



December 26, 2006

Brian Turner
Becker Morgan Group
309 South Governors Avenue
Dover, De 19904

RE: PLUS review – PLUS 2006-11-12; Big Oak Commons, LLC

Dear Mr. Turner:

Thank you for meeting with State agency planners on November 29, 2006 to discuss the proposed plans for the Big Oak Commons project to be located at the corner of Brenford Road and Route 13 near Smyrna.

According to the information received, you are seeking site plan approval for 103,952 sq. ft. commercial shopping center.

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

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 located in Investment Level 2 according to the *Strategies for State Policies and Spending*. This site is also located in the Kent County Growth Zone. Investment Level 2 reflects areas where growth is anticipated by local, county, and State plans in the near term future. State investments will support growth in these areas. Our office has no objections to the proposed development of this project in accordance with the relevant County codes and ordinances.

Street Design and Transportation

- US Route 13 is a principal arterial road and Brenford Road is a major collector road. DeIDOT's policy is to require dedication of sufficient land to provide a minimum right-of-way width of 50 feet from the inside edge of the travelway on divided highways and 40 feet from the centerline on collector roads. Therefore, DeIDOT will require right-of-way dedication along the frontage to provide any additional width needed from this project.
- Several traffic impact studies have examined the intersections along Brenford Road in recent years and for this reason DeIDOT found that a traffic impact study is not needed for this project. However, a traffic analysis will still be required for this development.
- The plan should provide a 10-foot wide permanent easement across the Brenford Road frontage of the site for an 8' wide shared use path.
- There is a two-lane service road shown along the west edge of the property, building on and extending a short right-of-way previously created there. This service road would serve several functions: Brenford Road access for the shopping center, delivery access, and interconnections to the adjoining property to the south and the proposed Big Oak subdivision to the west. DeIDOT supports the interconnections but they have some concerns about the design of the service road.
- From the discussion at the PLUS meeting, DeIDOT understands that the southernmost of the three outparcels is under contract but is not yet part of this

project. If possible, its access should be through the shopping center. Direct access to Route 13, if they were to permit it, would require further review but likely would not be as shown on the concept plan.

- The developer has already met with DelDOT regarding the need for improvements to Brenford Road and the intersection of US Route 13, Brenford Road and Big Oak Road. As DelDOT understands it, they have agreed to improve Brenford Road to meet DelDOT's collector road standards, which include 12-foot wide travel lanes and 8-foot wide shoulders, for a distance of about 1,250 feet from Route 13, and have agreed to serve as the lead developer in improving the intersection as noted below.
- DelDOT may require road improvements across the site's US Route 13 frontage and at the crossover located in the median of US Route 13. As discussed at the PLUS meeting, the US Route 13 access may need to shift opposite the existing crossover.

Natural and Cultural Resources

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

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

This project is located in Investment Level 2 according to the *Strategies for State Policies and Spending*. This site is also located in the Kent County Growth Zone. Investment Level 2 reflects areas where growth is anticipated by local, county, and State plans in the near term future. State investments will support growth in these areas. Our office has no objections to the proposed development of this project in accordance with the relevant County codes and ordinances.

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

The commercial parcel contains a historic, mid-20th-c. house (K-3850). Beers Atlas of 1868 shows the Mrs. Polk House very close to the southern corner of this parcel on Dupont Hwy. However, the recent development in this corner has probably disturbed any archaeological remains related to this house. There is only a low potential here for prehistoric-period archaeological sites. There are several early to mid-20th-c. houses

across Dupont Hwy from this parcel. The setting of the highway has become commercial along this area, and this new development will not substantially affect the setting of these houses.

While I think the probability here is fairly low, small, rural, family cemeteries often are found in relation to historic farm complexes, such as the Polk House, usually a good distance behind or to the side of the house. The developer should be aware of Delaware's Unmarked Human Remains Act of 1987, which governs the discovery and disposition of such remains. The unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out, and the developer may want to hire an archaeological consultant to check for the possibility of a cemetery here if this development is approved. The DHCA would have to have a copy of any archaeological report done for this purpose. They will be happy to discuss these issues with the developer; the contact person for this program is Faye Stocum, 302-736-7400.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

- 1) US Route 13 is a principal arterial road and Brenford Road is a major collector road. DelDOT's policy is to require dedication of sufficient land to provide a minimum right-of-way width of 50 feet from the inside edge of the travelway on divided highways and 40 feet from the centerline on collector roads. Therefore, DelDOT will require right-of-way dedication along the frontage to provide any additional width needed from this project.
- 2) Several traffic impact studies have examined the intersections along Brenford Road in recent years and for this reason DelDOT found that a traffic impact study is not needed for this project. However, a traffic analysis will still be required for this development. As discussed below, the developer has agreed to lead in the design and construction of needed improvements to the intersection of Route 13 and Brenford Road. However, the improvements that we have thus far identified as necessary were based on projections that did not include this shopping center. Accordingly, an analysis is needed to insure that the planned improvements will be sufficient and to identify any additional improvements that will be needed at this intersection.
- 3) The plan should provide a 10-foot wide permanent easement across the Brenford Road frontage of the site for an 8' wide shared use path.

- 4) There is a two-lane service road shown along the west edge of the property, building on and extending a short right-of-way previously created there. This service road would serve several functions: Brenford Road access for the shopping center, delivery access, and interconnections to the adjoining property to the south and the proposed Big Oak subdivision to the west. DelDOT supports the interconnections but they have some concerns about the design of the service road. It appears adequate as an access for the subject shopping center but as the adjacent properties develop and traffic on it increases, a higher design standard may be appropriate. Ideally, drivers entering the service road would do so at right angles, drivers exiting it would be able to do so completely before turning into a parking space, and drivers parallel parking behind the strip retail stores would be separated from the travelway by an island. If the service road is proposed for acceptance as a State-maintained street the access to the shopping center will have to be re-designed.
- 5) From the discussion at the PLUS meeting, DelDOT understands that the southernmost of the three outparcels is under contract but is not yet part of this project. If possible, its access should be through the shopping center. Direct access to Route 13, if they were to permit it, would require further review but likely would not be as shown on the concept plan.
- 6) The developer has already met with DelDOT regarding the need for improvements to Brenford Road and the intersection of US Route 13, Brenford Road and Big Oak Road. As they understand it, they have agreed to improve Brenford Road to meet DelDOT 's collector road standards, which include 12-foot wide travel lanes and 8-foot wide shoulders, for a distance of about 1,250 feet from Route 13, and have agreed to serve as the lead developer in improving the intersection as follows:
 - a) Eastbound Brenford Road: three approach lanes, including a separate left-turn lane, a shared left/through lane, and a separate right-turn lane.
 - b) Westbound Big Oak Road: two approach lanes, including a separate left-turn lane and a shared through/right-turn lane.

The road improvement cost would be entirely theirs. The intersection improvement cost would be shared with several other developers. The details of who will be responsible for what costs will be determined as plans are further developed. As discussed in item 2 above, the required intersection improvements could change based on the results of the traffic analysis that will be required.

- 7) DelDOT may require road improvements across the site's US Route 13 frontage and at the crossover located in the median of US Route 13. As discussed at the PLUS meeting, the US Route 13 access may need to shift opposite the existing crossover.
- 8) The applicant's site engineer should contact the project manager for Kent County, Mr. Brad Herb, regarding specific requirements for streets and access. Mr. Herb may be reached at (302) 266-9600.

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

Soils

According to the Kent County soil survey, Greenwich and Downer were mapped in the immediate vicinity of the proposed construction. Greenwich and Downer are well-drained upland soils that, generally, have few limitations for development.

Impervious Cover

Based on a review of the PLUS application, post-development surface imperviousness is estimated to be about 71 percent. However, given the scope and density of this project, said estimate is **clearly inaccurate**. The applicant should recognize that all forms of constructed surface imperviousness (i.e., rooftops, sidewalks and roads) should be accounted for when calculating surface imperviousness, otherwise an inaccurate assessment of this project's environmental impacts is inevitable. Additionally, the use of stormwater management areas to meet the County's open space requirements ultimately leads to an artificially low figure for surface imperviousness and its consequent environmental impacts. It is strongly recommended that the applicant address all of the above-mentioned concerns in the finalized calculation for surface imperviousness.

Since studies link increases in impervious cover to decreases in water quality, the applicant is strongly encouraged to pursue best management practices (BMPs) that can mitigate or reduce some of the most likely adverse 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 an increase in forest cover preservation or additional tree plantings are some examples of practical BMPs that could easily be implemented to reduce surface imperviousness.

TMDLs

A Total Maximum Daily Load (TMDL) is the maximum level of pollution for which a water quality limited water body can assimilate without compromising use and recreational goals such as swimming, fishing, drinking water, and shell fish harvesting. Compliance with TMDL nutrient loading reduction requirements will ultimately be assessed via nutrient budget protocol, a computer-based model that quantifies post-development nutrient loading under 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. Although TMDLs have not yet been finalized for the Leipsic River watershed to date, the applicant should be made aware that they will be available in the near future (before December 2006), and may be applicable to this project. It is strongly advised, therefore, that the applicant be proactive and employ best management practices (BMPs) and Best Available Technologies (BATs) as methodological mitigative strategies to reduce the likely degradative impacts associated with this development. Examples of BMPs or BATs that should be used to significantly reduce nutrient loading from this project include the use of pervious paving materials, restoration of some forest cover, and use of innovative "green-technology" stormwater methodologies rather than conventional open-water stormwater management structures. We suggest that the applicant periodically contact our office regarding the status of the nutrient budget protocol and obtain it as soon as possible. When it becomes available, we suggest that the applicant then verify their project's compliance with the specified TMDL loading rates by running the model themselves, or contacting us if assistance is needed. The contact person for obtaining the protocol is Lyle Jones at 739-9939.

Water Supply

The project information sheets state water will be provided to the project by Tidewater Utilities via a public water system. Our records indicate that the project is located within the public water service area granted to Tidewater Utilities under Certificate of Public Convenience and Necessity PSC-1464.

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.

Potential Contamination Sources exist in the area, and any well permit applications will undergo a detailed review that may increase turnaround time and may require site specific conditions/recommendations. In this case there is an underground storage tank associated with Paradise Florist within 1000 feet of the proposed project.

Should you have any questions concerning these comments, please contact Rick Rios at 302-739-9944.

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 our office 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 our office. 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.

Comments:

1. An agreement is in place to outfall the stormwater drainage from Big Oak Subdivision into the Willow Wood Subdivision. The plan revisions have been submitted but not approved pending approval from DelDOT.
2. The preferred methods of stormwater management are those practices that maximize the use of the natural features of a site, promote recharge and minimize the reliance on structural components.
3. 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.
4. 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.
5. Proper drainage of developed lots and active open space should be considered in the development of the grading plan for this subdivision.
6. A letter of no objection to recordation will be provided once the detailed Sediment and Stormwater Management plan has been approved.

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.

Nuisance Geese

The applicant indicated that nuisance geese would be considered in the planning of this project but methods of control were not indicated. Wet ponds planned for the subdivision 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 a reduction in the number and/or size of the ponds, proper landscaping, monitoring, and other techniques, geese problems can be minimized.

Site Investigation and Restoration

There is a salvage yard located adjacent to the SE portion of the property. Salvage yards historically have impacted soils and possibly groundwater from the salvage operations. DNREC has no information to indicate that the Big Oak Commons site has been impacted. However, the usual caution would apply: they should call DNREC's Site Investigation and Restoration Branch immediately (302-395-2600) if they encounter any impacted soil or groundwater during construction activities.

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

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 (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 or more, 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 duPont Highway and Brenford 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.

Department of Agriculture - Contact: Scott Blaier 698-4500

The Delaware Department of Agriculture has no objections to the application for a shopping center. The *Strategies for State Policies and Spending* encourages environmentally responsible development in areas in Investment Level 2.

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.

Tree Mitigation

The Delaware Forest Service encourages the developer to implement a tree mitigation program to replace trees at a 1:1 ratio within the site and throughout the community. This will help to meet the community's forestry goals and objectives and reduce the environmental impacts to the surrounding natural resources. To learn more, please contact our offices at (302) 349-5754.

Public Service Commission - Contact: Andrea Maucher 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.

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,



Constance C. Holland, AICP
Director

CC: Kent County
Town of Smyrna