

November 16, 2021

From: Fort Dupont Homeowners
To: Ombudsman Curtin

Subj: ASSISTANCE WITH APPLICABLE RIGHTS AND PROTECTIONS UNDER DUCIOA

1. Background. We are the first homeowners to purchase property at Fort DuPont and our properties are being developed under the enabling legislation Title 7, Chapter 47, Subchapter II. The Declarant is the "Fort DuPont Redevelopment and Preservation Corporation" (FDRPC), established by the Department of Natural Resources and Environmental Control (DNREC), and is a public instrumentality of the State of Delaware created for the purposes stated in section § 4731 of Title 7. The sole owner of the declarant (FDRPC) is the DNREC.

2. Concerns

a. We have been informed by Senator Poore that this is the only residential oversight entity of its kind in the state. Additionally, the property has been legally annexed by the city of Delaware City which allows them to charge and assess property taxes for Delaware City provided services. We have been informed that Delaware City does not want any responsibilities for the streets as they currently considered the Fort Dupont district as privately owned by the FDRPC, at least until the community is complete and the streets are finish coated.

b. Representation on the FDRPC board of directors for the residents, is limited to a single homeowner appointed by the Delaware City Mayor and Council due to several town hall meetings expressing concerns with how FDRPC has been operating and billing residents.

(1) Currently, the Executive Director of the FDRPC, an employee of the FDRPC (not board member), after requesting volunteers from the pool of current homeowners, has formed an unofficial committee to revise the existing "Declaration of Covenants, Conditions, Agreements, Restrictions, and Licenses" (hereafter referred to as the Declaration). The intent of the Executive Director is to draft a revised copy of the Declaration to be presented to the FDRPC board of directors for approval. This letter is being submitted on the committee's behalf, as well as other concerned residents.

(2) We, the homeowners of this unofficial committee, perceive both the current Declaration and modifications necessary to create desired changes, to be sufficiently complex as to require someone with subject matter expertise to aid in the navigation of a mutually agreeable and lawful remedy. Even the author of the current Declaration, attorney Max Walton, stated that the document was so complex that he would feel pretty good if he got it 85% correct. Moreover, as homeowner's, we are being asked for input and have no power or control over the outcome of this exercise; while at the same time the decision makers have legal council to defend any objectionable positions, and 14 out of 15 board members who will make the final decision do not live or own homes at Ft. DuPont, and therefore have no impact effect of the boards decisions. This feels unbalanced and unfair.

3. Request Details. The committee of homeowners is requesting assistance with:

- a. Help us understand if we are subject to the rights and protections of DUCIOA.
- b. Educate us, the committee members, on what rights and protections we are entitled.

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- c. Have a meeting with all Ft. DuPont homeowner's, possibly including our State Representative, Senator, and City Council Members to educate us generally and provide your perspective of our status.
- d. Review and provide an opinion on the current Declaration regarding the legality of its claims.
- e. With an understanding of the current Declaration provide feedback on all possible options we have as homeowners.
- f. If we are limited to, or if our best option is to edit the current Declaration, help us create a framework and provide guidance and input towards changes that will be lawful and to the benefit of the homeowners of Ft. DuPont.
- g. Advise us if there are any remedies at this point for failing to provide disclosure information to all homeowners (which goes beyond HOAs, & Deed restrictions, but also includes things such as soil contamination/remediation/modification, which in this example there has been related DNREC violations).
- h. If possible, be engaged with us through the process ahead, as the State's Subject Matter Expert, until some agreeable outcome is determined.

4. Desired Outcome. The committee of homeowners are seeking:

- a. To benefit from the same rights and protections as all other State Resident Homeowners under DUCIOA.
- b. To receive the same tax paid benefits that all other Delaware City Residents receive. The FDRPC should not provide redundant services and charge us a separate fee.
- c. Preference is to be governed by the laws, codes, and ordinances of Delaware City, created by elected officials, with a system which guarantees due process, and NOT be governed by the rules and regulations of the Declaration written and approved with zero representation of homeowners or a variation within that framework, which enables homeowners to have some power to determine some deed restrictions and reasonable fees for services.

5. Additional background, concerns, and opinions. Late last year one of our committee members was tasked by Representative Longhurst and Senator Poore to poll the residents regarding a specific question, — do we want our own HOA? There was no unanimous opinion at that time and consequently no action was taken by them towards a solution. Of the feedback I captured responses included:

- a. We don't have enough information (including):
 - (1) The City isn't providing services that all other residents receive, how do we know if that will change and to what extent will it change. (e.g. will they City own and maintain...the streets, storm water systems (including biobasins), street lights, open spaces).
 - (2) We don't have good accounting of current maintenance (i.e. "HOA") expenses, any projections the future, "finished" state, and cannot make accurate projections on what the costs will be.
 - (3) The maintenance expenses are currently whatever they say we should pay for, are based on the total cost of those expenses for the entire property, and based on a percentage determined solely by the Executive Director rather than proportioned based on square footage, linear feet, etc.

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(4) We don't understand DUCIOA and what this involves, or what our responsibilities will be.

(5) We don't know if the FDRPC will continue to have a governance role or what that role might look like.

b. The early majority does not want an HOA or to be governed by or assessed fees from the FDRPC. Essentially requesting the current Declaration to be dissolved and function as all other Delaware City residents. (We are the only City residents governed by a separate Declaration and would be the only HOA in the municipality).

c. Some are open to the possibility of forming an HOA only if it was required and only if we received the same benefits as all other City residents as a result, and with the caveat that they really needed more information before making that decision.

d. The current Declaration maintains the premise that “**Declarant does not believe that the provisions of DUCIOA (as such term is defined herein) is applicable to the Complex.** Nevertheless, Declarant reserves all of its rights to subject the Complex to the terms and provisions of DUCIOA in the future as the Declarant may deem necessary or advisable.”

e. The current Declaration does not entitle homeowners to the rights and protections under DUCIOA, Title 25, Chapter 81 or New Castle County Unified Development Code Chapter 40, Article 27.

f. Below is a list of examples which highlight inconsistencies between State and County Laws and the current Declaration:

(1) Homeowners have been expected to pay fees at closing and ongoing thereafter, independent of the status of development (percent complete), and in some cases include capital investments. (i.e. road repairs even though the roads have not been completed, public access area maintenance, etc.) Moreover, there is no process or any plans with milestones to transfer control to homeowners or Delaware City.

(2) Homeowners are expected to pay fees for properties, not owned by the homeowners, both within their “district” (or development) as well as outside of their “district”, for FDRPC profit. These properties or open spaces are and have been open to the public and a public destination for many years; much of which still exist today as a State Park.

(3) Homeowners are expected to pay for fees outside of standard maintenance of open space and common areas, such as — security, legal fees, newsletters, website, & office expenses. These are items that we perceive to be discretionary and as homeowners, we have no control over these spending decisions.

(4) Homeowners are not members of any HOA, Maintenance, or Civic Association and have no voting power or any control over setting or collecting fees levied on them.

(5) Homeowners are not members of any HOA, Maintenance, or Civic Association and have no voting power or any control over rules and regulations. Moreover, some rules are strict, and the Declarant claims powers to remedy violations without normal due process afforded under DUCIOA. (e.g. complaints received by the FDRPC can result in removal of the dog at the owner's expense (with no process defined in the declaration and performing maintenance on your vehicle is prohibited, even on your own property.)

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(6) Technically homeowners are residents of Delaware City, New Castle County and pay Delaware City and County taxes. Yet, in lieu of receiving benefits afforded all other City residents, such as snow removal on streets, we are expected to pay the FDRPC to perform this and other services.

(7) Also, as taxpaying residents of Delaware City, instead of conforming to City Code (laws), the Rules and Regulations of the Declaration were written to be stricter than City Code. It would appear this was done intentionally so the FDRPC would have greater control. As Citizens of Delaware City, we are denied the rights, privileges, and a lawful due process, that all other City residents' benefit.

(8) There are a number of State and County Statutes that protect us as buyers through disclosures to be provided by the Developer. We received none of these protections and received no disclosures in any form. (Two examples below).

(a) According to Title 6, Chapter 25, Subchapter II, § 2572, 2573, & 2578 we should have received disclosure information, which would have included the Declaration.

i. "The agent, subagent or seller, as applicable, shall give a copy of the Seller's Disclosure of Real Property Condition Report to all prospective buyers or prospective buyer's agent prior to the time the buyer makes an offer to purchase. This written disclosure form, signed by buyer and seller, shall become a part of the purchase agreement."

ii. I, nor any other home owner I am aware of received this prior to making an offer, neither did we receive a signed form as part of our purchase agreement, or at any point.

iii. Delaware Disclosure form for New Construction, attached.

(b) Moreover, to highlight steps that were not taken but should have been according to the New Castle County Unified Development Code:

Chapter 40, Article 27: SECTION 40.27.150 DUTY TO INFORM HOME BUYER

In residential home sales, the seller of a lot, or his or her authorized agent, has an affirmative duty to inform the purchaser about maintenance corporation membership and educate the purchaser about members' responsibilities. This duty requires the seller to provide the buyer with a copy of the maintenance declaration and bylaws. A written acknowledgment stating that the seller has fulfilled his or her duty under this section shall be signed by the purchaser.

New subdivisions. The developer of a new subdivision shall maintain a record of the individual acknowledgments evidencing the fact that the purchaser of a lot within the subdivision has been provided a copy of the maintenance declaration and the bylaws.

The seller shall obtain the purchaser's acknowledgment at or before the time an agreement of sale is executed. Each acknowledgment shall be presented to the Department as a condition precedent to the issuance of each certificate of occupancy.

A complete copy of the record of all acknowledgments shall be delivered by the developer to the board of directors of the maintenance corporation and the

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Department prior to the time the homeowners assume control of the board of directors.

The seller must provide documents outlining the open space maintenance to be performed by the maintenance corporation, as outlined on the approved subdivision plan, to each buyer subject to the maintenance declaration.

6. Our point of contact is Eric Smith; email: eric.m.smith@dupont.com , phone: 302-383-0393.

Thank you for your time!

FORT DUPONT HOMEOWNERS COMMITTEE

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