



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

December 27, 2005

Jim Galvin
Davis, Bowen & Friedel
23 North Walnut Street
Milford, DE 19963

RE: PLUS review – PLUS 2005-11-17; City of Milford Comprehensive Plan
Amendment

Dear Mr. Galvin:

Thank you for meeting with State agency planners on November 30, 2005 to discuss the proposed plans for the City of Milford comprehensive plan amendment.

According to the information received, you are seeking a comprehensive plan amendment to update the City's annexation plan to include properties in the area of Beaverdam Road and the Beaverdam branch east of SR 1 south to Sharps Road.

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.

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

This review reflects an early review of a proposed comprehensive plan amendment for the City of Milford. The area in question is located in Sussex County southeast of the City, east of State Route 1. As discussed at the PLUS meeting, we acknowledge that this request has been initiated due to the “Badger Creek Bayside and the New Milford” subdivision application (reviewed as PLUS 2005-05-23). This project is a 786 lot cluster

subdivision that takes full advantage of Sussex County's cluster ordinance, which ensures a density of 2.00 units per acre.

We understand that the City is very concerned about the prospect of having such a large subdivision located immediately southeast of the city limits. Although somewhat isolated by its located east of Route 1, the subdivision will impact City services and infrastructure including fire, police, parks, libraries, and roads. Due to these concerns, our office has agreed to consider the possibility of an annexation plan amendment that would ultimately allow the inclusion of this subdivision and some adjacent lands in the City limits.

The following are a set of initial comments on the proposed comprehensive plan amendment. These comments are intended to assist the City in developing and drafting the completed amendment text and maps.

1. The map presented for review showed a core annexation area outlined in yellow, which includes the parcels proposed as "Badger Creek Bayside." There are additional areas shaded blue that surround the core area. We do not support the inclusion of the outer blue shaded areas as annexation areas at this time. We encourage the City to focus only on the core area and enclaves it would create. The outer area severely impacts agricultural preservation districts.
2. Please be advised that as a matter of policy, agricultural districts and easements (PDRs) districts will not be considered as municipal annexation areas. The eventual annexation plan must respect the integrity of the agricultural areas, and any existing agricultural districts or easements. We will not certify an annexation plan that includes these areas as short term municipal annexation areas.
3. This annexation area is located east of Route 1, in an area that is actively engaged in agricultural production. In addition, it contains many sensitive watercourses and wetlands that are important to the natural habitat and water quality of coastal Delaware. As you will see below in their comments, the Delaware Department of Agriculture has serious reservations about this plan amendment request. The City of Milford must work with the Department of Agriculture to mitigate their concerns. Any provision to annex property and increase the allowable density should be accompanied by the protection of working lands and natural resources in this area.
4. Towards this end, we will only consider this amendment if it contains provisions for Transfer of Development Rights (TDRs). The lands to be annexed must be annexed and zoned at a density no more than the current allowable under County Codes. Any additional density must be achieved by purchasing development rights from rural areas and transferring it onto the parcel. Our office, in

- conjunction with the Department of Agriculture, will be happy to discuss the concept of TDRs with you further. In addition, we are available to assist the City and your consultants in drafting the appropriate ordinances to enable the TDR transfers if desired.
5. We strongly encourage the City to consider designating a greenbelt around the newly proposed southeastern annexation area. The greenbelt would preserve working lands and natural resources, and could be targeted as a sending zone for the TDRs.
 6. In order to consider this plan amendment for certification, we will be seeking a Memorandum of Understanding between our office and the City of Milford that will specify that no additional plan amendments will be requested by Milford until the plan is due for its regular update in 2008.
 7. Because we will not be accepting any further amendments until 2008, Milford is encouraged to thoroughly review the plan and the future land use map. This includes land use categories for parcels inside the current limits as well as annexation parcels. Any adjustments to the plan or map series must be requested at this time.
 8. We suggest the City amend the future land use category "Existing Residential or Other Developed Land". The land use and annexation plans should look into the future and designate the appropriate and desired future land uses for these parcels at this time.
 9. Transportation to and from the proposed southeastern development area is a major concern of our office. Specifically, we are concerned that the current at grade crossings of Route 1 that serve the rural and agricultural areas to the east will not be appropriate to serve a new community containing several thousand residents. The plan amendment must have a circulation element which describes the future improvements necessary to allow safe and efficient movement of vehicles, pedestrians, bicycles, utility vehicles and emergency services between Milford and the new annexation area. Coordination with DelDOT is essential, particularly with the Route 113 North / South Study. It would be prudent for the plan to evaluate the improvements needed if the "Eastern by-pass" is the preferred alternative of the 113 study, and also what improvements are needed if a western or on-alignment option is chosen. Interim improvements should also be discussed. DelDOT's comments contained below in this letter indicate that the State will not be participating in any necessary road improvements to serve this annexation area.

10. This plan amendment opens the whole plan for review. The following current planning issues are either new since the last plan update, or are in need of further evaluation at this time. We recommend that the plan amendment address the following issues:

- a. School Site Planning – new school sites are needed to address enrollment growth.
- b. Hospital Relocation – an appropriate location is necessary for the new or expanded hospital site.
- c. Work Force Housing – the plan should address work force / affordable housing specifically. Live near your work programs and moderately priced dwelling unit ordinances should be evaluated.

11. A PLUS review will be required once the final plan amendment text and maps are completed. The amendment should be formatted as a stand alone addendum to the comprehensive plan. The amendment must document intergovernmental coordination, public participation, and review by the Milford Planning Commission.

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

The area under consideration for annexation has a number of archaeological sites and historic buildings. The DHCA would like to see Milford include protections and incentives for preserving historic properties outside of the historic core of the town. These could include transferring development rights, requiring maintenance of historic buildings on larger lots within developments, dedicating open space to preserve archaeological sites, landscaping to reduce adverse visual and noise effects on historic properties, tax credits to encourage rehabilitation of historic properties, and/or requiring recordation of any historic buildings to be demolished. Milford may want to consider establishing a historic review board, to provide a forum for discussing historic preservation issues and to guide a historic preservation program, leading perhaps to becoming a Certified Local Government under the federal historic preservation program. We would be happy to work with the City on these issues. The contact person here is Robin Bodo; she can be reached at 302-736-7400.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

The subject area is designated as Level 4 under the *Strategies for State Policies and Spending*. The *Strategies for State Policies and Spending* has deemed the type of development contemplated inappropriate for this area. As part of our commitment to support the *Strategies*, DelDOT refrains from participating in the cost of any road

improvements needed to support the development of this area and is opposed to any road improvements that will substantially increase the transportation system capacity in this area. DeIDOT will only support taking the steps necessary to preserve the existing transportation infrastructure, preserve the capacity of Routes 1 and 36 to handle through traffic, and make whatever safety and drainage related improvements are deemed appropriate and necessary. The intent is to preserve the open space, agricultural lands, natural habitats and forestlands that are typically found in Level 4 Areas while avoiding the creation of isolated development areas that cannot be served effectively or efficiently by public transportation, emergency responders, and other public services. DeIDOT pointed out that in the future access across Route 1 to this area will likely be limited to two points, one at Delaware Route 36 (Cedar Beach Road) and one at Sharps Road.

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

Watershed Assessment Comments

It is strongly recommended that the future conceptual development plan for this area include environmentally proactive land use practices or strategies – a.k.a. Best Management Practices (BMPs) or Best Available Technologies (BATs) – that reduce or mitigate impacts to water and habitat quality. The following are some examples of the suggested BMPs and/or BATs that should be included as part of the future conceptual development plan:

- 1) Maintain a minimum 100-foot upland buffer from all wetlands and water bodies. An Army Corps of Engineers approved wetlands delineation should be conducted initially to assess where the actual wetlands/upland line is located.
- 2) Preserve the existing natural forested buffer (including all potential forested uplands) bounding the Beaverdam Branch in its entirety.
- 3) Reduce surface imperviousness through use of pervious paving materials (where practicable) and by additional native tree and shrub plantings.
- 4) Use innovative or “green-technology” stormwater practices. Stormwater Management structures should not be placed in forested areas and should be at least 100 feet from delineated wetlands and water bodies.

Water Resource Protection Areas

The DNREC Water Supply Section has determined that part of the area impacts an excellent recharge area (see following map). Excellent recharge areas have highly permeable sediments at the surface that provide rapid infiltration of precipitation as well as potential groundwater contaminants.

These parcels will become part of the Town of Milford through three phases of annexation. The southeast phase will not affect excellent recharge or wellhead protection areas. The two phases of eastern annexation will both affect excellent recharge areas but not wellhead areas. As the town develops Critical Source Water Area regulations in Compliance with Delaware Source Water Law, these areas should be considered high priority areas. The Comprehensive Plan should include language that adopts these critical areas as areas to be protected.

Map of Annexation areas (parcels outlined in light blue) east and southeast of Town of Milford with excellent recharge in green.



Site Investigation and Restoration

Five SIRB sites were found within the area :

- Wilkerson Terrace (DE-234) is located north of the proposed plan. It was an old borrow pit, which was converted into a landfill. No hazardous materials were found during a Site Investigation (SI) conducted in 1989, and DNREC-SIRB recommended no further action. DNREC-SIRB foresees no negative impact to the proposed plan.
- Carpenter Borrow Pit (DE-233) was brought to DNREC's attention by the EPA. The Borrow pit has not been used since 1969. Stressed pine trees were discovered in it, which initiated the Preliminary Assessment, but no hazardous material was found. No further action was recommended. DNREC-SIRB foresees no negative impact to the proposed plan.
- Fitzgerald Auto Salvage (DE-1315) is located at the southwest (6 on map) of the proposed plan. It bounded by Calhoun rd on the left and route 113 on the right. A site investigation was conducted and PCB, lead and PAH were found in the soil. In the ground water were VOC and MTBE. Additional investigation was recommended due to these findings. DNREC-SIRB cannot recommend anything until the investigation is complete. Any recommendations made will more than likely include sampling to test for the presence of the above mention contaminants.
- Sussex Materials (DE-1342): a Brownfield Investigation was conducted In 2004, and slight amounts of PCE was discovered in a monitoring well. This was considered to be an isolated discovery that was not wide spread. DNREC-SIRB foresees no negative impact to the proposed plan. However to be on the safe side, included in this plan should be an attempt to hunt for possible PCE sources by collected ground water samples from existing or temporary wells.
- Milford Ordinance (DE-1311) is located north of proposed plan. DNREC-SIRB currently has no information about this site. However, should any evidence of a release or imminent threat of release of hazardous substances be discovered at the subject site (e.g., contaminated soil or water), please discontinue construction activities and immediately notify DNREC at the 24-hour emergency number (800.662.8802). Also, please contact SIRB as soon as possible at 302.395.2600 for additional requirements.

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

The Delaware State Fire Marshal's Office has no objections to the annexation amendments to the Comprehensive Plan. A word of caution for the proposed area south of Sharp's Road, if annexed that area lies within the Memorial Fire Company territory. If your intent is to have the area served by the Carlisle Fire Company you will have to contact the DE State Fire Commission (302-739-3160).

All projects require site plan approval from the DE State Fire Marshal's Office prior to any recordation and or construction.

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: Mark Davis 689-4500

The Department of Agriculture reviewed the latest City of Milford Comprehensive Plan Amendment request. This is the **third** amendment request which state agency planners have reviewed from the City of Milford since the original plan certification on February 25, 2003. "Comprehensive Plans" when drafted properly should guide a jurisdiction's planning efforts for at least five years. Even under the worse of circumstances and excessive growth rates, a competently crafted and implemented comprehensive plan does not require four **major** amendments in less than three years. We suggest that the City of Milford's planning process is broken and needs to be fixed prior to serious consideration of this amendment request.

However, in deference to the OSPC, DDA submits the following comments for consideration. We vehemently oppose the requested amendment to the City's approved (and very new) annexation plan. This planned amendment would not only cause further growth east of SR1, it would validate that growth. The argument that this growth will occur regardless, and then will occur under Sussex County rules, at less density, is irrelevant. As state agency planners we are charged with expressing and championing a State position concerning appropriate and sustainable growth patterns state-wide.

There is a valuable, viable, and thriving agricultural community east of Milford. This annexation request will act as a catalyst for additional growth east of SR-1. The State's policy position of strongly discouraging growth east of SR1 is also based on a natural

resources protection and conservation strategy. There are numerous natural features, habitats and species unique to our area, which are currently viable east of SR-1.

As we have expressed many times, residential development and modern day production agriculture do not make good neighbors. The needs and expectations of subdivision residents conflict with the needs and expectations of traditional rural, farm oriented, residents. The increased residential traffic interferes with farm operations and the movement of farm equipment. The normal dust, noise, and odors associated with agricultural practices are troubling to new suburban oriented residents.

The Department has an obligation to safe-guard the interests of the First State's number one industry, agriculture. There is significant farm preservation activity east of Milford. These land-owners have obligated to continue in agriculture and in many cases have donated a large portion of the easement value of their land to do so. Furthermore, the proposed annexation area would include within it, Agricultural Preservation Districts. We strongly oppose the inclusion of Districts within town boundaries or annexation areas. Regardless of the proposed annexation area location east of SR-1, the plan to include Districts is completely unacceptable. To date, there is a total of 3,390 acres preserved through the Agricultural Lands Preservation Foundation within and immediately east of the proposed area. Nine of the nineteen districts are permanently preserved and encompass 2,085 acres. These districts were preserved at a direct cost of almost \$1.7M and represent an equal amount of donated value by the participating landowners. In other words, these landowners have donated a total of \$1.7 M in easement value to preserve their land, which yields a total easement value \$3.4M in this area (see attached map for details).

Sussex County – Contact: Richard Kautz 855-7878

This is the third significant plan amendment in three years. While the pace of development in the Milford area may be driving much of this, the result is a very uncoordinated approach to planning. For example, the current "Anticipated Growth Areas" shown on Map Number 7B included with this case makes no reference to growth in the area to the west and south of the City which was the basis for the Sussex County growth area around Milford included in the current County plan.

In the near future Sussex County will be revising it's plan and, in order to do so, will need to know the future land use plans of Milford. The City is encouraged to quickly complete a future land use plan for the area of Sussex County into which they plan to expand services and annex.

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".

Constance C. Holland, AICP
Director

CC: Sussex County