



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF  
STATE PLANNING COORDINATION

December 10, 2004

Ms. Judith Shuler  
Vollmer Associates, LLP  
800 Delaware Avenue, Ste. 610  
Wilmington, DE 19801-1365

RE: PLUS review – PLUS 2004-11-07 – Town of Cheswold Land Use Ordinance

Dear Ms. Shuler:

Thank you for meeting with State agency planners on November 23, 2004 to discuss the proposed Town of Cheswold Land Use Ordinance .

Please note that changes to the Ordinance plan, other than those suggested in this letter, could result in additional comments from the State.

This office has received the following comments from State agencies:

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

The State Planning Office appreciates this opportunity to review Cheswold's proposed Land Development Ordinance. We would like to commend the town and their consultant for developing a comprehensive and innovative land use ordinance. The ordinance, once adopted, will be instrumental in guiding growth and development in the town for many years to come.

Our office has the following specific questions, comments and suggestions regarding the land use ordinance:

- 1) Why is there a reference manufactured homes and mobile homes in definition of modular homes on page 7? I assume it is to direct readers to compare the three housing types, but this could be misinterpreted by the reader to imply that the three housing types are synonymous.
- 2) No definitions are provided for Flood Boundary, Floodway Map, or Wellhead.

- 3) The development review procedures are not as clear as they could be. From my initial reading of the ordinance it appears that the intention is for plans to go to the administrator, then to Planning Commission, then to Council for a final review. In addition, it appears that the intent of the ordinance is to combine all development reviews into a common procedure (site plans, major and minor subs). A concept plan is optional for all. This looks to be a very streamlined, easy to understand procedure. I recommend that this procedure be clarified in the ordinance text, and possibly through the development of a flow chart or some other graphic.
- 4) Is record plat required for all land use applications? Is the intent to have site plans recorded? If so, then this requirement should be clarified in the ordinance text as per the discussion above.
- 5) The ordinance is not very clear regarding how conditional use applications will be processed. Are conditional uses considered concurrently with a development plan application, or is an additional approval cycle required? I recommend that this issue be clarified in the ordinance text.
- 6) In Table 6-1, why are the R-1, R-2, and R-3 zones considered commercial zones? Should these be designated as residential zones in the table?
- 7) In Table 6-1, some of the items under “purpose” are actually regulatory in nature. It will probably be easier to read the ordinance if the specific requirements for each zone are separated out into another text section, rather than placing them all into the table under “purpose.”
- 8) Section 11-2 requires a public water connection. Considering the fact that Cheswold currently lacks a public water system for the older part of town, how will this impact existing lots if they redevelop? I recommend that you consider adding a provision to address parcels which do not yet have access to a public water system.
- 9) Section 12-1 is very thorough. I suggest that you require that all new lot lines be located outside of the floodplain. This would be consistent with the County regulations.
- 10) Source water protection section is not clear on what actions would have to be taken by the developer, or who would enforce that action. If the intent of the ordinance is to rely solely on the DNREC guidance manual, then it should be made clear that the Town will grant building permits or development approvals only after it can be demonstrated by the developer that they have met all conditions.

- 11) Tables 15-1 and 15-2 regarding open space dedications and “fee in lieu of dedication” are a bit complex. Regarding the “fee in lieu of dedication” described in table 15-2, I recommend revising the formula to reference a current appraisal of the land rather than a set amount. Land values will change over time leaving this ordinance quickly out of date. It is conceivable that open space dedication may become rare if it becomes much cheaper to just pay the fee based on the formula.

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

Section 6-1(B), Number 5 is reserved for Historic District Overlay Zone. The consultant informed us that there are no plans in the near future to designate a historic district or to establish a Historic District Overlay Zone. The SHPO strongly encourages the Town to designate a historic district and subsequently establish an overlay zone. They would be happy to assist.

The Town should be aware of the rural architecture, numerous archaeological sites, and the high probability for other archaeological sites, within and near Cheswold. With the amount of new developments occurring around Cheswold, the Town may want to consider some type of protection for the architectural and archaeological resources and help protect them from future development. Such resources should be considered when annexations take place.

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

- 1) On pages 4 and 5 in Article 2, Definitions, the definition of Bed & Breakfast Establishment goes beyond defining the term and establishes regulations. It is recommended that the definition be shortened and that the requirements be placed in Article 7.
- 2) On page 15 in Article 2, the definition of Self-Storage Facility provides for a small office but does not mention a caretaker apartment. Such apartments are common in these facilities. If the Town wants to permit them the Ordinance should say that.
- 3) On page 16 in Article 2, the definition of Storage, including Mini-Storage, reads “See ‘Warehouse.’”. However, the definition of warehouse excludes mini-storage and self-storage.
- 4) On page 21 in Section 3-4, Administrator, the qualifications and responsibilities of that position are described. While responsibilities of this sort are typically handled by a municipal employee or a consultant, the Ordinance is not clear as to the Administrator’s status. It is recommended that the Ordinance provide that the Administrator may be a Town employee, a consultant retained by the Town, or an employee of another government with which the Town has entered an agreement pertaining to administration of the Ordinance.

- 5) While Article 2 is expressly for Definitions, definitions of terms are placed throughout the Ordinance. At least one definition, Development Plan, is given in two places with slight differences. For clarity we recommend that all definitions be located in Article 2.
- 6) The Ordinance refers, in various places, to the “Municipal Governing Body” and elsewhere specifically mentions the Town Council. As they appear to be the same thing, it is recommended, for clarity, that the term “Town Council” be used throughout. Similarly, where “the Town” is meant, it should be substituted for “the Municipality”.
- 7) Section 6-1. Establishment of Zoning Districts, does not include a district for Office uses. DelDOT recommends that the Town consider providing for such a district to regulate office uses separately from retail commercial uses. As the Town presently does not have this land use, it may be reasonable to simply reserve a place for this district now and add specifics later.
- 8) In Table 8-1, Basic Development Standards in Residential Zones, under Tract Standards, there is an instruction under Maximum DUs per Acre, “Multiply tract area by 43,560.” We believe it should read “Divide 43,560 by tract area.”
- 9) Section 10-1, Part D.3.d. provides that “suburban (“rolled”) curbs are required” in manufactured home communities. While DelDOT agrees that curbing should be required, they suggest that upright curbing should at least be permitted. Rolled curbing is advantageous to the developer in that trucks bringing in manufactured homes can cross it without ramps and driveway locations can be decided after the curbing is in place. Upright curbing is desirable in that it discourages parking on lawns and provides a barrier between careless drivers and street trees.
- 10) Recognizing that they are reviewing a draft that has yet to be proofread, DelDOT has not looked for typographical errors. However, they noticed one such error in Section 10-1, Part D.5 that an electronic grammar and spelling checker would miss: the speed limit on cul-de-sacs should “be subject to a ten (10) mile per hour speed limit.”
- 11) DelDOT has recently begun the process of revising its standards for the design of subdivision streets. They expect to adopt revised standards in the first half of 2006. For this reason, it is recommended that the Town consider planning to update their street standards, where they reference the DelDOT manual, in 2006.
- 12) Given the street tree requirements in Section 15-4, it is recommended that upright curb be required on all municipal streets. Upright curb, as opposed to rolled curb, serves an important safety function in that at the low speeds typical of municipal streets it directs errant vehicles along the cartway and away from the trees.

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

**Delaware Coastal Programs Comments  
Prepared by Susan Love**

**General Comments:**

**Open Space Requirements:** The open space requirements are vague and confusing and most likely subject to a lot of interpretation which will not result in increased resource protection.

**Natural Heritage Program database review:** NHP review is required under the subdivision process, but no mention is made as to how the developer must comply with the recommendations. This should be addressed as a separate section with requirements that sensitive habitat as identified by NHP be included as undevelopable open space.

**Riparian Buffers:** There appears to be no hard and fast requirement for adequate riparian buffers. This must be addressed.

**Specific Comments**

**Pg 30** – “environmentally sensitive areas” and “other significant features” are not defined.

**Pg 37** – Why is there no overlay zone proposed for sensitive natural areas, riparian buffers or the like?

**Pg 48** – “townhouse” is not defined

**Pg 58, Section F, Character of Land** – This section is confusing. What will guide the decision to deem land unsuitable for subdivision or development? How can the Commission be ensured that its decision to determine land unsuitable will be upheld in court?

The types of reasons listed for deeming land unsuitable (flooding, slope, utility easements etc) most likely cannot be mitigated in most cases; therefore it would be best to eliminate the section that discusses solving the problems.

Unsuitable land SHOULD, in most cases, be part of an open space plan and public dedication, contrary to what the last sentence of this section proposes. Wetlands, floodplains, steep slopes etc. are an important component of natural space and community passive recreational areas and plans for ownership and management should be formulated early in the process.

**Pg 58, Section 9-3, Lot & Block Design:** This section should also specify that cul-de-sacs are to be minimized (cul-de-sacs increase impervious surfaces and interfere with connectivity of neighborhoods).

**Pg 59, Section 9-3, 5.a. Lot Frontage:** does not define what double frontage and reversed frontage lots are, making it difficult to interpret the meaning of this section. I think this is trying to address the backs of houses being visible from major streets, but don't know for sure.

**Pg 60, Section 9-3, B.5. –** The DSWC DE Riparian Buffer Initiative cannot provide site specific riparian buffer criteria. To our knowledge, there is no tool that will comprehensively do this; good buffer criteria take into consideration the site (soils, slopes, existing and planned vegetation etc) and the desired outcomes (for wildlife habitat, 300 feet from a stream is generally desirable, for reduction in sedimentation and nitrogen its around 150 feet).

Additional consultation with DNREC may be necessary to ensure an adequate buffer requirement.

**Pg 60, Section 9-3, B.6 --** Will there be a requirement that NHP's recommendations be incorporated into the site plan?

**Pg 62: 10-1, B –** This section should also state that cul-de-sacs are not preferred and should be limited.

**Pg 64: Sidewalks:** Should this section ensure that the area between the sidewalk and street is large enough for street tree survival?

**Section 11-4, Lighting:** Should this section specify that street lights, parking lot lights etc should be of the type that illuminate directly down and used only when necessary to minimize light pollution?

**Pg 70, C.2. –** should read..."may require a permit from the United States Army Corps of Engineers and/or the State of Delaware DNREC Wetlands and Subaqueous Lands Section"

*This ordinance should specifically exclude wetlands and flood plains from all building lots subdivided after it takes effect.*

**Pg 70, D. Construction Controls:** This section should state that building **shall not** occur in the 100 year flood plain, unless no other practicable alternative exists which would allow some use of the land by the property owner.

**Section D.1.** – What are the Kent County requirements and how will they impact Cheswold? This section creates some confusion in and of itself.

**Section 12** should perhaps contain a section which specifically addresses wetlands and impact avoidance.

**Section 12-3, Drainage, A.1:** The statement “natural and preexisting man-made drainage ways SHALL remain undisturbed” may be problematic as in some cases, drainage ditches can be eliminated in favor of ponds, or swales OR will have to be maintained in order to function. I would suggest rewriting to say... “natural and preexisting man-made drainage ways should remain undisturbed unless maintenance activities or proper drainage patterns mandate disturbance.”

**12-3, A.2.** – should also say that lot lines should not contain buffer zones of drainage ways and/or easements for maintenance.

**Section 15** – Open space is not defined either in this section or in the definitions at the beginning. Throughout this section, it appears as if the definition of open space jumps between meaning only active recreational open space and the combination of active and passive open space. The definitions and intent must be significantly clarified. In addition, what about open space for infrastructure (stormwater ponds etc.?)

**15-1.A.1.** – This section sets forth that land SHALL be dedicated for recreational purposes. It should also contain a section that states that natural areas including wetlands, floodplains, buffers, steep slopes also must be dedicated as part of passive open space.

B.1.c. (2) – consider revising “with the objective of creating a wooded area...” to “with the objective of returning the area to a natural state, either with wetland, meadow or woodland vegetation...”

B.1.d. – not all open space areas will be capable of being used and enjoyed, particularly wetlands with deep mucky soil!

B.1.f. – I continue to be confused by the restriction of allowing wetlands and other undevelopable areas to be part of the open space.

B.4. – where did the values for this table come from? It would appear that it addresses only recreational needs (e.g. for a playground) but gives no consideration of passive open space, for which much more than .6-4.5% would be necessary.

C.2.c. (6) – Has the DPR agreed to conduct such a review? What standards will be used?

15-2.A.1. – Does this mean that anything in excess of what is calculated in table 15-1 cannot be dedicated to the municipality?

15-2.A.2. – The municipality should strongly consider assuming maintenance responsibility for these open spaces; one of the benefits of being within an incorporated area is the additional services that can be provided above and beyond what are provided in the unincorporated area. Many homeowner's associations/maintenance corporations are volunteer based, have difficulty collecting annual fees and generally do not manage the land as well as a real governmental agency could.

15-5.A. – all natural areas are subject to a natural area deed restriction, but which ones, and when?

15-5.C. – deed restrictions shall allow for restoration and improvement activities.

### **Water Resource Protection Areas**

The town can refer to the New Castle County Uniform Development Code (UDC) and the Town of Townsend for modeling a wellhead protection ordinance. For more information refer to the draft Source Water Protection Guidance Manual for the Local Governments of Delaware

<http://www.wr.udel.edu/swaphome/phase2/Manual/SwappManual.pdf> and Ground-Water Recharge Design Methodology  
[http://www.wr.udel.edu/swaphome/phase2/Manual/SwappManual\\_supplement\\_1.pdf](http://www.wr.udel.edu/swaphome/phase2/Manual/SwappManual_supplement_1.pdf).

### **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. The DE State Fire Marshal's Office has the responsibility to review all commercial and residential subdivisions for compliance with the DE State Fire Prevention Regulations. This Agency asks that a MOU be established between the DE State Fire Marshal's Office and the Town of Cheswold once a Land Planning Commission is established. The Commission will be issuing final approvals on commercial and residential subdivisions. The State Fire Marshal's Office would be issuing approvals much like DelDOT, Kent Conservation, and DNREC. This Agency's approvals are based on the DE State Fire Prevention Regulations only.

Some of the compliance issues are listed below. 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:**
  - Water distribution system capable of delivering at least 1500 gpm for 2-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers. (Mercantile)



- Water distribution system capable of delivering at least 1000 gpm for 1-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers. (Assembly and Townhouses)
  - 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. (One & Two- Family Dwelling)
  - Where a water distribution system is proposed for the site, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.
- 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 or 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
  - For townhouse buildings, provide a section / detail and the UL design number of the 2-hour fire rated separation wall on the Site plan.
- 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.
  - 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)
- Townhouse 2-hr separation wall details shall be shown on site plans
- Note indicating if building is to be sprinklered
- Name of Water Provider
- Letter from Water Provider approving the system layout
- Provide Lock Box Note (as detailed in DSFPR) if Building is to be sprinklered
- 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 State Housing Authority – Contact Karen Horton 739-4263**

The ordinance contains good siting and design standards that will encourage development compatible with the Town’s suburban character. The DSHA especially supports two elements:

- Opportunities for residential units to be located above commercial or office uses.
- Opportunities for well-sited and well-designed manufactured housing.

**Department of Education – Contact: Nick Vacirca 739-4658**

School sites should be considered as a conditional use in all zoning districts.

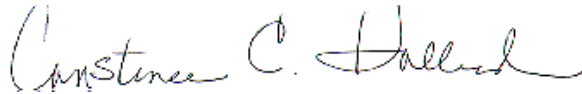
**Delaware Economic Development Office – Contact: Dorrie Moore 739-4271**

The DEDO has received a couple of phone calls from existing business in Cheswold regarding concerns over the amount of residential development that has taken place and is proposed to take place in the Cheswold area. The main concern is having adequate

buffers between industrial development and residential development. One business is worried they will become the focus of complaints and a possible relocation will be necessary. One way to make new residential developments aware of existing industrial properties might be to have the developer include a caveat that points out the industrial business right up front. This is being done in Sussex County with agricultural properties so that the new owner is aware of transportation, odors, dust, noise and industrial/agricultural activities.

The State requests that you consider the comments given by State agencies and notify this office of the changes made as a result of this letter. Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland". The signature is written in dark ink and is positioned above the typed name and title.

Constance C. Holland, AICP  
Director

CC: Town of Cheswold