



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

September 17, 2007

Vernon Giuttari
2776 Bowers Beach Road
Frederica, DE 19946

RE: PLUS review – PLUS 2007-08-11; Giuttari Property

Dear Mr. Giuttari:

Thank you for meeting with State agency planners on August 22, 2007 to discuss the proposed plans for the Giuttari Property located at 2776 Bowers Beach Road.

According to the information received, you are seeking a rezoning through Kent County from AC to BN to sell fish out of your home.

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. You 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.

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 rezoning that will result in a commercial use in an “out of play” area according to the *Strategies for State Policies and Spending*. This is due to statewide mapping which shows the parcel in a flood plain area. There may be errors in statewide

mapping when applied to the parcel level. The property owner is encouraged to work through Kent County and DNREC for a more site specific determination of any flood zones associated with this parcel. The *State Strategies* considers flood plains in Kent County as “out of play” because the County regulations in effect at the time prohibited any further subdivision activity to occur in flood plain areas.

If the flood plain was not an issue, this project would be located in Investment Level 4. This project is also located outside the growth zone according to Kent County’s certified comprehensive plan. Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development activities and suburban development are not supported in Investment Level 4. These areas are comprised of prime agricultural lands and environmentally sensitive wetlands and wildlife habitats, which should be, and in many cases have been preserved.

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

At the PLUS meeting, the applicant described his intentions behind the rezoning. The applicant is a commercial fisherman, and would like the rezoning in order to legally sell his catch from his garage on the property.

Our office is opposed to this rezoning request because the site is inconsistent with the *Strategies for State Policies and Spending*. The proposed commercial zoning district would allow a wide range of commercial land uses to be located on this parcel, many of which would be incompatible with the rural area and create the demand for additional State funded services and infrastructure. Our office would not be opposed to a conditional use or other legal mechanism which would restrict the use of the site to the proposed sale of seafood products caught by the homeowner as described by the applicant at the PLUS meeting.

Division of Historical and Cultural Affairs – Contact: Terrance Burns 739-5685

According to the historical resources and documents at the State Historic Preservation Office, there are no recognized or known archaeological or historical sites on this parcel. As you may know, this parcel is in a Level 4 area. The State Historic Preservation Office is not in favor of or will endorse this type of rezoning change to commercial in a Level 4 Area, and does agree with the other agencies, divisions and departments that a Conditional Use permit would be more appropriate here. If you 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 they will be more than happy to assist you.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

Vernon and Noreen Giuttari seek to have a 1.30-acre parcel (Tax Parcel SM-00-123.00-01-20.04) rezoned from AC to BN in Kent County. The parcel is located on the south side of Bowers Beach Road (Kent Road 18) and the north side of Whitwell's Delight Road (Kent Road 18C) just west of Bowers Beach and Sussex Avenue. Mr. Giuttari is a commercial fisherman and they are seeking the rezoning so that he can sell his product from their home.

Because this rezoning 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. We encourage the use of transfer of development rights where this growth management tool is available.

DelDOT recognizes that the proposed use will generate relatively little traffic and that Kent County rezoned an adjoining parcel to BG relatively recently. However, they cannot support the creation of additional commercial zoning in a Level 4 area. The

County Code permits the development of a “Butcher Shop” as a conditional use in AC districts. If the County finds it appropriate to permit the proposed use, we suggest that the best way to do that might be to treat the proposed fish market as a butcher shop and to permit it by conditional use rather than by rezoning.

If the County approves the proposed use, either by rezoning or by conditional use, the applicant should contact our Central District Public Works Engineer, Mr. Brad Saborio, to obtain a commercial entrance permit. Mr. Saborio may be reached at (302) 760-2416.

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

General Comment

The DNREC does not support this zoning change from agricultural to commercial in an Investment Level 4 area as defined by the *Strategies for State Policies and Spending*, and agree with other State agencies that a Conditional Use permit would be more appropriate in this situation/location.

Water Supply

The project information sheets state that water will be provided to the project by an existing individual on-site well. Our records indicate that the project site is not located in an area where public water service is available. 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.

Floodplains

The entire property is located within a FEMA Special Flood Hazard Area (Zone AE 10). The application states it is not in a floodplain. Any new structures on the property would have to comply with Kent County's Floodplain Ordinance.

Sediment and Erosion Control/Stormwater Management

In the event that more than 5,000 square feet of land is disturbed, a stormwater and erosion control plan will be required. The plan review and approval as well as construction inspection will be coordinated through Kent Conservation District. Contact Jared Adkins, Program Manager, at (302) 741-2600, ext. 3, for details regarding submittal requirements and fees.

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

The State Fire Marshal's Office has no objections to the rezoning request. If the rezoning request is granted, you should contact the State Fire Marshal's Office to discuss the project.

Department of Agriculture - Contact: Scott Blaier 698-4500

The Department is opposed to rezoning a parcel in this area from AC to BN. This parcel is located in an area designated as Investment Level 4 under the *Strategies for State Policies and Spending*. The *Strategies* do not support this type of zoning in areas such as these. 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 development which conflicts 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.

The Department is opposed to permanently rezoning the property because it might allow a land use inconsistent with the surroundings after you no longer own the property. However, the Department would support Kent County granting a conditional use permit to you to distribute the seafood you catch to a small number of customers. If the current conditional

use categories do not include the use you are seeking, the Department would further support the County amending their code to accommodate the use you propose.

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

Because this rezoning request has 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