



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

July 20, 2007

Mr. Bill Shirey
Bay Road Properties, LLC
C/O Shirey's Auto Sales
119 Lake Front Drive
Dover, DE 19904

RE: PLUS review – PLUS 2007-06-02; Bay Road Properties

Dear Mr. Shirey:

Thank you for meeting with State agency planners on June 27, 2007 to discuss the proposed plans for the Shirey's Auto Sales property located at 1166 Bay Road South near Milford.

According to the information received, you are seeking to rezone a portion of 18.6 acres to make the entire parcel BC. The zoning on this parcel is currently split with a portion being zone AC and a portion zoned BG. It is noted that there are currently no plans to change the use on the property.

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.

This proposal is located in Investment Level 4 according to the *Strategies for State Policies and Spending*, and is outside the designated growth area in the Kent County certified comprehensive plans. **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.**

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

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

This project represents a major land development in an Investment Level 4 area according to the *2004 Strategies for State Policies and Spending*. This project is also located outside of a designated growth area in the Kent County certified comprehensive plans. 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.

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

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

The archival and historic resources at the Division of Historical & Cultural Affairs- State Historic Preservation Office do show that there are no visual or known archaeological sites on or within this particular parcel (property).

There is a possibility that there could be prehistoric-period or historic-period archaeological sites still existing on this parcel, or within the area of where this parcel is located. It is very important for the developer to include sufficient landscaping around this project area, in order to protect the other historic properties in or within this specific area from the adverse visual and noise effects that may come from this commercial development. If you would like to discuss this information or other issues further, contact the Division of Historical & Cultural Affairs at (302) 744-7400 ext.25.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

Because this development is proposed for a Level 4 Area, it is inconsistent with the *Strategies for State Policies and Spending*. As part of our commitment to support the *Strategies*, DelDOT refrains from participating in the cost of any road improvements needed to support this development and is opposed to any road improvements that will substantially increase the transportation system capacity in this area. DelDOT will only support taking the steps necessary to preserve the existing transportation infrastructure and make whatever safety and drainage related improvements are deemed appropriate and necessary. The intent is to preserve the open space, agricultural lands, natural habitats and forestlands that are typically found in Level 4 Areas while avoiding the creation of isolated development areas that cannot be served effectively or efficiently by public transportation, emergency responders, and other public services.

DelDOT strongly supports new development in and around existing towns and municipalities and in areas designated as growth zones in approved Comprehensive Plans. They encourage the use of transfer of development rights where this growth management tool is available.

The land proposed for rezoning is adjacent to Delaware Route 1, and is therefore subject to the Department's Corridor Capacity Preservation Program (CCPP). The main goal of this Program is to maintain the capacity of the existing highway. In this Level 4 area, State policies will encourage the preservation of a rural lifestyle and discourage new development. Thus, no new entrances will be permitted. However, DelDOT will consider a relocation of the existing entrance in the interest of operational safety and efficiency. The CCPP will not permit the expansion of the existing entrance along Route 1 at this site. The CCPP policy can be viewed on Department's website at www.deldot.gov. The manual is located under the publication link.

If this development proposal is approved, notwithstanding inconsistencies with the relevant plans and policies, DelDOT will provide further technical review and comments.

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

Investment Level 4 Policy Statement

This project is proposed for an Investment Level 4 area as defined by the *Strategies for State Policies and Spending* and is also located outside of a designated growth area in the relevant municipal and county certified comprehensive plans. According to the *Strategies* this project is inappropriate in this location. In Investment Level 4 areas, the

State's investments and policies, from DNREC's perspective, should retain the rural landscape and preserve open spaces and farmlands. Open space investments should emphasize the protection of critical natural habitat and wildlife to support a diversity of species, and the protection of present and future water supplies. Open space investments should also provide for recreational activities, while helping to define growth areas. Additional state investments in water and wastewater systems should be limited to existing or imminent public health, safety or environmental risks only, with little provision for additional capacity to accommodate further development.

With continued development in Investment Level 4 areas, the State will have a difficult, if not impossible, time attaining water quality (e.g., TMDLs) and air quality (e.g., non-attainment areas for ozone and fine particulates) goals. Present and future investments in green infrastructure, as defined in Governor Minner's Executive Order No. 61, will be threatened. DNREC strongly supports new development in and around existing towns and municipalities and in areas designated as growth zones in certified Comprehensive Plans. DNREC encourages the use of transfer of development rights where this growth management tool is available.

This particular development certainly compromises the integrity of the State Strategies and the preservation goals inherent in many of DNREC's programs. While mitigating measures such as conservation design, central wastewater systems instead of individual on-site septic systems, and other best management practices may help mitigate impacts from this project, not doing the project at all is the best avenue for avoiding negative impacts. As such, this project will receive no financial, technical or other support of any kind from DNREC. Any required permits or other authorizations for this project shall be considered in light of the project's conflict with our State growth strategies.

Water Resource Protection Areas

The Water Supply Section has reviewed the above referenced PLUS project and determined that the area to be rezoned from Agricultural Conservation (AC) to General Business (BG) does not fall within any delineated wellhead protection areas or areas of excellent ground-water recharge. The area presently zoned as General Business (BG) falls within an excellent ground-water recharge area (see following map and attached map).

Excellent ground-water recharge potential areas are those areas mapped by the Delaware Geological Survey where the first 20 feet of subsurface soils and geologic materials are exceptionally sandy. These soils are able to transmit water very quickly from the land surface to the water table. This map category is an "indicator of how fast contaminants will move and how much water may become contaminated" (Andres, 2004, pg 1). Land

use activities or impervious cover on areas of excellent ground-water recharge potential may adversely affect the quantity and quality of ground water in these areas.

In addition, because the excellent ground water recharge area can so quickly affect the underlying aquifer if contaminants are spilled or discharged across the area, the storage of hazardous substances or wastes should not be allowed within the area unless specific approval is obtained from the relevant state, federal, or local program.

References

Andres, A. Scott, 2004, Ground-Water Recharge Potential Mapping in Kent and Sussex Counties, Delaware: Delaware Geological Survey Report of Investigations No. 66, p. 14.

<http://www.udel.edu/dgs/Publications/pubform.html#investigations>

Delaware Department of Natural Resources and Environmental Control (2005): *Source Water Protection Guidance Manual for the Local Governments of Delaware*: Dover, DE, 144 p.

http://www.wr.udel.edu/publications/SWAPP/swapp_manual_final/swapp_guidance_manual_final.pdf

Map of Bay Road (PLUS 2007-06-02)

Map of proposed development as it influences the excellent ground-water recharge potential area. The green area shows the excellent ground-water recharge potential area with affected parcel in light blue.



Water Supply

The project information sheets state that water will be provided to the project by an existing private on-site well. DNREC records indicate that the project site is not located in an area where public water service is available. Any public water utility providing water to the site must obtain a certificate of public convenience and necessity (CPCN) from the Public Service Commission. Information on CPCNs and the application process can be obtained by contacting the Public Service Commission at 302-739-4247. If this well develops a problem that causes it to be abandoned, then a new well will have to be

needed. Should an on-site public/miscellaneous public well be needed, a minimum isolation distance of 150 feet is required between the well and any potential source of contamination, such as a septic tank and sewage disposal area. The Division of Water

Resources will consider applications for the construction of on-site wells provided the wells can be located and constructed 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.

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.

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

Sediment and Erosion Control/Stormwater Management

The Stormwater program has no objection to the rezoning request. However, prior to land disturbing activity greater than 5,000 square feet, and as soon as possible prior to site plan development if possible, the applicant should contact the Kent Conservation District's Jared Adkins at (302) 741-2600, ext. 3, to schedule a pre-application meeting to discuss stormwater management and erosion and sediment control plans. Use of green technology practices and low impact development practices are recommended where feasible.

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

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):

❖ ***This Agency has no objection to the re-zoning request. The information provided below shall be considered when plans are being designed.***

As a note, applicant was advised at the PLUS meeting that prior to development and specifications and development of the property, the local office of the State Fire Marshal is to be contacted. Additionally, applicant was advised that changes made in 2006 in the State Fire Prevention Regulations now requires sprinkler system installation in Storage occupancies, including smaller mini-storage buildings.

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 Department is opposed to this type of development in areas designated as Investment Level 4 under the *Strategies for State Policies and Spending*. The *Strategies* do not support the land uses permitted under this zoning category in Level 4 areas. The intent of this plan is to preserve the agricultural lands, forestlands, recreational uses, and open spaces that are preferred uses in Level 4 areas. The Department of Agriculture opposes land use activities which conflict with the preferred land uses, making it more difficult for agriculture and forestry to succeed, and increases the cost to the public for services and facilities.

More importantly, the Department of Agriculture opposes this project because it negatively impacts those land uses that are the backbone of Delaware's resource industries - agriculture, forestry, horticulture - and the related industries they support.

A portion of this site has been designated as having "excellent" ground-water recharge potential. DNREC has mapped all ground-water recharge-potential recharge areas for the state, and an "excellent" rating designates an area as having important groundwater recharge qualities.

Senate Bill 119, enacted by the 141st General Assembly in June of 2001, requires the counties and municipalities with over 2,000 people to adopt as part of the update and implementation of their 2007 comprehensive land use plans, areas delineating excellent ground-water recharge potential areas. Furthermore, the counties and municipalities are required to adopt regulations by December 31, 2007 governing land uses within those areas to preserve ground-water quality and quantity.

Maintaining pervious cover in excellent and good recharge areas is crucial for the overall environmental health of our state and extremely important to efforts which ensure a safe drinking water supply for future generations. Retention of pervious cover to ensure an adequate future water supply is also important for the future viability of agriculture in the First State. The loss of every acre of land designated as “excellent” and “good” recharge areas adversely impacts the future prospects for agriculture in Delaware. The developer should make every effort to protect and maintain valuable ground-water recharge potential areas.

The Delaware Department of Agriculture supports growth which expands and builds on existing urban areas and growth zones in approved State, county and local plans. Where additional land preservation can occur through the use of transfer of development rights, and other land use measures, we will support these efforts and work with developers to implement these measures. If this project is approved we will work with the developers to minimize impacts to the agricultural and forestry industries.

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.

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.

Department of Education – Contact: John Marinucci 735-4055

This proposed development is within the Milford School District. This is a commercial/industrial development with no apparent impact on educational infrastructure, capacity or demand. DOE has no comments or objections to this rezoning request.

Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.

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

Sincerely,

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

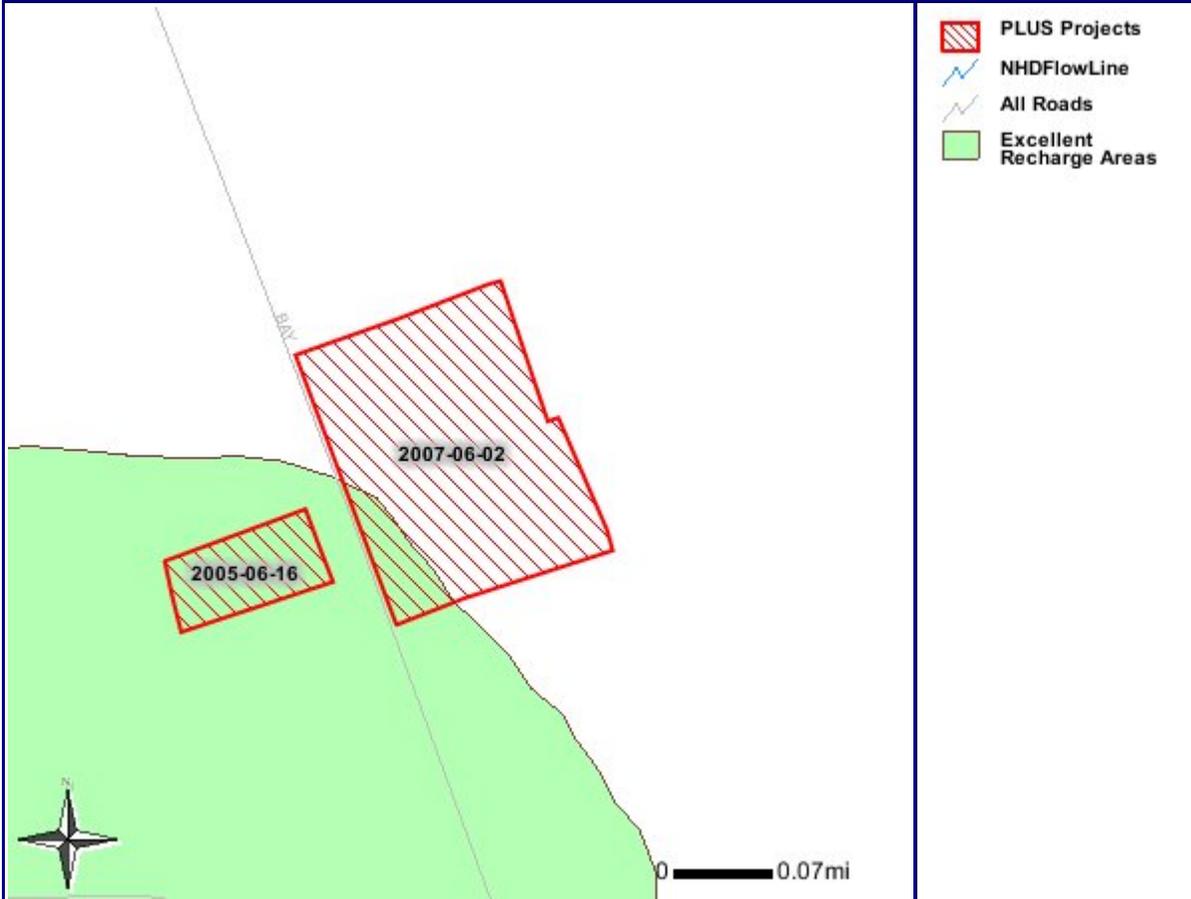
Constance C. Holland, AICP
Director

CC: Kent County
City of Milford



Bay Road Properties

2007-06-02



This map was produced by the Delaware Department of Natural Resources and Environmental Control.

