



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

February 20, 2011

Mr. Thomas Wilkes
Remington & Vernick
262 Chapman Road, Ste. 105
Newark, DE 19702

RE: 2011-01-02; Town of Townsend comprehensive plan amendment

Dear Mr. Wilkes:

Thank you for meeting with State agency planners on January 26, 2011 to discuss the proposed draft comprehensive plan amendment for the Town of Townsend. It is our understanding that this amendment is to rezone a previously annexed parcel from its current split zoning of residential/commercial to commercial. According to the discussion at the PLUS meeting, the property owner does not intend to build additional square footage at this time.

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.

Recommendations: Our office strongly recommends that the Town consider these recommendations from the various State agencies as you review your plan amendment for final approval.

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

The Office of State Planning Coordination has no objection to the proposed amendment.

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

- The Division of Historical & Cultural Affairs is not opposed to this land use plan amendment as it pertains to rezoning of the parcel (2500200095) from residential & commercial to commercial. Furthermore, the property does have a historic commercial building on it, and they request that the owner/developer consider maintaining this building in any future development. While the building is not listed in the National

Register, it may be eligible for it, and as such could be eligible for federal and state tax credits for a certified historic rehabilitation. If you have any questions, concerns, or would like to discuss these issues further, please contact Alice Guerrant at 302-736-7412.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

- The existing buildings on the site have been in continuous use with similar businesses for many years and may legally continue to operate there. However, with any significant change or expansion DelDOT will, pursuant to Section 8.6 of the Standards and Regulations for Subdivision Streets and State Highway Access, evaluate the need for entrance improvements and may require that they be made.

The applicants present two different future uses of the site if the property is rezoned: an expansion of their existing operation and a possible future convenience store use. Depending on what is planned, it seems likely that a new entrance could be accommodated on Pine Tree Corner Road (New Castle Road 25) to serve the expansion of the existing use. Given that the property has only about 360 feet of usable frontage on Pine Tree Corner Road and about 225 feet of frontage on Route 71, any use of it for a convenience store, especially the retail chain type suggested in their July 30, 2010, letter to the Town, would likely require the filling of wetlands along Pine Tree Corner Road and would necessarily require the addition of other commercially zoned parcels along Route 71.

- Any new or improved site access must be designed in accordance with the Standards and Regulations. This manual is available on-line at http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision_Manual_Revision_1_proposed_060110.pdf.
- Route 71 and Pine Tree Corner Road are, respectively, classified as a minor arterial road and a major collector road. Consequently, in accordance with Section 3.6.5 of the Standards and Regulations, DelDOT will require dedication of a 10-foot deep strip of right-of-way along each road to meet our minimum standards for such roads. This dedication would be required when the applicants seek to file a plan for the development or redevelopment of the property.
- In accordance with Section 3.10.1 of the Standards and Regulations, we anticipate requiring that the applicants enter into a signal agreement to cover the cost of any changes to the existing signal made necessary by their development or redevelopment of the property. Depending on what type of business is developed, they may be required to improve/provide pedestrian facilities at the intersection. Some or all of these facilities may be addressed through the signal agreement.

- Specific requirements regarding left turn lanes are located in Section 5.2.2.2 of the Standards and Regulations, but such lanes would likely be warranted at the site entrances. Access to the site will probably be limited to right turns in and out unless there is sufficient right of way to install a left turn lane.
- In accordance with Section 3.5.7.4 of the Standards and Regulations, DelDOT anticipate requiring a shared access between the site and any commercial development that might occur on the adjoining parcel on Route 71.
- In accordance with Section 5.5.2 of the Standards and Regulations, DelDOT anticipates requiring that the entire site frontage, or at least the developable portion thereof, be curbed.

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

The Department of Natural Resources and Environmental Control did not have any comments regarding the comprehensive plan amendment but made the following comments should the rezoning be approved and future development planned for the site:

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 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 the New Castle Conservation District. Contact the New Castle Conservation District at (302) 832-3100, Ext. 3 for details regarding submittal requirements and fees (Delaware Code, Title 7, Chapter 40; Delaware Regulations, Administrative Code, Title 7, 5101).

Tank Management Branch. Please be aware:

- If a release of a Regulated Substance occurs at the proposed project site, compliance of 7 Del.C. Chapter 60, 7 Del.C., Chapter 74 and DE Admin. Code 1351, State of Delaware *Regulations Governing Underground Storage Tank Systems* (the UST Regulations) is required.
- There are three (3) LUST projects located within a quarter mile of the rezoning project site:

- Ron’s Texaco, Facility: 3-000225, Project: N8901152 (Inactive)
 - E&P Market, Facility: 3-000281, Project: N9506127 (Inactive)
 - Townsend Fire Company, Facility: 3-001536, Project: N9501029 (Inactive)
- Per the **UST Regulations: Part E, § 1. Reporting Requirements:**
 - “Any indication of a Release of a Regulated Substance that is discovered by any Person, including but not limited to environmental consultants, contractors, utility companies, financial institutions, real estate transfer companies, UST Owners or Operators, or Responsible Parties shall be reported within 24 hours to:
 - The Department’s 24-hour Release Hot Line by calling 800-662-8802; and
 - The DNREC, Tank Management Branch (TMB) by calling 302-395-2500.”

Hazardous Waste Sites

- If it is determined by the Department that there was a release of a hazardous substance on the property in question and the Department requires remediation pursuant to the Hazardous Substance Cleanup Act, the provisions of 7 Del.C. Chapter 91, Delaware Hazardous Substance Cleanup Act and the Delaware *Regulations Governing Hazardous Substance Cleanup* shall be followed.

Air Quality

- The applicant shall comply with all applicable Delaware air quality regulations. Please note that the following regulations in Table 1 – Potential Regulatory Requirements may apply to your project:

Table 1: Potential Regulatory Requirements	
Regulation	Requirements
7 DE Admin. Code 1106 - Particulate Emissions from Construction and Materials Handling	<ul style="list-style-type: none"> ● Use dust suppressants and measures to prevent transport of dust off-site from material stockpile, material movement and use of unpaved roads. ● Use covers on trucks that transport material to and from site to prevent visible emissions.
7 DE Admin. Code 1113 – Open Burning	<ul style="list-style-type: none"> ● Prohibit open burns statewide during the Ozone Season from May 1-Sept. 30 each year. ● Prohibit the burning of land clearing debris. ● Prohibit the burning of trash or building

	materials/debris.
7 DE Admin. Code 1135 – Conformity of General Federal Actions to the State Implementation Plan	<ul style="list-style-type: none"> Require, for any “federal action,” a conformity determination for each pollutant where the total of direct and indirect emissions would equal or exceed any of the de minimus levels (See Section 3.2.1)
7 DE Admin. Code 1141 – Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products	<ul style="list-style-type: none"> Use structural/ paint coatings that are low in Volatile Organic Compounds. Use covers on paint containers when paint containers are not in use.
7 DE Admin. Code 1144 – Control of Stationary Generator Emissions	<ul style="list-style-type: none"> Ensure that emissions of nitrogen oxides (NO_x), non-methane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO₂), carbon monoxide (CO), and carbon dioxide (CO₂) from emergency generators meet the emissions limits established. (See section 3.2). Maintain recordkeeping and reporting requirements.
7 DE Admin. Code 1145 – Excessive Idling of Heavy Duty Vehicles	<ul style="list-style-type: none"> Restrict idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes.

For a complete listing of all Delaware applicable regulations, please look at our website: <http://www.awm.delaware.gov/AQM/Pages/AirRegulations.aspx>.

Blackbird Natural Area

- The entire forested area located on the recently annexed parcel (250-020-0095) is part of the Blackbird Natural Area. Natural areas contain lands of statewide significance identified by the Natural Areas Advisory Council as the highest quality and most important natural lands remaining in Delaware. For natural areas boundary lines, please contact the Office of Nature Preserves at 302.739.9235.
- Serious consideration should be given to protecting the identified natural area should the parcel eventually be developed. Natural area protection recommendations include:
 - Prohibit/strictly limit the removal of trees within the natural area boundary.
 - Provide buffers to the natural area- Prohibit additional development within 100 feet of the existing natural area boundary.

- Prohibit placing stormwater structures within the natural area.
- Require green technologies to manage stormwater around natural areas- Use the natural processes of vegetation to filter stormwater and take up harmful pollutants. This will improve groundwater recharge without the need for expensive infrastructure.

Key Wildlife Habitat

- The applicant noted that wetlands on this parcel are a '*natural solution to stormwater management*'. Conversion of natural wetlands into stormwater facilities or directing stormwater to wetlands could result in the degradation of water quality. It is best to avoid direct impacts to wetlands and to provide at least a 100-foot upland buffer to protect water quality and provide habitat for wetland dependent species which rely on the upland buffer for habitat.

The forest on this property is mapped as Key Wildlife Habitat (KWH) in the Delaware Wildlife Action Plan (DEWAP)¹ because it is part of a larger forest block that can support an array of plant and animal species. In addition, according to our GIS database, there are coastal plain ponds within this forest block and these unique wetlands provide breeding habitat for a variety of animals, including amphibians and invertebrates, and often support a unique and rare assemblage of plants. The maps in DEWAP show areas of the state where conservation efforts can be focused. Although designation as KWH is non-regulatory, these maps are intended to help guide site-specific conservation planning efforts.

- ¹The Delaware Wildlife Action Plan (DEWAP) is a comprehensive strategy for conserving the full array of native wildlife and habitats-common and uncommon- as vital components of the state's natural resources. Congress challenged the states to demonstrate comprehensive wildlife conservation. Delaware, along with all of the other states and provinces throughout the country are working to implement their wildlife action plans. This document can be viewed via the Division of Fish and Wildlife's website at <http://www.fw.delaware.gov/dwap/Pages/default.aspx>. DEWAP also contains a list of species of greatest conservation need, key wildlife habitat, and species-habitat associations.

Additional information on tank management

- When contamination is encountered, PVC pipe materials should be replaced with ductile steel and nitrile rubber gaskets in the contaminated areas.

- 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.
- Should the municipality anticipate being more restrictive than Delaware's Regulations Governing Underground Storage Tank Systems or Delaware's Regulations Governing Aboveground Storage Tanks, please be aware that the municipality shall be responsible for enforcing the more restrictive rules.

Additional information on hazardous waste sites

- The Site Investigation and Restoration Branch (SIRB) strongly recommends that the land owner perform environmental due diligence of the property by performing a Phase I Assessment in accordance to Section 9105(c) (2) of the Delaware Hazardous Substance Cleanup Act (HSCA). While this is not a requirement under HSCA, it is good business practice and failure to do so will prevent a person from being able to qualify for a potential affirmative defense under Section 9105(c) (2) of HSCA.
- There are no SIRB sites or Groundwater Management Zones within a ½ mile radius of the proposed project.
- 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.

Additional information on air quality

- The Division of Air Quality (DAQ) strongly supports all efforts that preserve public health and safety and promote smart growth, however, businesses may emit, or cause to be emitted, air contaminants into Delaware's air, which will negatively impact public health, safety and welfare. These negative impacts are attributable to:
 - Emissions that form ozone and fine particulate matter; two pollutants relative to which Delaware currently violates federal health-based air quality standards,
 - The emission of greenhouse gases which are associated with climate change, and
 - The emission of air toxics.
- Air emissions generated from businesses include emissions from the following activities:
 - Area sources such as painting, maintenance equipment and the use of consumer products like roof coatings and roof primers.
 - The generation of electricity needed to support your store rooms and offices, and

- Vehicle activity associated with the parking lot.
- The three air emissions components (i.e., area, electric power generation, and mobile sources) for this project could not be quantified at this time. Please note that there are also emissions associated with the actual construction and demolition, including automobile and truck traffic from working in, or delivering products to the site, as well as site preparation, earth moving activities, and other miscellaneous air emissions not reflected.
- Additional measures may be taken to substantially reduce the air emissions identified above. These measures include:
 - **Constructing with only energy efficient products.** Energy Star qualified products are up to 30% more energy efficient. Savings come from building envelope upgrades, high performance windows, controlled air infiltration, upgraded heating and air conditioning systems, tight duct systems and upgraded water-heating equipment. Every percentage of increased energy efficiency translates into a percent reduction in pollution. The Energy Star Program is excellent way to save on energy costs and reduce air pollution.
 - **Offering geothermal and/or photo voltaic energy options.** These systems can significantly reduce emissions from electrical generation, and from the use of oil or gas heating equipment.
 - **Providing tie-ins to the nearest bike paths and links to any nearby mass transport system.** These measures can significantly reduce mobile source emissions.
- Additionally, the following mitigation measures will reduce emissions associated with the actual construction phase of the project:
 - **Using retrofitted diesel engines during construction.** This includes equipment that are on-site as well as equipment used to transport materials to and from site.
 - **Using pre-painted/pre-coated flooring, cabinets, fencing, etc.** These measures can significantly reduce the emission of VOCs from typical architectural coating operations.
 - **Planting trees in vegetative buffer areas.** Trees reduce emissions by trapping dust particles and by replenishing oxygen. Trees also reduce energy emissions by cooling during the summer and by providing wind breaks in the winter, whereby reducing air conditioning needs by up to 30 percent and saving 20 to 50 percent on fuel costs.

This is a partial list, and there are additional things that can be done to reduce the impact of the development. The applicant should submit a plan to the DAQ which address the

above listed measures, and that details all of the specific emission mitigation measures that will be incorporated into the Town of Townsend Comprehensive Plan Amendment.

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. The town shall report back to the Office of State Planning Coordination regarding adoption of any Review or Amendment, and forward the office any relevant meeting minutes, resolutions, ordinances and a copy of the final Plan Review or Amendment text and maps as adopted.

Thank you for the opportunity to review this amendment. 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 Coordination Director