



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

January 18, 2011

Mr. Lawton Myrick  
George, Miles & Buhr, LLC  
206 West Main Street  
Salisbury, MD 21801

RE: PLUS review – 2010-12-02; Browning/Davis Rezoning

Dear Mr. Myrick:

Thank you for meeting with State agency planners on December 22, 2010 to discuss the proposed rezoning of the Browning/David property located at the northeast corner of Cedar Neck Road and Fred Hudson Road in Sussex County.

According to the information received, you are seeking a rezoning of 2.38 acres from MR to B-1 for 2 commercial buildings totaling 18,500 sq. ft.

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.**

**Strategies for State Policies and Spending**

This project is located in Investment Level 3 according to the Strategies for State Policies and Spending. Investment Level 3 reflects areas where growth is anticipated by local, county, and state plans in the longer term future, or areas that may have environmental or other constraints to development. State investments will support growth in these areas, but please be advised that the State may have other priorities in the near term future. We encourage you to design the site with respect for the environmental features which are present.

### **Code Requirements/Agency Permitting Requirements**

#### **State Historic Preservation Office – Contact Terrence Burns 736-7404**

- There are no known cultural or historic resources such as an archaeological site or listed National Register property on this parcel. Although there are no known cultural or historic resources on this parcel, it is important that the developer be aware of the Delaware Unmarked Human Remains Act of 1987, outlined in Chapter 54 of Title 7 of the Delaware Code, which pertains to the discovery and disposition of such remains, because the unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out. Prior to any demolition or ground-disturbing activities, the developer may want to consider hiring an archaeological consultant to examine the parcel for archaeological sites, such as a cemetery or unmarked human remains.
- If there is any federal involvement with the project, in the form of licenses, permits, or funds, the federal agency, often through its client, is responsible for complying with Section 106 of the National Historic Preservation Act (36 CFR 800) and must consider their project's effects on any known or potential historic or cultural resources.

#### **Department of Transportation – Contact Bill Brockenbrough 760-2109**

- The site access must be designed in accordance with DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access. This manual is available on-line at [http://www.deldot.gov/information/pubs\\_forms/manuals/subdivisions/pdf/Subdivision\\_Manual\\_Revision\\_1\\_proposed\\_060110.pdf](http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision_Manual_Revision_1_proposed_060110.pdf).
- As proposed, the subject development can be expected to generate more than 50 trips during the weekday peak hour. Therefore, it would meet DelDOT's volume warrants for a Traffic Impact Study (TIS), as contained in Section 2.3.1 of DelDOT's Standards and Regulations. If the developer would like to proceed with the TIS, they should contact Mr. Troy Brestel of the DelDOT Development Coordination Section to arrange for a scoping meeting. Mr. Brestel may be reached at (302) 760-2167.
- From the site plan presented, it appears that the subject development may generate less than 2,000 trips per day and 200 trips during the weekday peak hour. If the developers are willing to file a deed restriction to that effect, they would be willing to accept payment of the Area-Wide Study Fee, addressed in Section 2.3.2 of the Standards and Regulations, in lieu of a TIS. This fee, calculated as \$10 per daily trip, would be payable when the site plan is submitted for issuance of a Letter of No Objection. Payment of it would exempt the developer from the need to do a TIS but would not exempt them from participation in off-site improvements or the need to do a Traffic Operational Analysis if

one is required in the review of their entrance plans. If the developers would like to pay the fee in lieu of doing a TIS, they should contact me at (302) 760-2109.

- In accordance with Section 5.2 of DeIDOT's Standards and Regulations for Subdivision Streets and State Highway Access, DeIDOT anticipates requiring improvements along the site frontage. Preliminarily, those improvements would include separate left and right turn lanes at the site entrance on Cedar Neck Road. Those improvements could, in turn, require the dedication of rights-of-way to public use. As discussed below, DeIDOT would likely require improvements at the entrance on Fred Hudson Road if we permit access there at all. They recommend that the developer's site engineer contact the DeIDOT Subdivision Manager for eastern Sussex County, Mr. John Fiori, to discuss these requirements further. Mr. Fiori may be reached at (302) 760-2260.
- DeIDOT anticipates that Sussex County will require a "Letter of No Objection" from the Department for this project. Per Section 3.4 of DeIDOT's Standards and Regulations for Subdivision Streets and State Highway Access, the developer must submit **three (3) signed and sealed paper copies and one electronic (pdf) copy** of the **record plan**, with an Initial Stage Fee Calculation Form and the Initial Stage Fee. Please make all submissions to Mr. John Fiori, Subdivision Manager. The entrance plan will not be reviewed until after the "Letter of No Objection" has been issued.
- As specified in Section 4.1 of DeIDOT's Standards and Regulations for Subdivision Streets and State Highway Access, when the entrance construction plans are submitted for review, the developer must submit **two (2) paper copies and one electronic (pdf) copy** of the construction plans, one copy of the record plan, an Initial Stage Fee Calculation Form, a Construction Stage Fee Calculation Form, a Construction Stage Review Fee, an application for highway entrance permit and a signed and sealed commercial entrance design checklist for review and approval. Be advised that the Department will not review the entrance plan until it has signed off on the record plan. Please make all submissions to Mr. John Fiori, Subdivision Manager.

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

## **TMDLs**

- The project is located in the greater Inland Bays drainage - specifically within the area designated as the "low nutrient reduction zone" of the Indian River Bay watershed. In this portion of the watershed, specific Total Maximum Daily Load (TMDL) pollutant reduction targets have been developed by the State of Delaware (under the auspices of Section 303(d) of the 1972 Federal Clean Water Act) for nutrients (e.g., nitrogen, phosphorus), and bacteria. 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 State water quality standards (e.g., dissolved oxygen, nutrients, and bacteria;

*State of Delaware Surface Water Quality Standards, as amended July 11, 2004*) to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. The TMDL for the Low Reduction zone of the Inland Bays watershed calls for a 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 40 percent reduction in bacteria from baseline conditions.

**The adopted Inland Bays Pollution Control Strategy regulation was published in the Delaware Register of Regulations on November 11, 2008 and is now an enforceable regulatory directive.** A Pollution Control Strategy (PCS) is an implementation strategy that identifies the actions necessary (regulatory and nonregulatory) to systematically reduce the pollutant loading to a given water body, and thus meet the TMDL reduction requirements specified for that water body. These regulations can be reviewed at <http://regulations.delaware.gov/documents/November2008c.pdf> and background information, guidance documents, and mapping tools can be retrieved from [http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/ib\\_pcs.htm](http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/ib_pcs.htm). The regulations address establishing a buffer zone sediment and stormwater controls for new development projects, and additional measures and standards for onsite wastewater treatment and disposal systems. Additionally, a map of water features identifies the specific primary and secondary water features that require buffers; these maps can be reviewed at <http://maps.dnrec.delaware.gov/inlandbayspcs93/>.

- The regulations require that buffers of a specified width be established for State-regulated wetlands, tidal waters, primary and secondary water features. The width may be reduced when combined with advanced sediment and stormwater controls and upon the creation of a development-wide nutrient management plan. Buffers must be placed in common open space and be clearly demarcated, designated and recorded on final plans or plat. Buffers must be maintained in perpetuity and must have boundary signs or markers or distinctive vegetation identifying the upland edge of the buffer.
- The regulations also require that permanent sediment and stormwater management plans be designed and implemented to include design criteria to further reduce nutrient contributions. Compliance with this provision can be through any of the options below.
  - ❖ For properties with primary and secondary water features:
    1. Implement standard width buffers
    2. Implement reduced buffer widths in conjunction with the creation and use of a development-wide nutrient management plan (NMP), and the implementation of at least one advanced stormwater treatment control method.
  - ❖ For properties without primary or secondary water features, or for those properties with primary and secondary water features that employ a reduced-width buffer

(including the required NMP), select from at least one of the following advanced stormwater treatment control methods:

1. Reduce nutrients by the TMDL percentage
  2. Reduce nutrients to irreducible concentration levels
  3. Implement three practices within a treatment train
  4. Establish 30% of the project parcels as forest in common open space (See appendix L in the PCS regulations for planting requirements).
- The applicant should also remember that a nutrient management plan (NMP) is also required when electing to pursue a reduced buffer width for their project. An NMP is also required for those properties without primary or secondary water features. The Nutrient Management Program link can be retrieved at <http://dda.delaware.gov/nutrients/index.shtml>
  - The applicant should assess nutrient loading on their parcel through the DNREC developed methodology known as the “Nutrient Load Assessment protocol.” The protocol is a tool used to assess changes in nutrient loading (e.g., nitrogen and phosphorus) that result from the conversion of individual or combined land parcels to a different land use(s), while providing applicants with quantitative information about their project’s impact(s) on baseline water quality. We strongly encourage the applicant/developer use this protocol to help them design and implement the most effective BMPs. Please contact Lyle Jones at 302-739-9939 for more information on the protocol.

## **Water Supply**

- The project information sheets states water will be provided to the project by Sussex Shores Water Company via a public water system. DNREC records indicate that the project is located within the public water service area granted to Sussex Shores Water Company under Certificate of Public Convenience and Necessity 89-CPCN-02.
- 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.

### **Water Resource Protection Areas**

- The DNREC Water Supply Section GPB has determined that the project falls entirely within an excellent ground-water recharge potential area for Sussex County (see attached map).

Excellent Ground-Water Recharge Areas are those areas mapped by the Delaware Geological Survey where the first 20 feet of subsurface soils and geologic materials are exceptionally sandy. These soils are able to transmit water very quickly from the land surface to the water table. This map category (excellent) is an indicator of how fast contaminants will move and how much water may become contaminated (Andres, 2004). Land use activities or impervious cover on areas of excellent ground-water recharge potential may adversely affect ground water in these areas.

In addition, because the excellent ground water recharge area can readily affect the underlying aquifer if contaminants are spilled or discharged across the area, 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.

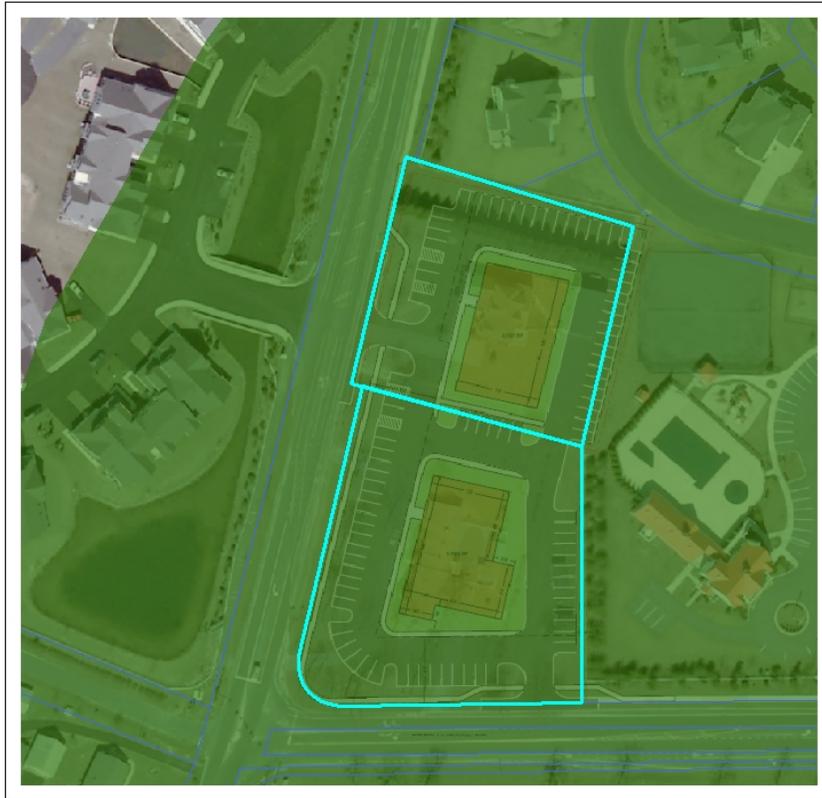
SWAPP Recommends:

- Reducing impervious cover

### *References*

Andres, A. Scott, 2004, Ground-Water Recharge Potential Mapping in Kent and Sussex Counties, Delaware: Delaware Geological Survey Report of Investigations No. 66, p. 14.  
<http://www.udel.edu/dgs/Publications/pubform.html#investigations>  
Anne Mundel, (302) 739-9945, [Anne.Mundel@state.de.us](mailto:Anne.Mundel@state.de.us)

**Browning Davis Property (PLUS 2010-12-02)**



100 50 0 100 Feet

1:1,200



**Legend**

 Excellent Ground-Water Recharge Potential

**Sediment and Stormwater Program**

- The Drainage Program recognizes this application is for a rezoning only. However, based on “schematic layout B” submitted with the application, a detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. Contact the Sussex Conservation District to schedule a project 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 Sussex Conservation District. Contact Jessica Watson at the Sussex Conservation District at (302) 856-2105 for details regarding submittal requirements and fees (Delaware Code, Title 7, Chapter 40; Delaware Regulations, Administrative Code, Title 7, 5101).

### **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.

#### Department of Transportation – Contact Bill Brockenbrough 760-2109

- The proposed entrance on Fred Hudson Road presents several problems. Left turns out would be difficult to make safely because exiting drivers must cross two westbound lanes to enter the eastbound lane. Similarly, entering drivers must cross those same two lanes and there is no way around a vehicle that has stopped in attempting to make that turn. There is no room to create a bypass lane or left turn lane. It may be possible to build a concrete median and prohibit left turns in and out, but that would need to be determined.

Right turns in and out are undesirable because the entrance is on a right turn lane. Entering drivers would be at risk for being rear-ended by drivers who mistakenly believe they are going to turn onto Cedar Neck Road. Exiting drivers who want to go south on Cedar Neck Road would have to cut across the right turn lane at a sharp angle to enter the through/left lane. It may be possible to place a right-in/right-out entrance near the property line, build a new, relatively short, westbound right-turn lane just west thereof on Fred Hudson Road approaching Cedar Neck Road, and re-designate the existing right-turn lane as a through lane and the existing through/left lane as an exclusive left-turn lane. The feasibility of such an arrangement would need to be determined.

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

### **Additional information on TMDLs**

- Please maximize open space through voluntary establishment of additional tree cover on this parcel.
- DNREC strongly recommends that the applicant calculate post-construction surface imperviousness with all forms of created surface imperviousness (e.g., rooftops, driveways, parking lots, sidewalks, open-water storm water management structures,

and roads) included in the calculation. They also strongly encourage the use of pervious paving materials (in lieu of conventional asphalt and concrete) to mitigate surface imperviousness and its' impacts on water quality wherever practicable.

- DNREC also strongly recommends the use of rain gardens, and green-technology storm water management structures (in lieu of open-water management structures) as BMPs to mitigate or reduce nutrient and bacterial pollutant impacts via runoff from impervious surfaces.

**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, Office of State Planning Coordination

CC: Sussex County