



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF  
STATE PLANNING COORDINATION

December 10, 2004

Mr. Steve Timmons  
2114 Fords Corner Road  
Hartly, DE 19953

RE: PLUS review – PLUS 2004-11-01; Timmons Property

Dear Mr. Timmons:

Thank you for meeting with State agency planners on November 23, 2004 to discuss the proposed plans for the Timmons property located at 2114 Fords Corner Road, near Hartly.

According to the information received, you are seeking a rezoning from AR-1 to BN for the purpose of placing a building on the site to serve as a sales building and welding shop for outdoor furnace sales.

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 Kent 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:

**Office of State Planning Coordination – Contact: David Edgell 739-3090**

This site is located in Investment Level 4 according to the State Strategies for Policies and Spending. This site is located outside of the Kent County Growth Zone, and is located in the midst of numerous agricultural preservation districts. Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development

activities and suburban development are not supported in Investment Level 4. This commercial rezoning and the proposed development of a retail sales establishment is inconsistent with the goals and intent of Investment Level 4, and appears to be inconsistent with the goals and intent of the Kent County Comprehensive Plan as well. Our office is opposed to this rezoning and land development project in this rural area, and notes that State investments to support this proposed use are not expected.

As a result of the discussion at the PLUS meeting, and in consideration of the comments listed below it appears that the site itself has multiple constraints for development. The site is dominated by wetlands, woodlands, and poor soils which may make it difficult to construct the proposed structures regardless of the zoning issue. It is recommended that the applicant fully investigate the suitability of the site for construction and consider the comments contained in this letter prior to making a decision to proceed with a formal rezoning request.

**Department of Transportation – Contact: Bill Brockenbrough 760-2109**

- 1) Because the development is proposed for a Level 4 Area, it is inconsistent with the Strategies for State Policies and Spending. Therefore DelDOT will not participate in the cost of any road improvements needed to support this development. The comments that follow are not intended to suggest that DelDOT supports this development proposal.
- 2) As just mentioned, DelDOT does not support the proposed development. However, if the County acts affirmatively on the applicant's request, DelDOT recommends that they seek an alternative way to accommodate it. In our view, treating the business as a home occupation or other conditional use would be preferable to creating an isolated BN district.
- 3) The applicant's engineer or surveyor should contact the DelDOT project manager for Kent County, Mr. Brad Herb of Johnson, Mirmiran & Thompson, regarding their requirements for access. Mr. Herb may be reached at (302) 266-9080

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

**Soils**

According to the soil survey update, Sassafras and Fallsington were mapped in the immediate vicinity of the proposed construction. Sassafras is a well-drained upland soil that has few limitations for development. Fallsington is a very poorly-drained wetland associated (**hydric**) that has severe limitations for development. At least 80-90% of subject parcel contain Fallsington soils.

## **Wetlands**

Statewide Wetland Mapping Project (SWMP) maps indicate the entire project area is palustrine wetlands.

Impacts to Palustrine wetlands are regulated by the Army Corps of Engineers through Section 404 of the Clean Water Act. In addition, individual 404 permits and certain Nationwide Permits from the Army Corps of Engineers also require 401 Water Quality Certification from the DNREC Wetland and Subaqueous Land Section and Coastal Zone Federal Consistency Certification from the DNREC Division of Soil and Water Conservation, Delaware Coastal Programs Section. Each of these certifications represents a separate permitting process.

The applicant should note that if a road crossing of Johnson Branch is proposed, permits from the DNREC Wetlands and Subaqueous Lands Section and from the Corps of Engineers may also be required.

Because there is strong evidence that federally regulated wetlands exist on site, a wetland delineation, in accordance with the methodology established by the Corps of Engineers Wetlands Delineation Manual, (Technical Report Y-87-1) should be conducted. Once complete, this delineation should be verified Corps of Engineers through the Jurisdictional Determination process. Contact the Wetlands and Subaqueous Lands Section at 302.739.5726 for a list of Wetlands Consultants that can perform Wetlands Delineations.

Impacts to wetlands should be avoided and vegetated buffers of no less than 100 feet should be employed from all wetlands and waterbodies.

To find out more about permitting requirements, the applicant is encouraged to attend a Joint Permit Process Meeting. These meetings are held monthly and are attended by federal and state resource agencies responsible for wetland permitting. Contact Denise Rawding at (302) 739-4691 to schedule a meeting.

Further, it recommended that the applicant contact the Farm Services Agency of the USDA for information regarding the potential for the farmed or cleared wetlands on subject parcel to meet the 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.

## **ERES Waters**

This project is located adjacent to environmentally sensitive receiving waters of the Chesapeake Bay Watershed; 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 Chesapeake Bay Watershed, reduction of nitrogen and phosphorus loading will be obligatory. 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. In the Chesapeake Watershed, "target-rate-reductions" of 30 and 50 percent will be required for nitrogen and phosphorus, respectively.

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 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."

**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 (739-4590) in the Department's Watershed Assessment Section for further information regarding the acceptable protocol for calculating a nutrient budget.**

The developer is encouraged to employ BMPs (or other pollution control strategies) such as stormwater management and riparian buffers to mitigate nutrient runoff into adjoining streams or watercourses. The previously mentioned recommendation for a **100-foot minimum isolation distance from all waterbodies and wetlands is an important BMP to attain nutrient load reduction goals.**

## **Water Supply**

The project information sheets state that individual on-site wells will be used to provide water for the proposed project. Our records indicate that the project is not located in an area where public water service is available. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the Regulations Governing the Construction and Use of Wells. In this case, a minimum isolation distance of 150 ft. is required between the well and any potential source of contamination, such as a septic tank and sewage disposal area. A well construction permit must be obtained prior to constructing any wells.

Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.

All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.

Should you have any questions concerning these comments, please contact Rick Rios at 302-739-3665.

## **Water Resource Protection Areas**

Almost the entire parcel is located in an excellent recharge area (see map). According to the State law that created the Source Water Protection Program, county and municipal governments will be required to enact ordinances to protect Water Resource Protection Areas. The following language has been excerpted from the draft Source Water Protection Guidance Manual for Local Governments,

Supplement 1 - Ground-Water Recharge Design Methodology. While the language is currently draft and the local ordinances are not yet in place, the developer may find the language useful in modifying the site plan to protect the excellent recharge area.

Water Resource Protection Areas (WRPAs) are defined as (1) surface water areas such as floodplains, limestone aquifers, and reservoir watersheds, (2) wellhead areas, or (3) excellent recharge areas. The purpose of an impervious cover threshold is to minimize loss of recharge and protect the quality and quantity of ground and surface water supplies in WRPAs.

New development in WRPA's may exceed the 20 % impervious cover threshold, but be no more than 50 % impervious, provided the applicant submits an environmental assessment report recommending a climatic water budget and facilities to augment recharge. The environmental assessment must document that post-development recharge will be no less than predevelopment recharge when computed on an annual basis.

Commonly, the applicant offsets the loss of recharge due to impervious cover by constructing recharge basins that convey relatively pure rooftop runoff for infiltration to ground water.

The Department recommends the following (ranked in order of preference):

- 1) Preserve WRPA's as open space and parks by acquisition or conservation easement.
- 2) Limit impervious cover of new development to 20 % by right within WRPA's.
- 3) Allow impervious cover of new development to exceed 20% within WRPA's (but no more than 50% impervious) provided the applicant develops recharge facilities that directly infiltrate rooftop runoff.
- 4) Allow impervious cover of new development to exceed 20% within WRPA's (but no more than 50% impervious) provided the applicant develops recharge facilities that infiltrate stormwater runoff from forested and/or grassed surfaces with pretreatment.

### **Stormwater Management**

Stormwater management is an integral part of the site development infrastructure. The planning and design for stormwater management should begin early. The applicant is encouraged to contact the Kent Conservation District as soon in the planning process as possible in order to receive their preliminary comments. Contact Jared Adkins at (302) 741-2600, ext. 3, for plan submittal and review requirements.

### **Drainage**

The proposed project is within the Gravelly Run Tax Ditch. Coordination for future tax ditch maintenance is essential and the Drainage Section requests Mr. Timmons contact the Gravelly Run Tax Ditch and the Kent Conservation District to ensure adequate access to the existing right-of-way is established. Alteration of the tax ditch, (Sub 4 of Sub 3 of Prong 8) to either the physical ditch or to the right-of-way will require a formal court order change of the Gravelly Run Tax Ditch.

The Drainage Section requests that all precautions be taken to ensure the project does not hinder any off site drainage upstream of the project or create any off site drainage problems downstream by the release of on site storm water.

### **Forests**

According to 2002 aerial photos, the proposed site plan is forested. Site plans show that this forest will be removed. Plans should be designed to minimize impacts to the forested area. This area provides important water quality, air quality and habitat benefits both to the site itself and the region.

### **Revegetation/Landscaping**

It is requested that no invasive species be used in the revegetation of disturbed or landscaped 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](http://www.dnrec.state.de.us/fw/invasive.htm). The DNHP encourages, where possible/feasible, the use of native plants for habitat restoration projects on-site and their Botanist, Bill McAvoy can be contacted at (302) 653-2880 to assist you in developing a plant list.

### **Underground Storage Tanks**

There are no LUST site(s) located near the proposed project. However, should any underground storage tank or petroleum contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible. It is not anticipated that any construction specifications would be need to be changed due to petroleum contamination. However, should any unanticipated contamination be encountered and PVC pipe is being utilized, it will need to be changed to ductile steel in the contaminated areas.

### **State Fire Marshal's Office – Contact: John Rossiter 739-4394**

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:**
  - Since the structures of the complex are proposed to be served by individual on-site wells (No Central Water System), set back and separation requirements will apply.
- b. **Fire Protection Features:**

- For commercial buildings greater than 5000 SqFt, a fire alarm signaling system which is monitored off-site is required
  - For commercial buildings greater than 10,000 Sq Ft Class B (2-hour rated) fire barriers are required to subdivide buildings into areas of 10,000 SqFt. or less
  - 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
- 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 Ford's Corner Road 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”
  - Proposed Use
  - Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units
  - Square footage of each structure (Total of all Floors)
  - National Fire Protection Association (NFPA) Construction Type
  - 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](http://www.delawarestatefiremarshal.com), technical services link, plan review, applications or brochures.

**Public Service Commission - Contact: Andrea Maucher 739-4247**

Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety guidelines. Contact: Malak Michael at (302) 739-4247.

**Delaware Emergency Management Agency – Contact: Don Knox 659-3362**

No significant impact to public safety is foreseen by implementation of this project.

**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: Kent County

Attachment: WRPA map