnumber the owners or residents of parcels in the territory who opposed annexation, allowing for a hostile takeover of contiguous lands into the town. Interestingly, Cheswold may also

annex land owned by the state of Delaware (including roadbeds and highways) unless the state agency managing the lands objects in writing within thirty days of notice of the annexation. This annexation technique allows the town to leap frog over state highways in order to reach previously non-contiguous property that only abutted state-owned lands. The town of Felton in Kent County follows the Cheswold annexation model but only allows the state of Delaware ten days to object to annexation of its properties.

The town of Millville in Sussex County follows the Milton town charter

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and requires a majority approval of annexations by town residents as well as qualified voters in the proposed annexation territory. Millville only recently enacted procedures for annexation in its charter as approved by the General Assembly in 1994.

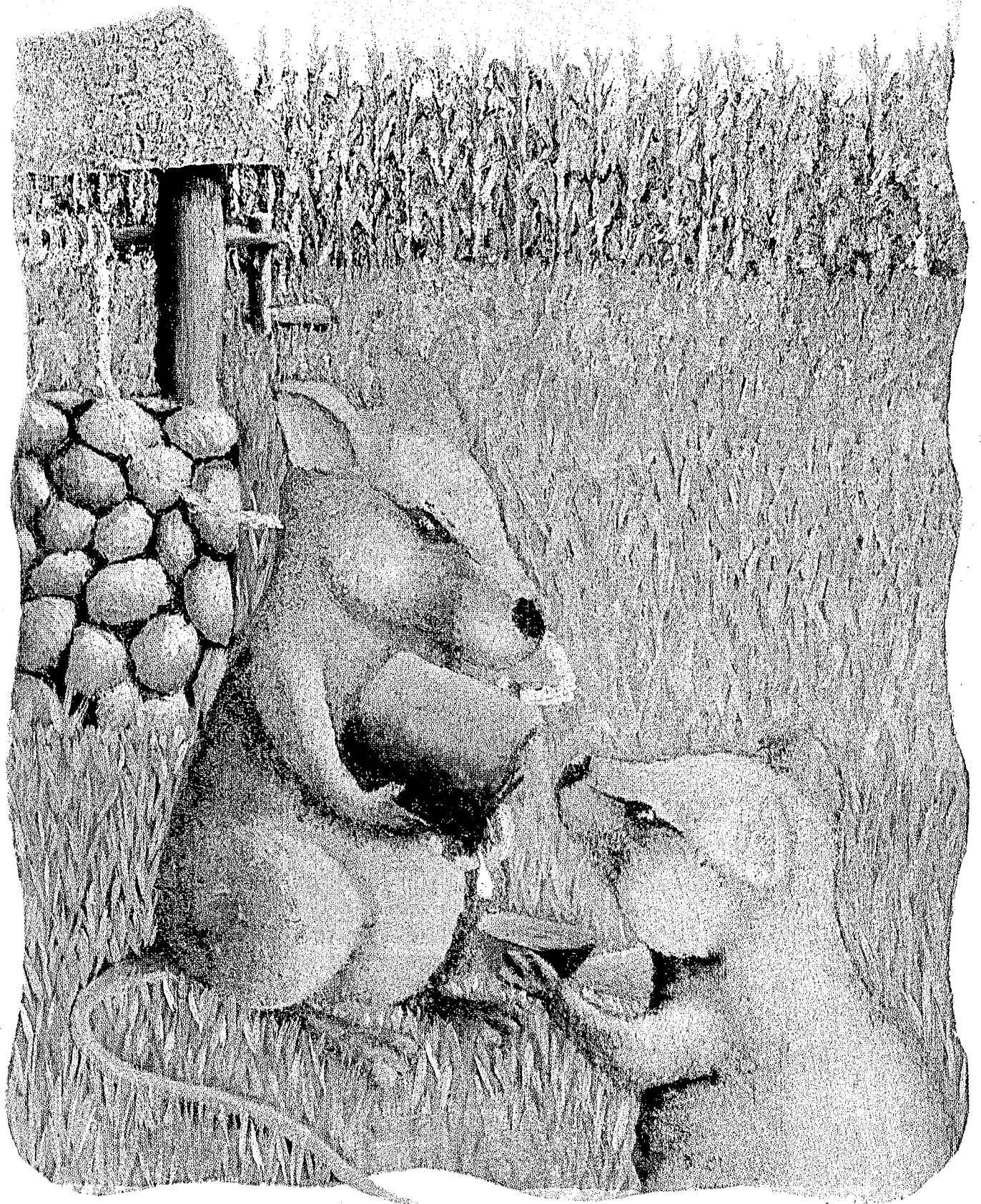
The town of Kenton in northern Kent County follows the aggressive annexation procedure of the town of Cheswold but adds a sweetener. Kenton is authorized by its charter to exempt any newly-annexed lands from town property taxes until either a building permit is granted or the land is sold to a new owner after annexation. Kenton, in particular, stands well-posi-

tioned to aggressively land bank adjacent properties with little adverse impact on existing owners by virtue of this tax exemption mechanism.

Delaware small towns in Kent and Sussex counties are poised to carry out their own measure of manifest destiny by dusting off their charters and initiating smart growth annexations. For example, Kenton's tax exemption feature might attract farmers or large acre landowners and encourage open space preservation rather than construction. Cheswold's annexation by decree might capture problem properties that exist in fringe areas around the town currently exempt from any town influence or controls. Delaware's small towns may not realize it but they are equipped with the tools to extend their character community and soul to the soulless, characterless urban sprawl just outside their antiquated borders. In turn, the countryside disenfranchised find a forum for voicing their concerns about sprawl and other quality of life issues to a town council that has a vision and goal for their community rather than to a county government that can never be all things to all people.

In northern New Castle County, the sprawl surrounding the city of Wilmington presents a contrast in years of growth as compared to years of decline for the city. From an annexation perspective, this disparity grew by design and not chance. When the General Assembly enacted 22 *Del. C.* §101A, it hobbled the city of Wilmington's ability to continue natural organic growth. Section 101A allows New Castle County to veto any annexation proposed by Wilmington. A complex multi-step procedure requires approval of the city's annexation request by both the New Castle County Council and by signature and personal approval of the New Castle County Chief Executive. Essentially, the county maintains a veto over any expansion or growth of the city of Wilmington. Consequently, the countryside was lost to sprawl and the city stilted from enjoying natural economic expansion.

Once the myth of country living has been replaced by the positive prospect of town membership, the disembodied masses can become part of the fabric of southern Delaware and still enjoy pastoral settings outside thriving but growing municipal communities. Delaware's small towns might be able to save the county by reducing it through annexation. ♦



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