



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

August 28 2006

Mr. Ed O'Donnell  
University of Delaware  
180 Graham Hall  
Newark, DE 19716

RE: PLUS review – PLUS 2006-07-10; City of Delaware City Comp. Plan

Dear Mr. O'Donnell:

Thank you for meeting with State agency planners on August 2, 2006 to discuss the draft City of Delaware City 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.

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

**Office of State Planning Coordination – Contact: Herb Inden 739-3090**

*Certification Comments:* These comments must be addressed in order for our office to consider the plan amendment consistent with the terms of your certification and the requirements of Title 22, § 702 of the Del. Code.

- **Position on Population Growth:** There needs to be some clarification as to numbers used. For example, the trend shown in Chart 1, is steadily downward from 1970 to the year 2000, yet, in Chart 2 and Table 1, the projections are for a steady increase (52 people from 2000-2004 and then more than 300 people between 2004 – 05. There doesn't seem to be any discussion to support these numbers (other than using the Red Lion Planning District trend) nor is there a discussion of how Delaware City will

handle this growth if it does occur, e.g., through development of vacant land, use of vacant properties, ...

- **Position on Housing Growth:** Did not see this related to the projected population increases (see above).
- **Annexation Plan:** Due to the extensive nature of this proposal we will need to see some communication from New Castle County that they are not opposed to this part of the plan. The town should also discuss the potential impact of such an annexation on town facilities and services (it might also be helpful to know the impact to the town without annexation (are police services provided even though they are not in town, will the town be able to do more in the way of public safety if the annexation occurs, ...)).

***Non Certification Comments pertaining to the Office of State Planning Coordination comprehensive plan checklist:***

- **Public Participation Summary and Results:** More analysis and discussion could be given, especially concerning the 2 surveys.
- **Housing Needs Analysis:** This should be discussed with regard to the population projections as noted under “Position on Population Growth” above.
- **Redevelopment Strategy:** There does not seem to be a Redevelopment Strategy section, but rather scattered references throughout document. Given the historic nature of the town, it might be useful to have a section specific to redevelopment.

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

The PLUS Municipal Comprehensive Plan for Delaware City was reviewed, and there are no comments other than to applaud the thorough interweaving of historic preservation into the entire document, including strategies for economic development, that make the plan a potential model for other communities interested in this approach. One small matter . . . the comprehensive plan does not mention that Delaware City is one of the state's four currently designated local governments under the National Park Service's Certified Local Government program. This program is for local governments who implement proactive protection of historic properties in their jurisdictions and offers grant funding and a closer working relationship with the State's historic preservation office, now the Delaware Division of Historical and Cultural Affairs.

The DHCA also applauds the large areas of planned open space within the City's proposed annexation area. This will protect any archaeological sites within those areas, and the City should mention this as one of the pluses for this annexation. The City should include some specific consideration for the historic properties (both buildings and sites), that may be in their annexation area. Robin Bodo of this office would be happy to discuss any of these issues with the City; she can be reached at 302-736-7400.

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

The City of Delaware City seeks to replace its 2001 comprehensive plan. State law requires that comprehensive plans be updated every five years. Because the City is considering significant changes in their future annexation areas, they have undertaken a more comprehensive planning effort than is suggested by the term "update." DelDOT comments on the proposed plan, are as follows:

- 1) Section 2-8, Transportation states that the City is updating its transportation plan as a separate effort. DelDOT is interested in seeing that plan and can assist in its development if the City so desires. Except as noted in item 2 below, Section 2-8, as written, is generally sufficient pending the results of that update.
- 2) One of the strategies listed on page 31 is to "Request that DelDOT construct traffic-calming features on SR 9 entering the town to reduce the speed of through-traffic." DelDOT recommends that the City discuss this strategy further with their Traffic Studies Section before including it in the Plan. DelDOT generally does not install traffic calming outside of residential subdivisions and they would be even less likely to install it on a collector road, which SR 9 is. If they confirm that traffic calming is inappropriate in this instance, the Plan could still recommend for DelDOT or the City to install landscaping or other visual features that give the impression of a gateway into the town, so that drivers recognize that lower speeds are appropriate. An initial contact in our Traffic Studies Section would be its manager, Mr. Thomas Meyer. He may be reached at (302) 659-2005.

DelDOT funding for landscaping or other gateway features could possibly be made available through our Transportation Enhancements (TE) Program. Presently, most, if not all, of the funding available through the TE Program is already programmed. Therefore the City should not expect short-term results from it. The City should, however, contact Mr. Jeff Niezgoda, Planning Supervisor, at 302-760-2178, to discuss the eligibility of projects under the TE Program and the long-term outlook for funding.

- 3) While it is not a transportation concern, DelDOT recommends that the City exercise caution in regard to annexation of the refinery and the related industrial lands surrounding it. The City proposes that these annexations would be voluntary. It is not apparent to us what motivation the owners of these lands would have to seek annexation. Typically industry pays more in taxes than it receives in services, but one must ask why annexation would be of interest to these companies. If they seek tax relief or a looser regulatory environment, perhaps the City needs to raise its tax rates or strengthen its codes. If they seek particular services, the City should determine whether they will be able to provide them. Unless the City already has such procedures, the Plan should include the development of a process by which proposed annexations, perhaps above a certain size, would be studied by a committee in regards to costs and benefits, and a report submitted to the Planning Commission and City Council for consideration before they act on the annexation.

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

### **Environmental Protection and Natural Features Section**

**Recommendation 1: Include additional text in the regarding wetlands, tree resources, Dragon Run and the Pea Patch Island Heronry.**

Delaware City and its surrounding marshes and upland are a critically important natural area. As stated above, the Dragon Run is an exceptional natural area in the region. Pea Patch Island, in the Delaware River across from Delaware City, is home to the second largest heronry north of Florida. The marshes in and surrounding Delaware City are critical feeding grounds for these birds. Delaware City has also been proactive in wetlands restoration projects within their boundaries.

Does Delaware City have a street tree program? Information about street trees and tree resources in Town should be included.

Staff from the Delaware Coastal Programs can assist if necessary.

**Recommendation 2: Include air quality information in the text.**

Information about air quality and air pollutants should be outlined in the Environmental Protection and Natural Features section as well.

**Recommendation 3: Add a goals section which, at minimum, includes the following:**

- 1) Conserve and improve wetlands within and surrounding Delaware City
- 2) Conserve and protect important wildlife habitat

**Recommendation 4: Add a strategies section, including the following:**

- 1) Conduct an inventory of important natural communities and protect them via ordinance or zoning changes.
- 2) Develop an Environmental Protection Ordinance that would, at minimum, set forth riparian buffer requirements, tree protection standards, impervious coverage standards and wetland and floodplain protection standards.

**Wetlands**

Under the Section 2.7, Hydrology subsection, page 26, the plan addresses wetlands but does not clarify the distinction between nontidal and tidal wetlands regulatory jurisdiction. Consider the following:

“Protection of wetlands falls under the regulatory jurisdiction of Section 404 provisions of the Clean Water Act (CWA). In Delaware nontidal and tidal wetlands are regulated under this act; however, tidal wetlands are subject to additional and more stringent regulatory protection under Title 7 Chapter 66 provisions of the Delaware State Code.”

It is further suggested that the plan address wetlands under its own heading rather than part of the hydrology subsection. Hydrology is the science of water, but does not define whether it is sufficient for meeting the wetland hydrologic criterion specified under Section 404 of the Clean Water Act. It should also be noted that in addition to hydrology, hydric soils and hydrophytic vegetation must also be present to meet jurisdictional requirements for consideration as a wetland.

**Buffers**

Under Section 2.7, Coordination subsection, page 27, the document makes only a passing or vague reference to nutrient reductions through BMPs. It is strongly recommended that the Comprehensive Plan qualify their BMP recommendations with specific examples. A specific BMP that the Watershed Assessment Section strongly encourages is the preservation /enhancement of upland buffer(s). Since vegetated buffers are important for mitigating sediment and nutrient runoff impacts to all affected waters of the Delaware Bay, including wetlands, it is strongly recommended that the Town adopt language in the Comprehensive Plan or, even better, an ordinance specifically requiring the preservation

and/or construction of a vegetated 100-foot upland buffer. Studies have shown that a 100-foot buffer is the minimum buffer width necessary to effectively mitigate nutrient runoff impacts from development.

### **Water Resource Protection Areas**

The DNREC Water Supply Section has reviewed the draft City of Delaware City Comprehensive Plan dated June 2006. These comments focus specifically on the wellhead protection areas found within the current City boundaries and the area of possible incorporation to the south which contains additional wellhead protection areas.

#### **Discussion:**

The Delaware City population was under 2,000 in the year 2004; therefore, Title 7, Part VII, Chapter 60, Subchapter VI, and the amendments contained in Chapter 67 (formerly Senate Bill No. 119) of the Delaware Code encourages the City to recognize these areas in its comprehensive Plan and to adopt protection measures for these areas by December 2007.

Critical Areas are defined as wellhead protection areas and excellent ground-water recharge areas. The Delaware City does, as they have noted, have two public supply wells within their municipal boundaries. These two wells draw water from a confined aquifer. The DNREC has delineated 150 foot radius wellhead protection areas around these two wells. This is the minimum fixed radius allowed under the State of Delaware Wellhead Protection Plan and Source Water Assessment and Protection Plan, both approved by the U.S. Environmental Protection Agency. In addition, the City's plan identifies an area to the south for the possible annexation. Within this area, there are two public supply wells owned by the Governor Bacon Health Center. These two wells are confined and have 300 foot radius wellhead protection areas as depicted on the NCC Water Resource Protection Area maps. These areas are currently addressed under the New Castle County Unified Development Code which requires a larger fixed radius area than the State. The state has adopted the county wellhead delineations. There are no excellent recharge areas present within the City's boundaries.

#### **Recommendations:**

The Delaware City Comprehensive Land Use plan should include a requirement that the City develop an ordinance which protects the wellhead protection areas around all public water supply wells within their municipal boundaries, both as they presently exist and those within any annexed lands. Since New Castle County has had a Water Resources Protection Area ordinance for over a decade, it would be an excellent template for the

City to consider assuring consistency between lands that adjoin these two local government jurisdictions. The NCC code can be found on line at the following address: <http://www.co.new-castle.de.us/CZO/nccportal.asp>

DNREC Water Supply- Source Water Protection Program is interested in assisting Delaware City with questions or concerns with technical issues, creation, or implementation of source water protection programs and ordinance development. You may contact the program at 302-739-9945 for further information.

### **Water Supply**

Delaware City's water supply is provided by two municipal wells completed in the lower Potomac aquifer. These wells are well protected from contaminants and each has the capacity to provide the peak daily volume of water allocated to the City. The City's water supply and sewer improvements in recent years have steadily reduced per capita water demand and actual water use has recently been less than one-third of the City's annual allocation. New residential development can proceed for the foreseeable future without the need to increase the water supply capacity. Sewer capacity limitations will be a restriction to future growth long before the current allocation can be used.

The annexation proposed in the current Comprehensive Plan will include the Valero Refinery in the municipal water service area. The City does not have adequate capacity to replace the refinery's current water supply. The refinery recently submitted a request to increase its annual allocation by 157 million gallons. Although this represents only 10% more water for the refinery, the amount exceeds the entire annual allocation for the City. This illustrates the enormity of the potential obligation the City may be undertaking. This annexation proposal is unprecedented in scope and it is not known what responsibilities the City may have to provide water to the refinery after annexation. The ground-water source for both the City and the refinery is the Potomac aquifer, which is currently the object of a 5-year long ground-water modeling study by the Army Corps of Engineers. The refinery has already had discussions with United Water about limiting impacts to United's future ground-water withdrawal facilities. It is quite conceivable, even likely, that the refinery will some day need more ground water than is available on their property. The quantity of water that will be available for the refinery will not be known until the USACE study is completed. With all these unknowns, it is impossible to say what the City's obligations will be if this property is annexed. These concerns make the proposed annexation seem risky from a water allocation standpoint.

### **State Resource Areas**

The marsh lands to the south of Delaware City, adjacent to the C&D Canal have been identified as State Resource Area lands. State Resource Area lands include any open lands characterized by great natural scenic beauty, or whose existing openness, natural condition or present state of use, if retained, would maintain important recreational areas and wildlife habitat, and enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources, including environmentally sensitive areas.

Further, the lands identified as “areas of concern” by Delaware City in map 10, Annexation and Future Land Use, are comprised of both state and federal lands and make up the Chesapeake and Delaware State Resource Area. What plans, if any, does Delaware City have regarding to use these lands marked “areas of concern”?

### **Annexation Area**

The proposed annexation area would quadruple the size of the existing town. While the desire to increase the tax base through annexation is understandable, we have several concerns regarding the scope of the annexation area, primarily with regard to the Town’s ability to conserve and protect resources under its current code requirements.

A brief review of the Delaware City code, available online, shows that there is no heavy industrial designation under zoning, nor specific environmental protections regarding riparian buffers, forest cover, impervious cover, etc. It would appear that the level of environmental protection of lands proposed to be annexed is greater under the County’s jurisdiction than under the City’s.

Dragon Run, and its associated wetland and upland natural areas, is widely regarded as an exceptional natural resource. The entire undeveloped area between Cox Neck Road, Route 13, Wrangle Hill Road and Route 9 is listed as a State Natural Resource Area. Currently, this region is zoned as HI-Heavy Industrial. Certainly, a change in zoning to Open Space under Delaware City’s jurisdiction would benefit the resource.

However, we are aware that the Valero Refinery is seeking space to construct confined disposal facilities for dredged material. The parcels surrounding Dragon Run could one day be targeted for such activities. Under the City’s Open Space designation, it appears that such a use could be permitted as a water retention basin. Because of the likely negative impact on water and habitat quality in Dragon Run, we would not support such a use in the uplands adjacent to Dragon Run. Further, we are concerned that development pressure in the next 5 – 10 years could result in a change in designation from Open Space

to another use, likely commercial, as has happened with other municipalities who have annexed land under the “greenbelt” concept.

**Recommendation 1: Delaware City should strengthen its Open Space zoning designation to clarify that dredged disposal facilities are prohibited. This should occur prior to annexation of new land.**

**Recommendation 2: The Dragon Run parcels should be protected as Open Space in perpetuity through agreements with the State, conservation easements or other mechanism.**

DNREC is also concerned that current environmental protection standards under Delaware City Code are not adequate for expansions and use changes at the industrial complex.

**Recommendation 3: Delaware City should, prior to annexation of any land, develop an environmental protection ordinance that would, at minimum, establish 100-foot buffer zones, wetland & floodplain protections, impervious surface coverage standards and tree mitigation standards.**

### **General Planning Issues**

The contamination liability at the refinery has been estimated by their consultant at potentially as much as \$100 million dollars as is an obligation on the previous owner Motiva. However, it is believed refinery contaminants consisting of a wide variety of hazardous compounds have already or are beginning to migrate offsite in an uncontrolled manner. It is not known how this might effect Delaware City from a liability standpoint, but it obviously bears mentioning.

Delaware City's land use management practices will influence its ability to provide water quality and quantity protection for its citizens and its neighbors. Delaware City has the responsibility to be concerned about this.

Raising greater revenues, including an annexation study, is an important component of providing service to the public. Should these areas not seek to be annexed it is still very important that the town assert its interests and recommendations in these areas clearly as part of this study for improving intergovernmental coordination.

It is recommended that the town consider breaking up the annexation areas into at least three areas:

1. The Southeast area has potential for economic development that does not apply to the other areas. There may be commercial potential for serving people south of Reedy Point who now travel much further to meet their daily needs. The town could request the State to conduct a study of the Governor Bacon property to meet the town's planning goals.
2. The Buffer Zone that can insure that a separation is maintained between incompatible uses. This concerns the separation that needs to be maintained between residential areas and the industrial area.
3. The industrial zone. The town should have some means to become more familiar with all the public information that is available at DNREC that concerns this area. It may be that annexation of this could require the town to add to its administration to provide for answering constituent concerns, council representation, elections, police, industrial safety, etc.

**Housing:**

Page 14: Delaware City may wish to consider programs such as the Neighborhood Tax Credit Program (administered through DEDO) to help fund housing improvements.

Page 14: One of the primary goals listed in this section is to provide affordable housing for all income levels, yet there is no discussion of affordable housing needs in Delaware City. Are rents considered affordable based on median income? Are there homeownership opportunities for those making less than 80% of median income?

**State Fire Marshal's Office – Contact: John Rossiter 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.

The DE State Fire Marshal's Office has the responsibility to review all commercial and residential subdivisions for compliance with the DE State Fire Prevention Regulations. This Agency asks that a MOU be established between the DE State Fire Marshal's Office and Delaware City. 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.

***The DE State Fire Marshal's Office has no objection to the annexation growth and boundaries.***

1. *pg 23 should add what fire protection (fire hydrants) the town currently offers, if there are any long range plans to add or upgrade, and what is expected of new development (meet standards set forth in the Delaware State Fire Prevention Regulations).*
2. *pg 39 should add the Office of State Fire Marshal to the list of agencies.*

Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: [www.delawarestatefiremarshal.com](http://www.delawarestatefiremarshal.com), technical services link, plan review, applications or brochures.

**Department of Agriculture - Contact: Milton Melendez 698-4500**

The Department of Agriculture has no objections to the City of Delaware City's proposed Comprehensive Plan.

If the City is successful in annexing the petroleum refinery and surrounding cropland, the Department would like to work with the City and refinery owner to keep the cropland in agriculture. If residential development is ever planned for the agricultural land within the City's proposed annexation area, the Department would encourage the City to preserve as much of it as possible through a Transfer of Development Rights (TDR) program or other means. In fact, the Department would like to see the City devote a few paragraphs of their comprehensive plan to a discussion of agricultural land preservation.

**Delaware State Housing Authority – Contact Karen Horton 739-4263**

The Delaware State Housing Authority has reviewed the Municipal Comprehensive Plan for Delaware City to determine how the State's goals, policies, and strategies, as they relate to affordable housing, have been incorporated. Since Delaware City's population is less than 2,000, the Comprehensive Plan is required to include goals and recommendations for providing sound and affordable housing for its residents, which the Plan states. Specifically, we support the Plan's goals for providing sound affordable housing and a pro-active code-enforcement program. We specifically like the strategy to zone for a variety of housing types to support housing for residents of all income levels. As a follow up, we encourage the City to continue explore zoning techniques to provide additional affordable housing opportunities. An example would be to permit accessory dwelling units in residential areas as a matter of right, to encourage social- and economic-integration, and life-cycle housing.

The Housing Authority would also like the strategies concerning code enforcement to protect the City from those few who allow their properties to deteriorate to substandard conditions. However, please be cognitive of the displacement issues that can result. Overall, this is a well thought out plan that addresses housing issues pertinent to Delaware City.

**Department of Education – Contact: John Marinucci 739-4658**

The DOE supports the State Strategies for Policies and Spending, to the extent possible and practicable within the limits of the Federal and State mandates under which the Department operates.

In its review of Comprehensive Plans and Comprehensive Plan Amendments, the DOE considers:

- Adequate civil infrastructure availability within the region to accommodate current and future educational facilities.
- Transportation system connections and availability to support multimodal access within the community, to include but not limited to walk paths, bike paths, and safe pedestrian grade crossings.
- Transportation road system adequacy to accommodate bus and delivery vehicle traffic to current, planned or potential educational facilities.
- Recreation facilities and opportunities within the community and their respective proximity to current and planned or potential education facilities. The DOE also recognizes the potential that the educational facilities are to be considered recreational facilities by and within the community.

The DOE *typically* considers industrial/commercial development incompatible with educational facilities, however, residential development and educational facilities *are typically* considered to be compatible. As a result, the DOE is interested in the proximity of current and planned or potential education facilities to commercial/industrial development zones.

The DOE recognizes the integral role of educational facilities within communities. As such, the DOE seeks to assure that residential growth, that generates additional demand on educational facilities, is managed with adequate educational infrastructure being made a part of sub-division plans as appropriate.

**Following receipt of this letter, the Town should make any certification changes noted in this letter and review all other comments for consideration. The plan should then be resubmitted to this office for review before final adoption by the**

**Town. A written response regarding the changes made to the plan should accompany the resubmitted plan.**

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: New Castle County