



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

February 25, 2008

Mr. Ken Christenbury  
Axiom Engineering  
18 Chestnut Street  
Georgetown, DE 19947

RE: PLUS review – 2008-01-03; Hampden Park

Dear Mr. Christenbury:

Thank you for meeting with State agency planners on January 30, 2008 to discuss the proposed plans for the Hampden Park project to be located on the south side of the intersection of SCR 382 and SCR 388.

According to the information received, you are seeking a rezoning 1.85 acres from GR to B1 for a 15, 424 sq. ft. neighborhood business 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 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.

This proposal is located in Investment Level 4 according to the *Strategies for State Policies and Spending*, and is within the Low Density area according to the Sussex County certified comprehensive plan. **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: Bryan Hall 739-3090**

This project represents a major land development that will result in 15,424 sq. ft. of commercial space in an Investment Level 4 area according to the *2004 Strategies for State Policies and Spending*. This proposal is located in Investment Level 4 according to the *Strategies for State Policies and Spending*, and is within the Low Density area according to the Sussex County 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 areas. 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 will bring commercial space to an area where the State has no plans to invest in infrastructure upgrades or additional services. To provide some examples, the State government funds 100% of road maintenance and drainage improvements for the transportation system, n paratransit services, and about 90% of the cost of police protection in the unincorporated portion of Sussex County where this development is proposed. Over the longer term, the unseen negative ramifications of this development will become even more evident as the community matures and the cost of maintaining infrastructure and providing services increases.

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: Terrance Burns 739-5685**

At this time, there is no indication of a known historic and cultural resource, archaeological site, or national register listed property on this project area, but there is a known historic and cultural resource nearby or very close to this project area. This historic and cultural resource is a late 19th-century or early to mid 20th-century house along with scattered outbuildings (S-2024).

Another historical aspect is that according to the Beers Atlas of 1868, this project area appears to be within the area or vicinity of Baltimore Hundred, and there is a variety of historical attributes or aspects within that particular area or vicinity of Baltimore Hundred. Also according to the Beers Atlas of 1868, it appears that there was a dwelling of some type very close to where the project area (parcel/property) is today, and that dwelling was associated or affiliated with someone by the name of N. Tunnel. It is a possibility that there could probably be potential historic and cultural resources or potential archaeological resources associated with that dwelling or related to that dwelling.

In addition, it is extremely important to remember and be aware that this project area is in a Level-4 area. Level-4 areas are often or usually environmentally sensitive areas, and sometime there area historical attributes or aspects within these types of environmental sensitive areas. The State Historic Preservation Office of the Division of Historical & Cultural Affairs is not in favor of any type of zoning change, construction, building project, or development in Level-4 areas.

Since this project area is in a location where there are some historical attributes or aspects, it is also an indication that it is a possibility that there could probably be potential historic and cultural resources or potential archaeological resources on or within this project area. The potential historic and cultural resources or potential archaeological resources could a cemetery, burial ground, unmarked human remains, or some other type of hidden contents or remains, which has historical attributes or aspects.

Prior to any type of ground-disturbing activities, demolition, or construction, the developer show review Chapters 53 and 54, in Title 7, of the Delaware State Code. Chapter 53 pertains to the discovery and disposition of “Conservation of Archaeological Resources In or On State Lands”. Chapter 54 pertains to the “Delaware Unmarked Human Remains Act of 1987”, such as the discovery and disposition of Unmarked Human Burials or Skeletal Remains”. The unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out.

Also prior to any type of ground-disturbing activities, demolition, or construction, the developer may want to hire an archaeological consultant to check and examine the project area thoroughly. The purpose for this is to make sure that there is no indication or evidence of a potential historic and cultural resource or potential archaeological resource such as a cemetery, burial ground, unmarked human remains, or some other type of hidden contents or remains, which has historical attributes or aspects.

**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 their 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. DelDOT encourages the use of transfer of development rights where this growth management tool is available.

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. Of particular concern are the increase in impervious cover, the loss/fragmentation of forest (1.8 out of 1.8 acres or 100%), and tax ditch rights-of-way. 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.

### **Soils**

According to the Sussex County soil survey update, Klej and Mullica were mapped in the immediate vicinity of the proposed construction. Klej is a somewhat poorly-drained wetland associated (hydric) transitional soil likely to contain both upland and wetland soil components. Mullica is a very poorly-drained wetland associated (hydric) soil that has severe limitations for development, and should be avoided. Approximately 70% +/- of the soils mapped on subject parcel are mapped as Mullica.

### **Wetlands**

According to the Statewide Wetland Mapping Project (SWMP) maps, palustrine scrub-shrub wetlands were mapped over much of subject parcel.

Impacts to Palustrine wetlands are regulated by the U.S. Army Corps of Engineers (USACE, or "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 Management Program (DCMP) Section. Each of these certifications represents a separate permitting process. Please be advised that

Nationwide permits have been suspended in Delaware and are pending further coordination with the Corps. Therefore, contrary to past practices, Coastal Zone Management approval can no longer be assumed. Individual certifications must be granted from the DCMP office for each project intending to utilize a Nationwide Permit. For more information on the Federal Consistency process, please contact the DCMP office at 302.739.9283. 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.

Based on a review of existing buffer research by Castelle et al. (1994), an adequately-sized buffer that effectively protects wetlands and streams, in most circumstances, is about 100-foot in width. In recognition of this research and the need to protect water quality, the Watershed Assessment Section recommends that the applicant maintain/establish a minimum 100-foot upland buffer (planted in native vegetation) from the landward edge of all wetlands and water bodies (including all ditches).

As mentioned previously, this parcel is mostly comprised of very poorly-drained hydric Mullica soils (estimated 70%). Hydric soils typically have a seasonal high water table at or near the soil surface (within one-foot of soil surface or less). Building in such soils is likely to leave prospective residents of this and adjoining properties susceptible to future flooding problems from groundwater-driven surface water ponding, especially during extended periods of high-intensity rainfall events such as tropical storms/hurricanes or "nor'easters." This is in addition to increased flooding probabilities from surface water runoff emanating from future created forms of structural imperviousness (roof tops, roads, sidewalks, and stormwater management structures).

Based on the Chapter 99, Section 16A of the Sussex County Code (paraphrased), lands compromised by improper drainage or flooding potential pose significant threats to the safety and general welfare of future residents and, therefore, shall not be developed. Soils mapped as Mullica fit the criterion for improper drainage or high flooding potential, and should be avoided. The Watershed Assessment Section believes permitting development on such soils would be inconsistent with above-mentioned regulatory guidelines in the Sussex County Code.

### **Impervious Cover**

Based on information provided by the applicant in the PLUS application form, the applicant's projected estimate of post-construction surface imperviousness should not exceed 70 percent. However, given the scope and density of this project, this estimate appears to be a significant underestimate (appears likely to exceed 90%). The applicant

should realize that all forms of constructed surface imperviousness (i.e., rooftops, sidewalks, open-water stormwater management structures, and roads) should be included in the calculation for surface imperviousness; this will ensure a realistic assessment of this project's likely post-construction environmental impacts. Since it is apparent that the applicant's estimate for surface imperviousness is a significant underestimate of their project's actual post-construction impacts, this estimate should be recalculated to include all of the above-mentioned forms of constructed surface imperviousness. Failures to do so will significantly understate this project's true environmental impacts.

Studies have shown a strong relationship between increases in impervious cover to decreases in a watershed's overall water quality. It is strongly recommended that the applicant implement best management practices (BMPs) that reduce or mitigate some of its 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 help reduce surface imperviousness.

### **ERES Waters**

This project is located adjacent to receiving waters of the Little Assawoman Bay designated as having waters of Exceptional Recreational or Ecological Significance (ERES). ERES waters are recognized as special assets of the State, and shall be protected and/ or restored, to the maximum extent practicable, to their natural condition. Provisions in Section 5.6 of Delaware's "Surface Water Quality Standards" (as amended July 11, 2004), specify that all designated ERES waters and receiving tributaries develop a "pollution control strategy" to reduce non-point sources of pollutants through implementation of Best Management Practices (BMPs). Best Management Practices as defined in subsection 5.6.3.5 of this section, expressly authorizes the Department to provide standards for controlling the addition of pollutants and reducing them to the greatest degree achievable and, where practicable, implementation of a standard requiring no discharge of pollutants.

### **TMDLs**

Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been promulgated through regulation for the Little Assawoman watershed. A TMDL is the maximum level of pollution allowed for a given pollutant below which a "water quality limited water body" can assimilate and still meet water quality standards to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. Although TMDLs are required by federal law, states are charged with

developing and implementing standards to support these desired use goals. The TMDL nutrient reduction requirements for the Little Assawoman watershed require a 40 percent reduction in nitrogen and phosphorus. Additionally, the TMDL reduction requirement for bacteria is also 40 percent.

### **Compliance with TMDLs through the PCS**

As stated above, Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been promulgated through regulation for the Little Assawoman watershed. The TMDL calls for a 40% reduction in nitrogen and phosphorus from baseline conditions. Additionally, a 40 % reduction in bacteria will also be required from baseline conditions. Additional nutrient reductions may be possible through the implementation of Best Management Practices such as wider vegetated buffers along watercourses or ditches, increasing passive, wooded open space, use of pervious paving materials to reduce surface imperviousness, and the use of green-technology stormwater management treatment trains. The Department has developed an assessment tool to evaluate how your proposed development may reduce nutrients to meet the TMDL requirements. Contact Lyle Jones at 302-739-9939 for more information on the assessment tool.

### **Water Supply**

The project information sheets state water will be provided to the project by Artesian Water Company via a public water system. 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 04-CPCN-23.

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 a Large On-Site Septic System

associated with Twin Cedars Apartment within 1000 feet of the proposed project, located towards the Eastern part of the property.

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

### **Sediment and Erosion Control/ Stormwater Management**

A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. Contact the reviewing agency to schedule a pre-application meeting to discuss the sediment and erosion control and stormwater management components of the plan as soon as practicable. The site topography, soils mapping, pre- and post-development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion. The plan review and approval as well as construction inspection will be coordinated through the Sussex Conservation District. Contact Jessica Watson at the Sussex Conservation District at (302) 856-7219 for details regarding submittal requirements and fees.

Because of the parcel's location in an impaired watershed and the amount of impervious surface, consider incorporating more green technology BMPs and low impact development practices to reduce stormwater flow and to meet water quality goals.

The Sediment and Stormwater Management Program ensures sediment and erosion control plans and stormwater plans comply with local land use ordinances and policies, including the siting of stormwater management facilities. However, we do not support placement in resource protection areas or the removal of trees for the sole purpose of placement of a stormwater management facility/practice.

### **Drainage**

- This project is located within the Batson Branch Tax Ditch. Tax Ditch right-of-way for Prong 1 of the Batson Branch Tax Ditch is located on this property. Any change to the existing tax ditch rights-of-way will require a change to the Batson Branch Tax Ditch court order. Please contact the Drainage Program in Georgetown at (302) 855-1930 to request a determination of the tax ditch rights-of-way for this property.

- Contact Jessica Watson at the Sussex Conservation District at (302) 856-7219 to schedule a pre-application meeting for this project and include Brooks Cahall of the Drainage Program.
- 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.
- 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.

### **Forest Preservation**

The project area, although small, is part of a larger forest block and will result in fragmentation and clearing of part of a forested area. Cumulative forest loss throughout the State is of utmost concern to the Division of Fish and Wildlife which is responsible for conserving and managing the State's wildlife (see [www.fw.delaware.gov](http://www.fw.delaware.gov) and the Delaware Code, Title 7). To reduce impacts to nesting birds and other wildlife species that utilize forests for breeding, we recommend that clearing not occur April 1st to July 31st. This clearing recommendation would only protect those species during one breeding season; once trees are cleared the result is an overall loss of habitat.

### **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. ***This Agency has no objection to the re-zoning request.*** 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.statefiremarshal.delaware.gov](http://www.statefiremarshal.delaware.gov), technical services link, plan review, applications or brochures.

**Department of Agriculture - Contact: Scott Blaier 698-4500**

The proposed rezoning is in an area designated as Investment Level 4 under the *Strategies for State Policies and Spending*. The *Strategies* do not support this type of isolated development in this area. 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 the proposed 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.

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. Public investments in areas such as this are best directed to agricultural and forestry preservation.

The developer should coordinate with Sussex County to ensure their project is in compliance with the County's forested buffer requirements.

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. To further support this concept the Delaware Forest Service does not recommend the planting of the following species due to the high risk of mortality from insects and disease:

Callery Pear  
Leyland Cypress

Ash Trees  
Red Oak (except for Willow Oak)

If you would like to learn more about the potential problems or impacts associated with these trees, please contact the Delaware Forest Service for more information at (302) 698-4500.

### *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**

DOE recognizes that this development project is in level 4 of the State Strategies for Policies and Spending and as such, DOE does not support the approval of this project. This proposed project is in the Indian River School District. This is a rezoning request and review for commercial use. This rezoning request and site plan review is commercial in nature with no apparent impact on educational service delivery or infrastructure and, as such DOE has no further comments regarding this request.

### **Sussex County – Contact: Richard Kautz 855-7878**

This year Sussex County will be considering implementation of a Source Water Protection Program required by the State. Depending on the requirements adopted by the County Council this project might be affected. Any public use well location should insure that the wellhead protection area is entirely on site.

While the request is for rezoning, the developer should be aware that the Sussex County Zoning Ordinance Section 115-166 C states, "Parking within front yard setback shall be discouraged and subject to site plan review." The Planning and Zoning Commission is reluctant to approved parking in the front setback and so the design should be revised to show compliance with the setback requirement. Consideration should be given to

following the suggestions contained in the State's Better Models publication for commercial development.

The Sussex County Engineer Comments:

The project proposes a rezoning for neighborhood business, retail, and convenience on 1.85 acres. The sewer planning study assumption for the parcel is 1.0 EDU, reflecting a single-family residential parcel in a residential subdivision. The Sussex County Engineering Department opposes this rezoning because of the potential for increased wastewater flow from commercial uses. The parcel is within the boundaries of the Johnson's Corner Sanitary Sewer District (JCSSD). The preliminary schedule indicates sewer service could become available to the area as early as the summer of 2010. The parcel will receive sewer service when Sussex County completes the area's transmission system and the developer installs the collection system to serve parcels in Hampden Park.

The developer of Hampden Park will be required to complete or participate in offsite sewer construction and upgrades, at the developer's expense. Conformity to the South Coastal Area Planning Study 2005 Update and the Johnson's Corner Sanitary Sewer District Preliminary Engineering Report will be required.

Sussex County requires design and construction of the collection and transmission system to meet Sussex County Engineering Department's sewer standards and specifications. The Sussex County Engineer must approve the connection point. A sewer concept plan must be reviewed and approved prior to any sewer construction. A checklist for preparing sewer concept plans was handed out at the PLUS meeting. Also, please note system connection charges will be required. Please contact Mrs. Christine Fletcher at 302 854-5086 for additional information on charges.

For questions regarding these comments, contact Rob Davis, Sussex County Engineering Department at (302) 855-7820.

**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