



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF
STATE PLANNING COORDINATION

June 20, 2005

Ms. Linda Raab
Raab & Associates
6606 Old Stage Road
N. Bethesda, MD 20852-4328

RE: PLUS review – PLUS 2005-05-10; Clayton Comprehensive Plan Amendment

Dear Ms. Raab,

Thank you for meeting with State agency planners on June 1, 2005 to discuss the draft Town of Clayton Comprehensive Plan.

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. This office has received the following comments from State agencies:

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

The Office of State Planning Coordination commends the Town of Clayton for their very complete and well done comprehensive plan amendment. We appreciate the fact that the Town has chosen to publish a plan update which compiles all previous updates and the new material into a unified document. This will ensure that your staff, the public, and our office have access to the most up to date information. We also commend the Town for working so closely with our office, the Smyrna School District, Kent County, the Department of Agriculture and others as we collaboratively addressed issues involving your new growth area and the site for the new intermediate school. This has been an excellent example of intergovernmental coordination on all parts, but could not have been initiated without the commitment and interest of the Town of Clayton.

The plan document complies with the minimum requirements of a Municipal Development Strategy for jurisdictions with a population under 2,000, as required by the Delaware Code. Please take the following recommendations and information into account as you finalize the plan:

1. We support the Town's policy, stated at the PLUS meeting, of phasing annexations based on available infrastructure and resources.

2. It is recommended that the Intergovernmental Coordination Section note that during the plan preparation there were a number of meetings with officials from our office, the Smyrna School District, Kent County, and the Department of Agriculture to discuss the new growth area to the west.
3. With annexations and continued residential growth, it is possible that Clayton's population will exceed 2,000 persons by your next update. Please be aware that there are more detailed requirements for Towns with populations over 2,000, and consider this as you prepare the next plan update. The next update will be due by 1/16/2008.
4. Please notify our office when the plan has been adopted by your Planning Commission and Council. We will recertify the plan when we receive copies of meeting minutes or resolutions documenting its adoption along with one digital and two paper copies of the plan

State Historic Preservation Office (SHPO) – Contact Alice Guerrant 739-5685

The Town of Clayton has been very receptive to historic preservation and has a fine stock of historic buildings. There are also historic properties in the proposed annexation areas, including National Register-listed ones. SHPO will provide the Town with a map of these properties and an updated map of National Register properties in Town. SHPO requests that the Town consider ways to protect these properties from inappropriate development after annexation, and would be happy to work with them on such issues.

Department of Transportation – Contact Bill Brockenbrough 760-2109

The Town of Clayton is preparing an update to their 1996 Comprehensive Plan. Comments on the draft are as follows:

- 1) Section 1-5b, Growth and Development, states that the Town's "concept of managed growth includes staging annexation in accordance with the ability of the town's infrastructure to handle it." DelDOT supports development in and around towns and commends the Town for their considered approach to this matter.
- 2) Section 1-6a, describing the Public Workshop held on the Update, mentions that about 30 people attended. This figure would represent only about two percent of the population if they were entirely Town residents and there were several people there representing other government agencies, most of whom presumably were not also residents. The low participation rate may simply suggest that residents are content to let the Town government handle the matter for them. However, it makes it more important for the Town to publicize the substance of the update to its residents and to offer them ample opportunity to comment.
- 3) In Section 3-3a, the description of Clayton's employment base misstates the location of Atlantic Tractor's storage area. Atlantic Tractor has two storage areas, one on Wilson Avenue (includes their machine shop) and one on Smyrna Avenue. The property mentioned on South Bassett Street is a gasoline, diesel fuel and fuel oil storage area currently owned by the local Southern States cooperative.

- Previously all three storage areas were under the common ownership of Clements Supply Company.
- 4) Table 13, Recreation Facilities Serving Clayton, lists the Garrison's Lake Golf Club as a facility. That club has since closed and the land has been purchased by the State of Delaware. The State is currently evaluating the best and most appropriate use.
 - 5) In Section-4b, one of the recommendations for Recreation and Open Space is to work with DNREC and DelDOT "to identify opportunities to target unused railroad rights-of-way for hiking, biking and other recreational purposes." These rights-of-way are included in DelDOT's Statewide Rail to Trail Master Plan. DelDOT looks forward to working with the Town on such projects. The Plan should also be referenced in Section 3-6, Transportation. More information on the Plan is available from Mr. Michael Kirkpatrick of the Statewide and Regional Planning Section. Mr. Kirkpatrick may be reached at (302) 760-2153.
 - 6) Pertaining to the recommendations in Section 3-6b:
 - a) For concerns having to do with parking on State-maintained roads and signing, including the designation of existing roads as truck routes, the Town should contact Assistant Director for Traffic, Mr. Donald Weber. Mr. Weber may be reached at (302) 659-2002.
 - b) Regarding the reopening of the railroad crossing at Old Duck Creek Road and Duck Creek Parkway, DelDOT is prohibited by State law from creating new at-grade railroad crossings (Bridges, tunnels and relocations of existing crossings are permitted.). Section 4-2d cites a Federal Railroad Administration restriction in this regard but does not mention that a State law also applies.
 - c) Regarding bicycle and pedestrian planning, the Town should contact Assistant Director for Statewide and Regional Planning, Mr. Joseph Cantalupo, (302) 760-2121.
 - d) Regarding rail service, the Town should contact Mr. Michael Kirkpatrick. See Comment 5 for contact information.
 - 7) The statement in Section 4-2c, that "Many businesses along South Bassett Street are in buildings that once were homes," seems incorrect. While the lots they occupy may previously have been residential lots and some of the buildings have been converted from previous uses, none of the business locations appear to be converted houses.

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

Chapter 3 – Community Character

This section does not mention natural resource issues other than waterbodies and wetlands. There may be other natural resources within Clayton that deserve mention, such as small areas of forest and woods, riparian areas, or rare and endangered species. Even small natural areas have environmental and social benefit and are worth mention.

Referring to Section 3.1a Description – Geology, Page 21, the text below is recommended to more accurately describe the geology of the area:

Clayton, as well as the rest of Kent County, is located within the Atlantic Coastal Plain physiographic province. The Atlantic Coastal Plain consists of geological formations comprised of deep-lying crystalline rocks covered with layers of gravels, sands and clays. The layers that make up the Coastal Plain dip gently towards the Atlantic Ocean from northwest to southeast.

Wetlands

DNREC recommends adding the following text:

Protection of wetlands falls under the regulatory jurisdiction of Section 404 provisions of the Clean Water Act. Under these provisions, the avoidance of construction/filling activities in areas containing wetlands or wetland-associated hydric soils is usually prohibited. Verification of wetland presence is provided by a United States Army Corps of Engineers (USACE) approved wetlands delineation. Tidal wetlands are provided additional and more stringent regulatory protection under Chapter 66 provisions of the State of Delaware's Tidal Wetlands Regulations. The Wetlands Section of the DNREC Division of Water Resources administers this program. Wetlands are important...

Referring to Page 22, Wetlands and Recharge Areas, the text below is recommended to offer a more precise depiction of recharge areas and aquifers:

Precipitation falling on the land surface provides all water that recharges aquifers. Aquifers are layers of gravel and sand within which water is stored and moves underground. Excellent recharge areas consist of predominantly sandy soils that allow precipitation to most rapidly infiltration to the underlying aquifer. Good, fair and poor recharge areas have progressively slower infiltration rates.

Maintaining good water quality in local aquifers is especially important because Clayton (as well as all communities in Kent and Sussex Counties) obtains all drinking water from wells drilled into aquifers. Care must be taken with developments in excellent recharge areas to ensure that precipitation does not pick up and carry contaminants downward to replenish the aquifer below the land surface and that sufficient open area is preserved to allow precipitation to

recharge the aquifers. As shown on Map 4, there is substantial acreage of excellent recharge areas in the Clayton vicinity.

Pollution Control

The following text is suggested to broaden what the Department believes is the primary purpose for employing vegetative buffers:

Employing protective environmental practices such as planting vegetative buffer strips between cropland/residential development and waterways/wetlands.

Water Resource Protection Areas

Source water protection is vital to preventing water pollution in wellhead and excellent recharge areas. Wellhead and excellent recharge areas should be included as areas of critical protection in the Comprehensive Plan. Once these areas are adopted in the Plan, the town can develop ordinances to protect them.

There are several instances where the Town expresses the desire to increase the amount of open space, recreational space and general beautification projects. These uses compliment source water resource protection efforts. Land use best management practices in the Source Water Protection Guidance Manual for the Local Governments of Delaware, (<http://www.wr.udel.edu/swaphome/phase2/SWPguidancemanual.html>), work directly with the goals of open and recreation space and general beautification projects.

Clayton's population is below 2,000 so recommendations made concerning source water protection should be implemented on a voluntary basis. DNREC applauds the Town's initiative in protecting critical areas within municipal boundaries.

Critical Areas are defined as wellhead protection areas and excellent recharge areas. There are instances where both types of critical areas are present within Clayton's municipal boundaries. DNREC Water Supply- Source Water Protection Program will assist the Town with technical issues, creation or implementation of source water protection programs, and ordinance development.

A clarification for page 31, paragraph 5: "Water quality is..." Excellent and good recharge areas do not ensure good or excellent water quality but rather reflect the *rate* at which water can infiltrate to the subsurface aquifer. Water quality can be maintained by limiting potential contaminant infiltration of excellent and good recharge areas. For example, a leaking underground petroleum storage tank in an excellent recharge area has a greater potential to do widespread damage to the aquifer than a leaking underground storage tank in poor recharge area.

The source water protection law covers protection of excellent recharge areas only. There is no recommendation to protect good recharge areas, however any effort made to protect these areas by the Town of Clayton is commendable.

Sediment and Erosion Control/Stormwater Management

Intergovernmental coordination establishes a relationship between the Town of Clayton and Kent County, but the Kent Conservation District is not specifically mentioned. Kent Conservation District is not part of Kent County government and should be a named agency in this section. The District should be notified of all proposed development plans so that comments can be made at the preliminary stages about the required Sediment and Stormwater Plans.

Habitat and Rare Species

There are records of rare species within Duck Creek and its tributaries, including the federally listed Bald Eagle which forages and roosts along the creek system. Maintaining the current forested riparian buffer is extremely important. A vegetative (preferably forested) buffer of at least 100 feet along all wetlands and water bodies within Town boundaries and annexation areas is recommended.

Residential and commercial developments proposed within the area mentioned above should implement stringent sediment, erosion, and run-off control methods so that impacts to water quality are reduced.

Buffers are integral components of aquatic and wetland habitats in that they reduce 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.

Recreation and Open Space

The Town is strongly encouraged to ensure that open space dedicated during the subdivision process is adequately maintained and managed. It is unclear whether the Town or homeowner associations will maintain subdivision open space. Many homeowners associations do not have the technical expertise or time to adequately manage open space and stormwater areas, resulting in trespass, illegal dumping and littering. Significant safety issues can also result, particularly in stormwater or stream areas and habitat degradation. The Town should consider taking management responsibility of all neighborhood open space.

Referring to section 3-1b, Goals and recommendations, goals should be strengthened to include:

- Preserve and improve stream health and water quality
- Preserve and improve riparian buffers
- Improve water quality
- Provide opportunities to residents to enjoy Clayton's natural areas
- Maintain and improve groundwater recharge

The recommendation section should include more specific text such as:

Work with DNREC and other natural resource agencies to develop policies and procedures to improve water quality for inclusion in the municipal code. These recommendations should, at a minimum, include buffer requirements from streams and wetlands and prohibition of development activities within flood zones.

Other suggested modifications:

- Require an Army Corps of Engineers approved wetlands delineation before considering approval of all land annexation requests.
- Develop a buffer ordinance per DNREC guidance as a Best Management Practice (BMP) to control pollution.
- Work with DNREC to develop policies, procedures, and BMPs that offer practicable solutions for the mitigation of various environmental problems.

Referring to Page 48, Greens Branch Area, the Town is commended for recognizing and proactively addressing the development constraints of this area. It is unclear if the Town intends to designate only the floodplain in the Greens Branch Area or floodplain throughout the Town as open space. It is strongly recommended that all floodplain within the Town be placed into a designation that significantly restricts development potential. A location map of the Area should be provided.

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

The Delaware State Fire Marshal's Office has no objections to the amendments to the Comprehensive Plan. Site plan approval is required from the DE State Fire Marshal's Office prior to any recordation and or construction.

- Section 3-5a, Water Supply – add “Any annexed areas will meet the most current Delaware State Fire Prevention Regulation criteria for fire protection.”

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

Department of Agriculture - Contact Mark Davis 739-4811

The Delaware Department of Agriculture commends the town for its efforts to develop this complete and well done plan. The Department fully supports the intergovernmental coordination efforts initiated and fostered by the Town of Clayton.

The Delaware Forest Service offers its assistance to the Town in landscape design standards development, tree preservation and mitigation activities, and identifying opportunities to include urban forestry activities within their community.

Delaware State Housing Authority – Contact Jimmy Atkins 739-4263

The Town of Clayton Comprehensive Plan updates the land use and annexation maps and the community profile, planning, and community character sections of the certified 1996 Comprehensive Plan. Since the Town of Clayton population is less than 2,000, HB 396,

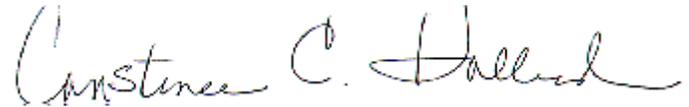
which mandates affordable housing plans, is not applicable. The Comprehensive Plan includes goals and recommendations for providing sound and affordable housing for its residents. While median home values in Clayton have increased sharply since 1996, they are among the lowest and most affordable in Delaware. The Plan also addresses annexation and code enforcement. DSHA encourages the Town to annex and zone land at a higher density to allow for diverse housing types. Furthermore, since 34 percent of the housing stock in Clayton was built in 1939 or earlier, any code enforcement activities should be balanced with historic preservation.

Department of Education – Contact Nick Vacirca 739-4658

The Department of Education has noted that school sites should be considered as conditional use in all zoning areas.

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".

Constance C. Holland, AICP

Director

CC: Kent County