



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
STATE PLANNING COORDINATION

October 19, 2005

Mr. David S. Hugg III
Town of Smyrna
P.O. Box 307
Smyrna, DE 19977

RE: PLUS review – PLUS 2005-09-08; Town of Smyrna Comprehensive Plan Update

Dear Mr. Hugg:

Thank you for meeting with State agency planners on September 28, 2005 to discuss the proposed Town of Smyrna Comprehensive Plan amendment.

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 following are considered certification issues and will need to be resolved before the plan can be certified:

1. The “Memorandum of Understanding” between the Town, New Castle County, and various landowners in the New Castle County portion of Smyrna must be included as an appendix to the plan.
2. All outstanding Plans of Services must be completed and accepted by our office prior to certification of the plan. This includes the Plans of Services for the parcels already annexed in New Castle County. We must be in receipt of all final resolutions to consider these items completed.
3. On “Figure 8, Future Land Use within the Town of Smyrna” the town owned parcel north of Duck Creek is not assigned a land use color. This parcel must have a future land use.

4. Text must be added to the Growth and Annexation plan which describes the “Area of Concern” depicted on Figure 8, and clearly states that this is not an area that the Town of Smyrna will consider for annexation within the planning period.
5. Figure 8 includes a layer called “Annexation_Plan_Boundary.” The dark purple outline of this area proceeds south of Brenford Road to encompass the “Area of Concern.” The Area of Concern is where the Town has an interest in how development in the County jurisdiction will impact the Town, but is not an area that the town may consider for annexation within the planning period. We recommend that the dark purple outline be revised to coincide with the annexation area, i.e. Brenford Road.
6. The DSHA indicates that the housing section does not adequately address affordable housing as is specified in Title 22, Sect. 702 Del. C. Please update this section with the appropriate information on affordable housing. See the DSHA comments in this letter for additional information.
7. DNREC recommends that you designate “critical areas” as a part of your comprehensive plan. This designation will enable the completion of ordinances, such as source water protection. Please revise the plan to incorporate DNREC’s recommendations in this regard, which may be found later in this letter.

The following are a complete list of comments and recommendations received by State agencies. We ask that you consider these items as you revise your plan:

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

Our office is pleased to review Smyrna’s amended comprehensive plan. The plan is a very detailed, complete document which sets a vision for the Smyrna of the future as a center of employment and commerce that retains its residential character and historic charm. We look forward to working with Smyrna to help achieve this vision. The certification process is detailed at the end of this letter. Please contact David Edgell with any questions about the comments, or the process for completing your plan amendment.

1. Figure 8, Future Land Use within the Town of Smyrna is one of the most important maps in the plan. We are concerned that the map legend is difficult to read, which may lead to misinterpretation and or errors in land use determinations in the future. It is recommended that this map’s color scheme and legend be revisited to make it more legible. The cross hatch patterns create a particular problem because they do not show up well in the legend. Similarly, the residential classifications are hard to differentiate.

2. The southwest portion of the plan includes the lands recently annexed as the Worthington subdivision, and lands proposed to be annexed under the name "Sylvan Valley Real Estate." In both cases the parcels are designated "Low Density Residential" (defined as 0-4 du/acre) but proposed for development at medium residential densities (defined as 5-6 du/acre). We recommend that you revisit the land use designations in this portion of the plan. As you are aware, zoning districts must comply with the land use plan.

3. We understand that the Plan contains a population projection that the town believes reflects accurately the future growth of Smyrna. To summarize, the Town projects an aggressive rate of 300 units of new construction per year leading ultimately to a town population of 15,000 in 2015 and 20,000 in 2020. Small area population projections are notoriously hard to prepare with accuracy, and we respect the fact that Smyrna has chosen to use building permit data from recent years to make this aggressive projection. We also note that the Delaware Population Consortium does not prepare small area projections for Smyrna, so technically speaking there is no way to judge this particular projection against a standardized data set. Smyrna's growth may not ultimately lead to more people moving to Delaware, but if this optimistic projection becomes a reality then more people will be choosing to locate into the municipal jurisdiction as opposed to other more remote areas in northern Kent and southern New Castle Counties. With this having been said, we believe that Smyrna's projections are too aggressive and optimistic. The selection of 300 units per year as the average is hard to substantiate, given that new permits appear to have peaked at 270 permits in 2003, declined to 257 in 2004, and appear to be trending towards a similar decrease in 2005 (graph and chart, p. 23). The average permits for new construction issued between 2000 and 2004 appears to be 183 per year, making 180 permits per year a more defensible figure to use for your trend based projections. There are many factors that may intervene in the coming years to impact the pace and quantity of new construction activity and subsequent immigration into Smyrna. We look forward to monitoring the growth of population in Smyrna through the Delaware Population Consortium and other venues, and working with the town to coordinate needed infrastructure and services for the growing population.

4. We note that the Town of Smyrna is a contract user of Kent County's wastewater system, and that as such the Town is in regular contact with the County regarding projected sewer demands. We recommend that you note this fact in the Intergovernmental Coordination chapter, since adequate sewer infrastructure will be critical for Smyrna's growth.

Division of Historic and Cultural Affairs – Contact: Alice Guerrant 739-5685

The DHCA is pleased to see that Smyrna’s comprehensive plan focuses on historic preservation of the downtown historic district. However, the historic resources of Smyrna extend beyond the limits of the identified district, and in fact the Town is already acting to protect historic properties outside of that area. For instance, they recently required the developer to keep Mount Pleasant (K- 3863) within his development on a larger lot. They were reassured to hear at the meeting that the Town is implementing protections for their historic resources in a wider area and plans to extend their overlay historic zoning to the rest of the National Register-listed Smyrna Historic District (K-302).

There are other areas that haven’t been as well documented but add to the historic character of the community. There is no mention of the African-American community resources on the east side of Route 13, including the former Thomas B. Clayton School just taken off the demolition list by the Superintendent of the School District. The energy generated from the recent discovery of the African-American burial at the Smyrna VFW as well as the saving of this school can be used to advantage to get the community involved in documenting their resources. As the Town annexes, they also should identify and protect historic resources that come into the town boundaries. A specific concern is that, as properties are annexed from New Castle County, an existing protection for historic properties is removed.

It is suggested that the Town apply for Certified Local Government designation and partnership with the DHCA office to help get that survey and identification of outlying historic resources accomplished with potential help from Historic Preservation Fund grants. Each year, 10% of the money allocated to the State of Delaware by the National Park Service is set aside for grants to Certified Local Governments.

Among additional protections, road improvement projects should mention protection of and accommodation for historic properties. Also an economic development strategy could be to promote the incentives for appropriate rehabilitation of historic buildings. The town is proposing a façade improvement program, which we support. However, there are also tax incentives from federal, state, and county governments that could apply to appropriate rehabilitation and adaptive re-use of Smyrna’s historic resources. This supports the Town’s existing practice of the redevelopment authority purchasing neglected buildings for resale and rehabilitation. The Town may want to look at the Town of Milton’s recent adoption of a “no tear-down” ordinance, which prevents someone from purchasing an older building with the intention of tearing it down to build something new.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

- 1) On page 73, regarding improvements to Sunnyside Road (Kent Road (90)), the Plan states that “Portions of this road are not within the Town’s boundaries, necessitating State improvements.” While DeIDOT understands the Town’s point that they cannot be responsible for improvements outside their boundaries, the State is not the only party that could make the needed improvements. DeIDOT routinely requires developers to make road improvements to address the impacts of their traffic. It seems entirely possible that at least some of the needed improvements on Sunnyside Road could be done by the private sector.
- 2) On page 75, the Plan mentions that a Southern Development Area Study “should examine the potential for extension of Rabbit Chase Road north to connect to Artisan Drive.” Since the last update, two residential subdivisions, Southern View and Wicksfield, have been recorded and have begun construction in the path of that extension. Therefore, in their view, such an extension no longer seems viable.

The Department of Natural Resources and Environmental Control – Contact: Kevin Coyle 739-9071

The following suggestions/comments on the Smyrna Comprehensive Plan Update pertain mainly to the Environmentally Sensitive Resources Section and the Natural Features Section (pages 92 & 93). The Watershed Assessment Section believes that this section could be improved by a little reorganization and the replacement of vague environmental policies with more specific ones that are more likely attain the stated goals.

Recommendation #1

First, because there is no clear distinction given between the Environmentally Sensitive Resources Section and the Natural Resources Sections, DNREC recommends combining these two sections under one section heading and incorporate the all the following recommendations within this section.

Recommendation #2

It would be more logical and appropriate to discuss TMDLs, water recharge areas, floodplains, riparian buffers and forest protection under the Environmentally Sensitive Resources Section or Natural Resources Section (pages 92 & 93) rather than the Private

Open Space subsection of the Public and Private Recreational Facilities Section (page 96 & 97).

Recommendation #3

Given the fact that buffers are an essential Best Management Practices (BMP) for achieving the nutrient reductions necessary for Delaware to achieve future Federal TMDL reduction requirements to meet water quality standards, the Watershed Assessment Section strongly recommends that the Town be “proactive” and create a specific policy (ordinance) mandating the maintenance/restoration of buffers for all residential/commercial developments that are within 100 feet of wetlands or water bodies. Based on peer-reviewed research, a buffer width of 100 feet (upland area between wetland/ water edge to the edge of a created land parcel) is considered the minimally acceptable buffer width necessary to maintain water and habitat quality.

Recommendation #4

It is strongly recommended that a section on wetlands regulatory jurisdiction be added to the Comprehensive Plan. DNREC suggests the following:

“Regulatory Protection of wetlands is mandated under Federal 404 provisions of the Federal Clean Water Act. Tidal wetlands are accorded additional regulatory protection under Title 7 Chapter 66 provisions of the State of Delaware’s Code. Compliance with these statutes may require an Army Corps of Engineers approved field wetlands delineation and/or DNREC approval.”

It is also strongly recommended that the Comprehensive Plan contain language restricting lot line placement within all delineated wetlands.

Recommendation #5

Since the creation of impervious cover through development is well-known environmental problem in all watersheds under intense development pressures – including the Smyrna River watershed - it is strongly recommended that this plan attempt to be proactive and require all development projects with Town of Smyrna implement BMPs that mitigate for some of these impacts. Suggested BMPs to mitigate the creation of excessive impervious cover, include: reducing the amount of allowable forest cover removal; requiring the use of alternative paving surfaces (especially in commercial developments) where practicable; allowing only green stormwater technologies; and

adopting a minimum buffering requirement from all wetlands and streams (see recommendation #3).

Water Resource Protection Areas

Smyrna's population was 5679 in the year 2000, so Senate Bill 119 applies to the Critical Areas within the municipal boundaries.

Critical Areas are defined as wellhead protection areas and excellent recharge areas. There are instances where both of these types of critical areas are present within the Town of Smyrna municipal boundaries (see map below). The Source Water Protection Program is interested in assisting the Town of Smyrna with questions or concerns with technical issues, creation or implementation of source water protection programs and ordinance development.

There are several excellent recharge areas within and nearby the municipal boundaries of the Town. The Town of Smyrna Water supply wells are located within the municipal boundaries. The wellhead protection areas defined by DNREC Source Water Protection are both inside and outside of the municipal boundaries. The area outside of the municipal boundaries is under Kent County jurisdiction. A revised Source Water assessment that includes the recently added 4th well will expand the wellhead protection area further into Kent County.

As Kent County develops Source Water Protection regulations, the Town of Smyrna should make an effort to be involved with this process as the decisions have to potential to affect the Town's water supply. Coordinating efforts with the Town of Clayton may be an option that the Town of Smyrna considers.

It is important that this Comprehensive Plan adopt the Critical areas (excellent recharge and wellhead protection) as areas that will be protected. This first step will allow the Town to achieve dynamic source water protection through later code development.

The Town of Smyrna included an "Environmental Protection" section as part of this comprehensive plan. Some clarification is needed to simplify the process for adopting Critical Areas. The recharge potential mapping of the State of Delaware was completed in 2000 and the excellent recharge areas are available for Kent and New Castle Counties. These areas were delineated by the Delaware Geological Survey. Please refer to this publication for more information:

<http://www.udel.edu/dgs/Publications/pubsonline/RI66.pdf>

<http://www.udel.edu/dgs/Publications/pubsonline/hydromap11.pdf>

http://www.udel.edu/dgs/Publications/pubsonline/hydromap11_12_BACK.pdf

Data for producing maps is available from this link:

Digital Ground-Water Recharge Potential Data for Kent and Sussex Counties

<http://www.udel.edu/dgs/Publications/pubsonline/DP02-01.zip>

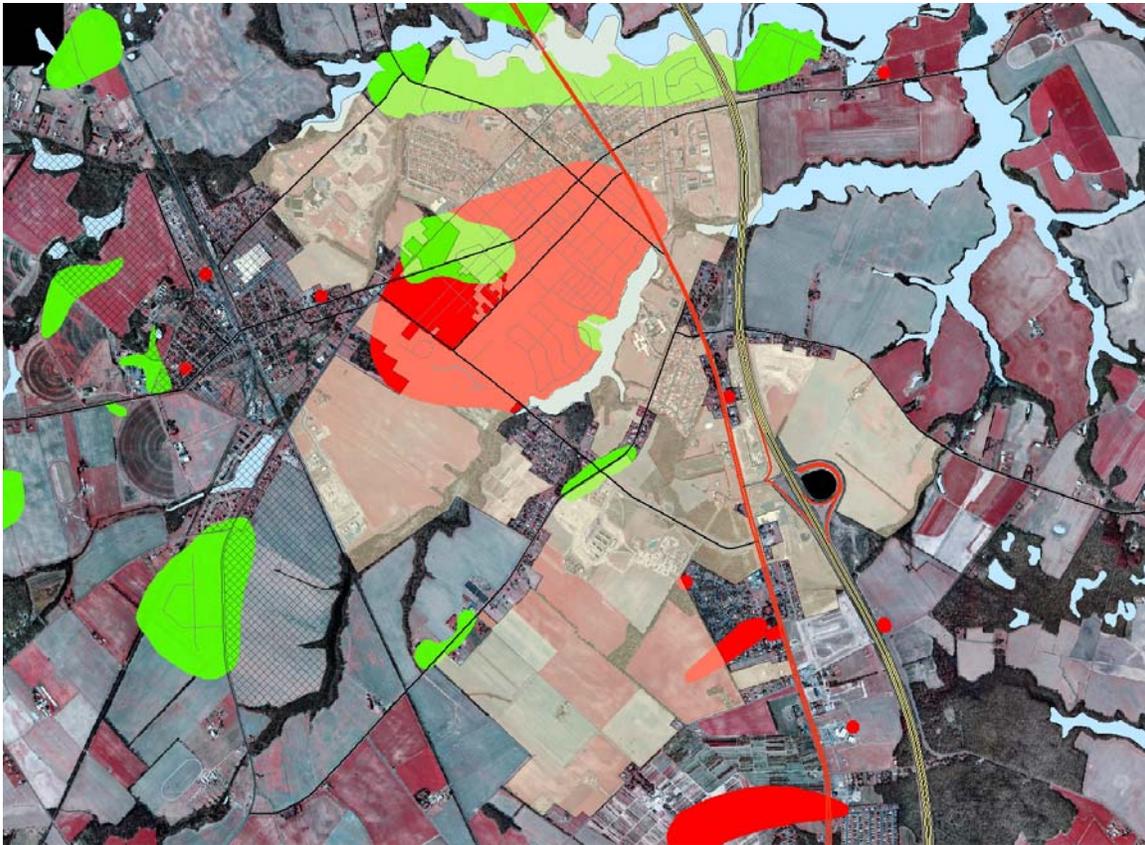
The Comprehensive Plan states that a five hundred foot radius around public wells was established to restrict land uses that may affect the water supply. Delaware Source Water Law requires adoption of the DNREC delineated wellhead protection areas as critical areas. The map below shows the wellhead area for the 3 wells in existence at the time of the assessment. This area covers a substantial section of the Town. This area was delineated through the Source Water Assessment Report provided to the Town of Smyrna on September 9, 2003. An updated Source Water Assessment is forthcoming.

General Summary of Comprehensive Plan

A first step for critical area (wellhead and excellent recharge) protection would be adoption of the Critical Areas into the Town of Smyrna Comprehensive Plan as area to be protected. Once the areas are adopted in the comprehensive plan the town can take what steps it feels necessary to protect these critical areas through ordinance or regulation. DNREC Source Water Protection Branch is available to assist in this process.

Within the Comprehensive Plan there are several instances that the Town of Smyrna expresses the desire to expand the amount of open space, recreational space and general beautification projects within the Town. These uses compliment source water resource protection efforts. Some of the land use best management practices found 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.

Map 1 - Town of Smyrna with Excellent Recharge Areas in Green and Wellhead Protection Areas in dark red. (black crosshatch outlines Town of Clayton).



State Resource Areas

The area designated as Business and Commercial on the north side of Duck Creek between Rt. 13 and SR 1 contains land identified as the Lower Delaware River State Resource Area. State Resource Areas are comprised of lands that contain a variety of natural, cultural and open space resources significant to the state, and include lands held in conservation by various groups as well as lands targeted for conservation and preservation efforts. Consideration should be given to protecting these resources during the design and construction of any future projects.

State Fire Marshal's Office – Contact: Dune Fox 856-5298

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

- ❖ May want to use language out of DE State Fire Prevention Regulations (Part II Section 6-4 Water Distribution) to help define where water is "available".
- ❖ On pgs. 50, 51, & 60 – may want to add, "water supply shall be adequate to provide fire protection through out the town in accordance with the DE State Fire Prevention Regulations".
- ❖ The streetscape and realignment projects should be reviewed by the DE State Fire Marshal's Office for fire department accessibility and fire hydrant locations.
- ❖ On pg. 98 may want to add MOU between FMO and Town of Smyrna.

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.

Department of Agriculture - Contact: Milton Melendez 698-4500

Neither the Delaware Department of Agriculture nor the Delaware Forest Service has any objections to the Town of Smyrna Comp Plan Update. The Town of Smyrna does not propose to annex any Agricultural Districts or Easements in the Area, and supports preservation wherever possible. The Farmland Protection section of the Comprehensive Plan mentions the town's support of TDRs, but does not mention any information about TDR receiving areas within the town. The Department of Agriculture and the Delaware Forest Service would like to see more details on this topic and a policy regarding the establishment of receiving areas for TDRs within the Town's borders.

To further improve and enhance the natural resources within and surrounding the community, the Delaware Forest Service would ask the community to continue to

develop comprehensive forest mitigation and protection ordinances to allow for future tree preservation within the community. The Delaware Forest Service extends its services to the community in addressing these and any other forest resources needs within the community.

Public Service Commission - Contact: Andrea Maucher 739-4247

If there are parcels in the City's growth area that are not part of any water provider's certificated service territory, the City could offer service prior to annexation if it applies to the Commission for a CPCN. Further, the Commission is not aware of any statute that would prohibit the Commission from granting a CPCN to a private utility to serve any parcels located in a City's certified growth area should the appropriate application be filed

Delaware State Housing Authority – Contact Jimmy Atkins 739-4263

Per HB 396, municipalities such as Smyrna, with populations over 2,000 people, should develop policies, statements, goals, and other planning components for affordable housing in accordance with the present and future needs. The Town's plan includes a section on housing, which provides general information on the rental and homeownership units including affordable housing units managed by DSHA. While the housing section provides a general description of the housing, it does not adequately address housing supply, demand, and need. DSHA recommends that the Housing Plan section should include a more descriptive analysis of the housing supply, demand, and future needs for housing in Smyrna based on available social and economic data. For example, the Community Profile Section includes several charts and graphs that relate to school enrollments, age, and income, but there is little or no discussion of what this means for housing.

Furthermore, the Town's plan references the creation of a Redevelopment Authority to address blighted areas including dangerous buildings. However, there is no information in the plan that documents the number of blighted or deteriorating structures that would potentially meet the definition of blight and deterioration to qualify the creation of the Redevelopment Authority.

Lastly, the Town's plan states as a goal, to develop a mixture of housing types and sizes that are affordable to a wide range of incomes. DSHA supports this goal and looks forward to working with the Town to make this a reality.

Certification Process

1. Once all edits, changes and corrections have been made the plan please submit the completed document (text and maps) to our office for review. Your PLUS response letter should accompany this submission. Also include documentation about the public review process. In addition, please include documentation that the plan has been sent to other jurisdictions for review and comment, and include any comments received and your response to them.
2. Our office will require a maximum of 20 working days to complete this review.
3. We will provide the Town of Smyrna with written verification that our office has accepted the plan and all changes for adoption and certification.
4. The plan may then be formally adopted by your Planning and Zoning Commission and Town Council.
5. Send our office documentation that the plan has been formally adopted by your Planning and Zoning Commission and Town Council. We will accept the plan as an amendment to your certified plan. A letter to this effect will be sent within 10 working days. The amendment will not alter your original plan certification date. A full plan update will be due on or before May 16, 2008.

Please remember to submit your response letter to our office with your final plan submission. Your letter must detail your response to comments received as a result of the pre-application process, noting whether comments were incorporated into the final plan or not and the reasons 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