



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

December 26, 2006

Al Thompson
Thompson Elliott Associates
22 Old Rudnick Lane, Ste. 2
Dover, DE 19901

RE: PLUS review – PLUS 2006-11-07; Heron Creek

Dear Mr. Thompson:

Thank you for meeting with State agency planners on November 29, 2006 to discuss the proposed plans for the Heron Creek project to be located on the north side of Hazlettville Road, .14 miles west of Apple Grove School Road.

At the time of the PLUS review, this project was for a subdivision including 62 residential units on 62.9 acres located in Investment Level 4. **The comments in this letter are technical, and are not intended to suggest that the State supports this development proposal. This letter does not in any way suggest or imply that you may receive or may be entitled to permits or other approvals necessary to construct the development you indicate or any subdivision thereof on these lands.**

On December 14, 2006, this office received notification from you stating that the 62 unit project has been abandoned by the developer. We were informed at that time that the developer intends to resubmit a subdivision plan including 25 units (or less) in accordance with the “low density” provisions of the Kent County Subdivision Ordinance.

According to the PLUS Memorandum of Understanding between our office and Kent County, residential subdivisions of 50 or more units outside of the Kent County Growth

Zone are required to go through PLUS review. The new subdivision containing 25 units (or less) will not require review through PLUS.

We offer the comments in this letter to you and the County as informational comments. We should note that these comments were generated from the review of the 62 unit subdivision and may not apply to the new subdivision plan submitted to the County.

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

This proposal is located in Investment Level 4 according to the Strategies for State Policies and Spending, and is outside the growth zone area according to the Kent County Comprehensive Plan. Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development activities and suburban development are not supported in Investment Level 4. These areas are comprised of prime agricultural lands and environmentally sensitive wetlands and wildlife habitats, which should be, and in many cases have been preserved.

From a fiscal responsibility perspective, development of this site is likewise inappropriate. The cost of providing services to development in rural areas is an inefficient and wasteful use of the State's fiscal resources. The project as proposed will bring new residents to an area where the State has no plans to invest in infrastructure upgrades or additional services. These residents will need access to such services and infrastructure as schools, police, and transportation. To provide some examples, the State government funds 100 percent of school transportation and paratransit services, up to 80% of school construction costs, and the cost of police protection in the unincorporated portion of Kent County where this development is proposed. Over the longer term, the unseen negative ramifications of this development will become even more evident as the community matures and the cost of maintaining infrastructure and providing services increases.

Because the development is inconsistent with the Strategies for State Policies and Spending, the State is opposed to this proposed subdivision.

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

1. According to the Statewide Wetland Mapping Project (SWMP) mapping, palustrine forested riparian wetlands were mapped along the entire northern boundary of the subject parcel, directly adjoining a headwater tributary known as the Cahoon Branch.

Although wetland impacts are not anticipated, please note that 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.

2. Because there is strong evidence that federally regulated wetlands exist on site, a wetland delineation, in accordance with the methodology established by the Corps of Engineers Wetlands Delineation Manual, (Technical Report Y-87-1) should be conducted. Once complete, this delineation should be verified by the Corps of Engineers through the Jurisdictional Determination process.

3. The information provided indicates that Tidewater Utilities will provide well water to the proposed projects through a central public water system. Our files reflect that Tidewater Utilities does not currently hold a certificate of public convenience and necessity (CPCN) to provide public water in these areas. They will need to file an application for a CPCN with the Public Service Commission, if they have not done so already. Information on CPCN requirements and applications can be obtained by contacting the Public Service Commission at 302-739-4247. Should an on-site public well be needed, it must be located at least 150 feet from the outermost boundaries of the project. 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 wells.

Sediment and Erosion Control/Stormwater Management

Requirements

1. Land disturbing activities in excess of 5,000 square feet are regulated under the Delaware Sediment and Stormwater Regulations. A detailed sediment and stormwater management plan must be reviewed and approved by the Kent Conservation District prior to any land disturbing activity (i.e. clearing, grubbing, filling, grading, etc.) taking place.

2. The review fee and a completed Application for a Detailed Plan are due at the time of plan submittal to the Kent Conservation District. Construction inspection fees based on developed area and stormwater facility maintenance inspection fees based on the number of stormwater facilities are due prior to the start of construction. Please refer to the fee schedule for those amounts.
3. The following notes must appear on the record plan:
 - The Kent Conservation District reserves the right to enter private property for purposes of periodic site inspection.
 - The Kent Conservation District reserves the right to add, modify, or delete any erosion or sediment control measure, as it deems necessary.
 - A clear statement of defined maintenance responsibility for stormwater management facilities must be provided on the Record Plan.
4. Ease of maintenance must be considered as a site design component and a maintenance set aside area for disposal of sediments removed from the basins during the course of regular maintenance must be shown on the Record Plan for the subdivision.
5. All drainage ways and storm drains should be contained within drainage easements and clearly shown on the plan to be recorded by Kent County.
6. A soils investigation supporting the stormwater management facility design is required to determine impacts of the seasonal high groundwater level and soils for any basin design.

Comments:

1. The designer is encouraged to consider the conservation design approach and limit the amount of tree clearing required for the development of the site including the stormwater management facilities shown in the wooded areas.
2. Access to the proposed stormwater facility must be provided for periodic maintenance. This access should be at least 12 feet wide to leading to the facility and around the facility's perimeter.
3. It is recommended that the stormwater management areas be incorporated into the overall landscape plan to enhance water quality and to make the stormwater facility an attractive community amenity.

4. A letter of no objection to re-recording will be provided once the detailed Sediment and Stormwater Management plan has been re-approved.
5. Proper drainage of developed lots and active open space should be considered in the development of the grading plan for this subdivision.
6. Based on the site characteristics, a pre-application meeting is suggested to discuss stormwater management and drainage for this site.

Drainage

The Drainage Program requests that the engineer take precautions to ensure that the project does not hinder any off site drainage upstream of the project or create any off site drainage problems downstream by the release of on site storm water. The Drainage Program requests that the engineer check existing downstream ditches and pipes for function and blockages prior to the construction. The engineer is encouraged to meet with downstream landowners to obtain their concerns of current drainage as well as the additional drainage impact this project will have on the area. Please notify downstream landowners if there will be a change in the volume of water released on them.

The Drainage Program does not support the removal of trees for the creation of stormwater management areas. However, the Drainage Program recognizes that tree removal is unavoidable in some cases. Where practical, plant native trees and shrubs to compensate for the loss of nutrient uptake and stormwater absorption the removed trees provided.

The Drainage Program does not have a clear understanding how stormwater will convey to the stormwater management areas. The Drainage Program requests that the routing of major stormwater pipes through yards be prohibited.

The Drainage Program encourages the elevation of rear yards to direct water towards the streets where storm drains are accessible for maintenance. However, the Drainage Program recognizes the need for catch basins in rear yards in certain cases. Therefore, catch basins placed in rear yards will need to be clear of obstructions and be accessible for maintenance. Decks, sheds, fences, kennels, and other structures placed along the storm drains, or within 10 feet of the catch basins, can hinder drainage patterns as well as future maintenance to the storm drains or catch basins. Deed restrictions, along with drainage easements recorded on deeds, should ensure adequate future maintenance access.

The Drainage Program requests a 15-foot side yard setback on all lots with a drainage easement on the side unless otherwise specified. A 15-foot side yard setback will allow room for equipment to utilize the entire drainage easement and maneuver free of obstructions if the drainage conveyance requires periodic maintenance or future re-construction.

The Drainage Program requests a 10-foot drainage easement around all catch basins located on private property to ensure adequate room for maintenance. The Drainage Program recommends restrictions on fences, sheds, and other structures within the easement to prevent obstructions from being placed within 10 feet of the catch basin.

Record all drainage easements on deeds and place restrictions on obstructions within the easements to ensure access for periodic maintenance or future re-construction.

Open Space

In areas set aside for passive open space, the developer is encouraged to consider establishment of additional forested areas or meadow-type grasses. Doing so will provide wildlife habitat and it will create recreational opportunities for residents. Once established, these ecosystems provide increased water infiltration into groundwater, decreased run-off into surface water, air quality improvements, and require much less maintenance than traditional turf grass, an important consideration if a homeowners association will take over responsibility for maintenance of community open spaces. Natural habitat implementation efforts should be targeted to open space areas adjacent to forests and/or wetlands. Natural habitat could consist of reforesting portions of open space or establishing meadow grasses. The developer is encouraged to review "Community Spaces, Natural Places: A guide to restoration, management, and maintenance of community open space". This document provides a reference of practical and successful open space management techniques that emphasize natural landscape alternatives other than turf grass management. The guidebook is available online at: <http://www.dnrec.state.de.us/dnrec2000/Divisions/Soil/dcmp/>.

In addition, a detailed open space management plan should be recorded on the record plan. This plan should outline how to manage each open space area, as well as invasive species. Open space containing forest and/or wetlands should be placed into a permanent conservation easement or other permanent protection mechanism. Conservation areas should also be demarked to avoid infringement by homeowners.

Site Visit Request

In order to provide more informed comments and to make recommendations, the program botanist and ecologist request the opportunity to survey the forest and wetland areas that could potentially be impacted by the project. This would also allow the applicant the opportunity to reduce potential impacts to rare species and unique habitats and to ensure that the project is environmentally sensitive. In addition, a survey of the project site will give staff an opportunity to document the biodiversity of the property before project activities begin. Please contact Bill McAvoy or Robert Coxe at (302) 653-2880 to set up a site visit.

Forest Preservation

According to the applicant there will be no forest loss if possible. DNREC appreciate the applicant's apparent effort to avoid forest clearing. However, there are at least five lots, a cul-de-sac and one (possibly two) stormwater management ponds located on the forested portion of the property. DNREC recommends that the ponds be relocated to a non-forested portion of the site or an alternate method of stormwater management be employed. The lots and associated cul-de-sac should be omitted from the site plan as well. Considering the fact that over 20,000 acres of forest has been cleared since 2003 and a corresponding loss of forest dependent species has occurred, maintaining forest at this site is important. As forested areas are cleared or converted into a 'residential woods', wildlife must either co-exist with the new residents or disperse into the surrounding area. Either scenario can result in human/animal conflicts, including interactions on the roadways. According to aerial photographs, the immediate area around this project has been largely cleared for agriculture and development, leaving little available habitat for displaced wildlife.

If forest is cleared despite recommendations to the contrary, trees should not be cleared from April 1st to July 31st to minimize impacts to birds and other wildlife that utilize forests for breeding. This recommendation would only protect those species during one breeding season, as once trees are cleared the result is an overall loss of habitat.

Department of Education – Contact: John Marinucci 739-4658

This proposed development is within the Capital School District boundaries however, the south west corner of the proposed development crosses into the Caesar Rodney School District. District boundary lines are available at the following link:

<http://doegis1.doe.k12.de.us/WEBSITE/districtMaps/viewer.htm>

DOE also commented that both elementary and secondary schools are at or beyond 100% of current capacity based on September 30, 2005 enrollment. You are strongly encouraged to contact the Capital School District Administration to address the issue of school over-crowding.

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland".

Constance C. Holland, AICP
Director

CC: Kent County