



**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION**

May 26, 2010

John Giles
Town of Elsmere
11 Poplar Avenue
Elsmere, DE 19805

RE: PLUS 2010-04-03; Town of Elsmere Comprehensive Plan Update

Dear Mr. Giles:

Thank you for meeting with State agency planners on April 28, 2010 to discuss the proposed Town of Elsmere draft comprehensive plan update.

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.

Certification Issues: These comments must be addressed in order for our office to consider the plan amendment consistent with the terms of your certification and the requirements of Title 22, § 702 of the Del. Code.

There are no certification issues with the plan as reviewed.

Office of State Planning Coordination –Contact: Herb Inden 739-3090

The Office of State Planning Coordination would like to commend the Town of Elsmere for preparing a thorough and well done comprehensive plan update. We note the extensive time and effort the Town put into this document by both the Planning Commission and the Town Council working with the Institute for Public Administration and the Delaware State Housing Authority and it seems to have paid off with a well done document that all levels of government and the citizens can rely on in moving forward.

Recommendations/Additional Information

This section includes a list of site specific suggestions that are intended to enhance the project. These suggestions have been generated by the State Agencies based on their expertise and subject area knowledge. **These suggestions do not represent State code requirements.** They are offered here in order to provide proactive ideas to help the applicant enhance the site design, and it is hoped (**but in no way required**) that the applicant will open a dialogue with the relevant agencies to discuss how these suggestions can benefit the project.

State Historic Preservation Office – Contact Terrence Burns 736-7404

- While there is not a separate historic preservation section, historic preservation values are incorporated in the Town’s vision for its future, and several recommendations are explicitly directed to historic preservation.
- The State Historic Preservation Office supports the recommendations and encourages the Town to consider completing a survey and nomination of a historic district to the National Register of Historic Places. Listing in the National Register would make homeowners eligible for the State’s Historic Preservation Tax Credit, which will help with maintaining affordable housing and preventing blight. In addition, income-producing properties within the district (including rental housing) would be eligible for both the State and the Federal tax credit programs. This would also assist the Town in qualifying for the National Trust for Historic Preservation’s Main Street Program and we would be happy to discuss this with the Town.
- The State Historic Preservation Office (SHPO) strongly supports the creation of a historic overlay district and a business district design plan, and overhauling the zoning to prevent inadvertent redevelopment that is not in keeping with the character of the Town. A separate building code for rehabilitation of older and historic buildings and changes to the zoning code to prevent inappropriate infill or teardowns in historic areas are strongly encouraged. It is important that these protect the historic character of these older buildings and their streetscapes. SHPO would be happy to provide technical assistance and sources of information on these issues as the Town develops these programs, and if you have any questions or concerns, please contact Alice Guerrant at 302-736-7412.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- Recommendation Four in Section 6.6 and Recommendation Nine in Section 8.5 mention implementing “traffic-calming measures” to reduce speeds on Kirkwood Highway. However, Kirkwood Highway is a principal arterial highway. Section 3.1 in the DelDOT Traffic Calming Manual states that they will apply traffic calming measures only on roads classified as minor arterial highways and lower. Accordingly, traffic calming as such is not an option in this situation.

Please understand that traffic calming is a technical term pertaining to measures within the travelway. It may be possible to change the streetscape, e.g. adding street furniture or decreasing setbacks so as to give drivers visual cues that lower speeds are appropriate. DelDOT would be willing to discuss such measures with the Town. Recommendation Four in Section 6.6 is discussed further under Suggestions.

- Recommendation Ten in Section 8.5 proposes a “prominent, overarching sign or banner gateway to the city.” Per Delaware Code Title 17, Section 134(c), DelDOT has responsibility for maintenance of the State-maintained roads through the town. As part of that responsibility, they regulate aerial features including signs or banners that span the travelway. An initial contact in this regard would be Mr. Thomas Meyer, our Traffic Studies Engineer. Mr. Meyer may be reached at (302) 659-4090.
- Section 4.2c describes a current practice that many in the town would like to prohibit, specifically, the building of a second dwelling in the backyard of an existing dwelling, either as an accessory dwelling or as a separate lot under different ownership. It is important that this practice be regulated for a variety of reasons, including the additional parking and traffic associated with the additional dwellings. However, this practice can be an important way of providing for growth and density in places that are already largely developed, such as Elsmere. DelDOT recommends that the Town regulate this practice but continue to encourage it in one or more zoning districts.
- DelDOT has two concerns about Table 31: Kirkwood Highway Traffic Counts:
 - The volumes are mislabeled, apparently due to a misunderstanding of how to read the Traffic Summary reports. The counts shown all apply to the segments east of those indicated in the column headings, e.g, the volumes shown as being from the West Elsmere Limits to Linden Avenue were actually those for the segment from Route 141 to the West Elsmere Limits.
 - As the text indicates, not all of the segments in the Summary reports are counted every year. When a segment is not counted, a volume is estimated by factoring the most recent count using data from similarly classified roads elsewhere in the state. For this reason, the change shown from year to year may or may not reflect what actually occurred there. DelDOT has added data from 1999 and 2000 and recommend that Table 31 be revised to the following:

Year	Rt 141 to W. Elsmere Limits	W. Elsmere Limits to Linden Ave.	Linden Ave to DuPont Rd.	DuPont Rd. to E. Elsmere Limits	E. Elsmere Limits to Geddes St.
1999	34,170	29,498	26,227		
2000					19,445
2001					

2002				24,126	
2003			22,549		
2004					
2005	33,247	28,343		23,501	
2006					23,176
Annual Growth (Decline)	(0.5%)	(0.7%)	(3.8%)	(0.9%)	3.0%

- Recommendation Four in Section 6.6 is to “Continue to work with DeIDOT to reduce traffic speeds along Kirkwood Highway by decreasing posted speed limits and/or implementing traffic-calming measures.” As discussed above, traffic calming as they define it is not an option on Kirkwood Highway. However, they are open to continuing to work with the Town to determine what might be done to lower prevailing speeds. However, the Town should understand that they typically set speed limits based on the 85th percentile speed where speeds are not otherwise regulated, e.g. the speed limit is 25 miles per hour on all State-maintained subdivision streets. The Town may contact Mr. Thomas Meyer, Traffic Studies Engineer, at (302) 659-4090 as necessary in this regard.
- Recommendation Six in Section 6.6 is to “Work with DART First State to maintain and upgrade the bus stops and shelters along Kirkwood Highway.” DART First State is committed to providing the best possible service to its patrons and will work with the Town in this regard. However, the Town should be aware that when properties are redeveloped, especially in ways that would benefit from transit service, DART often looks for businesses to provide stops and to fund shelters in front of their properties. DeIDOT recommends that the Town contact Ivan Mitchell, a Service Development Planner with the Delaware Transit Corporation, as necessary regarding bus stops and shelters along Kirkwood Highway. Mr. Mitchell may be reached at (302)576-6062.
- Recommendation Nine in Section 6.6 is to “Continue to pursue a greenway trail along the existing rail line to connect Maple Avenue Park and Fairgrounds Park.” This project is one of three for which the Town has applied for Transportation Enhancement funds. The Town should expect to hear from us this summer when they begin conceptual planning. For more information on the status of those projects, the Town may contact Mr. Jeff Niezgod, Transportation Enhancement Coordinator, at (302) 760-2178.
- Recommendation Eight in Section 7.4 is that “The town should work with DeIDOT and DNREC to monitor noise and air pollution along Kirkwood Highway and other areas of the town.” DeIDOT undertakes noise and air pollution monitoring and modeling as necessary for our capital program and requires noise monitoring and modeling where development is proposed along limited access highways. To the extent that our resources permit, we are willing to work with the Town. However, we lack the resources to institute long-term noise and air pollution monitoring programs in Elsmere or elsewhere.

To the extent that DNREC is unable to help, the Town may want to consider retaining a private contractor for this purpose.

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

Fish and Wildlife

- Map 9, Area of Concern: A review of our GIS database indicates there may be suitable habitat for the federally listed bog turtle (*Glyptemys muhlenbergii*) within the proposed 'Area of Concern; specifically, within the undeveloped wetland and open space area along Little Mill Creek and Wilson Run. Bog turtles typically occur in freshwater wetlands with open canopies, mucky soils, and tussock vegetation; however, they can occur in more marginal habitats as well. The bog turtle is a **federally listed** species, protected under the **Endangered Species Act**. Projects proposing a land-use change or hydrological change in this area could impact this habitat and would need to be screened by our program. We may request a Phase I survey to determine if habitat is present. If habitat is found during the survey, the applicant will be required to either completely avoid all direct and indirect project impacts to the wetland, in consultation with the U.S. Fish and Wildlife Service and Delaware Division of Fish and Wildlife, or have Phase II surveys conducted to determine if bog turtles are present.

Phase I surveys can be conducted any time of year when ice and/or snow cover is not present. If potential habitat is found, however, please note there is a time of year restriction during which Phase II surveys for bog turtles must be conducted. *A Delaware approved bog turtle surveyor must be used to conduct the surveys.*

- Riparian Areas: The plan doesn't specifically mention the importance of riparian areas and the upland buffers that protect those areas from degradation. A portion of the land adjacent to Little Mill Creek is designated for possible future Industrial development. The remaining land along Little Mill Creek and Chestnut Run are already developed or comprised of Parks and Recreation land. In the interest of water quality and wildlife habitat, we recommend maintaining an upland buffer of *at least* 100 ft along Little Mill Creek and Chestnut Run (and Wilson Run if area is annexed). This recommendation is based on peer reviewed research that suggests that buffer values increase noticeably with widths of 100 or more feet. This buffer should *not* be a maintained lawn area but comprised of existing vegetation or planted with Delaware native species of trees, shrubs, grasses or wildflowers. If the Town is interested in conducting plantings to enhance the buffer zone, our program botanist Bill McAvoy could assist with drafting a list of Delaware native plants suitable to the area. Bill can be reached at (302) 735-8668 or William.McAvoy@state.de.us.

Parks and Recreation Facilities

- Section 5-7, Recreational Opportunities and Space, Parks and Open Space: There are 11 park/open space areas that are managed by the Town of Elsmere:
 - **Chestnut Run Park**-10.6 acres of Open Space located along Jefferson Ave.
 - **Junction Park**- .5 acre park with playground, basketball and tennis courts, picnic tables and a pavilion. Located at Junction Street and Casapulla Ave.
 - **Vilone Park**- 18.6 acre park with playground, ball fields, picnic tables, benches, and concession stand. Located at Olga Road and Marvillo Avenue.
 - **Joseph R. Walling Park**- 2 acre park with playground, basketball and tennis courts, picnic tables, and a pavilion. Located along Linden Avenue.
 - **Bryan Martin Park**- .1 acre park with a playground. Located along Tamarack Avenue.
 - **Maple Avenue Park**- 6.2 Acre park with playground, benches and handicap facilities. Located at Maple Avenue and Sycamore Ave.
 - **Elsmere Memorial Park**- .5 acre of open space with a gazebo and bus stop. Located at the intersection of Rt. 2 and Rt. 100.
 - **Town Hall Park**- .34 acre park with playground, picnic tables, and benches. Located at 11 Poplar Avenue.
 - **Fairgrounds Park**- 32 acre park with playground, ball fields, picnic tables and concession stand. Located at Dover Avenue and Filbert Ave.
 - **Village Circle Park**- .5 acre park with brick walkway and gazebo. Located at New Road and Alvil Road.
 - **Baltimore Avenue Dog Park**- 1 acre parcel formerly the Delmarva Sub-station. Located at the intersection of Baltimore Avenue and Northern Avenue.

Delaware Land and Water Conservation Trust Fund (DTF): Thank you for referencing the DTF program in the Comp Plan update. The following is an April 2010 update on the parks in Elsmere that have received funding through the DTF program; Junction Park, Vilone Park, Joseph R. Walling Park, Bryan Martin Park, Maple Avenue Park, Town Hall Park, and Fairgrounds Park. The Town of Elsmere could further benefit from this program when incorporating new outdoor recreational facilities (particularly when planning or developing the Baltimore Avenue Dog Park) or adding amenities to existing parks. For more information on the Delaware Land and Water Conservation Trust Fund, please contact Robert Ehemann @ 302.739.9235.

- Although it is not currently being considered, Section 4.2c Land and Infrastructure discusses the possibility of selling some publicly owned parkland. The Town of Elsmere should be aware that properties that have received DTF funding are protected as public recreational facilities in perpetuity. Delaware Code Title 30, c. 54 (II) § 5423 (4) states 'It is intended that property acquired or improved with funds from the Earnings Account shall remain in public outdoor recreation and conservation use in perpetuity. Said

property may not be converted to other uses without a subsequent act of the General Assembly. If the General Assembly approved the sale or lease of any project or a portion thereof, the State shall receive its pro rata share of net sale and/or lease income. Said funds shall be deposited in the Earnings Account to be immediately available for other projects.’

Reference: <http://delcode.delaware.gov/title30/c054/sc02/index.shtml#5423>

Potential Brownfield sites

- DNREC's Site Investigation and Restoration Branch (SIRB) encourages the development of Brownfields and can provide assistance when investigating and remediating Brownfield sites. Although SIRB has no specific comments regarding the proposed comprehensive plan at this time, if any future development occurs on sites with previous manufacturing, industrial, or agricultural use, SIRB recommends that a Phase I Environmental Site Assessment be conducted prior to development, due to the potential for a release of hazardous substances. If a release or imminent threat of a release of hazardous substances is discovered during the course of future 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). In addition, SIRB should be contacted as soon as possible at 302-395-2600 for further instructions.

Water Resources comments

- The Water Supply Section, Ground-Water Protection Branch (GPB), has determined that the Town does not contain any excellent ground-water recharge potential or wellhead protection areas.

Stormwater/Drainage comments

- Explore the feasibility of stormwater utility to fund upgrades to existing stormwater infrastructure. Upgrades to the stormwater system may reduce pollutant loads and help reach the established total maximum daily load for nitrogen, phosphorus, and bacteria. Reach out to the New Castle Conservation District, New Castle County and the Delaware Clean Water Advisory Council as partners in funding stormwater retrofits.
- The Town should pursue drainage easements along waterways and storm drains where currently there are none.

Plan Implementation

- Page 55, Recommendations: The Plan should offer more specific “actionable” environmental protection strategies than currently offered. DNREC recommends that the

following ordinance or ordinances (unless current Town ordinances address these concerns) which would:

- a) Require all applicants to submit to the Town a copy of the development site plan showing the extent of State-regulated wetlands (as depicted by the State Wetland Regulatory Maps), and a United States Army Corps of Engineers (USACE) approved wetlands delineation as conditional approval for any new commercial and/or residential development. Additionally, the site plan should depict all streams and ditches which are jurisdictional pursuant to the Subaqueous Act (7 Del. C., Chapter 72) as determined by DNREC.
- b) Help protect freshwater wetlands where regulatory gaps exist between federal and State jurisdictions (i.e., isolated wetlands and headwater wetlands).
- c) Where possible, require a 100-foot upland buffer width from all wetlands or water bodies (including ditches).

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 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 the landward edge of all wetlands and water bodies (including all ditches).

- d) Require an impervious surface mitigation plan for all residential and commercial developments exceeding 20% imperviousness. In commercial developments, it is strongly recommended that pervious paving materials be required on at least 50% of the total paved surface area(s).
- e) Require the calculation for surface imperviousness (for both commercial and residential development) take in to account all constructed forms of surface imperviousness, including all paved surfaces (roads, parking lots, and sidewalks), rooftops, and open-water stormwater management structures.
- f) Require the assessment of a project's TMDL nutrient loading rate through use of the Department's nutrient budget protocol. The applicant should be further required to use any combination of approved Best Management Practices (BMPs) to meet the required TMDLs for the affected watershed(s) in question.
- g) Exclude structural Best Management Practices (BMPs) such as community wastewater treatment areas, open-water stormwater treatment structures and natural areas containing regulated wetlands from consideration as open space.

- h) Prohibit development on hydric soil mapping units. Proof or evidence of hydric soil mapping units should be provided through the submission of the most recent NRCS soil survey mapping of the parcel, or through the submission of a field soil survey of the parcel by a licensed soil scientist.
- i) Require the applicant to use “green-technology” stormwater management in lieu of “open-water” stormwater management ponds whenever practicable.
- j) All open space land uses should be designed and managed in a manner that mitigates or reduces nutrient pollutant loading and its damaging impacts to water quality. Since changes in land use often increase runoff of nutrient pollutants into nearby waterways (including wetlands) draining a common watershed, these nutrient pollutant loading impacts should be assessed at the preliminary project design phase. To this end, the Watershed Assessment Section has developed a methodology known as the “Nutrient Load Assessment Protocol” to assess such impacts. The protocol is a tool used to assess changes in nutrient loading that result from the conversion of individual or combined land parcels to a different land use(s), and serves as a “benchmark indicator” of that project’s likely impacts to water quality. It is the intention of this protocol to inform those relevant governmental entities (i.e., State, county, and municipal) how a given project will affect water quality in their jurisdictions, while informing/encouraging developers of the need to incorporate better conservation practices (i.e., BMPs) in their project designs to help improve water quality.

Delaware State Housing Authority – Contact Karen Horton 739-4263

DSHA wants to thank the Town for allowing us to assist in the development of this aspect of the plan and hope to use this same approach with other municipalities. This is a plan that DSHA will use as the standard when reviewing Affordable Housing Plans of other municipalities.

- The Delaware State Housing Authority endorses the Plan’s goals for improving the integrity of the housing stock through rehabilitation and improving housing maintenance through City codes. We also applaud the use of innovative techniques such as “permit-ready” housing to address infill needs in a manner that contributes positively to the Town’s character.
- DSHA is appreciative of the opportunity to work with the Town of Elsmere on the development of their Affordable Housing Plan.
- DSHA can provide technical assistance to the Town in implementing any of the recommendations outlined in the Plan.
- Additionally, DSHA has developed a website, **Affordable Housing Resource Center**, to learn about resources and tools to help create housing for households earning 100% of

median income or below. Our website can be found at: www.destatehousing.com

"Affordable Housing Resource Center" under our new initiatives.

Department of Agriculture – Contact Scott Blaier 698-4529

- The last sentence on page 7 ending with “dog” is incomplete, and does not continue on page 8.
- The Delaware Forest Service encourages the town to develop a formal urban forestry management plan that addresses a tree canopy goal if it has not already. Trees are a vital part of any community and the Delaware Forest Service recommends that trees be preserved during the development process. A tree ordinance protecting existing woodlands in future development as well as existing street trees can be developed and implemented to address this issue. The Delaware Urban & Community Forestry Program would be glad to offer assistance. Please contact the Delaware Forest Service for more information at (302) 659-6705 or 698-4547.
- The Department encourages the town to develop and promote agricultural businesses whenever possible, specifically farm markets. The Department has a fully staffed marketing section, and we encourage the town to contact them at (302) 698-4535 to see how they can help. Please contact Kelli Steele of the Department’s marketing section to explore agricultural economic development activities. Food safety, nutrition, and wholesomeness are consumer priorities these days, and many people are turning to local sources of food supply. As a result, there are a number of agricultural development opportunities.

Approval Procedures:

1. Once all edits, changes and corrections have been made to the plan, please submit the completed document (text and maps) to our office for review. **Your PLUS response letter should accompany this submission.** Also include documentation about the public review process. In addition, please include documentation that the plan has been sent to other jurisdictions for review and comment, and include any comments received and your response to them.
2. Our office will require a maximum of 20 working days to complete this review.
 - a. If our review determines that the revisions have adequately addressed all certification items, we will forward you a letter to this effect.
 - b. If there are outstanding items we will document them in a letter, and ask the town to resubmit the plan once the items are addressed. Once all items are addressed, we will send you the letter as described above.
3. Once you receive our letter stating that all certification items have been addressed, the Planning Commission and Council should adopt the plan pending State certification. We

strongly recommend that your Council adopt the plan by ordinance. The ordinance should be written so that the plan will go into effect upon receipt of the certification letter from the Governor.

4. Send our office a copy of the adopted plan along with the ordinance (or other documentation) that formally adopts your plan. We will forward these materials to the Governor for his consideration.
5. At his discretion, the Governor will issue a certification letter to your City.
6. Once you receive your certification letter, please forward two (2) bound paper copies and one electronic copy of your plan to our office for our records.

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
Office of State Planning Director

CC: Ed O'Donnell