



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF
STATE PLANNING COORDINATION

May 24, 2004

Mr. Chris Carbaugh
Atlantic Group
10038 Old Ocean City Blvd.
Berlin, MD 21811

RE: PLUS review – PLUS 2004-04-11; Herring Pointe

Dear Mr. Carbaugh

Thank you for meeting with State agency planners on May 5, 2004 to discuss the proposed plans for the Herring Pointe project to be located south of Road 278 adjacent to the Cove.

According to the information received, you are seeking site plan approval for 170 single family units to be located on 78.15 acres in the Environmentally Sensitive Developing Area of Sussex County.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting. The developers will also need to comply with any Federal, State and local regulations regarding this property. We also note that as Sussex County is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the County.

This office has received the following comments from State agencies:

Delaware State Housing Authority (DSHA) – Contact: Karen Horton 739-4263

DSHA supports the Herring Pointe proposal as it sets aside a percentage of units for first-time homebuyers. The provision of these units will help address the need for affordable homeownership that was identified in the 2003 Statewide Housing Needs Assessment and in an area of the State where affordable homeownership opportunities are diminishing.

State Historic Preservation Office (SHPO) – Contact: Anne McCleave 739-5685

There is a known archaeological site located on the south part of the subject parcels. There is a high probability that there are more archaeological sites within the project area, both prehistoric and historic. It is recommended that the forested areas be retained and buffers be provided near the forested and water areas to help preserve the sites. We suggest the applicant or developers contact the SHPO office at 302-739-5685 to set a time to meet with their archaeologists at the site to discuss the best ways to plan around the archaeological sites.

If there is any federal involvement with this project, in the form of licenses, permits, or funds, the federal agency is responsible for complying with Section 106 of the National Historic Preservation Act. The developers should also be aware of the Delaware Unmarked Human Remains Act (7 Del. Code Ch. 54) and contact Faye Stocum at 302-739-5685 if any are found.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

1. In accordance with Section 2 of DelDOT's Rules and Regulations for Subdivision Streets DelDOT will require a right-of-way dedication of 30 feet from the centerline on Angola Beach Road.
2. DelDOT understands that there is an existing drainage problem on Angola Beach Road at the site entrance. Their South District Maintenance Engineer, Mr. Jeff Reed, has contacted the applicant in this regard and they are working to resolve the matter. The site entrance design will need to reflect the remedy to the drainage problem.
3. The site entrance will require a bypass lane or a protected left-turn lane. A final determination will be made in DelDOT's review of the entrance plan.
4. As part of the entrance improvements, DelDOT anticipates requiring the applicant to widen Angola Beach Road to 11-foot travel lanes and 5-foot shoulders from the site entrance to Angola Road (Sussex Road 277).
5. DelDOT will require a sight distance analysis at the proposed entrance location.
6. The stub streets should be provided from the entrance road to the Dorman property on the north.
7. The applicant's engineer should contact the DelDOT Subdivision Manager for Sussex County, Mr. John Fiori, regarding comments 1 through 5 and more generally about DelDOT's requirements with regard to the design of the site entrance. Mr. Fiori may be reached at (302) 760-2260.

**The Department of Natural Resources and Environmental Control – Contact:
Kevin Coyle 739-3091**

Wastewater

The development is proposing spray irrigation. A letter of intent filed with the Groundwater Discharges Section is the first step in exploring the feasibility of wastewater treatment and disposal technologies. Please contact Marlene Baust at 302-739-4761 if you need additional details.

Soils

According to the soil survey update, the following soils were found in the immediate vicinity of subject site (grouped on the basis of drainage class):

- Excessively well drained – Evesboro
- Well Drained – Fort Mott/Henlopen complex, Downer, & Ingleside
- Moderately well drained – Hammonton
- Poorly drained (**hydric**) - Hurlock
- Very poorly drained (**hydric**) –Broadkill mucky silt loam (**tidal**)

Evesboro is an excessively well-drained soils that have moderate limitations on account of rapid permeability. Fort Mott/Henlopen complex, Downer, and Ingleside are well-drained upland soils that, generally, have few limitations for development. Hammonton is a moderately well-drained soil of low-lying uplands that has moderate limitations for development. Hurlock is a poorly-drained wetland associated (**hydric**) soil that has severe limitations for development. Broadkill mucky silt loam is a very poorly-drained tidally-influenced wetland associated (**hydric**) soil that has severe limitations for development.

Although most of the soils on subject parcel are fairly well drained, they have limitations associated with rapidly permeable sandy surface and subsurface horizons. Such soils are conducive to nutrient leaching via groundwater or surface runoff into the surrounding watershed. In soils containing shallow water tables or found in close proximity to waterbodies, these impacts are greatly intensified.

Wetlands

According to Statewide Wetland Mapping Project (SWMP) maps, the following wetland types are found on subject parcel(s): Estuarine Emergent and Palustrine Forested.

It should be noted that tidal wetlands are regulated and/or protected somewhat more stringently than nontidal wetlands – regulatory jurisdiction falls under the Chapter 66 provisions of the State of Delaware’s Tidal Wetlands Regulations. **Where applicable, it is strongly recommended that the Wetlands Section of the Division of Water Resources be contacted for questions pertaining to tidal wetlands. They can be reached at 739-4691.**

Although tidal wetlands are protected under Federal and State statute, nontidal wetlands are regulated exclusively under the Federal 404 provisions of the Clean Water Act. Under the Federal 404 provisions, the avoidance of construction/filling activities in those areas containing wetlands or wetland-associated hydric soils is usually prohibited.

Therefore, a wetlands delineation is strongly recommended on this parcel. Specific regulatory questions pertaining to nontidal wetland regulations should be directed to the Army Corps of Engineers (ACOE).

Even though close association between wetland and soil conditions is usually apparent, the applicant should keep in mind that the presence of jurisdictional wetlands (i.e., criteria defined by the 1987 ACOE Wetlands Delineation Manual) can not always be predicted with complete assurance from the existing wetland (SWMP) and hydric soil mapping (soil survey). That is, the vagaries of wetlands mapping presents some difficulty when one tries to translate map polygon lines (i.e., SWMP and/or soil survey mapping units) that encompass large land areas containing considerable on-the-ground variability. Furthermore, these maps were never intended for use as definitive assessments of regulatory jurisdiction, but as a management tool to inventory existing land resources. Therefore, neither the SWMP mapping nor the soil survey should be construed as a substitute for wetlands delineation. Hence, a field wetlands delineation in conjunction DNREC approved tidal wetlands evaluation, is the recommended course of action to gain site construction approval for this parcel.

Further, it is recommended that the Farm Services Agency of the USDA be contacted to assess whether the farmed wetlands on subject parcel meet the recognized criteria for classification as “prior converted wetlands.” Prior converted wetlands are farmed wetlands that have drained or altered before December 23, 1985, and no longer meet the wetland criteria established under the 404 program. Such wetlands are considered exempt from regulatory protection provided that there is no proof of a continuous “fallow period” of five years or greater in that parcel’s cropping history. Parcels converted after said date regardless of cropping history are considered jurisdictional by the Army Corps of Engineers (ACOE). The contact person for assessing a parcel’s cropping history is Sally Griffin at the USDA – she can be reached at 678-4182

It is also recommended that the developer maintain a minimum 100-foot buffer width from landward edge of all wetlands. In cases where natural buffer vegetation has been removed or reduced by past development or farming activities, the developer is encouraged to restore/establish to said buffer width or greater with native herbaceous and/or woody vegetation.

Finally, it should be acknowledged that undisturbed upland forests are often an integral component in the maintenance/preservation of water quality and/or habitat integrity ecosystem integrity for a given watershed. **In recognition of this fact, the Department strongly recommends preservation of the existing natural forested upland buffer on the lower one-third of subject parcel, be protected in its entirety. Protection of**

this buffer is vitally important for protecting and mitigating environmentally sensitive waters and wetlands from additional loading of nutrient-laden runoff from entering the Inland Bays. The Department believes that the best course of action to ensure protection of this forested acreage into perpetuity is through conservation easement designation. The contact person for easement information is Tim Kaden at of the Division of Parks and Recreation – he can be reached at 739-3423.

ERES Waters

This project is located adjacent to receiving waters of Inland Bays designated as waters having Exceptional Recreational or Ecological Significance (ERES). ERES waters are recognized as special assets of the State, and shall be protected and/ or restored, to the maximum extent practicable, to their natural condition. Provisions in Section 11.5 of Delaware's "Surface Water Quality Standards" (as amended August 11, 1999), specify that all designated ERES waters and receiving tributaries develop a "pollution control strategy" to reduce non-point sources of nutrient runoff through implementation of Best Management Practices (BMPs). Best Management Practices as defined in

Subsection 11.5(e) of this section, expressly authorizes the Department to provide standards for controlling the addition of pollutants and reducing them to the greatest degree practicable, or where attainable, a standard requiring no discharge of pollutants.

TMDLs

With the adoption of Total Maximum Daily Loads (TMDLs) as a "nutrient-runoff-mitigation strategy" for reducing nutrients in the Inland Bays Watershed, reduction of nitrogen and phosphorus loading will be mandatory. A TMDL is the maximum level of pollution allowed for a given pollutant below which a "water quality limited water body" can assimilate and still meet water quality standards to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. Although TMDLs are authorized under federal code, states are charged with developing and implementing standards to support those desired use goals. The Jurisdictional authority for attaining these use goals will fall under the auspices of Section 11.5 of the State of Delaware's Surface Water Quality Standards (as amended August 11, 1999), and will be achieved via nutrient reductions referred to as "pollution control strategies."

Nutrient reductions prescribed under TMDLs are assigned on basis of water quality concerns – that is, the those regions deemed to be of greatest environmental concern will require correspondingly higher levels of nutrient reduction than those regions deemed less environmentally sensitive. In this watershed, these regions are demarcated as high and low reduction zones. The high reduction zone corresponds to the western portion of the watershed, and requires a reduction of nitrogen and phosphorus by 85 and 65 percent, respectively. The low reduction zone corresponds to the eastern portion of the watershed, and requires a reduction of nitrogen and phosphorus by 40 percent. **This project is proposed within the low nutrient reduction zone.**

In order for the applicant to verify compliance with the TMDL mandate, a full nutrient accounting process known as nutrient budget should be prepared. The developer/consultant should contact Lyle Jones in the Department's Watershed Assessment Section for further information regarding the acceptable protocol for calculating a nutrient budget. He can be reached as 739-4590.

Revegetation/Buffers

DNREC requests that no invasive species be used in the revegetation of disturbed areas. A list of species considered invasive in Delaware can be found on the DNHP web site, <www.dnrec.state.de.us/fw/invasive.htm>. DNREC further recommends the use of native plants and our botanist, Bill McAvoy can be contacted at (302) 653-2880 to assist you in developing a plant list.

In the interest of water quality and wildlife habitat, we recommend maintaining the forested buffer of at least 100 ft along Herring Creek and associated wetlands. Buffers are an integral component of aquatic and wetland habitats, reducing the amount of sediments, pollutants, and other non-point source material that may affect the function and integrity of habitat and the condition and survivability of aquatic organisms. Forested buffers also serve as habitat for many terrestrial species that are dependent on aquatic and wetlands habitats for a portion of their annual life cycle. A preferred design would be one in which lot lines are moved out of the forested area completely.

Nuisance Species

DNREC recommends that the number of ponds incorporated in the subdivision design be reduced. The ponds will likely attract waterfowl like resident Canada geese and mute swans that will create a nuisance for community residents. Although small numbers of these species are enjoyed by residents, geese and swans can quickly multiply and overwhelm the area. High concentrations of waterfowl in ponds create water-quality problems, leave droppings on lawn and paved areas and can become aggressive during the nesting season. Ponds that remain in the subdivision plan should be landscaped to deter nuisance species. Short manicured lawns around ponds provide an attractive habitat for these species. However, native plantings, including tall grasses, wildflowers, shrubs, and trees at the edge and within a buffer area around ponds, are not as attractive to geese because they do not feel as safe from predators and other disturbance when their view of the area is blocked. The Division of Fish and Wildlife does not provide goose control services, and if problems arise, residents or the home-owners association will have to accept the burden of dealing with these species (e.g., permit applications, costs, securing services of certified wildlife professionals). Solutions can be costly and labor intensive; however, with a reduction in the number of ponds, proper landscaping, monitoring, and other techniques, geese problems can be minimized.

State Fire Marshal's Office – Contact: Kevin McSweeney 739-3696

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. At the time of formal submittal, the applicant shall provide; completed application, fee, and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation (DSFPR):

a. **Fire Protection Water Requirements:**

- Where a water distribution system is proposed for single family dwellings it shall be capable of delivering at least 500 gpm for 1-hour duration, at 20-psi residual pressure. Fire hydrants with 1000 feet spacing on centers are required.
- Where a water distribution system is proposed for townhouse type dwellings, and the clubhouse it shall be capable of delivering at least 1000 gpm for 1-hour duration, at 20-psi residual pressure. Fire hydrants with 800 feet spacing on centers are required.
- The infrastructure for fire protection water shall be provided, including the size of water mains.

b. **Fire Protection Features:**

- All structures over 10,000 Sq. Ft. aggregate will require automatic sprinkler protection installed.
- Buildings greater than 10,000 sq.ft., 3-stories of more or over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements.
- Show Fire Department Connection location (Must be within 300 feet of fire hydrant), and detail as shown in the DSFPR.
- Show Fire Lanes and Sign Detail as shown in DSFPR

c. **Accessibility:**

- All premises which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. This means that the access road to the subdivision from Angola Beach Rd must be constructed so fire department apparatus may negotiate it.
- Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.
- Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also,

please be advised that parking is prohibited in the cul-de-sac or turn around.

- If the use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.

d. Gas Piping and System Information:

- Provide type of fuel proposed, and show locations of bulk containers on plan.

e. Required Notes:

- Provide a note on the final plans submitted for review to read “ All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”
- Name of Water Supplier
- Proposed Use
- National Fire Protection Association (NFPA) Construction Type
- Townhouse 2-hr separation wall details shall be shown on site plans
- Maximum Height of Buildings (including number of stories)
- Provide Road Names, even for County Roads

Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: www.delawarestatefiremarshal.com, technical services link, plan review, applications or brochures.

Public Service Commission - Contact: Kevin Neilson 739-4247

This parcel is currently within the CPCN area for Tidewater Utilities

If any natural gas or closed system propane distribution network is planned, it must conform to pipeline safety requirements.

Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,



Constance C. Holland, AICP
Director

CC: Sussex County