



November 15, 2005

Mr. Rick Woodin
Woodin & Associates, LLC
5177 West Woodmill Drive., Ste. 6
Wilmington, De 19808

RE: PLUS review – PLUS 2005-10-10; Westtown Marketplace

Dear Mr. Woodin:

Thank you for meeting with State agency planners on October 26, 2005 to discuss the proposed plans for the Westtown Marketplace project to be located on the north side of US 301 at the intersection of US Route 301, DE Route 299, and DE Route 15.

According to the information received, you are seeking site plan approval for a 247,000 sq. foot commercial center to be located on 30 acres within the Westtown subdivision.

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 the Town of Middletown is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the Town.

Executive Summary

The following section includes some site specific highlights from the agency comments found in this letter. This summary is provided for your convenience and reference. The full text of this letter represents the official state response to this project. ***Our office notes that the applicants are responsible for reading and responding to this letter and all comments contained within it in their entirety.***

State Strategies/Project Location

- This project is part of the Westown master plan and is located in Investment Level 2 according to the State Strategies for Policies and Spending, and as such the State supports development in this area.

Street Design and Transportation

- The width of the internal road will need to be larger so that it can accommodate three exiting lanes and two entering lanes.
- A bike lane will have to be provided along the entrance road.

Natural and Cultural Resources

- According the Statewide Wetland Mapping Project Maps (SWMP), palustrine emergent wetlands were mapped on the south-central portion of subject parcel. A wetlands field
- delineation is highly recommended; this delineation should be verified by the U.S. Army Corps of Engineers through the Jurisdictional Determination process.
- Impacts to wetlands should be avoided and vegetated buffers of no less than 100 feet should be employed from all wetlands and water bodies.
- The DNREC Water Supply Section has determined that the entire parcel falls within an area of excellent groundwater recharge (see following map and attached map).
- DNREC Water Supply Section recommends that that portion of the new development within the excellent recharge area not exceed 20% impervious cover

The following are a complete list of comments received by State agencies:

Office of State Planning Coordination – Contact: Herb Inden 577-5188

This project is part of the Westown master plan and is located in Investment Level 2 according to the State Strategies for Policies and Spending, and as such the State supports development in this area.

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

The J. P. Cochran Tenant House (N-5219; as shown on Beers Atlas of 1868) stood on Rt. 301 within this parcel, but has been demolished since it was inventoried. Four other Cochran tenant houses are also shown on Beers on Rt. 301. The 1931 USGS 15' topographic map shows only one of these houses remaining, and by the 1937 USDA aerials, only the house in our survey files was still standing. So there are five potential historic-period archaeological sites within the parcel. In addition, parts of the parcel have high and medium potential for prehistoric-period archaeological sites. Cochran Grange (N-117), J. P. Cochran's own house, is very close to the project area, just south and on the other side of Rt. 301. This property is listed in the National Register of Historic Places.

The Division of Historical and Cultural Affairs requests that sufficient landscaping be installed to screen this development from the view of Cochran Grange. They would also appreciate the opportunity to check the area for archaeological sites, to learn something about their location, extent, and nature before any ground-disturbing activities take place.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

This project is included in Westown, a master planning concept encompassing several parcels on the west side of Middletown. In this effort, DelDOT has been working with the Town of Middletown and the developers of these parcels to design and build the transportation infrastructure using a comprehensive approach that allows development to occur along with the infrastructure.

- 1) This developer will be contributing to the cost of off-site traffic improvements as a signatory to a Recoupment Agreement that assigns a specific contribution amount.
- 2) DelDOT supports this proposal as being consistent with the size and usage studied in the Westown Circulation Plan. However, this proposal would not allow for any additional retail lots near the Wal-Mart without adjusting the size or usage of the remaining area set aside for office & a hotel.
- 3) Regarding specific aspects of the plan, DelDOT offers the following comments:
 - a) The setback of the first access road appears to be far enough back to allow for projected queues at the intersection with US 301.

- b) The width of the internal road will need to be larger so that it can accommodate three exiting lanes and two entering lanes.
 - c) A bike lane will have to be provided along the entrance road.
 - d) The proposed plan is to have a split phase for the future signal (due to low volumes of through traffic across Route 301).
 - e) The location of the main entrance appears consistent with the location recommended in the Westown study; it is opposite the proposed Auto Mall entrance.
 - f) The US 301 project may need to share the proposed storm water management pond, so that option should be kept open.
- 4) DelDOT supports the developer's intent to provide bicycle, pedestrian and transit facilities as part of their project and the Town's intent to require them.

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

Soils

Based on the New Castle County soil survey, a large unit of wetland associated (hydric) soils (Fallsington) was mapped on subject parcel.

Wetlands

According the Statewide Wetland Mapping Project Maps (SWMP), palustrine emergent wetlands were mapped on the south-central portion of subject parcel. A wetlands field delineation is highly recommended; this delineation should be verified by the U.S. Army Corps of Engineers through the Jurisdictional Determination process.

Impacts to wetlands should be avoided and vegetated buffers of no less than 100 feet should be employed from all wetlands and water bodies. Lots should exclude all wetlands and associated buffers. The developer should note that both DNREC and Army Corps of Engineers discourage allowing lot lines to contain wetlands to minimize potential cumulative impacts resulting from unauthorized and/or illegal activities and disturbances that can be caused by lot owners.

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.

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.

It is also recommended that the Farm Services Agency of the USDA be contacted to assess whether any of 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 USDA. The contact person for assessing a parcel’s cropping history is Sally Griffin at the USDA – she can be reached by phone at 678-4182.

TMDLs

With the adoption of Total Maximum Daily Loads (TMDLs) as a “nutrient-runoff-mitigation strategy” for reducing nutrients in the Appoquinimink River 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. Nutrient reductions prescribed under TMDLs are assigned to those watersheds or basins on the basis of recognized water quality impairments.

In the Appoquinimink watershed, the primary source of water quality impairment is associated with nutrient runoff from agricultural and/or residential development. In order to mitigate the aforementioned impairments, a TMDL reduction level of 60 percent will be required for both nitrogen and phosphorus. In order for the applicant to verify compliance with the TMDL mandate, a full nutrient accounting process known as a nutrient budget should be prepared. The protocol used for calculating the nutrient budget involves a computer-based model to calculate post-development nutrient loading

utilizing a variety of land use scenarios in combination with a variety (or absence) of BMP types and intensities. This post-development loading rate is then compared with the pre-development loading rate as a means to assess whether the project meets the acceptable TMDL reduction levels.

Based on a preliminary evaluation of this project using said model, the development as currently conceived **does not meet** the TMDL reduction requirements for phosphorus. The applicant is encouraged to consider some of the above-suggested BMPs along with other redesign changes that they could be used to satisfy these reductions. We suggest that the applicant verify their project's compliance with the specified TMDL loading rates by running the model themselves. Please contact Lyle Jones of Watershed Section at 739-9939 for the acceptable model protocol. The applicant should be aware that the inclusion of stormwater management, buffers and wetlands as metrics for open space calculations – may understate the actual TMDL nutrient loading and, subsequently, the actual nutrient runoff as calculated from the nutrient budget protocol.

Impervious Cover

The Watershed Assessment Section feels that the amount of imperviousness generated by this project is excessive (over 75%) and should be reduced. Research has consistently shown that once a watershed exceeds a threshold of 10 percent imperviousness, water and habitat quality irreversibly decline. Since the amount of imperviousness generated by this project will be well over this 10 percent threshold, the applicant is strongly advised to pursue best management practices (BMPs) that mitigate and reduce its predictable impacts. Reducing the amount of surface imperviousness through the use of pervious paving materials (“pervious pavers”) in lieu of asphalt or concrete in conjunction with additional native tree and shrub plantings - are examples of practical BMPs that could easily be implemented to reduce surface imperviousness. Even better, reducing the amount of constructed structural imperviousness (i.e., building and parking lots) in the first place is probably the best BMP and should also be considered.

Water Resource Protection Areas

The DNREC Water Supply Section has determined that the entire parcel falls within an area of excellent groundwater recharge (see following map and attached map).

The proposed development would change the total impervious cover from approximately 1% to approximately 75%. These numbers were provided by the developer on the PLUS application. This number far exceeds the values set forth by New Castle County. The parcel is located in the Town of Middletown. Currently, the Town of Middletown does not have a Source Water Protection Component to their comprehensive plan.

DNREC Water Supply Section recommends that that portion of the new development within the excellent recharge area not exceed 20% impervious cover. Further, some allowance for augmenting ground-water recharge should be considered if the impervious cover exceeds 20% but is less than 50% of that portion of the parcel within this area. The purpose of an impervious cover threshold is to minimize loss of recharge (and associated increases in storm water) and protect the quality and quantity of ground water and surface water supplies.

Should the Town of Middletown approve the development plan as proposed, DNREC Water Supply Section strongly recommends that augmentation of groundwater recharge be required through engineering to achieve the impervious cover goals. Recommended engineering includes rooftop run-off systems that limit the potential for contamination of precipitation. These recommendations are made due to existence of the parcel entirely within an excellent recharge area and close proximity to a wellhead protection area.

For more information refer to the Final Source Water Protection Guidance Manual for the Local Governments of Delaware

<http://www.wr.udel.edu/swaphome/phase2/SWPguidancemanual.html>

and

Ground-Water Recharge Design Methodology

http://www.wr.udel.edu/swaphome/phase2/Publications/swapp_manual_final/swapp_guidance_manual_supp_1_2005_05_02.pdf.

Westown Marketplace Phase II (PLUS 2005-10-10) with excellent recharge in green and affected parcels outlined in light blue.



Water Supply

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. A well construction permit must be obtained prior to constructing any well(s).

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 302-739-9944.

Sediment and Erosion Control/Stormwater Management

A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. The plan review and approval as well as construction inspection will be coordinated through the Town of Middletown. Contact the Plan Review office at (302) 378-1171 for details regarding submittal requirements and fees.

As of April 11, 2005, stormwater best management practices must also consider water quality as well as quantity in impaired water bodies.

Rare Species

DNREC has not surveyed this project site; therefore, a review of their database indicates that there are currently no records of state-rare or federally listed plants, animals or natural communities on tax parcel 23-022.00-002. According to the site plan and application, only part of tax parcel 23-021.00-119 is going to be developed at this time. If there are plans for development of the remainder of this parcel, surveys for the federally listed bog turtle (*Glyptemys muhlenbergii*) may be required. The bog turtle is a federally listed species, protected under the Endangered Species Act. According to our database, GIS data, and aerial photographs, there is potential bog turtle habitat in the wetlands associated with tributaries of Sandy Branch which exists on the western half of the parcel.

Nuisance Waterfowl

Stormwater management ponds included in the site plan may attract waterfowl like resident Canada geese and mute swans. 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. Short manicured lawns around ponds provide an attractive habitat for these species. We recommend native plantings of tall grasses, wildflowers, shrubs, and trees at the edge and within a buffer area (50 feet) around the perimeter. Waterfowl do not feel safe when they can not see the surrounding area for possible predators. These plantings should be completed as soon as possible as it is easier to deter geese when there are only a few than it is to remove them once they become plentiful. 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 proper landscaping, monitoring, and other techniques, geese problems can be minimized.

Underground Storage Tanks

There are two inactive LUST site(s) located near the proposed project:

Shore Stop # 59, Facility # 3-000219, Project # N9807103

One Stop Shop, Facility # 3-000247, Project # N9212292

No environmental impact is expected from the above inactive/active LUST site(s). 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 with nitrile rubber gaskets in the contaminated areas.

State Fire Marshal's Office – Contact: John Rossiter 302-323-5365

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:**
 - 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.
 - Where a water distribution system is proposed for (Storage/Industrial/Mercantile) sites, 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 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 Middletown Warwick 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.
- The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.
- The local Fire Chief, prior to any submission to our Agency, shall approve in writing the use of gates that limit fire department access into and out of the development or property.

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)
- 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, technical services link, plan review, applications or brochures.

Public Service Commission - Contact: Andrea Maucher 739-4247

The project information sheets state that The Town of Middletown will be used to provide water for the proposed project. Our records indicate that part of the project (tax map number:23-021.00-119) is located within the public water service area granted to Artesian Water Company under Certificate of Public Convenience and Necessity number 02-CPCN-02, the other parcel (tax map number:23-022.00-002) is not located in an area where public water service is available. It is recommended that the developer contact Artesian Water Company to determine the availability of public water. Any questions concerning CPCNs should be directed to the Public Service Commission at 302-739-4247.

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 Department of Agriculture – Contact: Milton Melendez 739-4811

The Delaware Department of Agriculture has no objections to the Westown Marketplace application. The site is located on a long-range designated controlled development area. The *Strategies for State Policies and Spending* encourages responsible development in areas within a Growth Level 2 Zone. This site; however, is a part of an “excellent recharge” area. The Department of Natural Resources and Environmental Control (DNREC) has mapped all ground water potential recharge areas. An “excellent” rating is the highest rating and designates an area as having important groundwater recharge qualities.

Maintaining pervious cover in “Excellent” and “Good” recharge areas is crucial for the overall environmental health of our state and extremely important to efforts which ensure a safe drinking water supply for future generations. Retention of pervious cover to ensure an adequate future water supply is also important for the future viability of

agriculture in the First State. The loss of every acre of land designated as “excellent” and “good” recharge areas adversely impacts the future prospects for agriculture in Delaware. We encourage the developer to consider recharge potential, and design for the least impacts.

Forest Buffer Requirements

In addition, the Delaware Forest Service would ask the Developer to consider a 30’ forest/agricultural buffer when developing this parcel to lessen impact to the water resources and other properties adjacent to this site.

Right Tree for the Right Place

The Delaware Department of Agriculture Forest Service encourages the developer to use the “Right Tree for the Right Place” for any design considerations. This concept allows for the proper placement of trees to increase property values in upwards of 25% of appraised value and will reduce heating and cooling costs on average by 20 to 35 dollars per month. In addition, a landscape design that encompasses this approach will avoid future maintenance cost to the property owner and ensure a lasting forest resource.

Native Landscapes

The Delaware Department of Agriculture and the Delaware Forest Service encourages the developer to use native trees and shrubs to buffer the property from the adjacent land-use activities near this site. A properly designed forested buffer can create wildlife habitat corridors and improve air quality to the area by removing six to eight tons of carbon dioxide annually and will clean our rivers and creeks of storm-water run-off pollutants. To learn more about acceptable native trees and how to avoid plants considered invasive to our local landscapes, please contact the Delaware Department of Agriculture Plant Industry Section at (302) 698-4500.

Delaware State Housing Authority – Contact Jimmy Atkins 739-4263

No comment

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,

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

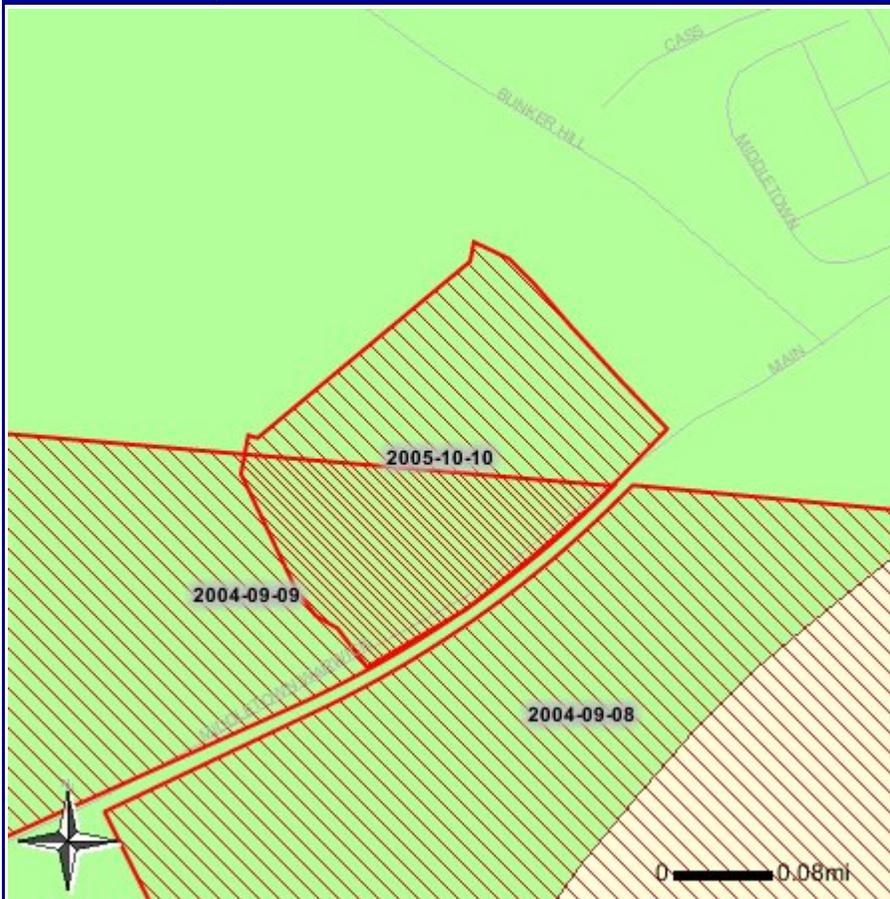
Constance C. Holland, AICP
Director

CC: Town of Middletown



Westtown Marketplace, Phase II

2005-10-10



- PLUS Projects
- All Roads
- Excellent Recharge Areas
- Towns

This map was produced by the Delaware
Department of Natural Resources and Environmental Control.

