



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

August 9, 2007

Mr. Stephen Soule
Soule & Associates
122 Arlington Road
Salisbury, MD 21801

RE: PLUS review – PLUS 2007-07-01; Dekowski Project

Dear Mr. Soule:

Thank you for meeting with State agency planners on July 25, 2007 to discuss the proposed plans for the Dekowski project to be located on Mastif way, 770' north of the intersection with Sound Church Road.

According to the information received, you are seeking a conditional use for 13 multi-family residential units on 15.16 acres.

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 Sussex 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

- The Office of State Planning and Coordination recognizes the proposed project is partially in Level 3 and Level 4 and within the Environmentally Sensitive District of Sussex County. In addition this office recognizes the site is currently experiencing development pressures from the adjacent approved project of Bayside Americana. Also, this office recognizes the right of the property owner and the developer to develop the site with 13 town-home units; however, the environmental features found on this site greatly restrict the development potential and may harm the environmental resources within this site and the watershed. This office would encourage the landowner and the developer work to explore other options to allow for preservation of this site while allowing for the appreciation of equity of the land.

If however, the site is developed, we would encourage the developer to explore Best Management Practices to preserve and lessen impacts to the natural resources on the site. Also, I would encourage the development of a partnership with Bayside Americana to address access concerns and to ensure that land uses such as residential units are not in conflict with maintenance operations of the larger project. If you have any questions, please contact our office.

Street Design and Transportation

- Mastif Way, where the proposed townhouses would have access, is owned and maintained by developers of Bayside, so the proposed entrances onto it are outside DelDOT's jurisdiction. However, Mastif Way connects to Sound Church Road (Sussex Road 394A), which DelDOT does maintain. Presently Mastif Way serves only the house on the subject property, a golf course maintenance building and another utility building, both associated with Bayside. Accordingly, Mastif Way and its intersection with Sound Church Road may need to be improved to handle the additional traffic.

Natural and Cultural Resources

- If the current pond is filled and built upon, the Drainage Program requests that that fact be disclosed to the buyer as well as noted on the deed.

- These tax parcels are comprised largely of wetlands and if developed, the wetlands should be protected from degradation. Wetlands (tidal and non-tidal) and the upland buffers that surround these wetlands provide habitat for a variety of plant and animal species. The current upland wetland buffers are not adequate as there are clearly lot lines, structures and infrastructure within 100 feet. In addition, wetland buffers (some species require more than 100 feet) serve as critical habitat for wetland dependent species which utilize upland buffers during a portion of their life cycle. Some aquatic species are especially sensitive to water quality changes and adequate filtration of sediments, run-off from parking lots, run-off of lawn fertilizer and chemicals, etc. are very important. Buffers along water courses are also used as a travel corridor by numerous wildlife species. DNREC recommends that you omit, downsize or relocate those parking spaces and buildings which will degrade wetlands because they are within 100 feet of existing wetlands.

- Forested areas on-site set aside for conservation purposes should be placed into a permanent conservation easement or other binding protection. These areas should be clearly marked and delineated so that residents understand their importance and so that homeowner activities do not infringe upon these areas.

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

Office of State Planning Coordination – Contact: Bryan Hall 739-3090

The Office of State Planning and Coordination recognizes the proposed project is partially in Level 3 and Level 4 and within the Environmentally Sensitive District of Sussex County. In addition this office recognizes the site is currently experiencing development pressures from the adjacent approved project of Bayside Americana. Also, this office recognizes the right of the property owner and the developer to develop the site with 13 town-home units; however, the environmental features found on this site greatly restrict the development potential and may harm the environmental resources within this site and the watershed. This office would encourage the landowner and the developer work to explore other options to allow for preservation of this site while allowing for the appreciation of equity of the land.

If however, the site is developed, we would encourage the developer to explore Best Management Practices to preserve and lessen impacts to the natural resources on the site. Also, I would encourage the development of a partnership with Bayside Americana to address access concerns and to ensure that land uses such as residential units are not in

conflict with maintenance operations of the larger project. If you have any questions, please contact our office.

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

According to the historic resources and documents at the State Historic Preservation Office in reference to this particular property or project area, it indicates that there were a few archaeological sites in the area, but none is on this property.

One of the archaeological sites near this property is the Holloway Cemetery-Cemetery Hill Site (refer to CRS site S-11501, Archaeological Site 7S-K-144). A small rural cemetery (or family cemetery) of this type are often found or discovered in relation to historic area, such as the one here, usually are a good distance behind or to the side of a dwelling of some type. 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 or project is approved.

The State Historic Preservation Office of the Division of Historical & Cultural Affairs would have to have a copy of any archaeological report done for this purpose. Also, the developer should be aware that this property is in an historic area, and it is possible that archaeological sites, which may not have been found or discovered at this time could still be remaining somewhere on this property. These archaeological sites can be prehistoric or historic. If this development is approved or proceeds, the State Historic Preservation Office of the Division of Historical & Cultural Affairs would like the opportunity to examine the area prior to any ground-disturbing activities, to see if there are in fact any archaeological sites on the property, and to learn something about their location, nature, and extent. If you (the developer) would like to discuss this information or other issues further, contact the State Historic Preservation Office Division of Historical & Cultural Affairs at (302) 744-7400 ext.25, and we will be glad to assist you.

If you (the developer) would like to discuss this information or other issues further, contact the State Historic Preservation Office Division of Historical & Cultural Affairs at (302) 744-7400 ext.25, and we will be glad to assist you.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

David J. and Erin E. Dekowski seek to develop about 13 townhouses on an approximately 15.16-acre assemblage of parcels (Tax Parcels 5-33-19.00-35.00 and

35.04) presently occupied by one single-family detached house. The subject land is located west of Fenwick Island and south of Delaware Route 54, and more specifically on the east side of Mastif Way, a private street in the Americana Bayside (a.k.a. Bayside) development. The land is zoned AR-1 in Sussex County and a conditional use approval would be needed to permit the development of townhouses.

Mastif Way, where the proposed townhouses would have access, is owned and maintained by developers of Bayside, so the proposed entrances onto it are outside DelDOT's jurisdiction. However, Mastif Way connects to Sound Church Road (Sussex Road 394A), which DelDOT does maintain. Presently Mastif Way serves only the house on the subject property, a golf course maintenance building and another utility building, both associated with Bayside. Accordingly, Mastif Way and its intersection with Sound Church Road may need to be improved to handle the additional traffic.

DelDOT recommends that the developers discuss their plans with the developer of Bayside. Further, either they or Bayside should contact our Subdivision Manager for eastern Sussex County, Mr. John Fiori, to determine what, if any, improvements will be needed at the intersection of Mastif Way and Sound Church Road. Mr. Fiori may be reached at (302) 760- 2260.

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

Wetlands

Statewide Wetland Mapping Project (SWMP) maps indicate the presence of estuarine wetlands on this parcel. These wetlands provide water quality benefits, attenuate flooding and provide important habitat for plants and wildlife. Vegetated buffers of no less than 100 feet should be employed from the edge of the wetland complex. The developer should note that both DNREC and the U.S. Army Corps of Engineers (USACE, or “the Corps”) discourage allowing lot lines to contain wetlands to minimize potential cumulative impacts resulting from unauthorized and/or illegal activities and disturbances that can be caused by homeowners.

Wetland Permitting Information

PLUS application materials indicate that wetlands have been delineated. This delineation should be verified by the Corps through the Jurisdictional Determination process. Please note that impacts to palustrine wetlands are regulated by the Corps through Section 404 of the Clean Water Act. In addition, individual 404 permits and certain Nationwide Permits from the Corps 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.

To find out more about permitting requirements, the applicant is encouraged to attend a Joint Permit Process Meeting. These meetings are held monthly and are attended by federal and state resource agencies responsible for wetland permitting. Contact Denise Rawding at (302) 739-9943 to schedule a meeting.

Water Supply

The project information sheets state that Tidewater Utilities will be used to provide water for the proposed project. Our records indicate that the project is located within the public water service area granted to Artesian Water Company under Certificate of Public Convenience and Necessity (CPCN) number 05-CPCN-16. It is recommended that the developer contact Artesian Water Company to determine the availability of public water. Any questions concerning CPCNs should be directed to the Public Service Commission at 302-739-4247. 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 well(s).

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

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 Sussex

Conservation District at (302) 856-7219, 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.

Drainage

1. The Drainage Program requests that the engineer take precautions to ensure 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. Notify downstream landowners of the change in volume of water released on them.
2. Have all drainage easements recorded on deeds and place restrictions on obstructions within the easements to ensure access for periodic maintenance or future re-construction. Future property owners may not be aware of a drainage easement on their property if the easement is only on the record plan. However, by recording the drainage easement on the deed, the second owner, and any subsequent owner of the property, will be fully aware of the drainage easement on their property.
3. If the current pond is filled and built upon, the Drainage Program requests that that fact be disclosed to the buyer as well as noted on the deed.
4. Preserve existing riparian buffers on this site to aid in the reduction of nutrients, sediment, and other pollutants entering the watershed. Please explore methods to filter excess nutrients in stormwater runoff from this site before releasing the stormwater into the Drum Creek watershed.

For questions or clarifications, please contact Jim Sullivan at (302) 739-9921.

Floodplains

The entire parcel is located within FEMA's Special Flood Hazard Area subject to inundation by the 1% annual chance flood. There is a 26% chance of a flood occurring during the life of a 30 year loan for a structure located in a Special Flood Hazard Area. Any new construction would have to comply with current floodplain regulations. Please contact Greg Williams at 302-739-9921 with any questions.

Wetland/Wildlife Habitat

These tax parcels are comprised largely of wetlands and if developed, the wetlands should be protected from degradation. Wetlands (tidal and non-tidal) and the upland buffers that surround these wetlands provide habitat for a variety of plant and animal species. The current upland wetland buffers are not adequate as there are clearly lot lines, structures and infrastructure within 100 feet. Scientific research indicates buffers less than 100 feet are not adequate for protecting water quality. In addition, wetland buffers (some species require more than 100 feet) serve as critical habitat for wetland dependent species which utilize upland buffers during a portion of their life cycle. Some aquatic species are especially sensitive to water quality changes and adequate filtration of sediments, run-off from parking lots, run-off of lawn fertilizer and chemicals, etc. are very important. Buffers along water courses are also used as a travel corridor by numerous wildlife species.

The Division of Fish and Wildlife is charged with conserving and managing the states wildlife (see www.fw.delaware.gov and the Delaware State Code, Title 7) and protection of wetland and forested habitat is of utmost concern.

DNREC recommends the following:

1. Omit, downsize or relocate those parking spaces and buildings which will degrade wetlands because they are within 100 feet of existing wetlands.

Forest Preservation

Forested areas on-site set aside for conservation purposes should be placed into a permanent conservation easement or other binding protection. These areas should be clearly marked and delineated so that residents understand their importance and so that homeowner activities do not infringe upon these areas.

Air Quality

Once complete, vehicle emissions associated with this project are estimated to be 1.0 tons (1,995.4 pounds) per year of VOC (volatile organic compounds), 0.8 tons (1,652.0 pounds) per year of NO_x (nitrogen oxides), 0.6 tons (1,218.9 pounds) per year of SO₂ (sulfur dioxide), 0.1 ton (108.5 pounds) per year of fine particulates and 83.5 tons (166,909.7 pounds) per year of CO₂ (carbon dioxide).

Emissions from area sources associated with this project are estimated to be 0.4 tons

(804.8 pounds) per year of VOC (volatile organic compounds), 0.0 ton (88.6 pounds) per year of NOx (nitrogen oxides), 0.0 ton (73.5 pounds) per year of SO2 (sulfur dioxide), 0.0 ton (94.8 pounds) per year of fine particulates and 1.6 tons (3,262.6 pounds) per year of CO2 (carbon dioxide).

Emissions from electrical power generation associated with this project are estimated to be 0.2 tons (319.0 pounds) per year of NOx (nitrogen oxides), 0.6 tons (1,109.5 pounds) per year of SO2 (sulfur dioxide) and 81.8 tons (163,647.1 pounds) per year of CO2 (carbon dioxide).

| | VOC | NOx | SO ₂ | PM _{2.5} | CO ₂ |
|------------------|-----|-----|-----------------|-------------------|-----------------|
| Mobile | 1.0 | 0.8 | 0.6 | 0.1 | 83.5 |
| Residential | 0.4 | 0.0 | 0.0 | 0.0 | 1.6 |
| Electrical Power | | 0.2 | 0.6 | | 81.8 |
| TOTAL | 1.4 | 1.0 | 1.2 | 0.1 | 166.9 |

For this project the electrical usage via electric power plant generation alone totaled to produce an additional 0.2 tons of nitrogen oxides per year and 0.6 tons of sulfur dioxide per year.

A significant method to mitigate this impact would be to require the builder to construct Energy Star qualified homes. Every percentage of increased energy efficiency translates into a percent reduction in pollution. Quoting from their webpage, <http://www.energystar.gov/>:

“ENERGY STAR qualified homes are independently verified to be at least 30% more energy efficient than homes built to the 1993 national Model Energy Code or 15% more efficient than state energy code, whichever is more rigorous. These savings are based on heating, cooling, and hot water energy use and are typically achieved through a combination of:

- building envelope upgrades,
- high performance windows,
- controlled air infiltration,
- upgraded heating and air conditioning systems,
- tight duct systems and
- upgraded water-heating equipment.”

The Energy Office in DNREC is in the process of training builders in making their structures more energy efficient. The Energy Star Program is excellent way to save on energy costs and reduce air pollution. They highly recommend this project development and other residential proposals increase the energy efficiency of their homes.

They also recommend that the home builders offer geothermal and photo voltaic energy options. Applicable vehicles should use retrofitted diesel engines during construction. The development should provide tie-ins to the nearest bike paths, links to mass transit, and fund a lawnmower exchange program for their new occupants.

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):

❖ **The State Fire Marshal's Office has no objection to the re-zoning request. The information provided below shall be considered when plans are being designed.**

a. **Fire Protection Features:**

- For townhouse buildings, provide a section / detail and the UL design number of the 2-hour fire rated separation wall on the Site plan

b. **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 the main thoroughfare 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.
- c. **Gas Piping and System Information:**
- Provide type of fuel proposed, and show locations of bulk containers on plan.
- d. 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
 - Square footage of each structure (Total of all Floors)
 - National Fire Protection Association (NFPA) Construction Type
 - Maximum Height of Buildings (including number of stories)
 - Townhouse 2-hr separation wall details shall be shown on site plans
 - 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 proposed project. The *Strategies for State Policies and Spending* encourage environmentally responsible development in Investment Level 3 areas.

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.

Delaware State Housing Authority – Contact Vicki Walsh 739-4263

This proposal is for a site plan review for 13 multi-family units on 15.16 acres located on Mastif Way, 770' north of the intersection with South Church Road near Selbyville. According to the State Strategies Map, the proposal is located in an Investment Level 3 area and Environmentally-Sensitive Developing Area. However, the proposal does not include units for first time homebuyers.

The 2003 Statewide Housing Needs Assessment indicates that much of the housing in the Selbyville/Frankford CCD is outside of the affordability level of low- and moderate-income households. For example, real estate data collected by DSHA for the first quarter of 2007 indicated that the median home price was \$385,000, which is outside the affordability level of low- and moderate-income households. Conversely, the affordability price for low- and moderate-income households earning 100% of area median income is estimated to be \$164,791. Households that cannot afford to live in the coastal resort area have been displaced to western Sussex County. The provision of moderately-priced units for first time homebuyers would help support the housing needs of low- and moderate-income families employed by the local retail, service, and tourism economy.

Department of Education – Contact: John Marinucci 735-4055

This proposed development is in the Indian River School District. DOE offers the following comments on behalf of the Indian River School District.

1. Using the DOE standard formula, this development will generate an estimated 7 students.
2. DOE records indicate that the Indian River School Districts' *elementary schools are at or beyond 100% of current capacity* based on September 30, 2006 elementary enrollment.
3. DOE records indicate that the Indian River School Districts' *secondary schools are not at or beyond 100% of current capacity* based on September 30, 2006 secondary enrollment. In multiple correspondences from the Indian River School District administration, the district asserts that while the Indian River High School has capacity, the Indian River Middle Schools' student population exceeds student capacity.
4. This development will create additional elementary school and middle school student population growth which will further compound the existing shortage of space.
5. The developer is strongly encouraged to contact the Indian River School District Administration to address the issue of elementary school over-crowding that this development will exacerbate.

Sussex County – Contact: Richard Kautz 855-7878

The State Wetlands map tidal wetland boundaries indicates the possibility of wetlands impacting the location of proposed lots and roads. Therefore those boundaries should be shown on the plat.

Furthermore, the jurisdictional determination letter should be provided to support the proposed design for that area and that the lot layout does not contain any wetlands. This letter should be obtained prior to the request for approval of any final plan.

Per page 15 of the Comprehensive Plan, "any increased density by rezoning should only be permitted with proper environmental safeguards."

Because this project is situated in an Environmentally Sensitive Development Area, the required report should include how this requirement and the PLUS comments have been addressed and how the plan has been revised accordingly.

The Sussex County Engineer Comments:

The project is within the boundary of the Fenwick Island Sanitary Sewer District and connection to the sewer system is mandatory. The project is within planning study and design assumptions for sewer service. The project is located between drainage areas of the Americans Bayside project, but is not part of the American Bayside project. Sewer service is available in the area, but has not been extended to the parcel at this time. Sussex County does not have a schedule to extend sewer service to the parcel. The

developer, at the developer's expense, will be required to extend sewer service to the project from an approved connection point.

Sussex County requires design and construction of the collection and transmission system to meet Sussex County Engineering Department's requirements and procedures. The Sussex County Engineer must approve the connection point. A sewer concept plan must be submitted for review and approval prior to any sewer construction. A checklist for preparing sewer concept plans was handed out at the meeting. All costs associated with extending sewer service will be the sole responsibility of the developer. One time system connection charges will apply. Please contact Ms. Janna Wilcoxson at 302 855-7817 for additional information on charges.

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: Sussex County
Fenwick Island