



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

April 23, 2007

The Honorable Don Tinari
Mayor, Town of Cheswold
23 North Walnut Street
P.O. Box 809
Milford, DE 19963

RE: PLUS review – PLUS 2007-03-04; Town of Cheswold Zoning Ordinance
Amendment

Dear Mayor Tinari:

Thank you for meeting with State agency planners on March 28, 2007 to discuss the proposed Zoning Ordinance amendment to define an overlay for R-3 zoned parcels which would allow cluster residential designs and associated public services.

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: David Edgell 739-3090

It is our understanding that the proposed ordinance is intended to provide for “large scale, mixed-style residential developments that use innovative design as a means of ensuring open space and natural resource and cultural resource protection and preservation.” The ordinance is designed as an overlay zone that can be applied to R-3 zoned parcels.

Our office supports the use of creative design techniques to encourage innovative site designs and the protection of natural features. The ordinance will be an important tool which will help the town achieve the goals set forth in our publication Better Models for Development in Delaware. We offer the following comments as recommendations intended to help the town strengthen the ordinance so that it will be an effective component of the Town's land development regulations:

1. The ordinance as designed requires a certain lot area for each residential dwelling unit (see the definition of Residential Lot) regardless of ownership type. This would apply to both traditional "residential lots" designed for fee simple transfer, and also to condominiums and multi-family units which will be maintained in common ownership. Dimensional and density standards apply in all cases (see J, 2, d.).

The intention here appears to be to control the density of the development project by regulating that each unit have a certain lot or land area associated with it. This may prove to be cumbersome in practice, particularly given the current wording of J, 2, d. How will you determine the dimensional and bulk standards of the "lot" required for a third story condominium unit? Will each unit in a multi-family building have to sit on a theoretical "lot" and comply with setbacks? Can those "lots" be combined into one larger parcel to be owned by the property manager or condominium association? It is not clear from the current language.

It is our suggestion that the purpose and intent of the ordinance would be better served by simply adding a gross or net density requirement to the ordinance rather than regulating "lot size" or dimensional standards for units in common ownership. This will allow for the greatest degree of design flexibility, while also achieving the goals and intent of the ordinance to regulate density. If there is some other goal or intent in requiring "lots" for units in common ownership, it is suggested that it be more clearly articulated in the ordinance.

2. There is a blank table in the ordinance (Table 7-2). This table appears to be something the developer is intended to fill out in order to allow staff to perform calculations necessary to ensure compliance with the ordinance. It is suggested that this table be removed from the ordinance and simply made a part of the application packet. If the table is in the ordinance, it will take an act of Council to make any changes or edits. If it is in an application packet then staff can make edits or changes as needed in order to obtain accurate information required for review.

3. In Table 7-3, it is suggested that you note that side yard setbacks for townhouse buildings refer to end units only.

4. In the section on Land Dedications (E., 1., d., ii) the ordinance uses the term “properly vetted and landscaped.” I am not familiar with the term “vetted” in this application. Is the intent to have the site *inspected by a qualified professional* prior to its conversion to woodland? If so, please clarify. Otherwise, a definition might be in order if the word has some other meaning.

5. Section 12-11 very clearly states that the intention is to discourage dedication of open spaces to the Town. Although the Town may not have resources at this time to operate a parks department, it may become desirable in the future to accept open space and recreational facilities by land dedication. We encourage the town to reconsider the wording of this section in order to leave an option for dedication of land if it ever becomes desirable.

6. Section 12-11, A, 2. indicates that among other options, it is acceptable for open space and recreational areas to remain under the ownership and control of the developer. It is our recommendation that the Town approach this option cautiously, and consider removing it from the ordinance. Developers, typically, are only active on the site until the development is completed. At that point the ownership and maintenance should be transferred to a homeowners association, the town, or other legal entity that has a long term or perpetual commitment to the property.

7. Section 12-11, C enables the town to require the dedication of lands for public purposes, such as schools and fire stations. We strongly suggest that the Town consult with your Solicitor regarding the legality of this provision. The practice of negotiating with developers to obtain voluntary donations of land for public facilities is widespread. However, it may not be legally permissible to actually require that a developer donate land for such a facility without just compensation. The body of law surrounding “eminent domain” may be informative to your Solicitor.

In general, we support the concept behind this ordinance and hope that our comments are helpful to you as you revise this ordinance. Please contact David Edgell if you wish to discuss these comments. He is also available to do a courtesy review of a revised ordinance, if desired.

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

The Division of Historical and Cultural Affairs has no objections to the proposed changes.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

DelDOT has no comments relating directly to transportation. They do offer one suggestion, however, that the Town require that the density bonus be conditioned on very specific requirements for the efficient use of the land, good site design and amenities that ensure a walkable community. In other words, the overlay must have benefits other than increased density.

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

Water Resources

The proposed ordinance should clearly state it is intended to preserve, protect, and enhance water quality, excellent recharge areas, Well Head Protection Areas, wetlands and riparian corridors. These areas need to be delineated and shown on any plans, plats, or plots as part of any submission to the Town.

Water Resource Protection Areas

The Water Supply Section has determined that the subject area falls within areas of excellent ground-water recharge potential and wellhead protection areas (see maps). This review referenced the Town of Cheswold Land Use Ordinance from its website.

Article 12; Environmental and Open Space; Section 12-4., Excellent Recharge Area, does not adequately address source water protection. Subsection B, Regulations Governing Development, sections 1 (a) and (b), states that a “qualified professional” must state that a development has or does not have an area of excellent ground-water recharge potential.

- Water Supply recommends that the Town define “qualified professional”

Section 2, states, “the developer shall provide documentation as to the measures taken to safeguard excellent recharge areas”.

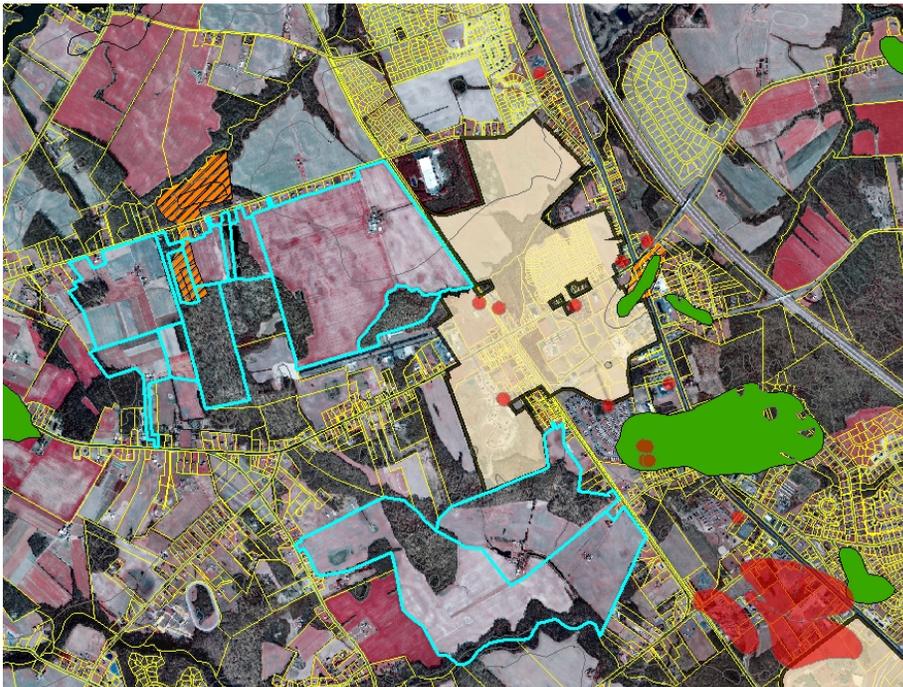
- Water Supply recommends that the Town adopt specific language to address impervious cover limitations, storm water management practices, restricting storage of hazardous materials, preservation of open space, clean recharge practices, and reforestation within recharge areas.

- By adopting specific language to protect this resource, the Town will set guidelines that a developer can follow.

During the review process, Water Supply found that Section 12-2., Wellhead Protection Areas of the Land Use Ordinance does not contain language for limiting impervious surface in wellhead protection areas.

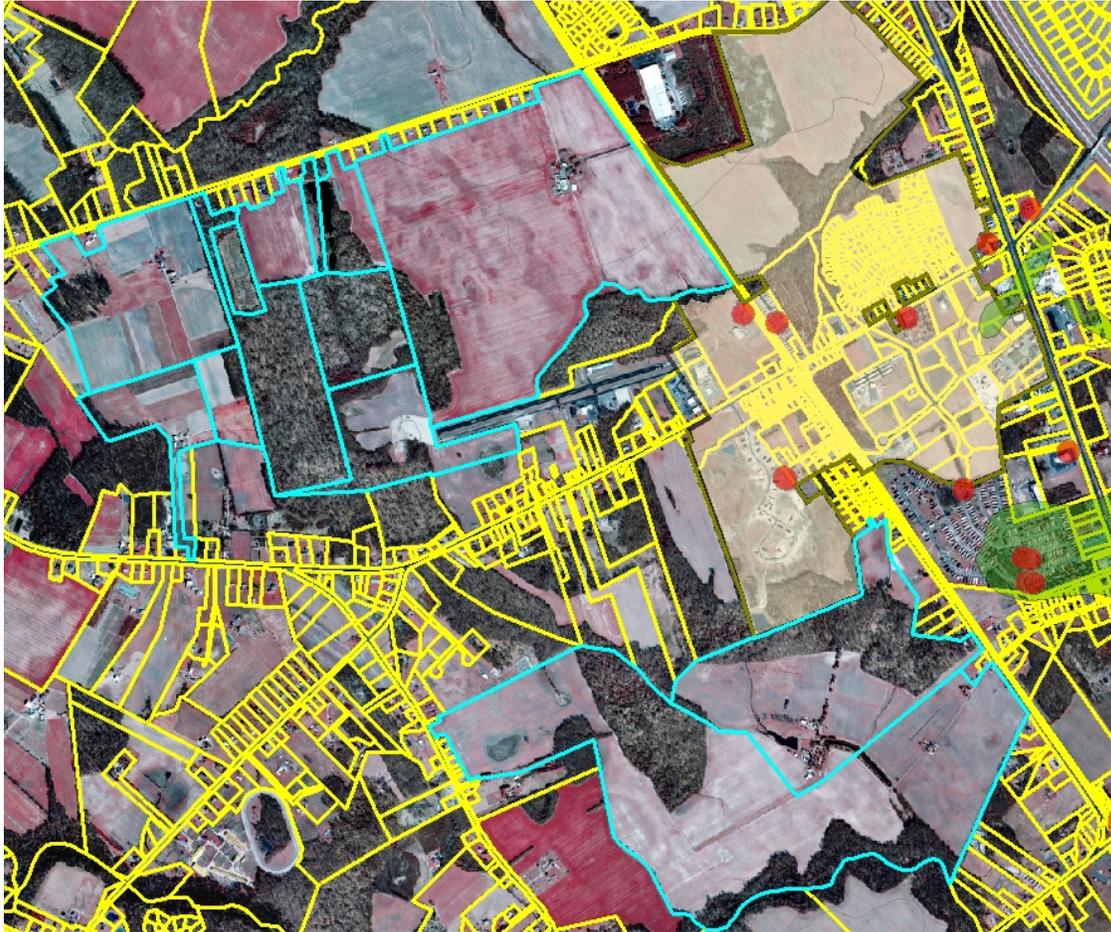
- Water Supply recommends language limiting impervious cover, storm water management practices, and preservation of open space in wellhead protection areas.

Map of the Town of Cheswold Comprehensive Plan. The municipal boundaries are beige and outlined in black. The blue polygons show the area proposed for annexation in the Cheswold Comprehensive Plan Amendment of 2006.



Map of Town of Cheswold Comprehensive Plan (PLUS 2007-03-04)

Wellhead protection areas are in Red. Excellent ground-water recharges potential areas shown in green.



Sediment and Erosion Control/Stormwater Management

The Town of Cheswold is proposing to amend their zoning ordinance. The Drainage and Stormwater Section has no objection to the amendment; however, the Town is encouraged to consider the following items:

- The Drainage and Stormwater Program strongly recommends and encourages the Town of Cheswold to consider including drainage and stormwater infrastructure and management options to the Comprehensive Plan. Municipalities need to emphasize drainage as a necessary infrastructure element in areas targeted for growth and development, and in areas of redevelopment. State stormwater regulations do not provide specific guidance for development in areas of poor drainage or historic flooding problems except for requiring a downstream study. Site-specific engineering solutions often end at the property line of the parcel being developed. A more comprehensive approach to providing solutions for drainage issues in areas designated for growth will require coordination between the town, DNREC, and DelDOT.
- The town plans to refine and add to its existing Land Use Ordinance to reflect the amendments to the comprehensive plan including consideration of an overlay for cluster development or mixed use development, and the addition of an overlay for the protection of wellhead protection areas, and excellent recharge areas. The Drainage and Stormwater Section encourages the town to consider drainage and stormwater management as a component of your ordinances and codes. It is also strongly recommended that you consider developing your own drainage code as well to address private drainage issues as land develops. Representatives from the Division of Soil and Water Conservation's Drainage and Stormwater Section will be happy to meet with the Town to provide assistance and/or draft language for consideration as you develop any ordinances. Please contact Jennifer Campaigning at 302.739.9921 or at Jennifer.campagnini@state.de.us to set up a meeting or to provide additional assistance.

The current Sediment and Stormwater Law and Regulations are available online at <http://www.dnrec.state.de.us/DNREC2000/Divisions/Soil/Stormwater/StormWater.htm>. The regulations are due to be revised in the coming year.

Drainage

Table 7-3.: Consider a side yard setback of 15 feet for property with a drainage easement in the side yard. This would give the engineer the option of a 5 foot side yard setback with stormwater conveyed on the street, or a 15 foot side yard setback with stormwater conveyed through the side yard.

A 15-foot side yard setback will allow room for equipment to utilize the entire easement and maneuver free of obstructions if the drainage conveyance requires periodic maintenance or future re-construction. The side yard setback would only increase on the side with the drainage easement.

For questions or clarifications, please contact Jim Sullivan at 739-9921.

Other Recommendations/Comments

Recommend incorporating the following definitions:

Sensitive Drainage Areas: The National Wetlands Inventory should not be used as the basis for determining the “sensitive drainage area.” While the NWI can provide background data and is a useful reference, it is not always accurate. Site specific delineations of tidal and non-tidal wetlands should be used.

Estimated Development Area: as written, the estimated development area calculation excludes the “sensitive drainage area” from developable areas. While this is a good start, the estimated development area should also exclude riparian buffers and other sensitive environmental resources protected by code.

Article 12, Section 12 -9

There is some confusion about the dedication section. Is the dedication to the Town? Is the land just designated as open space for the homeowner’s association? The text is not clear in sections 12-11 and 12-9 and seems to contradict.

12-9

E.1.d. (i) – suggest rewording to “if wooded, it is left in its natural, undisturbed state. This does not include management measures to remove exotic or invasive species or hazardous trees and/or the cutting of trails for walking, jogging or biking...” to ensure that routine management of natural areas does not exclude their consideration for dedication to the town.

Please also consider amending this section to include not only wooded areas, but meadow or fallow field areas.

E.1.d. (v) – why would the Town exclude a parcel that contains more than 25% floodplain? Floodplain areas are important to protect and can be utilized for passive recreation. To exclude floodplain areas from public dedication ignores an opportunity for protection and enhancement of these areas for the public good. It is recommended that the Town consider striking this subsection.

12-11

This section seems to contradict the previous section.

A.1. – is there a typo here?

B – Again, the Town is encouraged to take maintenance control over passive open spaces dedicated in residential developments. Natural areas require careful management and maintenance and require technical skills that homeowner's associations tend to lack. Comprehensive management by the town of all natural areas set aside during the development process can allow for improved protection of the areas from homeowner infringement and illegal activities, improved opportunity for restoration, improved opportunity for invasive species management and improved opportunity to link green spaces together with trails and greenways that benefit all the citizens of the town, not just residents of one neighborhood.

C.1 – should include parks.

State Fire Marshal's Office – Contact: RT Leicht 739-4394

The Delaware State Fire Marshal's Office has no objection to the zoning ordinance amendment.

Department of Agriculture - Contact: Scott Blaier 698-4500

The Delaware Department of Agriculture has no objections to the request from the Town of Cheswold to define and overlay for R-3 zoned parcels which would cluster residential designs with associated public services. The Department especially supports the ordinance's goal of preserving, protecting, and increasing open space and natural resources.

The Department's Forest Service oversees and administers an Urban Forestry program, including grants to communities for tree planting and maintenance. Each year an increasing number of Homeowner Associations apply for these grants to:

1. Increase tree canopy, thereby reducing mowing and grounds maintenance cost (homeowner's dues);
2. Mitigate wind and noise, add privacy, create shade, improve community aesthetics, and increase property values;
3. Create wildlife habitat;

4. and improve water quality (i.e. ground-water recharge areas).

However, it is becoming increasingly difficult to fund all the grant requests the Department receives each year.

For that reason, the Department is asking Counties, Cities, and Towns to include a proactive requirement for tree planting whenever possible. Furthermore, the Department asks that they work with the Department's Forest Service to plant the most suitable tree species (i.e. native species). This will not only to maximize the benefit to the environment and residents, but also reduce mowing costs and the likelihood of a Homeowners Association looking to a County, City, or Town for assistance in maintaining their open space.

The Department would like the opportunity to work with the Town to maximize the benefits of this ordinance with regard to creating quality natural areas and open space. Please feel free to contact Henry Poole, Urban Forester, at (302) 659-6705 for more information.

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.

Delaware State Housing Authority – Contact Vicki Walsh 739-4263

The Town of Cheswold is proposing an Amendment to their Comprehensive Plan to define an overlay for R-3 zoned parcels, which would cluster residential designs with associated public services. DSHA has reviewed the Town's Amendment and supports this proposed Amendment for high density mixed residential housing units. The most recent 2003 Statewide Housing Needs Assessment, as well as recent real estate information, indicates that there is a need for housing to support low- and moderate-income households. The DHSAs recommends that the Town of Cheswold, as part of this Amendment, also include incentives that ensure long-term affordable housing for low- and moderate-income persons.

Department of Education – Contact: John Marinucci 739-4658

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.
1. 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.
 2. 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.
 3. The DOE offers its support to assist the town and participate in coordination between the town, the local School District, the County, the Office of State Planning Coordination as well as other school districts and stakeholders as future developments and annexations may be considered.
 4. The DOE supports the Comprehensive Plan Amendment under consideration. Specifically, DOE supports the town's adoption of the articles regarding active open spaces since outdoor play is vital to the development of children, and DOE supports article C-1 which allows for the dedication of lands for schools and fire stations. DOE offers its support and assistance to the Town of Cheswold in this regard.

The State asks that you consider the comments in this letter when finalizing the zoning ordinance amendment. Please forward a copy of the zoning amendment, with the

approved changes, to this office for our files. If this office can be of any other assistance in finalizing this amendment, please contact David Edgell.

Thank you for the opportunity to review this project.

Sincerely,

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

Constance C. Holland, AICP
Director