STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
Budget Development, Planning and Administration
State Planning Coordination

May 18, 2009

James H. Willey
George, Miles, & Buhr, LLC
206 West Main Street
Salisbury, MD 21801

RE: PLUS review – 2009-04-06; Townsend Village Centre

Dear Mr. Willey:

Thank you for meeting with State agency planners on April 22, 2008 to discuss the proposed plans for the Townsend Village Centre project to be located on Gills Neck Road at Kings Highway adjacent to the City of Lewes.

According to the information received, you are seeking a rezoning and site plan approval through Sussex County for a 387,000 sq. ft. commercial 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.

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

- This proposed rezoning is located in Investment Level 3 according to the Strategies for State Policies and Spending, the Environmental Sensitive Development District as defined by the certified 2008 Sussex County Comprehensive Land Use Plan and the Area of Future Growth and Concern for the City of Lewes. An Investment Level 3 reflects areas where local, county, and state government comprehensive plans anticipates growth in the longer term future and which may have environmental or other constraints to development. The State will support investments for future growth in these areas; however, given the current state of the State, the State as a whole or specific state agencies may have reestablish their priorities in the near term future which may result in possible limitations of funding to support a potential projected supported by the rezoning of this site.

Street Design and Transportation

- The proposed entrance on Kings Highway at Clay Road appears to be under-designed.

- The DelDOT review recommended that a two-lane connector road be provided through the site from the Kings Highway entrance opposite Clay Road to the Gills Neck Road entrance.

Natural and Cultural Resources

- DNREC's chief concern is the percentage of impervious cover in an area that includes the City of Lewes' well fields. While they believe the developer adequately estimates impervious cover for the project, this amount – added to the existing impervious cover of the Cape Henlopen High School – has the potential to reduce ground-water recharge of the city's well field. The field consists of a series of shallow public wells that draw water from the shallow unconfined aquifer that receives recharge directly from precipitation. Maintenance of water levels in this aquifer is critical to this coastal community due to long-term risks of salt water intrusion.

This office has received the following comments from State agencies:

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

This proposed rezoning is located in Investment Level 3 according to the Strategies for State Policies and Spending, the Environmental Sensitive Development District as defined by the certified 2008 Sussex County Comprehensive Land Use Plan and the Area of Future Growth and Concern for the City of Lewes. An Investment Level 3 reflects areas where local, county, and state government comprehensive plans anticipates growth in the longer term future and which may have environmental or other constraints to development. The State will support investments for future growth in these areas; however, given the current state of the State, the State as a whole or specific state agencies may have reestablish their priorities in the near term future which may result in possible limitations of funding to support a potential projected supported by the rezoning of this site.

In addition, this parcel is adjacent to the City of Lewes and within Area of Future Growth and Concern for the City of Lewes as defined within the City's current comprehensive land use plan. As part of the City's efforts to implement this current comprehensive plan, the City continues to work with Sussex County to address the type of land use activities that may occur in this area of the County to preserve the quality of life for City residents. As part of this effort, the City has sent a letter expressing their concerns regarding this project (copy attached).

Finally, since this rezoning was seen through the PLUS Process this office has received a letter from the Honorable Joseph Booth, State Representative for the 27th district outlining his efforts in cooperation with other state legislators to conduct a Traffic Impact Study for the City of Lewes area to address the impacts of the various land use activities that could be supported by this rezoning. By copy of these letters to Sussex County and given these circumstances, the County should consider tabling this project until the results of that study are completed and we urge the County to work with the City to resolve these issues before any approvals are given.

State Historic Preservation Office (SHPO) – Contact: Terrence Burns 739-5685

The role of the Division of Historical & Cultural Affairs in the Preliminary Land Use Service (PLUS) process is to provide information on the potential affect or impacts that a development or construction project may have on historic or cultural resources, and is an advocate for their protection. These historic or cultural resources can be a historic property, building, structure, landscape, district, object, archaeological site, cemetery, burial ground, or unmarked human remains.

Development projects, whether they are big or small, or whether they are located in rural areas or urban areas, have the capability to impact historic or cultural resources. In some cases, many of them, such as architectural resources and archaeological sites have been adversely affected by development projects through the demolition or ground-disturbing

activities. These resources are also irreplaceable and quite valuable because of the important information they can provide about our state's past and a visual connection to our state's heritage.

In accordance with the Preliminary Land Use Service (PLUS) outlined in Chapter 92 of Title 29 of the Delaware Code, here are the observations in reference to this PLUS Review Application. In addition, all of the information provided in reference to these observations is according to the archival resources or reference materials of the State Historic Preservation Office, which is the central research repository of the Division of Historical and Cultural Affairs.

This parcel includes the S. P. Houston House (S-219; Beers Atlas of 1868). The house itself has been demolished already, but some outbuildings remain. There are areas of high potential for prehistoric archaeological remains here. The developer is including a conservation area along the creek which will help to protect any potential sites here. We commend the developer for including this generous natural and cultural conservation area in his plans.

Small, rural, family cemeteries often are found in relation to historic farm complexes, such as the Houston House, usually a good distance behind or to the side of the house. The developer is 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 is approved. We would have to have a copy of any archaeological report done for this purpose. We will be happy to discuss these issues with the developer. If you have any questions, or would like to discuss this information further, please contact Terence Burns at (302) 736-7404.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

LT Associates, LLC proposes to develop a 387,000 square foot shopping center on a 68.3-acre parcel (part of Tax Parcel 3-35-12.00-3.00). The land is located on the southeast corner of King's Highway (US Route 9) and Gills Neck Road (Sussex Road 267). A rezoning from AR-1 to CR-1 would be required to permit the proposed development.

1) In January 2008, following discussions with the developer, the Delaware River and Bay Authority, the City of Lewes and Sussex County, DelDOT sent the County a review letter commenting on a May 2006 traffic impact study (TIS) prepared for the subject development and the adjoining Governors multi-family development. While the land uses for both developments have changed since the TIS was submitted, they are sufficiently similar that the January 2008 letter remains valid. A copy is available on request.

2) Most of the recommendations in the January 2008 letter, mentioned above, concern off-site improvements, which will need to be coordinated with the developer and addressed by agreements and/or plan notes. Two of the recommendations, however, would require significant changes to the plan and therefore should be mentioned now.

First, the proposed entrance on Kings Highway at Clay Road appears to be under-designed. The review of the TIS recommended four lanes exiting the site: two left, one through, and one right, but it appears that only one or two are shown. Also, the review recommended that the left turn lanes exiting the site each be 550 feet long, but less than 500 feet is provided. With the entrance design shown, DelDOT would expect significant congestion within the site during peak hours.

Second, the DelDOT review recommended that a two-lane connector road be provided through the site from the Kings Highway entrance opposite Clay Road to the Gills Neck Road entrance. To provide the type of road with a sufficiently direct alignment would require either relocation of the proposed anchor store and a redesign of the site or a redesign of the already-approved Governors development. Some of the same function could be preserved by reworking the westernmost aisle parallel to Kings Highway to widen it and close off some of the parking aisles. Doing that would benefit the residents of Governors but would not have the same benefit to Kings Highway traffic as the road they recommended.

3) DelDOT recommends that one additional access point be provided along the aisle leading in from Kings Highway to serve the south part of the shopping center. While we would consider granting one further entrance along Kings Highway (allowing right turns in and out) to serve the future expansion, the only signalized access for this part of the center, and probably the only left turn access, would be at Clay Road.

4) DelDOT recommends that the developer contact our Subdivision Manager for eastern Sussex County, Mr. John Fiori, for more detailed comments on the site access. He may be reached at (302) 760-2260.

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

DNREC's chief concern is the percentage of impervious cover in an area that includes the City of Lewes' well fields. While they believe the developer adequately estimates impervious cover for the project, this amount – added to the existing impervious cover of the Cape Henlopen High School – has the potential to reduce ground-water recharge of the city's well field. The field consists of a series of shallow public wells that draw water from the shallow unconfined aquifer that receives recharge directly from precipitation. Maintenance of water levels in this aquifer is critical to this coastal community due to long-term risks of salt water intrusion.

Fish and Wildlife

Rare Species

DNREC field scientists have not surveyed this project area; therefore, we are unable to provide information pertaining to the existence of state-rare or federally listed plants, animals or natural communities at this project site. In the absence of site-specific information, they offer the following comments:

Rare species have been documented downstream within the forested buffer along Pot Hook Creek and Wolfe Glade. Forested habitat along the creek protects water quality by filtering run-off, minimizing bank erosion, and providing shade that moderates water temperature so it is suitable for spawning. Forested riparian habitat also provides vital breeding areas for wetland dependent species and is utilized by wildlife for resting, foraging and as a travel corridor between habitats. Because cumulative impacts are of concern considering the number of developments (and proposed developments) adjacent to the creek we offer the following recommendations:

Recommendation:

According to the PLUS application form, the existing forested buffer along Pot Hook Creek will be left intact; however, it is not specified how wide the buffer will be if the area "reserved for future expansion/stormwater management" is developed. DNREC highly recommends that at least a 100-foot (preferably 300 feet) buffer is preserved along the creek to protect sensitive rare species, protect water quality and maintain a wildlife habitat along the creek.

Mosquito Control

Development projects within 2-5 miles of large expanses of salt marshes or brackish wetlands can often lead to increased demands for mosquito control services, going beyond what DNREC's Mosquito Control Section currently has the budget or resources to provide. State, county and/or local governments should be prepared to deal with increased budget demands for mosquito control services when approving developments that could potentially have mosquito issues.

Additionally, even though the EPA has scientifically determined that EPA-registered mosquito control insecticides can be applied "without posing any unreasonable risks to human health, wildlife or the environment" (when used in accordance with all product label instructions), avoiding or reducing the use of such pesticides should be employed whenever possible.
For more information about this issue, the applicant can contact Dr. Bill Meredith, Mosquito Control Administrator at (302) 739-9917. *Edna Stetzar - (302) 653-2880, Edna.Stetzar@state.de.us*

Soil and Water

Sediment and Stormwater Program. 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) 856-2105 for details regarding submittal requirements and fees.

Because of the parcel's location in an impaired watershed and the amount of impervious surface, green technology BMPs and low-impact development practices should be considered a priority to reduce stormwater flow and to meet water quality goals.

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 onsite stormwater. 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.

Sediment/Stormwater and Drainage comments provided by James Sullivan - (302) 739-9921, James.Sullivan@state.de.us

Water Resources

Soils Assessment. Based on the NRCS soil survey update Greenwich (GrA), Downer (DoB), Fort Mott (FmB), Hurlock (HvA), and Manahawkin (Ma) were mapped in the immediate vicinity of the proposed construction. The soils mapped as Greenwich, Downer and Fort Mott are well-drained upland soils that, generally, have few limitations for development. Hurlock and Manahawkin are poorly to very poorly-drained wetland associated (hydric) soils that have severe limitations for development, and should be avoided.

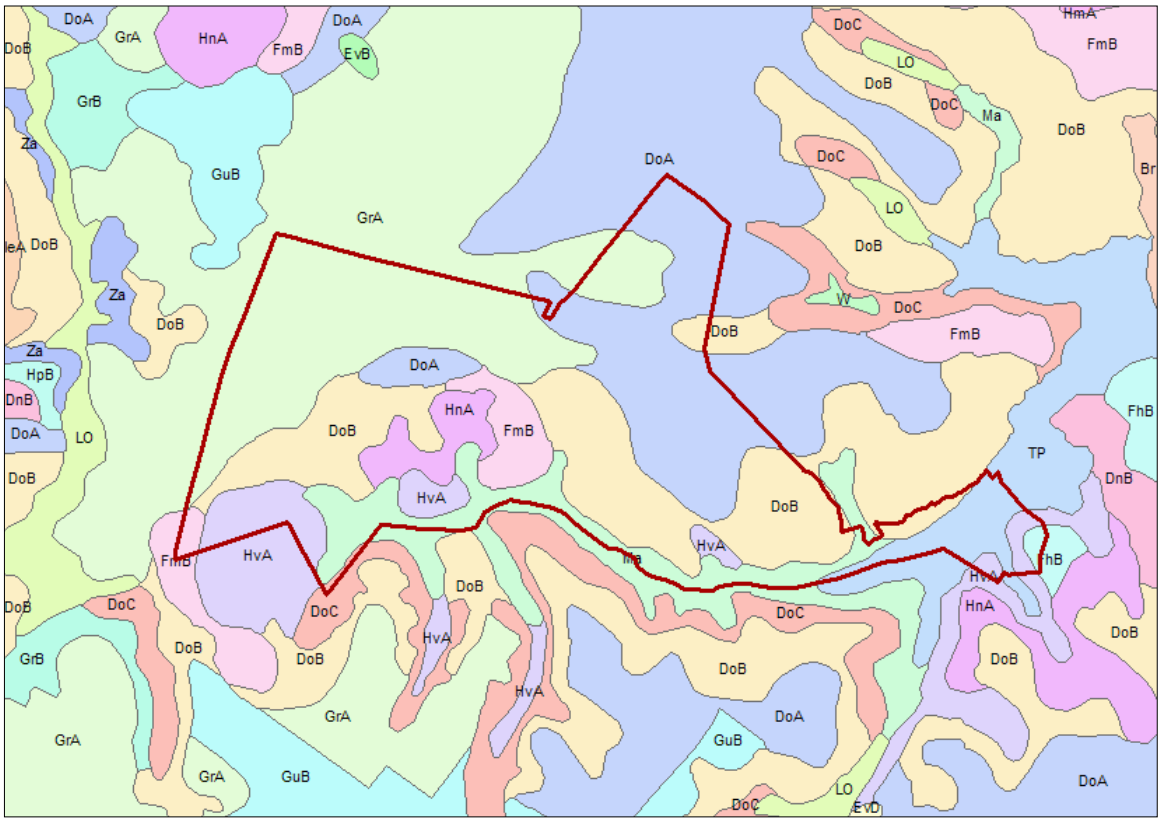


Figure 1: NRCS soil survey update mapping in the immediate vicinity of the Townsend Village Centre project phase.

Wetlands. Based on the Statewide Wetland Mapping Project (SWMP) maps, palustrine emergent riparian (PEM1A7) and palustrine forested riparian wetlands (PFO1/4A) were mapped along the southern boundary of subject parcel in the immediate vicinity of the proposed project (Figure 2).

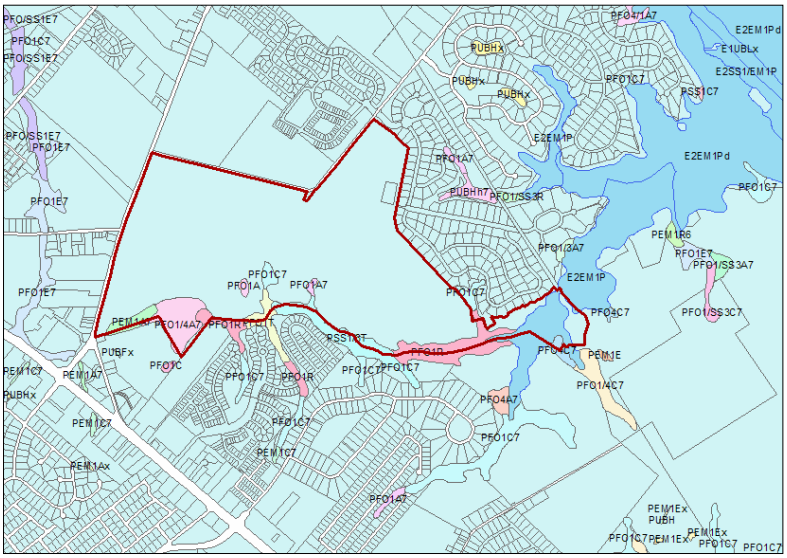


Figure 2: SWMP mapping in the immediate vicinity of the Townsend Village Centre project phase.

The applicant is responsible for determining whether any State-regulated wetlands (regulated pursuant to 7 Del.C. Chapter 66 and the Wetlands Regulations) are present on the property. This determination can only be made by contacting the Division of Water Resources' Wetlands and Subaqueous Lands Section at 302/739-9943 and consulting the State's official wetland regulatory maps, which depict the extent of State jurisdiction. The area regulated by State law may be very different from the area under federal authority. No activity may take place in State-regulated wetlands without a permit from DNREC's Wetlands Section.

In addition, most perennial streams and ditches and many intermittent streams and ditches are regulated pursuant to the Subaqueous Lands Act (7 Del.C. Chapter 72) and the Regulations Governing the Use of Subaqueous Lands. Ponds which are connected to other waters are also regulated, while isolated ponds are not. Any work in regulated streams, ditches or ponds requires a permit from the Wetlands and Subaqueous Lands Section. An on-site jurisdictional determination is recommended in order to determine whether any regulated watercourses exist on the property. Please contact the Wetlands and Subaqueous Lands Section at 302/739-9943 to schedule an on-site visit**.** Such appointments can usually be scheduled within 2 to 3 weeks.

The applicant should also be reminded that they must avoid construction/filling activities in those areas containing wetlands or wetland associated hydric soils as they are subject to regulatory jurisdiction under Federal 404 provisions of the Clean Water Act. A site-

specific field wetlands delineation using the methodology described in the 1987 United States Army Corps of Engineers (USACE or "the Corps") manual is the acceptable basis for making a jurisdictional wetland determination for nontidal wetlands in Delaware. The applicant is forewarned that the Corps views the use of the National Wetlands Inventory (NWI) mapping or the Statewide Wetlands Mapping Project (SWMP) mapping as an unacceptable substitute for making such delineations. To ensure compliance with said Corps regulatory requirements, it is strongly recommended that a field wetlands delineation using the above-referenced methodology be performed on this parcel before commencing any construction activities. It is further recommended that the Corps be given the opportunity to officially approve the completed delineation. In circumstances where the applicant or applicant's consultant delineates what they believe are nonjurisdictional isolated (SWANCC) wetlands, the Corps must be contacted to evaluate and assess the jurisdictional validity of such a delineation. The final jurisdictional authority for making isolated wetlands determinations rests with the Corps; they can be reached by phone at 736-9763.

Based on a review of existing buffer research by Castelle et al. (Castelle, A. J., A. W. Johnson and C. Conolly. 1994. *Wetland and Stream Buffer Requirements – A Review.* J. Environ. Qual. 23: 878-882), an adequately-sized buffer that effectively protects wetlands and streams, in most circumstances, is about 100 feet 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 all water bodies, including the riparian wetlands that bound the southern portion of this parcel.

Impervious Surfaces and Best Management Practices. The applicant estimates this project's post-construction surface imperviousness to reach only about 59 percent. When calculating surface imperviousness it is important to include all forms of constructed surface imperviousness, such as all paved surfaces including rooftops, sidewalks, driveways, and roads; open-water stormwater management structures and/or ponds; and community wastewater systems (if applicable); this will ensure a realistic assessment of this project's likely post-construction 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 this project's 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.

TMDLs. Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been promulgated through regulation for the Inland Bays 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.

This project is located in the low nutrient reduction area requiring a 40 percent reduction in nitrogen and phosphorus; a 40 percent reduction in bacteria is also required. Additional nutrient reductions may be possible through the implementation of Best Management Practices such as wider vegetated buffers along watercourses (and wetlands), increasing passive, wooded open space, use of pervious paving materials to reduce surface imperviousness (i.e., pervious pavers), and the use of green-technology stormwater management technologies.

A Pollution Control Strategy (PCS) is an implementation strategy that identifies the actions necessary to systematically reduce the pollutant loading rate for a given water body, and meet the TMDL reduction requirements specified for that water body. As mentioned previously, the pollutants specifically targeted for reduction in the Inland Bays watershed are nutrients (e.g., nitrogen and phosphorus) and bacteria. A variety of site-specific best management practices (BMPs) will be the primary actions required by the PCS to reduce pollutant loadings. The PCS for the Inland Bays was approved on November 11, 2008, and is now an enforceable regulatory directive.

The Department has developed an assessment tool that will help evaluate whether your proposed development meets the required TMDL nutrient reduction requirements specified by the PCS. Contact Lyle Jones at 302-739-9939 for more information on the PCS and the assessment tool.

Soils, wetlands, subaqueous lands and TMDL comments provided by John Martin, Watershed Assessment Section, (302) 739-9939, John.Martin@state.de.us

Water Supply. The project information sheets state water will be provided to the project by Tidewater Utilities via a public water system. Our records indicate that the project is located within the public water service area granted to Tidewater Utilities under Certificate of Public Convenience and Necessity 03-CPCN-12.

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. *Ricardo Rios - (302) 739-9944, Ricardo.Rios@state.de.us*

Water Resource Protection Areas. The DNREC Water Supply Section has determined that a significant portion of the proposed development falls within the wellhead protection area for the City of Lewes. Wellhead protection areas are surface and subsurface areas surrounding a public water supply well where land use activities or impervious cover may adversely affect the quantity and quality of ground water moving toward such wells. The review did not find any excellent groundwater recharge areas, (see attached map). The project lies within Sussex County. We acknowledges that Sussex County has a source water protection ordinance in place but we recommend that this project go beyond the requirements of the ordinance and consider our recommendations that will afford this resource additional and much needed protection.

The developer states on the PLUS application form that the proposed development would change the impervious over from 0% to approximately 59%. An ArcMap area calculation verifies that the approximate impervious cover will be 61%.

This amount of impervious cover added to the existing impervious cover of the Cape Henlopen High School has the potential to reduce ground-water recharge of the City of Lewes well field. The City of Lewes well field consists of a series of shallow public wells that draw water from the shallow unconfined aquifer that receives recharge directly from precipitation. Maintenance of water levels in this aquifer is critical to this coastal community due to long term risks of salt water intrusion.

Ideally, the impervious cover should not exceed 20%. The proposed development may exceed the 20% impervious cover threshold within the wellhead protection area, but be no more than 50% impervious, provided the applicant submits an environmental assessment report including a climatic water budget and systems to augment recharge that assure water quality as well as quantity. The environmental impact assessment must document that post-development recharge will be no less than predevelopment recharge when computed on an annual basis.

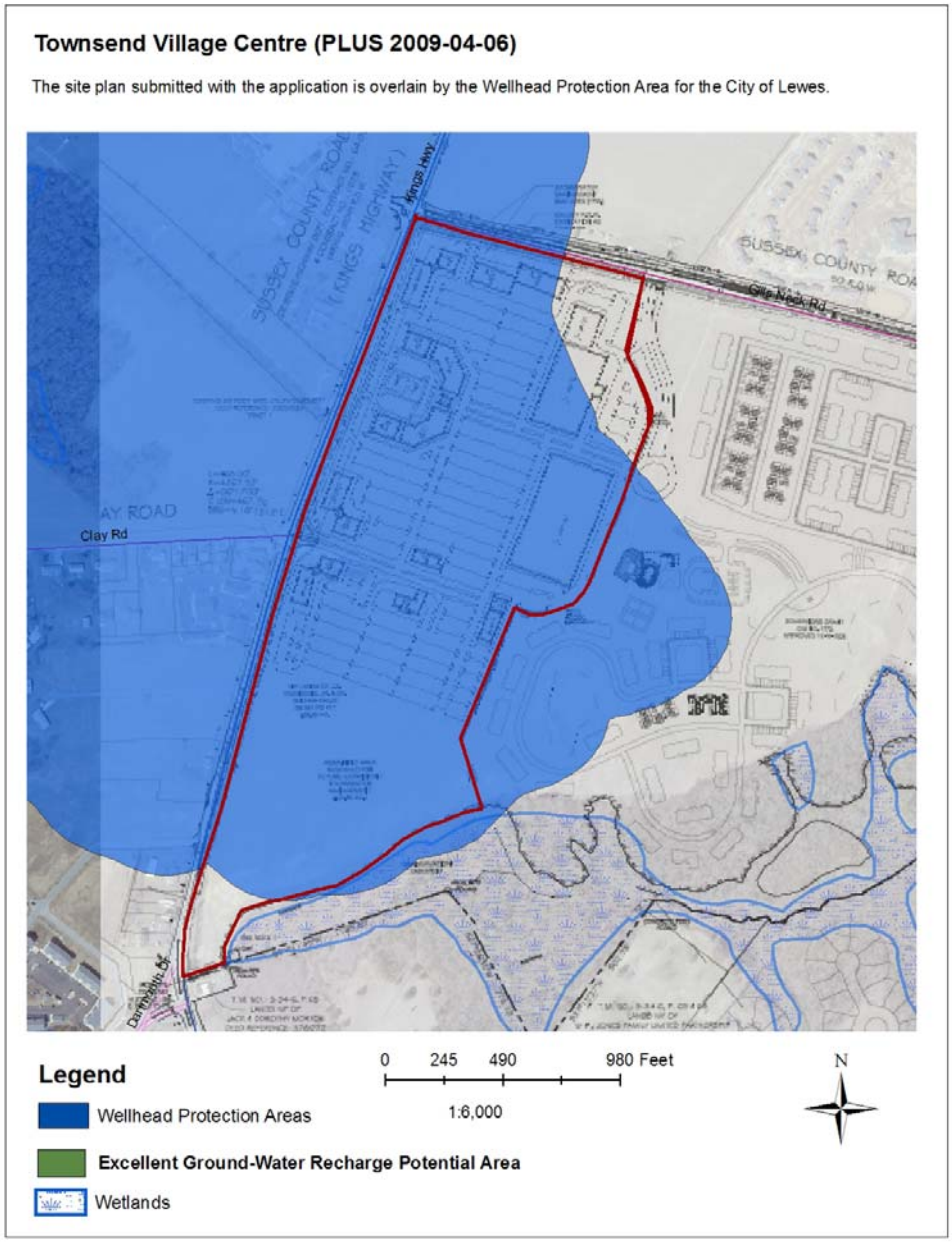
The applicant may offset the loss of recharge due to impervious cover by constructing recharge basins that convey pretreated rooftop runoff for infiltration to ground water. Refer to Supplement 1 entitled *Ground-Water Recharge Design Methodology*, dated May 2005 or later as revised for the details of how to design recharge facilities in Delaware source water protection areas. The applicant may also offset the loss of recharge by employing better management practices such as pervious cement or pavers.

Recommendation:

GPB recommends reducing impervious cover to 50% and perform an environmental assessment report prepared by a Delaware Registered Professional Engineer and/or Professional Geologist.

In addition, because the wellhead protection area is the source of public drinking water for the City of Lewes, 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.



Anne Mundel - (302) 739-9945, Anne.Mundel@state.de.us

Air and Waste

Hazardous Waste Sites. No SIRB sites or salvage yards were found within a ½-mile radius of the proposed development. However, based on the previous agricultural use of the proposed project site, which may have involved the use of pesticides and herbicides, SIRB recommends that a Phase I Environmental Site Assessment be performed prior to development. In addition, should a release or imminent threat of a release of hazardous substances be discovered during the course of development (e.g., contaminated water or soil), construction activities should be discontinued immediately and DNREC should be notified at the 24-hour emergency number (800-662-8802). SIRB should also be contacted as soon as possible at 302-395-2600 for further instructions. *Krystal Stanley - (302) 395-2644, Krystal.Stanley@state.de.us*

Tank Management Branch. There are three (3) inactive LUST sites located within a quarter mile from the proposed project.

Name: Cape Henlopen High School (Inactive)
Facility ID: 5-000894
Project: S9907129

Name: Mills Property (Inactive)
Facility ID: 5-000848
Project: S9703040

Name: Uni Mart #02008 (Inactive)
Facility ID: 5-000110
Project: S9706088

Should any underground storage tanks or petroleum contaminated soil be discovered by any person during construction, the DNREC-TMB at (302) 395-2500 and the DNREC Emergency Response Hotline at (800) 662-8802 must be notified within 24 hours.

Should any contamination be encountered, PVC pipe materials will have to be replaced with ductile steel and nitrile rubber gaskets in the contaminated areas.

Also, please note that if any aboveground storage tanks (ASTs) less than 12,500 gallons are installed, they must be registered with the TMB. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by the TMB. *Elizabeth Wolff - (302) 395-2500, Elizabeth.Wolff@state.de.us*

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):

a. **Fire Protection Water Requirements**:
   - Water distribution system capable of delivering at least 1500 gpm for 2-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers.
   - Where a water distribution system is proposed Mercantile sites, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.

b. **Fire Protection Features:**
   - All structures over 10,000 sq.ft. aggregate will require automatic sprinkler protection installed.
   - Buildings greater than 10,000 sq.ft., 3-stories or more, over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements
   - Show Fire Department Connection location must be within 300 feet of fire hydrant and detail as shown in the DSFPR.
   - Show Fire Lanes and Sign Detail as shown in DSFPR

c. **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 buildings from Kings Highway 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.
   - 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.

d. **Gas Piping and System Information:**
   - Provide type of fuel proposed, and show locations of bulk containers on plan.

e. **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
- Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units
- Square footage of each structure (Total of all Floors)
- National Fire Protection Association (NFPA) Construction Type
- Maximum Height of Buildings (including number of stories)
- Note indicating if building is to be sprinklered
- Name of Water Provider
- Letter from Water Provider approving the system layout
- Provide Lock Box Note (as detailed in DSFPR) if Building is to be sprinklered
- 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.statefiremarshal.delaware.gov, technical services link, plan review, applications or brochures.

Department of Agriculture - Contact: Scott Blaier 739-4811

The Delaware Department of Agriculture has no objections to the proposed rezoning request. The *Strategies for State Policies and Spending* encourages environmentally responsible development in Investment Level 3 areas.

The proposed development is adjacent to a property currently enrolled in the State's Agricultural Lands Preservation Program (Zwaanendael Expansion of the Hopkins Covered Bridge Agricultural District, (Parcel # 335-8.00-37.00). Therefore, the activities conducted on this preserved property will be protected by the agricultural use protections outlined in Title 3, Del. C., Chapter 9. These protections effect adjoining developing properties. The 300 foot notification requirement affects **all** **new deeds** in a subdivision located in whole or part within 300 feet of an Agricultural District. Please take note of these restrictions as follows:

§ 910. Agricultural use protections.

(a) Normal agricultural uses and activities conducted in a lawful manner are preferred and priority uses and activities in Agricultural Preservation Districts. In order to establish and maintain a preference and priority for such normal agricultural uses and activities and avert and negate complaints arising from normal noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm

operations, land use adjacent to Agricultural Preservation Districts shall be subject to the following restrictions:

(1) For any new subdivision development located in whole or in part within 300 feet of the boundary of an Agricultural Preservation District, the owner of the development shall provide in the deed restrictions and any leases or agreements of sale for any residential lot or dwelling unit the following notice:

This property is located in the vicinity of an established Agricultural Preservation District in which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities."

(2) For any new subdivision development located in whole or in part within 50 feet of the boundary of an Agricultural Preservation District, no improvement requiring an occupancy approval shall be constructed within 50 feet of the boundary of the Agricultural Preservation District.

(b) Normal agricultural uses and activities conducted in accordance with good husbandry and best management practices in Agricultural Preservation Districts shall be deemed protected actions and not subject to any claim or complaint of nuisance, including any such claims under any existing or future county or municipal code or ordinance. In the event a formal complaint alleging nuisance related to normal agricultural uses and activities is filed against an owner of lands located in an Agricultural Preservation District, such owner, upon prevailing in any such action, shall be entitled to recover reasonably incurred costs and expenses related to the defense of any such action, including reasonable attorney's fees (68 Del. Laws, c. 118, § 2.).

In addition, if any wells are to be installed, Section 4.01(A)(2) of the Delaware Regulations Governing the Construction and Use of Wells will apply. This regulation states:

(2) For any parcel, lot, or subdivision created or recorded within fifty (50) feet of, or within the boundaries of, an Agricultural Lands Preservation District (as defined in Title 3, Del. C., Chapter 9); all wells constructed on such parcels shall be located a minimum of fifty (50) feet from any boundary of the Agricultural Lands Preservation District. This requirement does not

apply to parcels recorded prior to the implementation date of these Regulations. However, it is recommended that all wells be placed the maximum distance possible from lands which are or have been used for the production of crops which have been subjected to the application of land applied federally regulated chemicals.

Section 1. Chapter 99, Code of Sussex Section 99-6 may also apply to this subdivision. The applicant should verify the applicability of this provision with Sussex County. This Section of the Code states:

G. Agricultural Use Protections.

(1) Normal agricultural uses and activities conducted in a lawful manner are preferred. In order to establish and maintain a preference and priority for such normal agricultural uses and activities and avert and negate complaints arising from normal noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations, land uses adjacent to land used primarily for agricultural purposes shall be subject to the following restrictions:

(a) For any new subdivision development located in whole or in part within three hundred (300) feet of the boundary of land used primarily for agricultural purposes, the owner of the development shall provide in the deed restrictions and any leases or agreements of sale for any residential lot or dwelling unit the following notice:

> "This property is located in the vicinity of land used primarily for agricultural purposes on which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities."

(b) For any new subdivision development located in whole or in part within fifty (50) feet of the boundary of land used primarily for agricultural purposes no improvement requiring and occupancy approval for a residential type use shall be constructed within fifty (50) feet of the boundary of land used primarily for agricultural purposes.

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.

Do Not Plant List

Due to the high risk of mortality from insects and disease, the Delaware Forest Service does not recommend planting any of the following species:

Callery Pear
Leyland Cypress
Red Oak (except for Willow Oak)
Ash Trees

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 Economic Development Office – Contact: Jeff Stone 672-6849

No comments were received regarding this application.

Delaware Division of Public Health- Health Promotion Bureau- Contact: Michelle Eichinger (302) 744-1011

Ensuring that new residential and commercial development incorporates pedestrian- and bicycle-friendly features allows people to travel by foot or by bicycle and promotes physical activity as part of daily routines. Regular physical activity offers a number of health benefits, including maintenance of weight and prevention of heart disease, type 2 diabetes and other chronic diseases.[1] Research shows that incorporating physical activity into daily routines has the potential to be a more effective and sustainable public health strategy than structured exercise programs. [2] This is particularly important considering about 65% of adult Delawareans are either overweight or obese. [3] This current obesity

crisis is also affecting children. Approximately 37% of Delaware's children are overweight or obese[4], which places them at risk for a range of health consequences that include abnormal cholesterol, high blood pressure, type 2 diabetes, asthma, depression and anxiety. [1]

In Delaware, as in other states across the nation, certain patterns of land use can act as a barrier to physical activity and healthy eating for children and adults alike. Examples of such barriers include neighborhoods constructed without sidewalks or parks and shopping centers with full-service grocery stores situated too far from residential areas to allow for walking or biking between them.

This proposed development is in a Level 2/3 area. Developing is such an area is consistent with the *Strategies for State Policies and Spending*. DPH is committed to the *Strategies* and therefore, does support development in the proposed area.

DPH supports new development in and around existing towns and municipalities where compact and mixed land use patterns facilitate physical activity. As a way to promote physical activity and access to healthy foods, we recommend that the following amenities be included in the Townsend Village Centre:

Amenities to encourage active transportation

- Ensure there are sidewalks, crosswalks and walking/bicycling paths connecting the neighboring residential developments (i.e. Governors multi-family project), especially with the Junction & Breakwater Hiking/Biking trail.
- Ensure safe connectivity with sidewalks, crosswalks and walking/bicycling paths within the commercial development.
- Designate bike paths to supplement the sidewalks already so that residents can travel by foot or by bicycle to the site. In addition, install bike racks in convenient and safe locations within the site.

Amenities to encourage recreation

- Designate open space for passive recreation. Amenities for passive recreation can include park benches, picnic tables, or a gazebo. Ensure safe connectivity to these amenities.

[1] Nemours Health and Prevention Services (2005). *Delaware Children's Health Chartbook*, Newark, DE.

[2] Active Living by Design. *Transportation Fact Sheet*. Retrieved May 17, 2007, from http://www.activelivingbydesign.org/fileadmin/template/documents/factsheets/Transportation_Factsheet.pdf.

[3] Delaware Health and Social Services (2008), *Division of Public Health, Behavioral Risk Factor Surveillance System (BRFSS), 1990-2007*.

[4] Nemours Health and Prevention Services (2007). *2006 Delaware Survey of Children's Health Descriptive Statistics Summary, Volume 1*.

Delaware State Housing Authority – Contact Valerie Miller 739-4263

No comments were received regarding this project.

Department of Education – Contact: John Marinucci 735-4055

This proposed project is in the Cape Henlopen School District. This rezoning request is commercial in nature.

This project very close to the Cape Henlopen High School Campus. The developer is encouraged to communicate with the Cape Henlopen School District Administration to coordinate construction activities with the school. The developer is also requested to work with the District regarding disruptive activities during State Testing week.

Sussex County – Contact: Richard Kautz 855-7878

Please refer to previous comments for PLUS 2007-03-11.

Site comments are not included because this is a rezoning application only. The revised site plan, while showing a smaller footprint for a smaller area than the earlier proposal, can be significantly modified to allow for any of the permitted uses if the rezoning is approved. The applicant is reminded about the adequate infrastucture requirement for "Large-scale uses" in a CR-1 District. See Chapter 115-83.3 A.

The Sussex County Engineer Comments:

The parcel is within the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and connection to the sewer system is mandatory. A project that does not exceed 410 EDUs would be within the capacity limits of the overall approved concept plan for the parcel. So long as the proposed project and the 24.80 acre “remaining area for future expansion” does not exceed a total of 410 EDUs as previously approved, there is adequate capacity in the sewer system. The project conforms to the West Rehoboth Planning Study and system design assumptions for sewer service.

A sewer concept plan for providing sewer service to the area, including this parcel, was previously approved. This plan requires extensive regional construction to be completed by the developer, with the added requirement to participate in and contribute funds to a necessary treatment plant upgrade in accordance with an approved sequence of construction. This information and requirements are detailed on the approved concept plan and in prior correspondence. The offsite forcemain, which will extend from Gills Neck Road to the treatment plant, must be fully operational before the Engineering Department will provide final approval of the project allowing sewer connections to begin. The developer has previously provided the contribution toward the treatment plant upgrade and that requirement is complete. A portion of the regional upgrades have been completed by the developer as well.

In addition to the above, the layout of the new proposal differs significantly from the original, and it is required that a revised concept plan for Townsend Village Centre be submitted for review and approval prior to the submittal of any construction plans. A checklist for preparing sewer concept plans is attached.

The proposed development will require a developer installed collection system in accordance with Sussex County's standard requirements and procedures. The Sussex County Engineer must approve the connection point. The current plan is different from the approved concept plan and a revised concept is required as noted above. The previously approved concept plan shall also be submitted with all future plan submittals.

Onetime System Connection Charges will apply. 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,

Constance C. Holland, AICP
Director

CC: Sussex County
City of Lewes

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET

May 6, 2009

The Honorable James L. Ford, III, Mayor
City of Lewes
P.O. Box 227
Lewes, DE 19958

RE: Letter dated April 27, 2009 - - Townsend Village

Dear Mayor Ford: Jim

This Office of State Planning is in receipt of your letter dated April 27, 2009 relative to Townsend Village Center. The office will include this information in our permanent record of this project as well as attaching it to the final PLUS letter sent to the applicant and the County.

After careful review of your concerns, staff has the following comments:

Under Delaware Code the Office of State Planning Coordination serves as a coordinator for State comments on land use projects over 50 residential units and/or 50,000 sq. ft. of commercial activity.

While I respect your request to delay our final letter regarding this project, the law prescribes 20 working days after the meeting to respond to the applicant, with a copy to the local jurisdiction, outlining our concerns and recommendations for the project unless the applicant agrees to a delay. Should the State not respond within the 20 days allowed by Del. Code, The State forfeits the opportunity to comment on the project.

BUDGET DEVELOPMENT, PLANNING AND ADMINISTRATION
STATE PLANNING COORDINATION
122 WILLIAM PENN STREET • THIRD FLOOR • DOVER, DE 19901
PHONE: (302) 739-3090 • FAX: (302) 739-6958 • WWW.OMB.DELAWARE.GOV

I see from the letter that you have included Sussex County officials in the mailing. I urge the City of Lewes to contact the Sussex County officials to discuss your concerns. It is my understanding that the City of Lewes and Sussex County have an MOU in place regarding land use matters contiguous to the Town Boundaries.

The concerns listed in your letter are items that should be need to be addressed by Sussex County prior to making a formal decision on this project. Hopefully the MOU will prove beneficial and open communications between the County, the City of Lewes, and the developer so that your concerns may be discussed and addressed.

If you have any questions, please let me know.

Sincerely,

Connie Holland

Constance C. Holland, Director
Office of State Planning

CC: Sussex County

Lewes file

JOSEPH W. BOOTH
STATE REPRESENTATIVE
Thirty-Seventh District

HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
LEGISLATIVE HALL
DOVER, DELAWARE 19901

COMMITTEES
Appropriations
Education
Joint Finance
Transportation, Land Use & Infrastructure

April 21, 2009

Ms. Connie Holland
Office of Management and Budget
State Planner
122 William Penn Street
Suite 301
Haslet Armory, 3rd Floor
Dover, Delaware 19901

Dear Ms. Holland:

The purpose of this letter is to advise you that Senator Simpson, Representative Schwartzkopf, Representative Carey have joined me in coming up with the monies necessary to fund a traffic impact study for the entire City of Lewes and environs. This study is scheduled to be completed within four months.

I wanted to make sure P.L.U.S. was aware of this action and that the results will be shared as soon as the study is complete. It is our understanding that new plans are being considered for the Townsend Track located just outside the city limits of Lewes.

Thank you for your attention to this matter.

Sincerely,

Joe

Joseph W. Booth
37th District
State Representative

JWB/mmd
cc: Mr. Dave Ennis

200 Garden Street, Georgetown, DE 19947
Home: 302-856-1850 House Office: 302-744-4251 Fax: 302-739-2773

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The City of Lewes

RECEIVED
O.F.C MGMT AND BUDGET
2009 APR 28 AM 11 11

April 27, 2009

Ms. Constance Holland, Director
Office of State Planning Coordination
122 William Penn Street, Suite 302
Haslet Building, 3rd Floor
Dover DE 19901

Dear Ms. Holland;

Please accept this letter with concerns from the City of Lewes (City) regarding the re-submission of the Townsend/Lingo project known as the Townsend Village Center (TVC). We ask that this letter and the attachments to this letter be made part of the official record.

1. The proposed TVC is part of the Lewes Board of Public Work's (BPW) wellhead protection area. The City is concerned that the proposed density of this development located so close to our recharge area will have an impact on our ability to continue to provide safe drinking water. In addition, this property is located in an area that is deemed "Environmentally Sensitive"; thus, the City requests there needs to be additional environmental protections to safeguard our drinking water supply. (A copy of the BPW's map is attached as Exhibit "A".)

2. The proposed project is located in a residential and school neighborhood with some small rural pockets. A 387,000 square feet commercial space is too large for this area and would dramatically alter the character of the surrounding neighborhood. The current zoning is AR1 and it is our position that it should not be changed.

3. The City suggests that the State Planning Office wait to issue a final report until it has read and studied the FutureScan study which was commissioned by the Greater Lewes Foundation. The purpose of this study is to help residents and governmental bodies to better understand the dynamics of this area: the growth patterns, the traffic impact, the impact on natural resources, etc. The City respectfully requests that the attached FutureScan study, which was officially released on April 25, 2009, be made part of the official record. (A copy of the 4/25/09 FutureScan study is attached as Exhibit "B")

4. In addition, the City requests that the issuance of a final report be delayed until the State Planning Office has reviewed and considered a traffic report which has been commissioned by the City. The City has contracted with the Renaissance Group to follow up on the findings contained in the FutureScan study and to provide a report and recommendation which focuses on traffic issues. It is our request that any further action on this project should be held in abeyance awaiting the outcome of these studies. Both the Future Scan study and the Renaissance Group study have been funded in part by the State of Delaware, the residents of Lewes, and private donations to a non-profit organization.

5. The City is concerned that the proposed size and density of the TVC project will negatively impact the safe passage of emergency vehicles to Beebe Medical Center. Kings Highway is one of only three arteries into Lewes and as more and more traffic is directed onto Kings Highway, the more this becomes a critical safety issue. Already, drivers of ambulances and EMS responders are reporting difficulties in negotiating traffic backups along this artery. The 2009 first quarter report from the Lewes Fire Department noted a total of 642 emergency responses.

6. The City is concerned that the proposed size and density of the TVC project will impact the safety and ease of travel into the City of Lewes. Kings Highway already serves the residents of Lewes, the developments off of Gills Neck Road, the Cape Henlopen High School, Cape Henlopen State Park, and the D.R.B.A. ferry. The City does not believe that Kings Highway as it is currently situated can safely accommodate this additional out-of-scale commercial development.

7. Finally, it should be noted that the proposed project represents an even higher density than the earlier application because the size of the project has been reduced to 43 of the 68 acres. The proposed reduction in build out from 521,000 sq/ft to 387,000 sq/ft results in a greater density per acre than the original project.

The City acknowledges that the Lingo/Townsend families have deep roots in our community, but, as was mentioned at the public hearing, there is no assurance that once this land is up-zoned it will remain in their hands. The next owners may not have the same high standards or sensitivity to local concerns. If the zoning change is approved, any permitted use recognized by the County commercial zone could be built there, and County, not Lewes, density, height, and set back requirements would apply. The City is concerned that the up-zoning will negatively impact the character of the area, the wellhead protection area, and will create safety issues on the surrounding roads.

Thank you for considering our point of view regarding this application for a major shopping complex and for making this letter and attached documentation a part of the official record.

Sincerely,

James L. Ford/III ST

James L. Ford, III
Mayor, City of Lewes

JLF:ae

Enclosures:

Cc: Sussex County Council
David Baker, Administrator, Sussex County Administration
Senator Gary Simpson
Representative Joseph Booth
Representative Pete Schwartkopf

Holland.4-27-09.TownsendProject.Concerns